
Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed standards, conditions & policies for accredited bodies

Discussion Paper

December 2019

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How to have your say

Submissions process

The Registrar of Companies (Registrar) is seeking written submissions on proposed minimum standards for the accreditation of bodies under the Insolvency Practitioners Regulation Act 2019, and other related policies and directions. Accredited bodies will be responsible for carrying out the frontline regulation of insolvency practitioners. The minimum standards will be set by the Registrar through notices in the *Gazette*.

Your submission may respond to any or all of the issues in this paper, or raise issues not covered in the paper. Where possible, please include evidence to support your views, for example, references to facts and figures, or relevant examples.

Please send your submission before **5pm on 7 February 2020**. Please include your name, or the name of your organisation, and contact details. You can make your submission by:

- Completing the Submission Form www.mbie.govt.nz/insolvencypractitionersaccreditation and attaching it as a Microsoft Word or PDF attachment and sending to practitioners@companies.govt.nz; or
- Mailing your submission to:

Anna Gibb
Service Design Policy
Ministry of Business, Innovation, and Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you may have in relation to the submission process to:

practitioners@companies.govt.nz

Information about implementation of the Act is available at www.companiesoffice.govt.nz/all-registers/insolvency-practitioners/news-and-updates/

Use of information

The information provided in submissions will be used to inform the Registrar's proposed option, and advice to Ministers. We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, the Companies Office may post PDF copies of submissions received to the Companies Office website at companiesoffice.govt.nz and/or MBIE's website at www.mbie.govt.nz. By making a submission, we will consider you to have agreed to us posting your submission, unless you clearly specify otherwise in your submission.

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Please indicate on the front of your submission if it contains confidential information and mark the text accordingly. If you wish to make a submission which includes confidential information, please send us a separate version excluding the relevant information for publication on our website.

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Purpose of this document

This discussion document includes proposals under the Insolvency Practitioners Regulation Act 2019 (the Act) to:

- Prescribe minimum standards for the accreditation of bodies
- Set standard conditions for the accreditation of bodies
- Make policies for the modification of conditions for accredited bodies
- Make policies for the accreditation process
- Make directions for annual reports and confirmations by accredited bodies

The Registrar welcomes your written submissions on the proposals included in this document. Once we have considered your submissions, we will develop and draft the minimum standards and conditions for accreditation, and associated policies and directions.

Proposed milestones for this process are:

Due date	Action
7 February 2019	Deadline for submissions
March 2020	<i>Gazette</i> notice published
June 2020	The Insolvency Practitioners Regulation Act 2019 comes into force

How to use this document

Questions for your consideration and feedback can be found throughout the document. The Registrar welcomes any other relevant comment or information that you wish to provide on the new scheme.

Information on how to make a submission is provided at the beginning of this document (see [How to have your say](#)).

Introduction

About this discussion document

The Act has introduced a co-regulatory scheme to promote quality, expertise, and integrity in the profession of insolvency practitioners. The Act will come into force in June 2020.

The Registrar of Companies (the Registrar) has responsibility under the Insolvency Practitioners Regulation Act 2019 to oversee the regulation of insolvency practitioners. The Registrar has responsibility to prescribe the minimum standards for accreditation of bodies under the Act, by notice in the *Gazette*. Before a notice is published the Registrar must consult about its proposals with those substantially affected by the proposal.

The Act also allows the Registrar to grant accreditation subject to conditions, and to set policies regarding determining applications for accreditation, and in setting conditions of accreditation.

This discussion document sets out the Registrar's proposals for several matters related to accreditation under the Act. This discussion document does not ask specific queries. Rather, submitters should also make any comments or suggestions they consider appropriate. As outlined in the *Principles for accreditation* section (page 10) below, the Registrar generally considers that the accreditation regime should closely match the accreditation regime under the Auditor Regulation Act. Changes should only be made where clearly justified by differences between the auditor regulatory regime and practice, and the insolvency practitioners' regulatory regime and practice. If you believe changes should be made to reflect differences between the audit and insolvency regimes, it would be most helpful if you can provide details as to why such differences are justified or necessary in practice.

