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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2025-409-753
[2025] NZHC 3825

UNDER	Part 16 of the Companies Act 1993 and part 31 of the High Court Rules 2016
IN THE MATTER	of an application for the liquidation of the defendant companies
BETWEEN	FINANCIAL MARKETS AUTHORITY Plaintiff
AND	CHANCE VOIGHT INVESTMENT CORPORATION LTD First Defendant
	CHANCE VOIGHT INVESTMENT PARTNERS LTD Second Defendant

continued …

Hearing: (Determined on the papers)

Counsel: J S Cooper KC and J C Adams for Plaintiff

Judgment: 9 December 2025

JUDGMENT OF ASSOCIATE JUDGE LESTER

This judgment was delivered by me on 9 December 2025 at 2.30 pm
pursuant to Rule 11.5 of the High Court Rules 2016

Registrar/Deputy Registrar

AND	CVI PARTNERS MORTGAGE FUND LTD Third Defendant
AND	CVI PARTNERS MORTGAGE INCOME FUND LTD Fourth Defendant
AND	CVI SECURITIES LTD Fifth Defendant
AND	CVI FINANCIAL LTD Sixth Defendant

[1] The Financial Markets Authority (FMA) applies on a without notice basis for the interim liquidation of the six defendants (the Group or the companies).

[2] At its most basic, the FMA considers there is reason to believe that all defendants, save the second defendant:

(a) are insolvent;

(b) that the affairs of the Group have been conducted in a manner that breaches various provisions of the Companies Act 1993 (the Act);

(c) that the defendants and their director, Mr Bernard Whimp, may have breached the Financial Markets Conduct Act 2013 (the FMCA), and other financial markets legislation as defined in sch 1 to the Financial Markets Authority Act 2011 (FMA Act); and

(d) that the defendant companies have failed to respond in a satisfactory and/or timely manner to notices issued by the FMA under s 25 of the FMA Act.

[3] The FMA submits that the appointment of interim liquidators is necessary to protect the interests of investors in the companies, other creditors of the companies, and their assets.

The Chance Voight Group

[4] While the Chance Voight Group is said by the FMA to be a collection of approximately 27 limited companies and limited partnerships, this application relates to six companies in the Group.

[5] The first defendant, Chance Voight Investments Corporation Ltd (CVICL), is a company in which the public have been offered shares.

[6] The second defendant, Chance Voight Investment Partners Ltd (CVIPL), is a wholly owned subsidiary of CVICL. It is a non-trading company which operates as a holding company of the other defendants, sitting between CVICL and the other defendants.

[7] The third defendant, CVI Partners Mortgage Fund Ltd (MF), solicits funds but on the basis it would provide (second or lower ranking) mortgage backed lending to CVICL's subsidiaries for acquisitions of property, with quarterly returns of between 10-12 per cent per annum to investors.

[8] The fourth defendant, CVI Partners Mortgage Income Fund Ltd (MIF), also solicits funds from the public on the basis that it would provide first ranking mortgage backed lending to CVICL's subsidiaries for acquisitions of "established" (that is, not development) property to generate secure quarterly returns of between 10-12 per cent per annum to investors.

[9] The fifth defendant, CVI Securities Ltd (CVS), in effect solicited investments in the Group as a whole, saying that funds deposited would be used to meet the Group's wider corporate purposes, while delivering returns of between 10-12 per cent per annum.

[10] The sixth defendant, CVI Financial Ltd (CVF), solicited funds on the basis that it would undertake investments in the Australian Stock Market to provide consistent returns of between 10-13 per cent per annum paid quarterly. I refer to the third through sixth defendants as the debt issuing entities.

[11] Mr Whimp is one of two directors of CVICL and CVIPL and is the sole director of the debt issuing entities. He is also the sole director of 19 further subsidiaries of CVICL and CVIPL and a board member of three remaining subsidiaries of CVICL and CVIPL.

[12] There are only two other directors involved in the Group, Mr Paul Currie, a barrister and solicitor of Christchurch. Mr Currie is also sole director of Equity Trustees Ltd which owns a 37.07 per cent of the shares in CVICL. His firm's trust account has been used for the receipt of investor funds for subscriptions of the debt issuing entities and the transfer of those funds to Group entities.

