NEW ZEALAND IMMIGRATION

RISK & VERIFICATION NETWORK

RISK REPORT: RISK MONITORING AND REVIEW OF EMPLOYERS WITH INDICATORS OF FINANCIAL VIABILITY RISK

2 August 2023

SBFA-2023-117

KEY POINTS

1. The purpose of this report is to communicate findings of targeted Risk Monitoring and Review activity on employers with indicators of financial viability risk. The report aims to establish whether there are other efficient and effective means in identifying financial viability risk during the employer accreditation process.

2. The employer accreditation applications have been assessed under policy settings that emphasise risk management post-accreditation including through 15% being assessed in Accredited Employer Risk Monitoring and Review (AERMR) and any renewal of accreditation application. Unless a specific financial risk indicator triggers at the time of application, the employer's financial viability declaration is accepted at face value as evidence that the viable and genuinely operating business immigration instruction requirements are met (see Appendix One).

3. There has been recent media coverage of liquidations involving accredited employers who declared meeting financial viability requirements.[1] [2] The current economic outlook indicates that New Zealand is already in a technical recession[3] and it is anticipated that more companies will experience financial stress in a tougher trading environment with increasing operational costs. There is opportunity for Immigration New Zealand (INZ) to react promptly when these issues appear including identifying any open applications relating to the employer.

4. To determine the extent of the issue relating to company insolvencies, the Senior Business and Finance Advisors (SBFA) obtained a list of insolvent companies from the New Zealand Companies Office (NZCO) and the Department of Internal Affairs (DIA) who maintain the NZ Gazette and cross-referenced the data against approved AEWV employers for the 12-month period from May 2022. This identified 73 instances of liquidations and removals from the NZCO register which were then referred by Risk and Verification (R&V) to Visa Operations (VOPs) for consideration of whether they continue to meet the viable and genuinely operating business instruction. The SBFAs have now implemented a monitoring programme to ensure timely referrals of any future cases.

[1] Media: Newsroom - Large nationwide childcare provider faces liquidation
[2] Media: NZ Herald - KBL Joinery in liquidation: Company with 28 staff folds - shock, dismay in building sector
[3] Media: Stuff - Cheat sheet: We're in a recession, so what?

5. The report recommends the following:

    a. Consideration is given to enhancing usage of the ADEPT API with the NZCO and / or development of an API with DIA records.

    b. In the interim or as an alternative, R&V continue to monitor and report instances of AEWV employers' undergoing liquidation or removal from the Companies Register proceedings.

    c. SBFAs develop a guidance document for INZ stakeholders to understand the various stages within liquidation and removal proceedings to assist decision-making.

    d. SBFAs continue engagement with Legal and engage Policy Teams around adapting AEWV instructions to better manage instances of liquidation or removal proceedings.

ANALYSIS

Data Source

6. Two sources of government information were used to identify employers with indicators of financial viability risk. The NZCO register contains information on all registered entities or businesses operating in New Zealand and the NZ Gazette provides notices for companies that have applications for liquidations, voluntary business cessations or companies removed or in the process of removal from the NZCO register.

Process

7. A list was requested from both agencies to identify:

    a. Companies that are subject to liquidations, receiverships or voluntary administration.

    b. Companies that have already been removed from the NZCO register.

    c. Companies that were voluntarily closed upon director or shareholder's passing a Resolution to cease business operations.

8. The above parameters were deemed by SBFAs as indicators of financial viability risks as it captures companies that are either in the early or final stages of liquidation processes following their inability to meet their financial obligations. Additionally, companies that are voluntarily closed by shareholders for whatever reason are also included as it would have the same effect on workers ceasing employment.

9. The data requested covers the period from 22 May 2022 to 22 May 2023, which is twelve months from when the accreditation scheme started.

10. The data from the NZCO and the DIA was then cross-checked with the list of accredited employers in the ADEPT system using the NZBN and/or company name as identifiers.

11. A total of 73 Accredited employers were found to match the list of companies that are in the process of liquidation or removal from NZCO. While the percentage of matched employers is small (0.3% of approximately 25,000 approved employers as at 22 May 2023), it represents 7.8% of all NZ Gazette notifications for the period.

Decided Employer Accreditation applications

12. For the 73 employer accreditation applications, one was declined and one withdrawn following requests by VOPs for financial information. Both applications triggered the genuine business assessment (GBA) rules after submitting adverse responses around financial viability.

13. 71 applications have been given a 12-month automatic extension of accreditation, including those already removed from the NZCO register or undergoing liquidation proceedings.