This discussion paper is the second of two papers relating to the notices that the Registrar may publish in the *Gazette*. A discussion paper was released in November 2019 relating to the minimum standards for licensing of insolvency practitioners. Submissions on the minimum standards for licensing closed on 13 December 2019. The discussion paper is available for information at www.mbie.govt.nz/insolvencypractitionerslicensing.

Background

Prior to the passage of the Act, insolvency practitioners were not regulated as a specialist profession.

The Companies Act 1993 and Receiverships Act 1993 set out classes of people who were disqualified from acting as insolvency practitioners, such as an undischarged bankrupt or person under 18 years old. However, any person who was not disqualified could be appointed as a liquidator, administrator or receiver, even if they did not have adequate skills or the knowledge required to undertake an insolvency engagement.

Co-regulation

The Act has introduced a co-regulatory scheme which will come into force in June 2020, under which:

- accredited bodies will be responsible for carrying out the frontline regulation of insolvency practitioners, including licensing their entry and regulating ongoing competence, investigating complaints about them, and taking disciplinary action where appropriate; and
- the Registrar will be responsible for oversight of the accredited bodies. Oversight includes accreditation of bodies, ongoing monitoring and reporting, and corrective action to ensure the quality and effectiveness of the accredited bodies' regulatory systems and processes. The Registrar will also maintain a register of insolvency practitioners, which will be publicly searchable, and prescribe minimum standards and conditions for licensing insolvency practitioners.¹

The purpose of the Act is to regulate insolvency practitioners and to establish an independent oversight system in order to promote quality, expertise, and integrity in the profession of insolvency practitioners and compliance with the statutory duties of insolvency practitioners. From 17 June 2020, a person must be a licensed insolvency practitioner in order to act as an insolvency practitioner.² The related discussion document on minimum standards for licensing contains a summary of the Act's requirements for licensing.³

Accreditation

A body, or two or more bodies acting jointly, may apply to the Registrar for accreditation. The Registrar will grant accreditation if satisfied that:⁴

- (a) the applicant will implement and maintain regulatory systems that are adequate and effective; and
- (b) the applicant meets the prescribed minimum standards (see further below); and
- (c) the applicant is a fit and proper person to perform regulatory functions under the Act.

In addition, accredited bodies must have rules providing for:⁵

- (a) the investigation of complaints against a member⁶ or former member of the accredited body;
- (b) the hearing of complaints and other matters by a disciplinary body;
- (c) appeals against decisions of a disciplinary body;

¹ Section 22(1)(a) and (b). See further *Minimum Standards and Conditions for the Licensing of Insolvency Practitioners* discussion document, available at www.mbie.govt.nz/insolvencypractitionerslicensing.

² Section 8. However also note the transitional provisions set out in Schedule 1 of the Act.

³ Available at www.mbie.govt.nz/insolvencypractitionerslicensing.

⁴ Section 34.

⁵ Section 36.

⁶ Note that section 5 of the Act defines "member" to include persons to whom section 57 applies, such as members of recognised bodies. See further the discussion of recognised bodies on page 40 below.

- (d) the kinds of conduct for which a member or former member of the accredited body may be disciplined;
- (e) the actions that may be taken in respect of, and the penalties that may be imposed on, a member or former member of the accredited body for such conduct;
- (f) eligibility to carry out insolvency engagements; and
- (g) the code of conduct or ethics that governs the professional conduct of the members of the accredited body.

Accreditation may be granted subject to any conditions the Registrar thinks fit (see below).⁷

The Registrar's proposed minimum standards for accreditation, and proposed standard conditions for accreditation, are set out in this discussion paper. The Registrar seeks your comments on each of these.

Not in this discussion document

The Act allows, but does not require, the Registrar to prescribe or set certain other matters. This includes the procedure that accredited bodies and disciplinary bodies of accredited bodies must follow when performing regulatory functions.⁸

The Registrar does not propose prescribing and setting such matters prior to the insolvency practitioners' regulatory regime commencing in June 2020. The Registrar will monitor the regime, and may consider prescribing or setting such matters in the future if necessary to give effect to the principles and purposes of the Act.

This discussion document also does not include any discussion regarding solvent company liquidations, and recognition of professional bodies whose members may act as a solvent company liquidator under section 69 of the Act. Please make contact with the Registrar if you are a professional body considering applying for recognition under section 69.

⁷ Section 35.

⁸ Section 22(1)(e).

