

New Zealand company insolvency numbers predicted to rise

NZ Businesses continue to be affected by supply chain disruptions, interest rate increases, labour shortages, & rising costs. Insolvencies in NZ will increase.

AUCKLAND, NEW ZEALAND, July 11, 2022 /EINPresswire.com/ -- A more vigorous approach to debt collections is likely to prompt company directors to take a proactive approach to managing debts and IRD obligations. This will lead to a lift in business insolvencies and company strike off. [GRIP members](#) in Australia and UK suggest that NZ is one year away from seeing a notable shift in insolvency appointments. Australia predicts an increase in the final quarter of this financial year. Keaton Pronk of McDonald Vague considers NZ is six months behind Australia.

Directors of struggling companies should be considering options to restructure business or enter into formal compromise arrangements or voluntary administration. Liquidation is also a consideration for some.

Company strike off, is the process where a Limited Company is removed from the Companies Office register. Following removal, the company ceases to exist. There are three options to end NZ companies:

- Short-form removal from the companies register (solvent companies)
- Long-form removal – a solvent or insolvent liquidation, or
- Failing to file an annual return with the Companies Office (“the short cut method”).

Option three is not recommended. The short and long form methods minimise risk. Failure to file an annual return does not put an end to debt. It also does not provide certainty that the company is at an end.

Many directors and shareholders of companies facing financial difficulties are tempted to abandon the company, failing to file annual returns, the result being the company is struck off. Failing to file an annual return is an offence under the Companies Act 1993.

The shortcut approach comes with risks and the prospect of company restoration. These risks can include:

- For a solvent company, share capital and capital gains are not distributed tax free, shareholders could be liable for tax on distribution
- The forfeiture of tax credits;

- The loss of losses carried forward and imputation credits
- Assets not distributed prior to strike off become crown property unless the company is restored;
- Land/property held in the company name cannot be transferred
- A strike off is not a means to avoid a contingent liability claim
- A strike off is not a means to avoid a s 385 prohibition notice
- Reinstatement by the Registrar is straightforward if the company is a party to legal proceedings and those proceedings commenced prior to removal
- Reinstatement by the Registrar is able to be advanced if the company was in liquidation or receivership or both at the time
- The court has a wide general discretion to restore a company to the register if it is satisfied for any other reason, it is just and equitable that the company be restored to the register (s 329(1)(b)).
- There is no statutory time limit for restoration to occur
- There exists the potential review by the Registrar that proper books and records have been kept under Sections 189 and 194 of the Act, records to include documents, minutes of meetings, resolutions of shareholders and directors, copies of written communications to shareholders, copies of financial statements and accounting records. (Failure to keep accounting documents at the Company's registered office is an offence punishable by a fine of up to \$10,000 for both the company and directors).

A company that has been restored to the register is deemed to have continued in existence as if had never been removed from the register: s 330(2). This means any interest/penalties that have been incurred in the period from strike off to reinstatement are due. It also means company records must be brought up to date.

The short form liquidation or formal liquidation are more costly but avoid the potential consequences of a company restoration.

The short-form removal process is best suited to a company that has little trading history and/or has held minimal assets, is subject to low commercial risk, and no contingent liabilities.

A solvent liquidation costs more than a short-form removal but minimises the risk of the company being reinstated through a creditor application.

An insolvent liquidation involves an independent licensed insolvency practitioner managing the winding down of the company and the appropriate dealing of assets and distributions.

[McDonald Vague Licensed Insolvency Practitioners](#)

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