Not as dire as it could be

Hi

With 2024 alarmingly, half gone, those of us not jetting off to the European summer are staring down the barrel of a long winter stretch with trepidation. But with the change of government bedded down, how has business responded, has it moved the dial? The results are mixed.

Numbers of liquidations in 2024 continue to climb compared to lows between 2020 – 2022. However, business confidence has not tanked, According to the 2024 2 Degrees Shaping Business Study, businesses are reporting some bright spots of confidence:

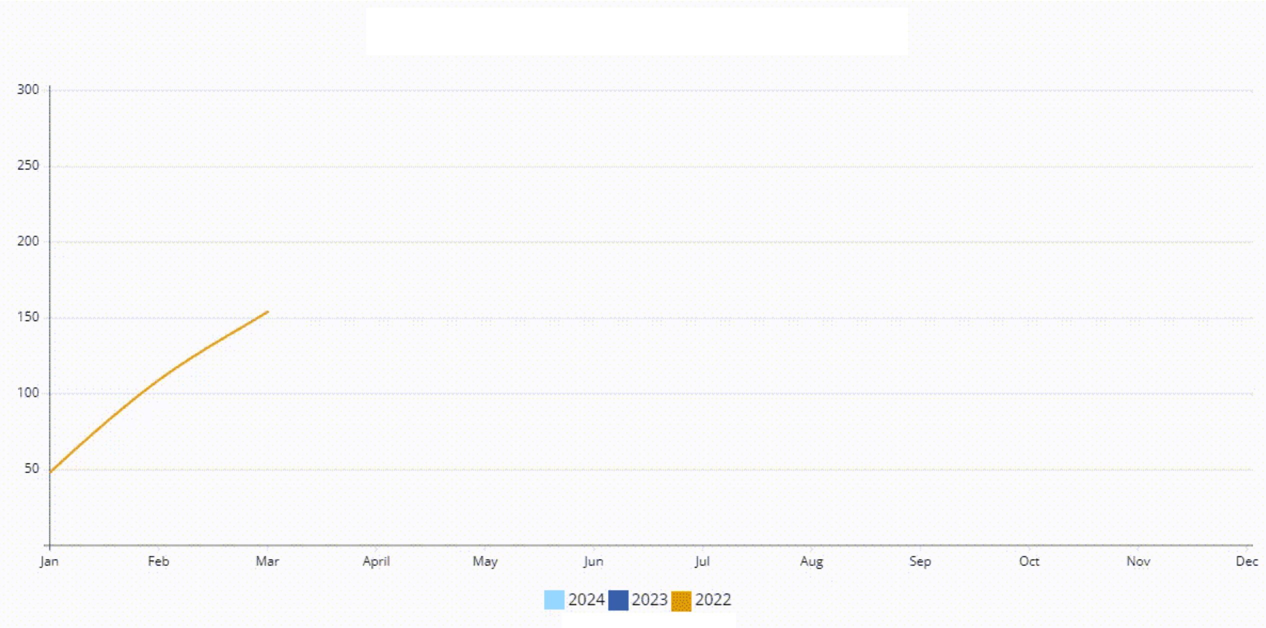
- A slight increase from 17% to 18% reporting to be “Thriving” and 52% reported to be “Reviving”;
- Over half of businesses are anticipating revenue growth;
- However, some concerns do exist around increasing costs, decreases in consumer spending and less work being available in 2024.

In terms of business failures, the numbers are still climbing, with no sign of slowing, the issues around interest rates and the knock-on effects to the building, construction & property development are well known. However, it is not all bad news. The change in government may be giving businesses at least superficially a shot in the arm in terms of confidence as we move through winter and out the other side.