Principles for accreditation

Principles of the Act

The purpose of the Act is to regulate insolvency practitioners and to establish an independent oversight system in order to promote:

- (a) quality, expertise, and integrity in the profession of insolvency practitioners; and
- (b) compliance with the statutory duties of insolvency practitioners.⁹

In addition, section 24 of the Act sets out guiding principles that apply to the Registrar when prescribing matters such as minimum standards and procedures. The prescribed matters must:

- (a) be necessary or desirable to promote quality, expertise, and integrity in the profession of insolvency practitioners;
- (b) be necessary or desirable to promote compliance with the statutory duties of insolvency practitioners;
- (c) not unnecessarily restrict the licensing of insolvency practitioners; and
- (d) not imposing undue costs on insolvency practitioners or on creditors.

These principles apply only to setting minimum standards. However, the Registrar considers it appropriate to have regard to these principles in considering other matters associated with accreditation, such as conditions or policies.

Other regulatory schemes

The co-regulatory scheme is modelled on the co-regulatory scheme in the Auditor Regulation Act 2011. Accrediting bodies have very similar roles under the auditor regulation scheme and insolvency practitioners' regulation scheme. The Registrar anticipates that some or all of the existing auditor accredited bodies, the New Zealand Institute of Chartered Accountants (NZICA) and CPA Australia, are likely to apply to become accredited bodies under the insolvency regulation scheme.

The Registrar considers the objectives of the Act (particularly limiting compliance costs) would not be met if a body accredited under both the Auditor Regulation Act and Insolvency Practitioners Regulation Act faced substantially different regulatory requirements.

This has two potential practical impacts. First, in making decisions regarding accreditation, the Registrar believes that it is appropriate to have regard to work already carried out by other regulators in considering whether a body is suitable to be accredited. The Registrar believes it would be unusual for one regulator to consider a body to be a fit and proper person with adequate and effective regulatory systems to issue one type of professional licence, and the

⁹ Section 3.

Registrar to reach a different conclusion regarding the same body's ability to issue insolvency practitioner licences.¹⁰

Second, the Registrar proposes that the minimum standards for accreditation of bodies under the insolvency practitioners' regulation scheme closely match the minimum standards set by the Auditor Regulation Act (Prescribed Minimum Standards for Accredited Bodies) Notice 2012. The Registrar has proposed certain changes where required to reflect differences between auditors and insolvency practitioners. This will reduce compliance costs for accredited bodies, as they will face similar requirements under both schemes, and will be familiar with the accreditation process. This is in turn likely to lead to reduced costs for practitioners and creditors, as accredited bodies are likely to pass at least some of the costs of frontline regulation on to practitioners.¹¹

¹⁰ Unless the concern related specifically to insolvency practitioner licences and not regulatory systems generally.

¹¹ The nature and amount of their recovery of their costs is not yet known.

Proposed minimum standards

This section outlines the Registrar's proposed minimum standards for accreditation. This section also summarises any differences between the Registrar's proposal and the Auditor Regulation Act (Prescribed Minimum Standards for Accredited Bodies) Notice 2012 (the Auditor Regulation Notice). Schedule 1 sets out the draft provisions for the minimum standard, marked up against the equivalent provisions of the Auditor Regulation Notice.

The Registrar seeks your feedback on these proposals and the draft provisions. As outlined in the *Principles for accreditation* section (page 10) above, the Registrar considers that the minimum standards for accreditation of bodies under the insolvency practitioners' regulation scheme should closely match the minimum standards set by the Auditor Regulation Act. Changes should only be made where clearly justified by differences between the auditor regulatory regime and practice, and the insolvency practitioners' regulatory regime and practice.

If you believe that other changes should be made to reflect differences between the audit and insolvency regimes, it would be most helpful if you can provide details as to why such differences are justified or necessary in practice.

Governance and organisational structures

The Registrar proposes that an applicant for accreditation must have adequate and effective organisational structures and governance arrangements to support the performance of the regulatory functions of an accredited body. This includes matters such as constitutional and other governing documents, organisational mandate and objectives, governing bodies and committees, and other internal structures and arrangements. The role of an accredited body as a front-line regulator must be clearly established and not (for example) secondary to the body's other roles as a membership or representative organisation.

There are no substantive differences between these proposals and the equivalent provisions of the Auditor Regulation Notice.

