



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Proposal to Terminate Statutory Management of Gwin Corporation Limited	Date to be published	15 October 2024

List of documents that have been proactively released

Date	Title	Author
August 2024	Proposal to Terminate Statutory Management of Gwin Corporation Limited	Office of the Minister of Commerce and Consumer Affairs
22 August 2024	Proposal to Terminate Statutory Management of Gwin Corporation Limited CAB-24-MIN-0320 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee (LEG)

Proposal to Terminate Statutory Management of Gwin Corporation Limited

- 1 This paper seeks approval to submit an Order in Council to terminate the statutory management of Gwin Corporation Limited to the Executive Council.

Executive Summary

- 2 Gwin Corporation Limited (**Gwin**) - along with other associated Peninsula Club retirement village corporations - was put into statutory management in 1994 by Order in Council. These entities were placed in statutory management because of concerns they could no longer honour their buyback obligations in relation to retirement units they had sold leaseholds on to residents of the village.
- 3 In 2016, following an application by the statutory manager, the High Court ordered that all Peninsula Club corporations, except Gwin, be placed into liquidation. This had the effect of terminating the statutory managements for those corporations. As Gwin was already in liquidation this process was not available. This leaves the termination of Gwin's statutory management dependent on an Order in Council.
- 4 I recommend terminating the statutory management of Gwin by Order in Council as it will allow the liquidation of the company to be concluded, meaning that any shareholders or creditors who are entitled to funds will receive them. The Order will come into effect at 1am on 30 September 2024.

Policy

- 5 This paper deals with a routine business-related matter requiring Cabinet's approval that does not require new policy decisions.

Background

Statutory Management

- 6 Statutory management is a procedure to deal with complex corporate failure. The Corporations (Investigations and Management) Act 1989 (the **Act**) enables the Governor General, on my advice given in accordance with a recommendation of the Financial Markets Authority, to declare by Order in Council that any corporation be placed in statutory management.
- 7 A corporation may be put in statutory management where it is desirable to:
 - 6.1 preserve the interests of its members, shareholders, creditors, beneficiaries, or the public; or

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- 6.2 enable the affairs of the corporation to be dealt with in a more orderly or expeditious way.
- 8 A corporation in statutory management may have this status terminated by either:
 - 8.1 a High Court order placing the corporation into liquidation; or
 - 8.2 an Order in Council under section 62(1) of the Act providing that the corporation shall cease to be subject to statutory management at a specified time and date.

The statutory management of the Peninsula Club companies

- 9 The Peninsula Club, a retirement village complex in Whangaparoa, was developed by Garry and Wendy Crawford. They operated the village through a complex set of business arrangements comprising five companies and a charitable trust: Melita Properties Limited (**Melita**), Gwin Corporation Limited (**Gwin**), Miskin Enterprises Limited, Chismon Limited, Northford Holdings Limited, and The Millenium Charitable Trust.
- 10 The business model was for the units in the village to be leased on leasehold titles to the residents and then the leasehold titles were to be bought back by the entities when the residents left the village or passed away. The units were owned and leased by the different entities under a variety of arrangements.
- 11 High interest rates, reduced demand for units and mismanagement through a convoluted series of transactions meant that the leasehold title buyback obligations could not be honoured. This left the residents vulnerable and the village on the verge of financial collapse. Due to this situation, on 20 October 1994, each of the six entities were placed into statutory management by Order in Council. At this time, however, Gwin was already in liquidation, having been placed in liquidation in March 1993.
- 12 The appointed statutory manager (Rodney Pardington of Deloitte) aimed to protect the leasehold interests in the units held by residents and allow them to sell their units for fair market value when they died or left the village. To this end a 'Deed of Reconstruction' between all relevant parties was negotiated. This arrangement set out that the management of the village was taken over by Peninsula Club Management Limited (**PCML**). The companies were released from their buyback obligations, and arrangements were put in place to ensure residents could continue to live in their units and obtain a return based on market value when they left the village or passed away.
- 13 This arrangement proceeded as planned. As each resident left, PCML determined whether there was any money owing to the corporations. By 2015, all but seven residents subject to the Deed of Reconstruction had departed the village. The statutory manager considered the appropriate way forward was for all the corporations to be put into liquidation with a common liquidator to determine which corporation had an entitlement to any funds that remained and, thereafter, make the appropriate distribution to creditors and/or shareholders.
- 14 On 19 May 2016, following an application by the statutory manager, the High Court ordered that each corporation, except Gwin, be placed into liquidation with the Official Assignee appointed as common liquidator. This had the effect of terminating the statutory management of each of those corporations.