[13] The other director is Mr Henry McKay who is the sole shareholder and director of CVI Trustees Ltd which holds a 37.07 per cent shareholding in CVICL (and thereby, the various wholly owned Group subsidiaries).

The FMA's standing to bring this application

[14] Section 241(2)(c)(va) of the Act authorises the FMA to apply to the Court for the liquidation of any company incorporated under the Act if the company is a "financial markets participant" (FMP).

[15] FMP is defined in s 4 of the FMA Act.

[16] An FMP means a person registered or required to be registered under, or for the purposes of any of the Acts listed in pt 1 of sch 1 to the FMA Act (which includes the FMCA and the Financial Service Providers (Registration and Dispute Resolution) Act 2008).

[17] A body corporate that is related to a person within the meaning of s 12(2) of the FMCA is also an FMP. The director or senior manager of any such body corporate is also an FMP.[1]

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[1] Section 4(1)(c)(ii) concerns a director or manager of a person referred to in (a) or (b) of the definition.

[18] CVICL has been registered on the Financial Service Providers Register since 6 October 2022 and is therefore an FMP. This renders CVIPL, as CVICL's wholly owned subsidiary, an FMP. In turn, the debt issuing entities, as wholly owned subsidiaries of CVIPL, are also FMPs, being mutually related to CVIP and CVICL.

[19] This means that the FMA has standing to apply for the liquidation of CVICL, CVIPL and the debt issuing entities.

Principles applicable to the appointment of interim liquidators

[20] Section 246 of the Act provides:

> **246 Interim liquidator**
>
> (1) If an application has been made to the court for an order that a company be put into liquidation, the court may, if it is satisfied that it is necessary or expedient for the purpose of maintaining the value of assets owned or managed by the company, appoint a named person, or an Official Assignee for a named district, as interim liquidator.
>
> (2) Subject to subsection (3), an interim liquidator has the rights and powers of a liquidator to the extent necessary or desirable to maintain the value of assets owned or managed by the company.
>
> (3) The court may limit the rights and powers of an interim liquidator in such manner as it thinks fit.
>
> (4) The appointment of an interim liquidator takes effect on the date on which, and at the time at which, the order appointing that interim liquidator is made.
>
> (5) The court must record in the order appointing the interim liquidator the date on which, and the time at which, the order was made.
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> …

[21] The objective of appointing an interim liquidator is to maintain the value of assets owned or managed by the company pending resolution of the liquidation proceedings.[2]

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2 *Re CBL Insurance Ltd (in liq)* [2018] NZHC 2547, [2019] 2 NZLR 262 at [51].

[22] Before an interim liquidator will be appointed, the Court must consider whether it is necessary or expedient to appoint an interim liquidator.[3] This involves a consideration of whether the substantive application for winding up will in all probability succeed. This involves a preliminary assessment of whether the applicant has a good prima facie case in respect of the grounds relied on for liquidation under s 241 of the Act.

[23] Further, it is not simply urgency that justifies the appointment of interim liquidators, there needs to be circumstances justifying such an appointment. This requires assessment so far as is relevant of whether there are company assets in jeopardy, whether the status quo should be maintained, whether the interests of creditors are safeguarded and any other relevant circumstances.[4]

[24] There is authority that the idea of necessity has the same meaning as "expedient", meaning "fitting, suitable, desirable or convenient",[5] which is a relatively low threshold (albeit the Court will exercise due care to satisfy itself to the two relevant factors before making orders).[6]

[25] The grounds relied on here are that:

(a) the companies of which liquidation are sought, are unable to pay their debts, that is, they are insolvent;

(b) the companies or their boards have persistently or seriously failed to comply with the Act; and

(c) that it is just and equitable that the companies be put into liquidation.

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3 *Truck and Trailer Holdings Ltd v Skelly Holdings Ltd* HC Christchurch CIV-2012-409-541, 11 May 2012 at [5]; approved in *Williamson v Starjam Charitable Trust* [2024] NZHC 3759 at [7].

4 *Shen v An Ying International Financial Ltd* HC Auckland CIV-2006-404-3088, 28 July 2006 at [14]–[15].

5 *Carter Holt Harvey Ltd v Timbalock NZ Ltd* (1997) 11 PRNZ 435.

