2025 in review and developments shaping restructuring and insolvency in 2026

With 2025 behind us, we are taking time at the start of 2026 to reflect on significant developments in the restructuring and insolvency space from both New Zealand and around the world and look ahead to what's coming in 2026.

28 May 2025

High Court provides guidance on insolvency practitioner independence and behaviour

Arena Alceon NZ Credit Partners, LLC v Grant [2025] NZHC 1360: In Arena Alceon NZ Credit Partners, LLC v Grant, [2025] NZHC 1360, the High Court found that voluntary administrator had breached various statutory duties and that the subsequent liquidators were not properly appointed. Despite this, the Court was not prepared to remove the liquidators from office, including because of the limited role expected, the length of time that had now passed and the additional cost and delay that would be caused by removal. This illustrates the challenges involved in removing a liquidator and the benefit of acting early on concerns regarding impartiality or independence.

In terms of the specific breaches and failures identified by the High Court, the decision addresses (and provides helpful guidance on) topics including:

- The administrator wrongly rejecting and accepting certain creditor claims and misunderstanding the standing of a secured creditor in a voluntary administration.
- Non-compliance (although not deliberately) with procedural rules for conducting creditor meetings.
- The administrator conducting unnecessary inquiries which resulted in excess fees charged during administration.
- A failure to file a compliant Declaration of Independence, Relevant Relationships and Indemnities form and subsequent refusal to do so when queried.

These matters, amongst others such as communications around the time of the administrator's appointment, lead the Court to determine that the administrator/liquidators had at least had the appearance of a lack of impartiality. While not removing the liquidators from office (and, in fact, curing their defective appointment by court order), the Court imposed additional, rarely-seen conditions in respect of their conduct of the liquidation, including that the liquidators must seek advice from senior counsel on all remaining decisions to be made in the liquidation and instruct external solicitors to conduct litigation against the secured creditor or the receivers. If those conditions were not accepted, the Court saw no option but to order removal.

5 June 2025

The primacy of creditor voting in VA and potential limits to a DOCA

In September, the High Court dismissed an application by a group of driver-shareholders in Wellington Combined Taxis Limited ("**WCT**") to vary or terminate a DOCA, following WCT and its associated companies ("**WCT Group**") being placed into voluntary administration. The WCT Group entered into a DOCA following the watershed meeting. The DOCA provided that WCT's taxi business would be sold to Auckland Cooperative Taxi Society Limited ("**ACT**"), with the sale proceeds to be distributed under a payment waterfall, and the WCT Group to be put into liquidation.

The applicants sought an order declaring the DOCA void under s 239ACX of the Companies Act 1993, and an accompanying order varying the DOCA by striking out the clause providing that the WCT Group would be put into liquidation following the DOCA's termination. Alternatively, the applicants sought an order terminating the DOCA on the basis that the completion of the distribution waterfall and the WCT Group's liquidation would unfairly prejudice a group of WCT's shareholders and was contrary to the WCT Group's interests.

McQueen J observed that those at the watershed meeting voted to adopt the DOCA which plainly provided for the WCT Group's liquidation. As to the termination order sought, Her Honour held that there was no proper basis to terminate the DOCA because the merits of the proposed compromises were the issue for voters at the watershed meeting and that the Court should not substitute its own view or second-guess the wisdom of voters.

Further afield and more recently, the Mauritian Supreme Court has ruled that a DOCA that compromises or releases a company's principal debt cannot release guarantors from their obligations under guarantees, with their liabilities remaining intact notwithstanding the company's settlement under the DOCA. This is the case even if the release is an ancillary consequence of a DOCA voted on and approved by the company's creditors. Readers should note that the Mauritian VA regime is based on the NZ VA regime, with the difference that there is a specific statutory provision in Mauritius which provides that third party releases cannot be effected by a DOCA of a separate company.

The decision is of interest in New Zealand as it reinforces the principle that voluntary administration compromises company debts, not third-party guarantees, and that careful drafting cannot override statutory protections for creditors against related companies, third party guarantors or even director guarantors (albeit directors' guarantees are not enforceable against them during the administration).

11 July 2025

Du Val litigation continues in 2025 (and expected to continue in 2026)

In 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 which suspended the Court appointed interim receivership appointments that were made earlier that month for most of the Du Val group entities.

Since being placed into statutory management, litigation from various stakeholders has ensued. For instance, the High Court struck out a claim that the FMA owed investors in the Du Val Mortgage Fund a common law or implied statutory duty of care in carrying out its regulatory functions under the Financial Markets Authority Act 2011 (FMAA) and the Financial Markets Conduct Act 2013 (FMCA). The Court held there was no sufficiently proximate relationship between the FMA and investors to give rise to a duty. The Court rejected imposing a duty to prevent creating a perverse incentive on the FMA to avoid getting involved, incentivising acting in a risk-adverse manner when involved, and indeterminate liability. The Court emphasised that the FMA is required to exercise its functions in the general public interest, not the position of the investors.