Decided Job Checks and Migrant Visa applications

1. There were 1,038 Job Tokens associated with approved Job Checks for the 73 employers with a total of 546 Job Tokens consumed.

2. 9 of 73 (12%) employers hired more than ten staff, 8 (11%) between 5 and 10 workers; 28 (38%) between 1 and 5 staff. 28 (38%) employers did not use their accreditation at all.

3. There were two employers that brought in over 100 staff through employer assisted work visas. Commercial information [redacted], trading as Commercial information [redacted]. The other entity is Commercial information [redacted]

Accreditation Type

4. 37 of 73 (51%) employers applied for standard accreditation; 33 (45%) high volume and 3 (4%) triangular accreditation.

Financial Declaration

5. 55 out of 73 (75%) declared no financial loss over 2 years. There were 17 employers who declared they suffered financial losses over 2 years with 11 (65%) declaring they had positive cash flows for the six months prior to accreditation and 6 (35%) declaring sufficient resources to continue operating the business.

6. With high incidence of employers declaring no financial issues during application and ending up being under liquidation, it then raises the question as to whether it is time to revisit the application form to tighten up the financial viability questions and the declaration section. Also make it mandatory for employer to submit their latest set of financial accounts, if adverse response to any of the viability questions are received. At the moment, submission of financial documents is not compulsory.

Documentary Evidence

7. 53 of 73 (73%) did not submit any financial or business-related documents to demonstrate financial viability requirements. For the 20 (27%) employers that voluntarily supplied business documents, 6 (30%) supplied low value documents such as invoices, quotes or referee letters as evidence.

Risk Treatment Referral

8. Only 13 of 73 (18%) were referred to Verification Teams (VT) for risk treatments and only 1 (1%) was referred to SBFA for specialist financial advice. Of these 13 referred, 12 (92%) have active information warnings in AMS or ADEPT.

Genuine Business Assessment (GBA)

9. The GBA occurs when an application triggers one or more of the three evaluation rules in ADEPT during the assessment process:

   a. a rule for a general partnership or sole trader, requiring the partners or sole trader not to be bankrupt or subject to a No Asset Procedure.

   b. a rule for an Employer that does not have a physical or online presence; and

   c. a rule when any of the four conditions below are answered adversely:

      - Has not made a loss over the last 24 months; or
      - Has a positive cash flow for each of the last 6 months; or
      - Has sufficient capital and/or external investment to ensure business remains viable and ongoing; or
      - Has a credible, minimum two-year plan to ensure the employer's business remains viable and ongoing.

10. 47 of 73 (64%) had a GBA trigger. 14 of 47 (30%) triggered due to declaring no physical or online presence, 10 (21%) declared financial losses or no positive cash flow or no external funding or no credible business plan. 12 (26%) were due to the declared business structure being a sole trader or partnership.

11. 7 of 47 (15%) had at least 2 triggers at the same time (e.g. declared losses and no physical or online presence. 4 (9%) appeared to have triggered an incorrect GBA, that is the employers declared they did not suffer a loss and had a physical or online presence and did not declare they were sole trader or partnership. The four cases will be raised with the ADEPT Operations Team for any learnings.

Count / %	Reasons for GBA Trigger
14 (30%)	No physical or online presence (NPOP)
12 (26%)	Sole Trader or Partnership declarations
10 (21%)	Adverse response on any one of these: Incurred losses over 2 years, no positive cash flow, no external funding sources or no credible business plan
7 (15%)	NPOOP **and** business losses/cash flow issues, etc.
4 (8%)	False trigger i.e. viability rules should not have been triggered at all

System Warnings in AMS or ADEPT

12. 26 of 73 (36%) had an active warning in AMS at application submission date, 20 (77%) of these relate to potential breaches of employment conditions or worker exploitation. Of the 26, 11 (42%) were referred to VTs for further risk treatment.

13. 11 of 73 (15%) employers have new information warnings created after the employer accreditation was approved. 2 of 11 (18%) also had active warnings at application submission date. 8 of 11 (73%) new warnings relate to employment breaches or worker exploitation.

Length of Business Operation

14. 30 of 73 (41%) businesses under liquidation proceedings have been registered with the NZCO for five or less years, which largely aligns with Statistics New Zealand and MBIE findings around periods for small business failures.

15. It is known that the company registration date is not necessarily the trading start date. One example in the caseload is Commercial information [redacted], however, declared in the accreditation application they have been operating for less than 24 months.

Type of Industry

16. 27 of 73 (37%) businesses under liquidation or removal proceedings are in construction; 16 (22%) in service industries; 8 (11%) in retail and 7 (10%) in hospitality.

