



## COVERSHEET

<b>Minister</b>	Hon Kris Faafoi	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	<b>Insolvency Law Reform</b>	<b>Date to be published</b>	4 November 2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
23 September 2019	<i>Insolvency Law Reform</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
23 September 2019	<i>Insolvency Law Reform: Annex One - Minor Changes</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
23 September 2019	<i>CAB-19-MIN-0491</i>	<i>Cabinet Office</i>
23 September 2019	<i>Regulatory Impact Statement: Insolvency Law Reform – Gift Cards &amp; Vouchers</i>	<i>Ministry of Business, Innovation and Employment</i>
23 September 2019	<i>Regulatory Impact Statement: Insolvency Law Reform – Reckless Trading Claims</i>	<i>Ministry of Business, Innovation and Employment</i>
23 September 2019	<i>Regulatory Impact Statement: Insolvency Law Reform - Voidable Transactions</i>	<i>Ministry of Business, Innovation and Employment</i>

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Insolvency Law Reform

**Portfolio** Commerce and Consumer Affairs

On 23 September 2019, following reference from the Cabinet Economic Development Committee (DEV), Cabinet:

#### Background

- 1 **noted** that in November 2015, the previous government agreed to the terms of reference of the Insolvency Working Group, which comprises an independent chair, four industry experts, a credit industry representative and a representative of the Official Assignee [EGI-15-MIN-0096 and APH-15-MIN-0109];
- 2 **noted** that most of the substantive recommendations the paper under DEV-19-SUB-0251 were recommended by the Insolvency Working Group;

#### Voidable transactions and other recoveries

- 3 **noted** that the Companies Act 1993 provides for liquidators to set aside certain types of debtor company transactions either two or three years prior to the liquidation being commenced, if the company was insolvent at the time the transaction took place;
- 4 **noted** that the consequences of a transaction being set aside is that the liquidator can claw back amounts from the other party to the transaction;
- 5 **agreed** to the following in relation to the periods of vulnerability prior to the commencement of the liquidation for clawbacks:
  - 5.1 reduce the period from two years to six months for voidable transactions with unrelated parties;
  - 5.2 increase the period from two to four years for voidable transactions with related parties;
  - 5.3 in relation to unrelated parties, reduce the period from two years to six months for voidable charges over property or undertakings of the debtor company;
  - 5.4 in relation to related parties, increase the period from two years to four years for voidable charges over property or undertakings of the debtor company;
  - 5.5 retain two years for transactions at undervalue with unrelated parties;

- 5.6 increase the period from two to four years in relation to transactions at undervalue with related parties;
- 5.7 increase the period from three to four years in relation to transactions for inadequate or excessive consideration;
- 6 **noted** that there is a creditor's defence, in relation to voidable transactions only, which states that a court must not order the recovery of property if the creditor proves that:
- 6.1 they acted in good faith;
- 6.2 a reasonable person in their position would not have suspected and did not have reasonable grounds for suspecting that the debtor company was or would become insolvent; and
- 6.3 they gave value for the property or altered their position in the reasonable belief that the transfer of property was valid and would not be set aside;

### Reckless trading

- 7 **noted** that insolvency practitioners can be deterred from taking reckless trading claims because the costs will be borne by unsecured creditors, but the benefits will accrue to any creditors that have security interests over the assets of the debtor company;
- 8 **agreed** that recoveries from reckless trading claims should be for the benefit of unsecured creditors only;

### Preferential claims

- 9 **agreed** to make the following changes to the existing preferential claim for employees of the debtor company:
- 9.1 clarify that long service leave is included within its scope;
- 9.2 add payments in lieu of notice to its scope;
- 10 **agreed** to require insolvency practitioners to honour at least 50 percent of the value of gift cards and vouchers, if the company continues to trade after being placed into receivership or liquidation;
- 11 **agreed** to not impose a time limit on the existing Inland Revenue Department and New Zealand Customs Service preferences relating to unpaid tax and customs duties and levies;

### Discussion document

- 12 **agreed** that officials from the Ministry of Business Innovation and Employment, the Inland Revenue Department and New Zealand Customs Service undertake policy development that seeks to improve the availability of tax debt information and outline potential policy options in a discussion document in 2020;

**Ponzi schemes**

13 **noted** that:

- 13.1 on 2 May 2018, DEV agreed to release a discussion document on a proposed new Ponzi-specific, insolvency regime [DEV-19-MIN-0058];
- 13.2 note that work on a possible regulatory solution for sharing losses among Ponzi scheme investors has been put on hold to avoid delaying progress on the reforms outlined in the paper under DEV-19-SUB-0251;


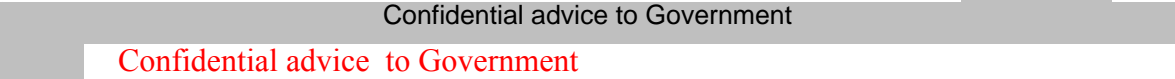
**Minor and technical changes**

- 14 **agreed** to the changes outlined in Annex 1 to the paper under DEV-19-SUB-0251;
- 15 **authorised** the Minister of Commerce and Consumer Affairs to make minor additional policy decisions and technical changes, consistent with the policy intent of the paper under DEV-19-SUB-0251, on issues that arise in the drafting process;

**Personal insolvency law**

- 16 **noted** that many of the rules applying to corporate insolvency under the Companies Act 1993 and personal insolvency under the Insolvency Act 2006 are the same;
- 17 **agreed** to make equivalent changes in the Insolvency Act to:
- 17.1 the proposal in paragraph 5 above, relating to periods of vulnerability;
- 17.2 the proposal in paragraphs 10-11 above, relating to preferential claims;
- 17.3 the changes specified in the right hand column of the table in Annex 1 to the paper under DEV-19-SUB-0251;

**Legislative implications**

- 18 **agreed** to include the above proposals in the Insolvency Law Reform Bill,   
Confidential advice to Government  
  
**Confidential advice to Government**
- 19 **invited** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;
- 20 **authorised** the Minister of Commerce and Consumer Affairs to release an exposure draft of the Bill for public comment.

Michael Webster  
Secretary of the Cabinet

*Secretary's Note: This minute replaces DEV-19-MIN-0251. Cabinet amended paragraph 6.3.*

**Hard-copy distribution:**

Prime Minister  
Deputy Prime Minister

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