Du Val founders Kenyon and Charlotte Clarke also challenged (amongst other litigation brought last year), what they describe as "excessive powers" granted to PwC as receivers and statutory managers after the High Court ruled that the founders faced compulsory examination under oath. This challenge is currently with the Court of Appeal with the judgment expected to be issued this year.

13 October 2025

IRD speaks out on enforcement action

IRD reports that it has increased tax collection efforts, specifically targeting relatively small overdue GST and employer debt balances to prevent debt ballooning. Total tax and entitlement debt had reached $9.3 billion in June 2025, an increase from $7.9 billion in June 2024.

Along with commencing insolvency proceedings, IRD is making increased use of direct deductions from taxpayers' bank accounts. From mid-June to October 2025, IRD sent 25% more notices about planned bank deductions than were sent in the whole of 2024, with $17 million of debt recovered through bank deductions from mid-June to late September 2025.

We expect increased IRD enforcement action has been a significant contributor to the recent increase in Official Assignee-administered company liquidations, increasing from less than 100 per year in the years to June 2019 and June 2020, up to 586 in the period July 2024 to June 2025 and 387 in the six months from July-December 2025. Meanwhile, personal insolvency figures remain steady at around 1,200 per year across bankruptcies, no asset procedures and debt repayment orders since 2021/2022.

10 November 2025

Supreme Court allows an appeal in connection with a permanent injunction and extant foreign proceedings

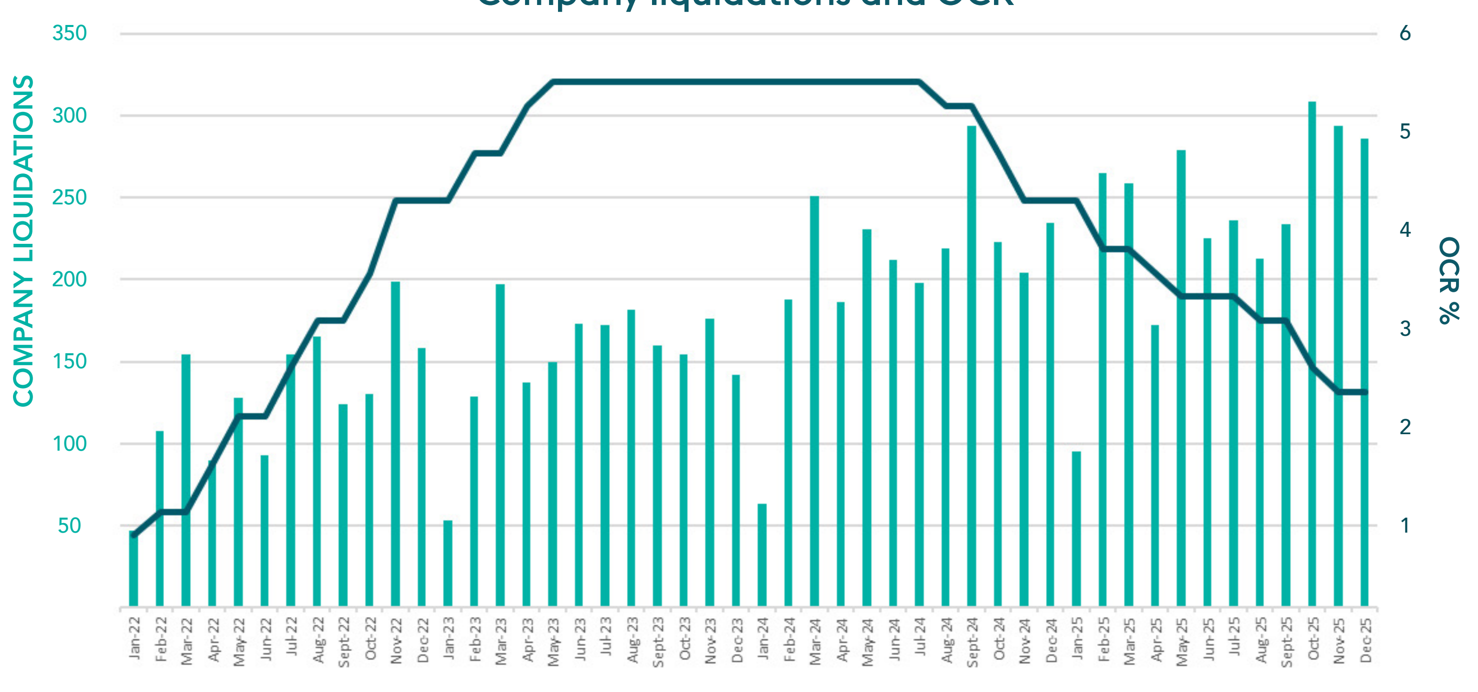
In November, the Supreme Court allowed Kea Investments Limited's ("**Kea**") appeal from the decision of the Court of Appeal and reinstated the permanent anti-suit and anti-enforcement injunctions ordered by the High Court. An anti-suit injunction is a court order restraining a party from initiating or continuing proceedings in a foreign jurisdiction and an anti-enforcement injunction prevents a party from enforcing a foreign judgment or arbitral award it has already obtained.