6 *Property Ventures Ltd (in rec and liq) v Gibbston Downs Wines ltd* [2014] NZHC 510 at [28].

The substantive merits of the FMA application

[26] Ms Cooper KC, counsel for the FMA, acknowledges that an application to liquidate a company on the grounds of insolvency is normally based on the evidence of an unanswered statutory demand. However, the Court may liquidate a company based on alternative evidence of insolvency.

[27] The absence of reliable records being supplied by the Group despite the FMA requiring such be provided complicates the FMA's assessment of solvency. However, an inference is available from the Group's failure to fully respond to notices issued by the FMA under s 25 of the FMA Act requiring the provision of financial records and other information relevant to the FMA's concerns.

[28] Mr McCloy, a chartered accountant and an insolvency expert, has provided an affidavit as to his opinion in respect of the Group's recording keeping, financial and business management, and apparent insolvency. Mr McCloy has been unable to arrive at a concluded opinion as to the solvency of CVICL and the debt issuing entities, however, the information that is available to Mr McCloy leaves him with serious concerns about the solvency of each of the entities in the Group as a whole. Mr McCloy's opinion is that the Group appears to be balance sheet insolvent.

[29] It also appears that the operation of the Group has been carried out with little regard to separate legal personality. According to the information that has been provided by Mr Whimp, the companies have used a single bank account for all Group transactions since November 2024.

[30] It appears the proceeds of investments into the debt issuing entities have been "pooled" in CVICL. Mr Whimp has described the Group as a "single consolidated entity". The FMA is concerned that this represents the appropriation of the proceeds of investments in individual debt issuing entities into the Group and in particular, for CVICL's purposes generally without regard to the terms of investment.

[31] The FMA's review of the records it has obtained is that the "overwhelming" source of receipts for the Group is deposits from the Group's solicitor's trust account — being some 94 per cent of all receipts in the period 2021-2025. From Mr Whimp's

statements to the FMA, it indicates these amounts are all, or nearly all, investor deposits. These amounts total $45,300,000. The rate of investment has increased substantially in the calendar year 2025 with $29,000,000 of the $45,000,000 deposited this calendar year.

[32] However, there is little evidence of other sources of income for the Group. The consequences of that is that CVICL and the debt issuing entities are interdependent on one another's financial support, and it appears on the debt issuing entities continuing to attract new investor funds to meet outgoings including interest and capital repayment obligations to existing investors.

[33] Ms Cooper submits that the following information, set out at [33]–[37], tends to indicate insolvency.

[34] CVICL has made a loss in each financial year since the year ended 31 March 2022 and its liabilities have exceeded its assets for each of those years.

[35] The debt issuing entities each made a loss in the most recent financial year and there is nothing to indicate their trading position has substantially improved.

[36] As at the last balance date, MF, MIF and CVS have negative stated net assets. The amounts for CVF show a slight positive net asset position but this appears to be based on the inclusion of assets held by another company to which CVS has no known legal entitlement. Further, there are doubts about the value of the assets recorded.

[37] However, the factor that I consider most significant in this application is that the Group appears to be dependent on issuing new debt securities to raise cash to meet redemption and interest payment obligations on existing debt securities. Mr McCloy notes that in the calendar year 2026, deposits totalling $21,920,000 are due to mature — being some 57 per cent of the $38,200,000 of funds under management.

[38] Mr McCloy concludes that the only way in which the Group could be solvent is if there are significant unrecorded inward cashflows or assets not referred to in the

information provided. He considers this to be most unlikely given the review of the accounts undertaken by another deponent for the FMA.

[39] As to CVIPL, the FMA has not identified any evidence that it has income, assets or a bank account. It appears to have no separate economic existence from its parent company. Its interim liquidation is sought given it is the parent of other entities. Additionally, it being in interim liquidation would assist with the efficient conduct of the interim liquidation as a whole.

[40] In a recent communication with the FMA Mr Whimp has asserted the Group is solvent and any issues with the Group's record keeping was due to a staff issue. This amounts to an acceptance the Group's records have been substandard, albeit with an excuse being raised, but Mr Whimp's bare assertions are not an answer to the analysis carried out by Mr McCloy based on the material that has been provided by the Group.