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- 15 Although the statutory manager had initially sought the liquidation of Gwin, the High Court determined it could not place Gwin in liquidation (terminating its statutory management). This was because it was already in liquidation.
- 16 The statutory management of Gwin may only be terminated by an Order in Council (attached as **Annex 1**). Termination will allow the liquidation to revive.

Application to terminate the statutory management of Gwin

- 17 In March 2024 I received a letter from Meredith Connell seeking approval to terminate the statutory management of Gwin on behalf of Gwin's statutory manager, the discharged liquidator, the Official Assignee, and Melita.
- 18 The grounds on which termination is sought are that:
 - 18.1 the statutory management has fulfilled its purpose and that it is appropriate for the liquidation of Gwin to now proceed to conclusion; and
 - 18.2 the liquidation of Gwin cannot proceed until the statutory management is terminated by Order in Council.

Recommendation to terminate the statutory management of Gwin Corporation Limited

- 19 Terminating the statutory management appears to be the most appropriate course in the circumstances as it will allow the liquidation of the company to be concluded, meaning that any shareholders/creditors who are entitled to funds will receive them. I understand that there are funds left in the company, but these are by and large owed to the Inland Revenue Department.

What will happen after Gwin's statutory management is terminated

- 20 Once Gwin's statutory management is terminated, its liquidation will be revived. No liquidator is currently acting. The liquidator is the person specified in the order (section 61(3)). The liquidator will be the Official Assignee.
- 21 The Official Assignee would take possession of Gwin's assets and resolve outstanding matters including:
 - 21.1 Finalise the sale or negotiate Gwin's rights or entitlements over the last remaining unit under the Deed of Reconstruction upon issuance of a new lease after repairs.
 - 21.2 Funds which may be owed to the corporations in the group, particularly Melita.
- 22 Once these issues are resolved, the Official Assignee would determine the rights of creditors and/or shareholders to those funds (if any) and make the necessary distributions. Once the liquidation is complete, Gwin would be removed from the Companies Register.

Timing and 28-day rule

- 23 The Order will be notified the Gazette on 29 August 2024: more than 28 days prior to the Order coming into force at 1am on 30 September 2024.

Compliance

24 The proposals in this paper are consistent with:

- 24.1 the principals of the Treaty of Waitangi;
- 24.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 24.3 the principles and guidelines set out in the Privacy Act 2020 and;
- 24.4 the Legislation Guidelines (2021 edition).

Regulations Review Committee

25 I do not consider there to be any grounds for the Regulations Review Committee to draw the proposed regulations to the attention of the House as a Standing Order requirement.

Certification by Parliamentary Counsel

26 The draft regulations have been certified by Parliamentary Counsel as being in order for submission to Cabinet.

Impact Analysis

27 An impact analysis is not required for this paper, as this is a routine matter that does not require any new policy decisions.

Publicity

28 PCO will publish the Order in Council on the legislation website and notify it in the Gazette.

Proactive release

29 I propose that this Cabinet paper be proactively released on the MBIE website within 30 business days, with any redactions as appropriate under the Official Information Act 1982.

Consultation

30 The Ministry of Business, Innovation and Employment have consulted with the Ministry of Housing and Urban Development, the Financial Markets Authority, the Official Assignee, the Registrar of Companies, Treasury and the Reserve Bank.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 20 October 1994 Gwin Corporation Limited (**Gwin**), along with associated Peninsula Club retirement village corporations, were put into statutory management;

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- 2 note that on 19 May 2016 the High Court ordered that all Peninsula Club corporations, except Gwin, enter liquidation, thereby ending their statutory management;
- 3 note that Gwin was already in liquidation before being put into statutory management, leaving the termination of Gwin's statutory management dependent on an Order in Council;
- 4 note that the Corporations (Investigation and Management) Order 2024 will terminate Gwin's statutory management, allowing for its liquidation to be revived and completed by the Official Assignee;
- 5 note that the Corporations (Investigation and Management) Order 2024 comes into force on 30 September 2024;
- 6 authorise the submission to the Executive Council of the Corporations (Investigation and Management) Order 2024.

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs