



## *Interesting and unpredictable*



Kia ora

With the end of the year fast approaching we are all overtaken with client functions, events, and follies with the silly season in full swing. Also, with insolvencies high, we are certainly very busy and expect that our friends in the law, accounting and advisory fields are as well. No rest for the wicked.

In the NZ context, with net migration reported at record lows, interest rates still relatively high, lower growth may be an impact to watch out for over the next few years along with further change and turmoil. America, enough said.

Our newsletter this month has excellent articles on receiverships, an overview of director duty, personal bankruptcy process and god forbid you are interested, cross border insolvency. Have a browse.

Adam Botterill

# Total liquidations, Jan 2022 - Oct 2024

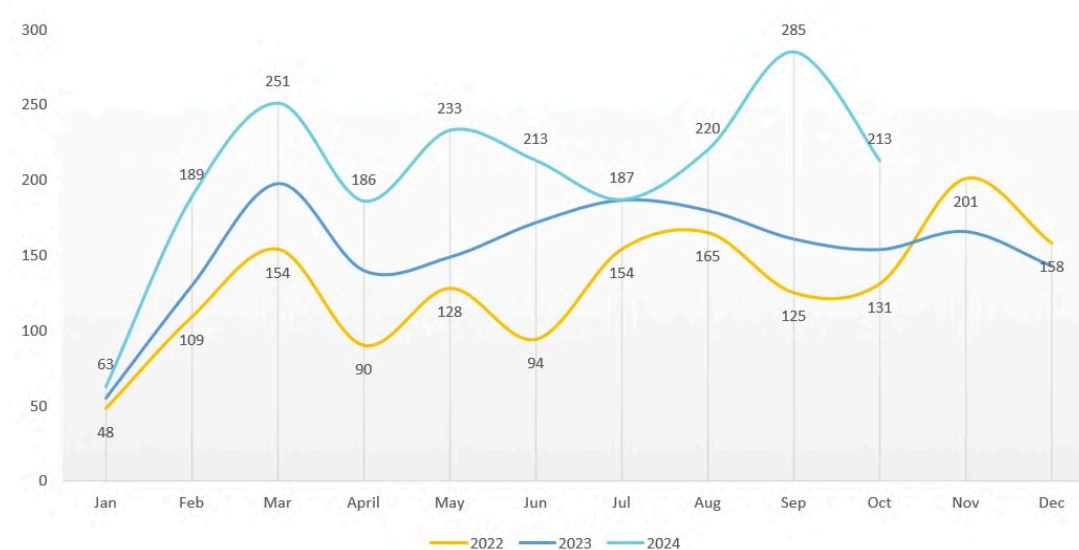
Watching the numbers, total liquidations have come back from a peak month in September of 285 to 213 in October. This is still a large increase on prior years' October liquidations and this year is looking to be a record number based on current trends.

**2022 – total liquidations: 1637**

**2023 – total liquidations: 1835**

**2024 – total liquidations: 2040 (to date)**

Total liquidations for 2024 are already higher than 2022 and 2023 and the low numbers during the pandemic.



## Who is pushing liquidations through court?

In most months court appointments make up a small proportion of the total pool of liquidations which varies between 20% and 25%. October sees a surge in court appointments amounting to 41%.

In terms of creditor appointments Inland Revenue Department takes the lead with 73% of all court appointments, continuing to use what may seem like a shotgun approach, indifferent to the particulars of debtor companies.

This raises the question of where IRD sends its hundreds of successful applications over the year. Of the 73 IRD liquidations in October, the Official Assignee took the bulk of appointments (93%), followed by KPMG (4%) and PWC (3%).

The Official Assignee is the largest manager of liquidations by quantity year to date (19%). However, its estimated that many of these companies are often smaller "strike-offs" that have been inactive for some time. We see this reflected in many of the official assignee liquidator reports and will likely continue to do so.



## Directors duties to insolvent companies, and the risks



Directors of insolvent companies who fail in their duties, may be held personally liable for losses caused by their actions or injurious omissions.

Announced in 2024, the Minister of Justice has asked the Law Commission to undertake a review of director duties and liabilities. This work is about to commence in 2025. It's aim is to look at clarifying duties and consequences for section 135 and section 136. It may recommend changes that lead to amendments of the Act and hopefully clarify the lines that directors ought to play in.

Read the [full article](#) by Waterstone Wellington manager, Bede Henderson



## Receivership, a broad overview



A receivership is an appointment made by a secured lender (typically a bank or finance company) who have a security in assets of the debtor company.

Almost all receiverships are appointed by secured creditors who have a General Security Agreement (GSA) granting the finance company a security interest in all present and after acquired property and all other property. Essentially meaning the finance company has an interest in all assets owned by the debtor.

The security agreement must also contain a clause granting the secured creditor the right to appoint a receiver.

A receivership commences when the debtor defaults on its loan, and the secured creditor decides to appoint a receiver.

Read the [full article](#) by Waterstone senior analyst Michael Turner



## Cross-border insolvency in New Zealand: an overview



Cross-border insolvency refers to situations where insolvency proceedings implicate multiple jurisdictions. Even though foreign creditors may have a security interest recognised in their jurisdiction, they must ensure that their interest is perfected under New Zealand legislation to retain priority over other creditors.

Recognition of proceedings may not be unilateral: New Zealand recognises foreign proceedings, but overseas recognition of New Zealand proceedings is determined by those countries' laws and their adoption of the Model law.

Any orders to deal (or cease dealing) with assets of a debtor or transactions of an insolvency, can only occur if there are existing foreign proceedings, and the New Zealand Court recognises that foreign proceeding.

Read the [full article](#) by Waterstone in-house counsel, Farah Tuteja



## Bankruptcy workflow



How does a person end up in bankruptcy? Perhaps surprisingly the road to bankruptcy is a long one and requires many court filings before adjudication occurs.

Firstly, judgment needs to be obtained against the person. This in itself is an entire legal proceeding which can take many years if complex. The judgment obtained is not required to be for a monetary sum (such as for the removal of a caveat), but there must be some sort of monetary order made by the Court.

This could be for repayment of a loan, for losses owed to a company for breaches of director's duties, or simply an order for costs issued by the Court. Any monetary amount ordered against the debtor is known as the judgment debt. In any event, the judgment debt must be at least \$1,000.

Once the Court judgment has been sealed, the person/entity owed the money, known as the judgment creditor, is required to serve the judgment on the person owing the judgment debt (known as the judgment debtor).

If the judgment debtor fails to make payment of the judgment debt, the judgment creditor is entitled to apply to the Court for the issuing of a bankruptcy notice.

Read the [full article](#) by Waterstone junior in-house counsel, Brooke McLeish



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