[41] I accept Ms Cooper's submission that the substantive application for winding up will in all probability succeed. At this point, in practical terms, the benefit of the doubt is against the defendants having not provided the financial disclosure required by the FMA. In short, there is no good reason for their failure to provide the required disclosure over an extended period. Either accounting records as required have not been kept or those records show the company is insolvent. That at least is an available inference in this context.

[42] Further, I am satisfied that there is also reason to believe that there have been serious and persistent breaches of the Act by the Group. Again, the solvency analysis is not straightforward because of the absence of proper records. But that difficulty points to and the evidence satisfies me that the directors have failed to keep the required written accounting records recording the transactions that the companies in the Group have undertaken. Section 194(1) of the Act requires records to be kept that correctly record the transactions of the company and enable the company to ensure its financial statements comply with generally accepted accounting practice.

[43] Mr Whimp has expressly confirmed to the FMA that he did not maintain basic management records for the Group, and that this has been his practise since the

incorporation of the Group. It appears that it is only now, following the FMA's investigation, that Mr Whimp has taken some steps to remedy that situation.

[44] Ms Cooper submits that the time it has taken Mr Whimp to produce something as basic as a list of current investors is indicative of the extent to which Mr Whimp has defaulted in his obligations to keep proper records for the Group.

[45] Ms Cooper notes that CVICL is a company with more than 10 shareholders that has not opted out of compliance with financial reporting requirements under s 202 of the Act to prepare Group financial accounts. But nonetheless, Mr Whimp and Mr Currie have failed to ensure that Group financial accounts for CVICL and its subsidiaries comply with generally accepted accounting practice which are to be prepared and signed within five months of each balance date as required by s 202 of the Act.

[46] Messrs Whimp and Currie have also failed to have CVICL's Group financial statements audited as required under s 207 of the Act.

[47] The FMA's evidence is that a failure to keep these records has further ramifications beyond the Act's compliance. Mr McCloy's opinion is that the absence of records will have impaired the directors' ability to understand the Group's financial position and its obligation to investors. The FMA submits that there is a good prima facie case that there has been a consistent contravention by the Board of CVICL and by Mr Whimp as sole director of the debt issuing entities of their obligations under s 136 of the Act. Section 136 of the Act requires directors to have an honest belief on reasonable grounds that their companies can perform their obligations when required to do so.

[48] In short, Ms Cooper submits there can be no confidence in the management of the Group's affairs.

[49] Ms Cooper submits that the evidence of persistent and serious disregard for "legal requirements or accepted principles of corporate management", means there can

be no confidence placed in Messrs Whimp and Currie's continued management of the companies.[7]

[50] Mr Whimp's repeated failure to provide information as requested by the FMA points to a failure to keep proper records. Over the course of 2025, the FMA issued four notices to the Group and Mr Whimp under s 25 of the FMA Act requiring provision of information. During 2025, the FMA repeatedly requested the financial statements for CVICL and the debt issuing entities, including consolidated and Group financial statements and management accounts. As already noted, Mr Whimp's advice was that these were not produced. Limited Xero accounting records and general ledger summaries were provided two months after they were first requested. Financial statements have, following the grant of an extension over the course of several months, been provided for individual entities including the debt issuing entities but only in draft form, in an incomplete state and with limited notes.

[51] The situation is quite unsatisfactory for companies raising money from the public.

The urgent appointment of interim liquidators

[52] The FMA considers that the appointment of interim liquidators should be made without notice to protect current and prospective investors from ongoing breaches of the law and misrepresentations as to the investments.

[53] The FMA considers that there have been misrepresentations in particular by MIF as to how investments have been marketed. The FMA has reason to believe that the promotional material and other documentation for MIF contained a number of false and misleading statements or omissions. These include claims that registered valuations were obtained for the properties offered as security when in fact Mr Whimp appears to have relied on "desktop valuations". While the terms of MIF's offer said that desktop valuations may be relied on where a current registered valuation has not

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7 *Australian Securities and Investments Commission v Weerappah (No 2)* [2009] FCA 249 at [7]–[10].

been obtained or is not available, there is in fact no evidence any effort was made to seek professional valuations.