Briefly, Wikeley Family Trustee Limited ("**WFTL**") obtained a default judgment in Kentucky based on a purported coal agreement between Mr Wikeley (as trustee for WFTL) and Kea ("**Coal Agreement**") ("**Default Judgment**"). In the High Court, Gault J declared that the Default Judgment was obtained by fraud (the Coal Agreement being fraudulent) and granted a permanent injunction which, in short, ordered the Wikeley parties to refrain from seeking to rely on the Default Judgment anywhere in the world, to cease attempting to rely on the Coal Agreement, and to take all steps necessary to discharge the Default Judgment. On appeal, the Court of Appeal was concerned with issues of comity raised by the permanent injunction and the validity of the Default Judgment being contemporaneously considered by the Kentucky Court of Appeals.

The Supreme Court issued the results judgment only four days after the Supreme Court hearing, owing to the extant foreign proceedings. We await the delivery of the reasons judgment. The ruling highlights the New Zealand courts' willingness in the right circumstances to use anti-suit injunctions to protect their own processes from international fraud, emphasizing the need for comity while preventing abuse of foreign legal systems.

26 November 2025

Company liquidations and OCR



OCR cut to 2.25%

RBNZ took barely a year to cut the OCR from 5.5% to 2.5% and further cut the OCR to a three year low at 2.25% in November 2025, although the RBNZ has indicated that this easing cycle might be coming to an end. Insolvency statistics in 2025 made for a challenging read (with October 2025 recording the highest monthly number of liquidations since 2011) and that could be compounded in 2026 if the trajectory of interest rates track upwards.

19 December 2025

OIO reforms underway to simplify foreign investment

The Overseas Investment (National Interest Test and Other Matters) Amendment Act 2025 ("**Act**") received Royal Assent on 19 December 2025. The amendments introduced by the Act seek to balance the regulatory burden on overseas investors with the risks to New Zealand's national interests associated with overseas investment transactions.

The amendments will require that an overseas investment in significant business assets, existing plantation forestry, and other types of sensitive land, meets a single consolidated "national interest test". The Act provides for significant Ministerial discretion, allowing the government to interpret national interest considerations in line with prevailing policy and security concerns. This approach aligns New Zealand's regime more closely with international counterparts such as Australia, where Ministers have broad powers to scrutinise and condition foreign investments.

The reforms to the Overseas Investment Act will come into effect on 6 March 2026.

read more

1 January 2026

Updates to the High Court Rules

From 1 January 2026, the High Court (Improved Access to Civil Justice) Amendment Rules 2025 came into effect, which will transform the way we run civil proceedings. The new suite of rules are designed to encourage parties to refine issues earlier in proceedings and they introduce new tools such as the judicial issues conference, which afford the opportunity for parties, lawyers and the judge the opportunity to discuss a broad range of matters including issues in dispute, settlement options, key facts, and other procedural matters.

In October 2025, the new and (hopefully improved) Commercial List was established. The Commercial List is designed to offer fast-paced access to civil justice on appropriate matters and ensure that disputed interlocutory issues are dealt with expeditiously and lead to earlier substantive hearing dates. Parties can elect for their proceeding to be moved to the Commercial List, which is suitable for commercial disputes not less than $2 million, judicial review applications, proceedings involving the amalgamation of companies, mergers, takeovers or corporate insolvency where the public interest or complexity warrants determination by a panel judge, and other categories listed in section 5 of the Senior Courts (High Court Commercial Panel) Order 2017.

The combination of the new High Court Rules and the Commercial List is intended to enable more efficient access to justice in civil proceedings.

