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News, views and statistics from the insolvency sector

Kia ora

We're excited to bring you the latest edition of our Waterstone newsletter, where we unpack recent events, business, insolvency trends and noteworthy cases. From the bustling streets of Auckland to the serene landscapes of Otago, our nation is a dynamic tapestry of activity, change and tempest.

In this edition, we look at the net increase in new company incorporations and what this may mean for the health of the business sector and market confidence in general. We also explore how inflation may be having an impact on all of this. With the OCR rate cut of 0.5% this week, and another possibly expected by Christmas, Adrian Orr ironically might be deemed the Santa Claus of the economy we didn't know we needed.

And let's not overlook insolvency numbers. Recent statistics indicate a notable increase in business failures, particularly in the hospitality sector, as operators grapple with ongoing supply chain challenges and fluctuating demand. We also review some recent case law in the Court of Appeal relating to liquidators' powers overseas and what employee rights are upon liquidation.

Stay tuned as we navigate this offshore reef together, providing you with the insights and information you need to stay afloat in our ever-changing landscape.

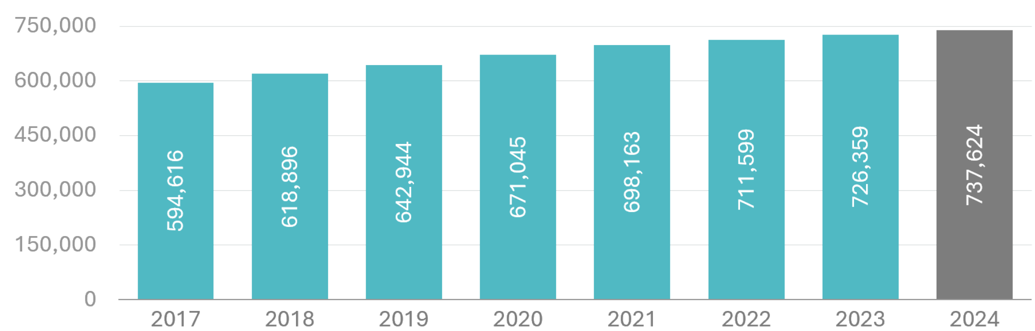
Adam Botterill

Insolvency Statistics: NZ business incorporation rate slowdown signals looming surge in liquidations

Statistics indicate a slowing growth rate of registered companies in New Zealand, predicting a potential rise in liquidations. Recent economic and business data reveal a complex landscape for New Zealand businesses.

Business indexes such as the Performance of Services Index (PSI) and the Performance of Manufacturing Index (PMI) showed significant weaknesses in June 2024 not seen since the Global Financial Crisis (excl. COVID-19 period).

Balance of registered companies, 2017-2024



Historically, the growth of net incorporations serves as a strong indicator of overall economic prosperity and development.

In 2024, the number of net incorporations is projected to reach a historical maximum of 737,500; however, there are signs of coming problems. Although data indicates that new incorporations suggest ongoing economic growth, the underlying concern is the significant slowdown in the pace of net incorporation growth, which has now reached its lowest level in the past eight years.

The pace of net incorporations has been slowing in recent years, falling to 1.55% in 2024, compared to an average growth rate of 3.07%. This deceleration reflects the broader economic challenges and likely signals of coming rise in business liquidations.

[Read the full statistical analysis by Waterstone analyst, Stan Denisenkov]

Being an employee of a liquidated company

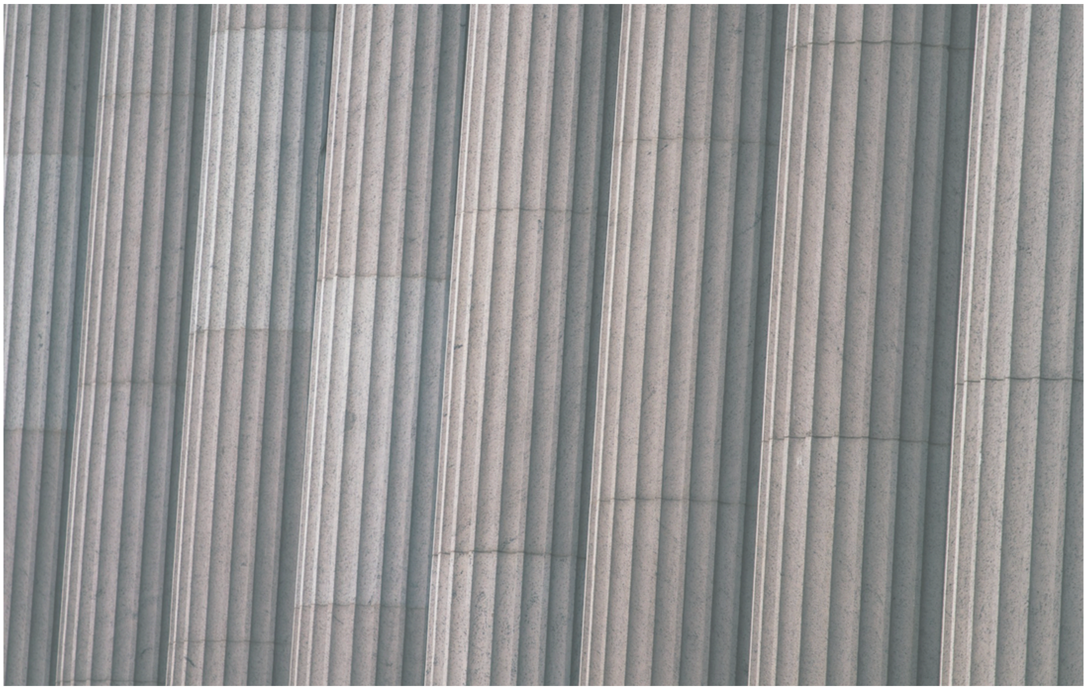
Many employees have concerns about the company they work for going into liquidation, and whether outstanding salaries will ever be paid. Unfortunately, this is a growing worry among New Zealanders because of the increasing number of national liquidations, largely attributable to the grim economic down-turn post covid.

You should know your rights and entitlements should a liquidation affect you. When a company goes into liquidation, the natural assumption is that there is no money or assets to pay owed individuals and businesses from. Fortunately, this may not always be the case.

All the company's employment agreements may be terminated on the day of liquidation except for circumstances where the liquidator needs them to continue to perform work to generate more funds to pay off as many creditors as possible.

Read the full article by Waterstone law clerk, Alisha Siraj

Case summary: Grant & Botterill v Bank of New Zealand



Who has the right to appoint a liquidator to a subsidiary company when the group is in receivership? While this is a niche question, this situation came before both the High Court and Court of Appeal recently.

Proceedings were filed in the High Court under section 284 of the Act to determine the validity of the liquidators' appointment, and it was determined that:

- The terms of the GSA granted the secured creditor the exclusive right exercise power over the companies' shares, and the company had surrendered any right to "deal with" the shares upon the appointment of the receivers; and

- The liquidators had no "power" to exercise rights over the shares without the GSA holder's consent, meaning the rights solely belonged to the receivers.

As a result, the appointment of the liquidators to the subsidiaries was determined to be invalid by the High Court. This was successfully appealed in the Court of Appeal. It was determined that the liquidators had been validly appointed to the subsidiary companies, as they we

Read the case summary by Waterstone in-house counsel, Brooke Mcleish

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