17. The figures are consistent with the survey reports about businesses that are doing it tough under the current economic climate. The construction industry has seen one of the highest increases in insolvencies during the first quarter of 2023.[4]

Company Liquidations, Business Cessation or Removal

18. 36 of 73 (47%) have Insolvency Practitioners appointed already and are under liquidation proceedings according to NZCO records.

19. 23 of the 36 (64%) businesses under liquidation have ceased trading as indicated in the liquidator's report.

20. 1 of 73 (1%) is under voluntary administration to put the company back into a going concern business.

21. There was one case, Commercial information [redacted] which was under voluntary administration, changed its status on Commercial information [redacted] to under liquidation after creditors voted down a proposal to save the business operations. Latest information indicated Commercial information [redacted] and to allow liquidators to consider further options.

22. 3 of 73 (4%) have already been removed from the NZCO Register due to amalgamation with other business entities and have now obtained new accreditation under the acquiring or new legal entity.

23. 33 of 73 (45%) are still in the application for company liquidation stage or initial notice of voluntary business cessation from shareholders. Generally, if an employer is at the application stage of liquidation proceedings, there is still potential for the company to resolve the case with the creditors. During this period there is no direct impact on instruction requirements except to the extent it may indicate financial viability risk. Once liquidators are appointed by the High Court, the likelihood of the business ceasing operations with direct impacts on workers, significantly increases.

4 Media: Newshub - Building, construction companies under stress as more go into liquidation

24. Of the 33 applications for liquidations, 20 (60%) have Inland Revenue as the plaintiff and one (3%) involves another government agency (Waka Kotahi); 13 (38%) have been brought by private companies.

Other observations

25. One employer, Commercial information which is an Commercial information was approved standard employer accreditation despite information given to INZ that all staff recruitment are done through another related company Commercial information Accreditation application should not have been approved under Commercial given they are not the direct employer. The provided copy of the employment contract Commercial information confirms staff are being recruited on behalf of Commercial In

RECOMMENDATIONS

Based on the review findings, SBFAs consider there is potential to improve financial viability risk management of Employer Accreditation applications and visibility of changes over time through the following recommendations:

1. Creation or enhancement of an API within the ADEPT system that will obtain up to date information from the NZCO register and NZ Gazette to identify accredited employers undergoing liquidation and removal proceedings. This process will improve visibility of employers with financial viability risk and enable INZ to manage any associated open applications.

2. In the interim or as an alternative, the SBFAs can continue to monitor data provided by the NZCO and the DIA and report instances of liquidation or removal proceedings to VOPs.

3. SBFAs develop a guidance document for INZ stakeholders to understand the various stages within liquidation and removal proceedings to assist decision-making and provide enhanced guidance to around verification opportunities to manage identified risk.

4. SBFAs to continue engagement with Legal and engage Policy Teams around instruction requirements to better manage instances of liquidation or removal proceedings during accreditation.

APPENDIX ONE: IMMIGRATION INSTRUCTIONS

The relevant requirements for all Accredited Employers related to financial risk are shown below:

WA2.10.1 Viable and genuinely operating business or organisation

a. A viable and genuinely operating business or organisation is one where:
   i. it is registered as an employer with the Inland Revenue Department; and
   ii. if the employer is a general partnership or sole trader, the partners or sole trader must not be bankrupt or subject to a No Asset Procedure; or
   iii. if the employer is a limited partnership, the general partners must not be bankrupt or subject to a No Asset Procedure.

b. The employer must:
   i. have not made a loss (before depreciation and tax) over the last 24 months; or
   ii. have a positive cash flow for each of the last 6 months; or
   iii. have sufficient capital and/or external investment (for example funding from a founder, parent company or trust) to ensure the employer's business remains viable and ongoing; or
   iv. have a credible, minimum two-year plan (for example by having contracts for work) to ensure the employer's business remains viable and ongoing.

c. "Viable and ongoing" includes being able to:
   i. meet financial obligations such as paying wages or salaries and all other operating costs and expenses; and
   ii. purchase inventory (if relevant).

ADMINISTRATION

Production

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RVTG

RVTG Required	*Date sent to RVTG*	*Outcome of RVTG*	*Description of Change*
Yes	4 August 2023	Choose an item.	

Document Control

Version	*Date*	*Author:*	*Description of Change*
0.1	26/06/2023	Privacy of natural pe	Original
0.2	31/07/2023	Privacy of natural pe	Revised the document following feedback from RVM Privacy of natural persons
0.3	02/08/2023	Privacy of natural persons	Additional changes

Dissemination List

For Action:	*For Information Only:*
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