Conflicts of interest

Accredited bodies will likely also be professional membership bodies with other interests such as advocating the position of the regulated profession. Key personnel of the accredited body may also be subject to the accredited body's regulatory systems themselves, or have family, friends and close business associates that are. The Registrar proposes that applicants for accreditation must have effective policies and mechanisms to identify and manage potential conflicts of interest.

There are no substantive differences between these proposals and the equivalent provisions of the Auditor Regulation Notice.

Personnel

The Registrar considers that an applicant's personnel must have the skills, knowledge and experience to enable the body to effectively discharge its functions as an accredited body. This includes both:

- the specific staff members it employs when it applies for accreditation; and
- the applicant's systems and processes for ensuring it has personnel with the requisite skills, knowledge and experience on an ongoing basis.

Accredited bodies should therefore have a process for identifying the skills, knowledge and experience required by a role or within a team, and for ensuring the person appointed to that role has, or the people appointed into that team collectively have the skills, knowledge and experience required.

The Registrar also considers that key persons should be fit and proper to be involved in the regulation of insolvency practitioners. Section 34(3)(c) of the Act requires the Registrar to be satisfied that an applicant is a fit and proper person prior to granting accreditation, and this will be considered as part of that assessment.

There are no substantive differences between these proposals and the equivalent provisions of the Auditor Regulation Notice.

Resources to perform regulatory functions

The Registrar proposes that accredited bodies must have the financial and other resources needed to perform their regulatory functions effectively and in a manner consistent with the purposes of the Act. In order to do this, an accredited body must be financially stable. Applicants will need to demonstrate that their income can cover their routine expenditure on an ongoing basis. This may include, for example, providing audited financial statements and/or budget plans for its regulatory functions.

Additionally, applicants will need to demonstrate they can reasonably fund any capital or project based expenditure, particularly expenditure that is necessary or planned to implement regulatory systems for insolvency practitioners.

The Registrar expects that accredited bodies will have a physical presence in New Zealand. Where an accredited body is not primarily based in New Zealand, the accredited body will need to identify functions which require a New Zealand presence and the extent to which those functions can be supported from overseas, and ensure that an appropriate New Zealand presence is put in place.

Applicants will need to demonstrate the resources assigned are appropriate for their regulatory systems. As outlined in the *Adequate and effective regulatory systems* section of this discussion document (page 22), what constitutes "appropriate" may differ between accredited bodies depending on the particular systems and structures each body has in place.

There are no substantive differences between these proposals and the equivalent provisions of the Auditor Regulation Notice.

Standing with other regulators

The Registrar anticipates that most applicants for accreditation will have some oversight role in respect of other professional services. As discussed, NZICA and CPA also have a role in regulating accountancy and audit professional services in both New Zealand and Australia. An international applicant may have a role in regulating insolvency practitioners in other jurisdictions.

The Registrar will have regard to the applicant's standing with other regulators in both New Zealand and overseas. As discussed in the principles for accreditation section of this discussion paper, it would be unusual for one regulator to consider a body to be a fit and proper person with adequate and effective regulatory systems to issue one type of professional licence, and the Registrar to reach a different conclusion regarding the same body's ability to issue insolvency practitioner licences.

Note that there are differences between the Auditor Regulation Notice and this proposal:

- Clause 3(1)(o) of the Auditor Regulation notice refers to membership of the International Federation of Accountants; no equivalent body exists for insolvency practitioners and accordingly this reference has not been included; and
- Clause 3(1)(p) refers to "regulatory roles in relation to accountants or auditors outside New Zealand"; this has been amended to more generally refer to any type of professional service regulation both in New Zealand and overseas.

The Registrar believes these changes better reflect the New Zealand regulatory environment, and will not impose any additional compliance costs on applicants for accreditation.

Internal compliance systems and processes

The Registrar proposes to review internal compliance systems and processes of applicants for accreditation. This includes systems and processes for:

- performing the accredited body's own functions effectively and in a manner consistent with the purposes of the Act;
- rectifying any non-compliance;
- continuous self-improvement; and
- documenting any changes to internal systems and processes.

There are no substantive differences between these proposals and the equivalent provisions of the Auditor Regulation Notice.