Adam Botterill

Insolvency Statistics

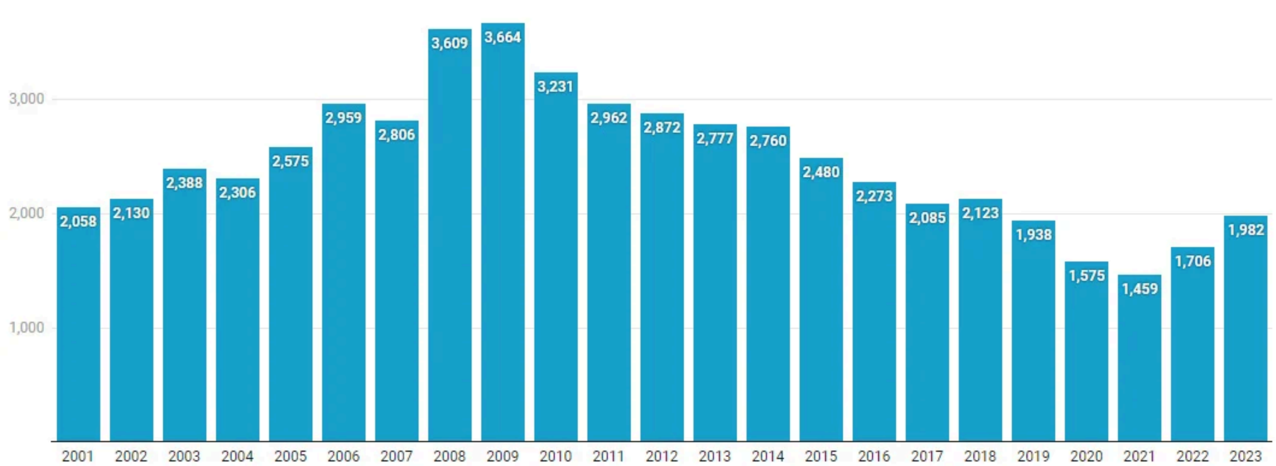
Total liquidations (monthly, 2022 – current)



The economic landscape in New Zealand continues to show significant challenges, as evidenced by the latest numbers of company liquidations. There were 215 liquidations in May (a 22% increase compared to April and far higher than May of 2022/3).

Although NZ may be technically out of recession this March quarter (+0.2%), all indications are that the immediate future is still challenging for the business sector.

Number of liquidations (2001 – 2023)



With liquidation numbers on the increase for several years consecutively, we are left wondering where the turning point is and how bad it can get. The answer may not be positive when considering the peak numbers of 2008, 2009 and 2010.

Although 2023 (1,982 liquidations) seems high compared to the last 3 years, the reality is that when compared further back to 2001 they have been at very low level relatively.

Below are three indicators that offer some insight into liquidations relative to number of companies:

2001: This year had the highest liquidation to incorporation rate over the past 23 years. 258,865 companies were registered with 1,932 liquidations recorded for the year, or 1 liquidation per 134 registered companies.

2009: The highest annual liquidations in a single year, with 3,433. It is important to note that in the 8 years prior, the total number of registered companies more than doubled, with 526,627: 1 liquidation per 153 registered companies.

2023: The number of companies in 2023 sat at 726,359, with a recorded 1,838 liquidations: That is 1 liquidation per 395 companies.

The annual proportion of liquidations to number of companies in total has declined significantly from 1 in 134 to 1 in 395.

Landmarks of Company and Insolvency Law: Influential cases and their Implications on Businesses

Directors have various duties imposed on them, and company law constantly develops on application. While risk is an inherent part of business, it is important to follow the evolution of the company and insolvency law. Particularly how directors' duties affect company's financial and trading status. Below are some key takeaways of influential decisions, particularly useful for directors to navigate the complexities of their duties.

Read the full article *by Waterstone In-House Counsel, Farah Tuteja.*

The financial perils of an overdrawn current account

An overdrawn current account occurs when shareholders or directors withdraw more money than they have put into the company. This often happens when companies face financial difficulties, yet shareholders or directors continue to rely on the company's funds as their primary source of income. Such accounts are recorded as debts owed to the company and listed as assets on the company's financial statements.

The recent case of Innovate Civil and Construction Limited v Hayes [2024] NZHC 1012 underlines the critical distinction between "drawings" and "salary" in managing shareholder or director current accounts. The director of Innovate was found liable for $154,894.27 in overdrawn funds. The High Court ruled in favour of the liquidator, determining that the payments to Hayes, labelled as *drawings* and irregular salary payments, were not authorised as salary due to the absence of a formal employment agreement and were not authorised in accordance with the Companies Act 1993.

Read the full article *by Waterstone In-House counsel, Lucy Rong.*

How companies sail through a storm and survive

When the economic climate is tough and businesses bear the brunt, it is not uncommon to see companies fully settling their debts, for as little as 15 cents on the dollar, while continuing to trade with a legally binding agreement.

What's more, they are often supported by their creditors, and generally everyone is happy with the arrangement.

For a business in distress, with debt spiralling out of control, this might sound like something mystical, magical, and altogether impossible. But it might not be and might just be the answer needed for your company or one you are advising.

Companies that can benefit from this arrangement need to be a business that is fundamentally sound but have taken on a recent setback. Maybe they entered a new market, just as the economy went south. Perhaps they took on work they weren't suited to, and only realised it later. Whatever the case, they're otherwise profitable and good at what they do, and they deserve a chance.

The mechanism to allow it is a Part XIV Compromise. The rules are found in the Companies Act 1993 and various pieces of case law.

Read the full article *by Waterstone Wellington Manager, Bede Henderson.*

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