[54] [REDACTED]

[55] [REDACTED]

[56] While Ms Cooper acknowledges that there may be further explanations that can be provided by the defendants and/or their directors, it is again telling that Mr Whimp acknowledges that proper records have not been kept and that there have been, at best, incomplete answers to FMA calls for information.

[57] The circumstances point to the need for the urgent appointment of interim liquidators to preserve value. That the known obligations of the Group can only be met, it seems through further investors depositing funds, is not a sustainable model.

[58] [REDACTED]

[59] I also accept Ms Cooper's submission that in these circumstances there is an urgent necessity to introduce independent management of the companies in order to provide assurances as to their management and to prevent the dissipation of funds to which investors and other creditors of the Group may seek to have recourse. In short, the orders are necessary to preserve the status quo.

[60] [REDACTED]

[61] [REDACTED]

[62] All the circumstances identified by the FMA mean there is reason to believe that an interim liquidator would be best able to ascertain the true state of the companies' affairs and be better able to assert control over the companies and their records if their appointment was unannounced.

[63] Accordingly, I am satisfied that in the circumstances, the appointment of interim liquidators to the six defendant companies that is, CVICL, CVIPL, MIF, MF, CVS and CVF, is appropriate. There is an ***order*** accordingly.

[64] Ms Cooper has suggested restriction on the interim liquidators' powers, that is, that the interim liquidators will not be able to realise or distribute the assets of the defendant companies except for the payment of their fees.

[65] Ms Cooper emphases that the terms of the appointment proposed are the least invasive terms consistent with achieving the preservation of the companies' assets.

[66] The interim liquidation order takes effect as 5.50 am on 10 December 2025. John Howard Ross Fisk, Lara Maree Bennett and Malcolm Hollis of PwC are appointed interim liquidators of the defendants.

Powers and terms of appointment of interim liquidators

[67] ***I order*** that the interim liquidators have the powers and authorities given to liquidators under the Act that are necessary or expedient for the purposes of maintaining the assets owned or managed by the defendant companies, including, for the avoidance of doubt:

(a) the power under s 248(1)(a) to take custody and control of the assets of the defendant companies, and any assets of the defendant companies that may be held by third parties;

(b) the power under s 260(2) and sch 6(b) to carry on the business of the defendant companies;

(c) the powers under s 261 to obtain documents and information, compel attendances on the liquidator and to require a person to assist in the liquidation to the best of the person's ability;

(d) the powers under ss 261, 265, and 266 to require a person to be examined on oath before the interim liquidators, and to seek orders that a person be examined on oath before the Court;

(e) the power to require a director or employee of the respondent companies to deliver up property to the interim liquidators under s 274.

[68] The interim liquidators may exercise their powers individually pursuant to s 242 of the Act.

[69] The interim liquidators shall not have any power to realise or distribute the assets of the defendant companies, except for the payment of the interim liquidators' fees and expenses of the liquidation as provided for by these orders.

[70] Pursuant to s 247 of the Act, from the time of the commencement of the interim liquidation, unless the interim liquidators consent, or leave is obtained from the Court, no person may:

(a) commence or continue legal proceedings against the companies;

(b) exercise or enforce, or continue to exercise or enforce, any right or remedy against the property of the companies.

[71] The interim liquidators are to investigate the affairs of the defendant companies and provide an initial report to the Court, to be copied to the FMA, before 5.00 pm, on 26 January 2026.

Remuneration and costs of interim liquidation

[72] I order that the interim liquidators be entitled to charge their usual rates of remuneration, as set out in their form of consent to act, for carrying out their duties and the exercise of their powers as interim liquidators.

[73] That the fees and expenses of the interim liquidators and their firm be treated and paid in accordance with s 278 and sch 7, cl 1 of the Act.

[74] The interim liquidators are to apply to the Court for approval of their fees.

Ancillary orders

[75] I further order that leave be reserved to the interim liquidators to apply for directions if needed.

[76] That the costs of this application be reserved.

[77] That no person be permitted to access, inspect, or copy the Court's file in respect of this proceeding without the prior leave of a Judge.

[78] Leave is reserved to the defendant companies to apply on 48 hours' notice in respect of the above order.

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Associate Judge Lester

Solicitors:
Luke Cunningham Clere, Wellington (for Plaintiff)