Membership and licensing regulatory systems

The Registrar proposes to review regulatory systems for membership and licensing as part of the accreditation process.¹² This includes systems and processes for ensuring applicants for insolvency practitioner licences:

- Meet the prescribed minimum standards for licences;
- Are fit and proper persons to be licensed insolvency practitioners;
- Satisfy other applicable legal and membership requirements; and
- Are subject to appropriate licence conditions.

This review may include consideration of matters such as:

- Resources allocated to the regulatory functions;
- The skills, knowledge and expertise of key people; and
- Documented policies and procedures for the licence application and review process (including any forms and support evidence).

One particular factor the Registrar will consider is how the applicant's regulatory systems support the policies and principles of the Act, especially the balance between promoting quality, expertise, and integrity in the profession of insolvency practitioners, and not unnecessarily restricting the licensing of insolvency practitioners or imposing undue compliance costs.

The Registrar considers it essential that membership criteria are appropriate having regard to the functions of the body. The Registrar would not consider it appropriate to accredit a body if its membership criteria unreasonably restricted entry into the insolvency profession. However, provided the accredited body's membership criteria and rules are reasonable and directed at maintaining high standards of professionalism within insolvency practitioners, at this time the Registrar does not intend to further specify how membership criteria should be structured or what rules the accredited body should have.

Note that there are differences between the Auditor Regulation Notice and the proposed drafting:

- the Registrar has not proposed any minimum standards regarding specific qualifications for insolvency practitioners; and
- the concept of "assessors" in the Auditor Regulation Notice is not relevant to insolvency practitioners.

These references have therefore not been included.

¹² Note that section 5 of the Act defines "member" to include persons to whom section 57 applies, such as members of recognised bodies. See further the discussion of recognised bodies on page 40 below.

Monitoring and oversight regulatory systems

The Registrar proposes to review applicants for accreditation's regulatory systems for monitoring and oversight as part of the accreditation process. This includes systems and processes for monitoring licensed insolvency practitioners' compliance with:

- The prescribed minimum standards and conditions of their licence;
- The Act and other applicable law; and
- The applicant's conduct rules.

The applicant should also have systems and processes for monitoring any issues with the insolvency profession or system, and developing strategies to address those issues.

As discussed in the membership and licensing regulatory systems section above, this review may include consideration of matters such as:

- Resources allocated to the regulatory functions;
- The skills, knowledge and expertise of key people; and
- Documented policies and procedures for the monitoring and oversight.

The proposal removes references to audit firms and issuer audits from the equivalent provisions of the Auditor Regulation Notice, as these concepts are not applicable to insolvency practitioners. There are no other substantive differences between these proposals and the equivalent provisions of the Auditor Regulation Notice.

Complaints, enquiries, investigations and discipline regulatory systems

The Registrar proposes to review applicants for accreditation's regulatory systems for dealing with complaints, enquiries, investigations and discipline. This includes systems and processes for determining:

- When to commence an enquiry or investigation into an insolvency practitioner's conduct;
- How to carry out such an enquiry or investigation (including steps to ensure that principles of natural justice are followed);
- When disciplinary proceedings or other regulatory enforcement powers should be exercised;
- When matters should be referred to other regulators; and
- Accountability and transparency requirements for such processes.

This review may include consideration of matters such as:

- Resources allocated to the regulatory functions;
- The skills, knowledge and expertise of key people;
- Documented policies and procedures;
- The constitution and membership of disciplinary or other decision-making bodies;

- The process for appealing decisions; and
- The range of powers and penalties available to the disciplinary body.

The proposal simplifies certain provisions of the Auditor Regulation Notice. It is necessary to remove references to auditing and assurance standards, as there are no equivalent insolvency standards. To simplify this further, some detailed provisions have been deleted and replaced with a cross reference to the Act. There are no other substantive differences between these proposals and the equivalent provisions of the Auditor Regulation Notice.

Other general obligations and policies

The Registrar proposes that an applicant for accreditation must have adequate and effective policies to support the performance of the regulatory functions of an accredited body, including how it exercises its judgements and discretions.

There are no substantive differences between these proposals and the equivalent provisions of the Auditor Regulation Notice.

