



The time of the VA has arrived



Hi

The time of the voluntary administration (VA) is here.

Over the last 4 years, this flavour of the insolvency menu has become increasingly common and its use is rising steadily. The numbers are:

- 2020 – 21 (7 DOCA's)
- 2021 – 17 (2 DOCA's)
- 2022 – 27 (4 DOCA's)
- 2023 – 40 (7 DOCA's)
- 2024 (so far) – 49 (1 DOCA)

While this is mostly of interest to insolvency practitioners and restructuring lawyers in the know. It is

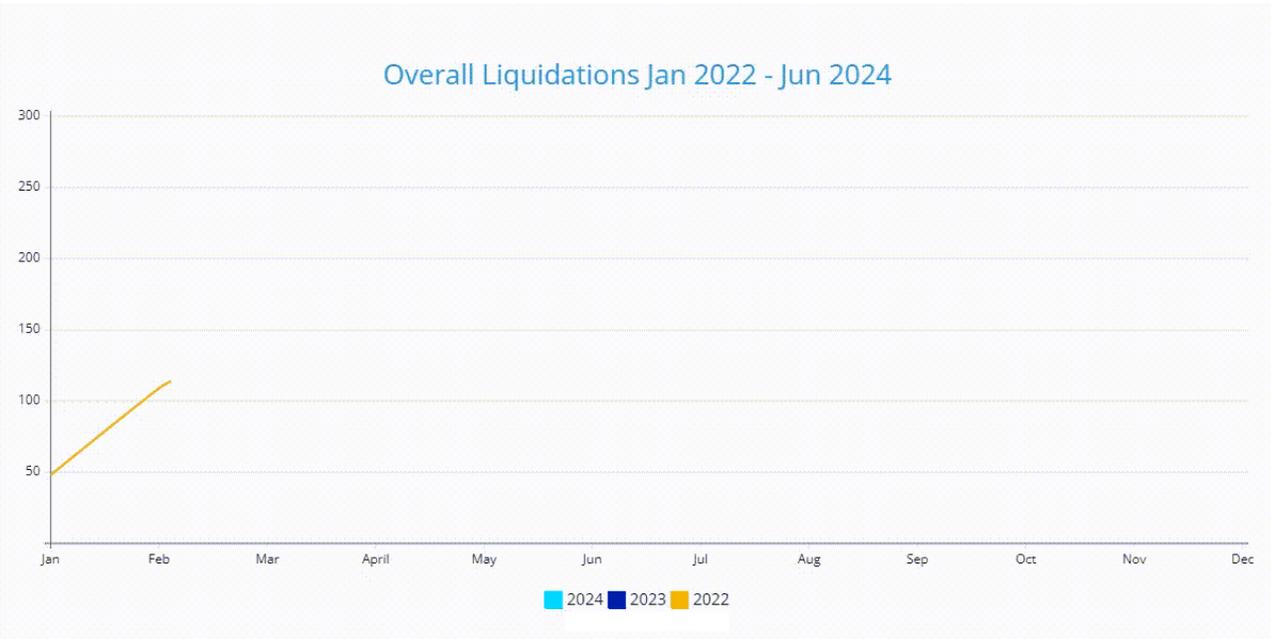
interesting to consider why. VA's had been on the verge of extinction (despite some practitioners evangelical best attempts to keep them going). But their cumbersome meetings (needing 2) and additional costs made them easy to sidestep.

Why the increase? There are a few possible reasons; 1) it is far harder to replace administrators at a creditor meeting than it is to replace liquidators, with the voting thresholds higher to replace; 2) Secured creditors can also vote; 3) It is an easier conversation to have with directors and, 4) earlier intervention while creditor support is still there.

We are seeing early intervention playing a big role with a number of creditor compromises being proposed also. When companies/boards seek help early there are simply more options on the table. Here is to a proactive year.

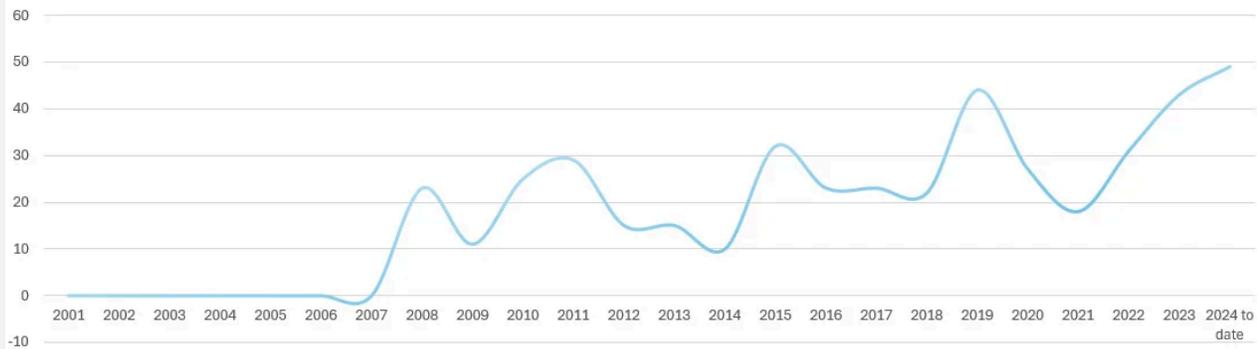
Adam Botterill

Insolvency Statistics



Liquidations for June remain largely unchanged with 217. On average monthly figures are still higher than the previous two years. With the current trend/numbers extended to the remainder of the year, total liquidations for 2024 may exceed 2000, which last occurred in 2016 when there were 2,111 recorded.