Looking ahead

Local impacts of geopolitical tensions

Much has and continues to be written about the potential impact in New Zealand of global events such as the recent escalation between Iran (and others) and the USA and Israel (and others). Whilst not directly involved in the conflict, it is expected that New Zealand will feel the impacts of increasing oil prices over the coming months, impacting many industries including manufacturing, logistics and agriculture. It is also possible that this will have consequential impacts on RBNZ's OCR strategy, although commentators appear split as to whether this will ultimately lead to the OCR increasing (to reduce inflationary impacts of increasing costs) or decreasing (to stimulate spending and consumer confidence).

ASIC puts a lens over private credit growth

Private credit plays a small but growing and important part of NZ's lending landscape (particularly in real estate). New Zealand has been slow to adopt private credit for corporate borrowers compared with the European and American economies where private credit not only plays a critical role in direct lending but has expanded to include other creative strategies to assist large private and public corporates to access finance and provide a runway for restructuring.

In Australia, ASIC has warned Australia's growing private credit market, requiring improved practices. ASIC's 2024–2025 surveillance of 28 private credit funds (Report 820) revealed significant concerns, requiring, improved practices regarding transparency, valuation, and governance. ASIC found inconsistent reporting, opaque fee structures, and poor management of conflicts. At the end of last year, ASIC released a catalogue of key legal obligations for the private credit market as part of its regulatory response to strengthen compliance in a rapidly growing and complex market.

We look forward to seeing how the growth of private and alternative capital across the ditch will impact New Zealand in the next 12 months as well as how our regulators will choose to respond in balancing the flexibility of capital and restructuring solutions that private credit provides while ensuring strong regulatory compliance.

Domestic and global insolvencies in the retail industry come into the forefront

The retail sector has experienced distress in 2025:

- The Body Shop UK parent company collapsed into administration in 2024 and while the brand was rescued at the start of 2025, international arms including New Zealand had to be wound up.
- Receivers and administrators were appointed to premium appliances supplier Kitchen Things and its associated companies with creditor claims surpassing $23 million.
- Furniture and appliances supplier, Smith City, was put into liquidation in October 2025, with creditor claims totalling nearly $27 million.
- Receivers and administrators were appointed to Australasian fashion retailer Mosaic Brands (formerly listed on the ASX) and were ultimately found liable to pay $25 million for various breaches of consumer law.

There are two key reasons for this trend. Firstly, shifting consumer behaviour caused a significant reduction in sales in the 2024 financial year as discretionary income and consumer spending decreased. Secondly, margins have been squeezed through increasing operational expenses (such as leased premises and utilities).

Given the anticipated end to the RBNZ OCR easing we anticipate that this trend may continue into 2026 and investors with the capital and risk appetite may see opportunity and value dislocation in this area.

Will we see the same significant movements in the agricultural sector?

There have been a number of significant transactions for underperforming businesses in the agri sector:

- Synlait divested its North Island assets for $307 million to Abbott Laboratories, a global Chicago based healthcare company, to reduce its debt.
- In the adjacent beef and meat processing industry, Alliance Group agreed to sell a 65% stake to Irish Meat processer Dawn Meats for a $270 million, with a significant amount to be utilised to reduce debt.
- Comvita, after having failing to conclude a sale to Florenz, is now exploring alternative funding options (after agreeing a short maturity extension and forbearance with its lending syndicate) to reduce debt.

We expect that large parts of the dairy industry will see a boost from the Fonterra capital return due in 2026 although some of this positivity may be counter-balanced by the impact of geopolitical tensions and any consequential impact on costs.

Companies Act Directors' Duties review underway

In August 2025, the Law Commission announced that it would be undertaking a long-awaited review of directors' core duties under the Companies Act 1993. The review will involve consideration of the key directors' duties which are engaged when companies are at risk of insolvency. The Law Commission will publish an Issues Paper and open public consultation in 2026 and intends to submit its Final Report in 2027. This review forms part of broader developments in corporate governance legislation in New Zealand. We can expect the final report to identify whether the existing legislation is fit for purpose and provide recommendations for amendments to refine and clarify directors' duties, particularly those that are engaged in the context of distressed companies. Former Attorney-General, Judith Collins KC, has been appointed the new chair of the Law Commission from mid-2026.

Any questions? Talk to one of our experts

Matthew Kersey
Partner
Litigation/Restructuring & Insolvency
matt.kersey@russellmcveagh.com
+64 9 367 8124

Alex MacDuff
Partner
Litigation/Restructuring & Insolvency
alex.macduff@russellmcveagh.com
+64 9 367 8231

Jeremy Upson
Partner
Litigation
jeremy.upson@russellmcveagh.com
+64 4 819 7501

Sam Jones
Senior Associate
Litigation
sam.jones@russellmcveagh.com
+64 9 367 8383