Conditions of accreditation

This section outlines the Registrar's proposed standard conditions for accreditation. These conditions will apply to accredited bodies on an ongoing basis once accredited. As for the minimum standards section above, this section outlines the Registrar's proposals, while Schedule 2 sets out the draft provisions for the standard conditions. These draft provisions are based on the equivalent conditions set out in the Financial Markets Authority's (FMA) guidance paper on the conditions of accreditation.¹³ Substantive changes are noted below.

The Registrar seeks your feedback on these proposed standard conditions for accreditation. As outlined in the previous sections, if you believe that other changes should be made to reflect differences between the audit and insolvency regimes, it would be most helpful if you can provide details as to why such differences are justified or necessary in practice.

Application of minimum standards

The Act allows the Registrar some flexibility in setting conditions for each accredited body. The Registrar's starting point is that the standard conditions outlined in this section will apply to all accredited bodies. However, the Registrar acknowledges that the circumstances of each accredited body (or applicant for accreditation) will not necessarily be identical and the Registrar will consider whether modification of the standard conditions is appropriate in accordance with the processes set out in this section (see below).

Types of conditions

Section 35(2) of the Act provides that conditions may include:

- (a) conditions relating to the procedure that an accredited body must follow when performing regulatory functions;
- (b) conditions to ensure that the accredited body's regulatory systems are adequate and effective;
- (c) conditions requiring the accredited body to seek consent from the Registrar before making any material changes to the rules of the body in relation to the licensing of insolvency practitioners; and
- (d) conditions as set by regulations.

MBIE has previously consulted on the content of the possible regulations to be made under the Act.¹⁴ Work on regulations resulting from this consultation is currently underway. The proposals for the regulations include:

¹³ See www.fma.govt.nz/assets/Uploads/120401-policy-and-guidance-on-applications-for-accreditation-and-conditions-of-accreditation.pdf.

¹⁴ See www.mbie.govt.nz/dmsdocument/6911-implementation-of-the-insolvency-practitioners-regulation-act-2019-proposed-regulations-discussion-paper.

- (a) the accredited body's ongoing compliance with any minimum standards for accreditation prescribed by the Registrar;
- (b) the accredited body's resources, financial position, and financial stability; and
- (c) ensuring that the accredited body's governance and organisational structure is adequate and effective.

Continuing compliance with minimum standards

The Registrar proposes an ongoing condition of accreditation that accredited bodies must continue to comply with the minimum standards for accreditation.

The equivalent conditions for auditor accreditation include some additional conditions that could fit within a continuing obligation to comply with the minimum standards. The Registrar invites submitters' thoughts on whether a single overarching condition is sufficient or whether additional more detailed conditions are helpful.

Informing the Registrar of accreditation matters and regulatory functions

The Registrar proposes conditions to ensure that accredited bodies keep the Registrar informed on matters affecting, or potentially affecting, the body's accredited status or performance of its regulatory functions. This is to support the Registrar's monitoring and oversight function under section 40 of the Act.

Note that the auditor standard conditions refer only to notification of actions by overseas regulatory bodies. The Registrar proposes that all regulatory actions be notified.

In addition, the auditor standard conditions require the FMA to be involved in the appointment of members to accredited bodies' disciplinary and appeals bodies. The Registrar does not propose including this requirement.

Informing the Registrar of monitoring and enforcement matters

The Registrar proposes conditions to ensure that accredited bodies keep the Registrar informed of significant events in relation to licensed insolvency practitioners and compliance with the Act and wider regulatory regime. This is to support the Registrar's monitoring and oversight function under section 40 of the Act.

There are some substantive differences to the proposed conditions and the equivalent auditor standard conditions. In particular, the auditor conditions require notification of detected breaches of audit standards; there are no equivalent insolvency practice standards. Instead, the Registrar proposes that the accredited bodies be obliged to notify the Registrar of any detected material breaches of relevant insolvency statutes.

Standard conditions and modifying conditions

Section 35(4) of the Act provides that the Registrar may vary, remove, add to, or substitute conditions of accreditation. The Registrar acknowledges that the circumstances of each

accredited body (or applicant for accreditation) will not necessarily be identical and the Registrar will consider any requests for modification of the standard conditions when a body applies for accreditation.

However, the Registrar also believes that the standard conditions outlined above strike a reasonable balance between the principles of promoting quality, expertise, and integrity in the profession of insolvency practitioners, and not unnecessarily restricting the licensing of insolvency practitioners or imposing undue compliance costs.