Voluntary Administrations 2001 - 2024



Since their introduction in 2007, voluntary administration has not been a very popular option for businesses in distress with an average of only 20-30 cases per year being the norm. Even in the wake of the 2007–2008 financial crisis, or the global financial crisis (GFC), voluntary administrations did not exceed this average.

With 2024 now over 6 months in, we have already had 49 voluntary administrations recorded. Already the highest figures ever, with another 6 months to go in 2024.

Contracting with entities that possess privileges, immunities, and statutory bars



Contracting with international organisations or Crown entities is generally viewed as commercially favourable as they are regarded as well-reputed, well-funded, and make good long-term contracting parties.

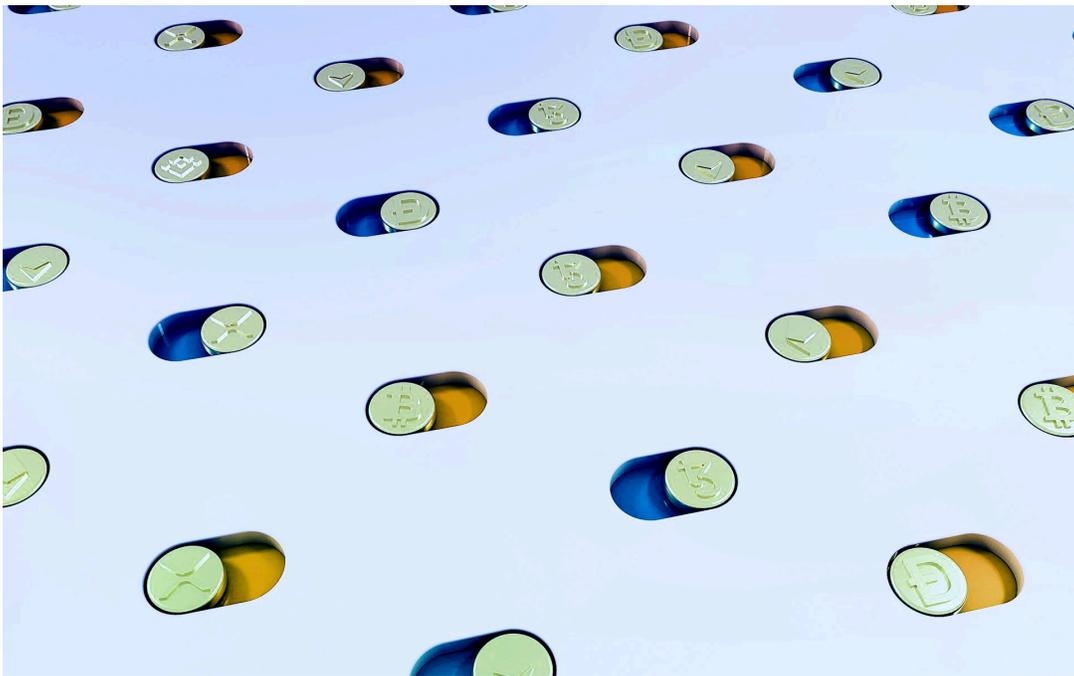
However, diplomatic bodies like embassies and their staff, international organisations, and crown entities enjoy these privileges in different respects, which could impact recovery and risk of

repayment, and therefore should be factored as a risk of directorial and financial management and insolvency.

It is useful to understand the applications and limitations of these privileges, as when contracting with such bodies, one may mitigate the risks by provisioning the contract accordingly. This could be in the form of the contract price, or, for example, obtaining advance assurances like a bank bond, or other assurance like a termination right.

[Read the full article](#) by *Waterstone In-House Counsel, Farah Tuteja*.

Case law update: Insolvency in the age of cryptocurrency



The case *Ruscoe v Houchens* [2024] NZHC 419 illustrates the flexibility and adaptability of insolvency law in the face of financial technologies.

Cryptopia was placed into liquidation in 2019 following a severe hack affecting approximately 370 different cryptocurrencies held by nearly a million account holders worldwide. The Court's decision highlighted several innovative approaches.

First, the High Court approved a claims portal developed by the liquidators, allowing account holders to verify and claim their balances, which was essential to the AML process. Much focus was placed on the allocation of trust administration costs, and sanctioned a proportional cost distribution model, ensuring fairness among all account holders. Additionally, the Court addressed the legality of distributing cryptocurrencies in jurisdictions where such transactions might be illegal, permitting conversion to fiat currency as necessary.

[Read the full article](#) by *In-House counsel, Lucy Rong*.

Voidable transactions and transaction undervalue; with practical examples



Jim is browsing Facebook marketplace and spots a deal! A Toyota Landcruiser for \$15,000.00; they usually go for \$35,000. Jim Rushes to the seller and quickly buys the Landcruiser; the seller explains he is moving overseas.

It turns out the Toyota Landcruiser was owned by Generic Construction Limited; a company which had been insolvent for twelve months.

Generic Construction Limited is placed into liquidation one month after the sale of the Landcruiser.

In this example, the liquidator of Construction Limited may have a claim of \$20,000 against Jim. This is because:

- The value of the Landcruiser was \$35,000
- Jim purchased the vehicle for \$15,000

[Read the full article](#) by Waterstone Analyst, Michael Turner.

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