On-request modifications

The Registrar therefore proposes a policy under which the Registrar will consider requests for modification, but applicants requesting such modification will need to support such requests by providing supporting evidence to show why such modifications are required for the applicant, how the modified conditions will satisfy the Act's policy and principles, and otherwise impose overall equivalent regulation.

Modifications in response to regulatory concerns

In addition, the Registrar is charged with monitoring and reporting on the regulatory systems of accredited bodies.¹⁵ If the Registrar has concerns regarding an accredited body's regulatory systems, he may issue directions to the accredited body.¹⁶ In addition to issuing directions to accredited bodies, the Registrar proposes that conditions of accreditation may also be modified where the Registrar is satisfied that modifying a condition will better address the underlying issue than a direction under section 42. The Registrar anticipates that such modifications will primarily be made at the Registrar's instigation following a review of an accredited body's regulatory systems.

The Registrar proposes that the requirements for directions set out in section 42 also be used as a guide for modifications of conditions. That is, before proposing modified conditions, generally the Registrar must be satisfied on reasonable grounds that the accredited body's regulatory systems:

- Are not adequate or effective;
- Can be improved in order to better meet the purposes of the Act; or
- Are materially inconsistent with the Registrar's plan under section 38.

The Registrar would discuss its concerns with the accredited body and provide reasons for its decision to modify conditions of accreditation.

Modifications in response to changes in law

Under section 35(2)(d) of the Act, conditions may be prescribed by regulation. Regulations may be made or amended after accredited bodies have been accredited. If new regulations are made, or existing regulations amended, the Registrar intends to review the conditions of all

¹⁵ Section 41.

¹⁶ Section 42.

existing accredited bodies and consider whether it is appropriate to modify existing conditions to reflect changes in law.

Adequate and effective regulatory systems

Section 34(3)(a) of the Act provides that the Registrar must be satisfied that an applicant for accreditation will implement and maintain regulatory systems that are adequate and effective before granting accreditation.

Section 39 of the Act provides that the Registrar must publish policies in relation to how the Registrar proposes to act in determining applications for accreditation. This section of the discussion document outlines the Registrar's proposed policy for determining if an applicant for accreditation will implement and maintain regulatory systems that are adequate and effective.

Proposal

The Registrar proposes to generally take a risk-based approach when determining applications for accreditation and whether an applicant for accreditation will implement and maintain regulatory systems that are adequate and effective. The Registrar considers it is appropriate that adequacy and effectiveness must be assessed in light of the size, scope and role of the accredited body. This may include consideration of:

- the potential number of insolvency practitioners affected;
- the potential number and type of debtors affected;
- the potential number and type of creditors affected;
- the size and scale of the potential insolvencies; and
- the potential impact if a matter is or is not done.

For example, the number of personnel required to discharge an accredited body's regulatory functions are likely to be proportionate to the number of licensed practitioners. An accredited body with only a few licensed insolvency practitioners may not require as many personnel as an accredited body with many licensed insolvency practitioners.

Other factors

The Registrar also notes that other factors that may be relevant in determining whether an applicant for accreditation will implement and maintain regulatory systems that are adequate and effective. This may include factors such as:

- whether the applicant has adequate and effective governance and organisational structures;
- how the applicant manages conflicts of interest;
- whether the applicant's personnel have the skills, knowledge and experience to enable the body to effectively discharge its functions;
- whether the applicant has the financial and other resources needed to effectively discharge its functions;
- the applicant's standing with other regulators;
- the applicant's internal compliance systems and processes;

- the applicant’s membership and licensing regulatory systems;
- the applicant’s monitoring and oversight regulatory systems; and
- the applicant’s investigation and complaint systems.

All these factors are included as minimum standards for accreditation. The Registrar will consider these factors as part of the Registrar’s assessment of whether the applicant meets the minimum standards. The Registrar does not consider it necessary to review such factors again to assess whether an applicant satisfies the section 34(3)(a) regulatory systems requirement.

Other information

The Registrar will consider any other information applicants for accreditation may wish to provide to support the Registrar’s assessment of whether the applicant will implement and maintain adequate and effective regulatory systems. Such information could include matters such as:

- independent reviews, audits, assessments or certifications carried out by independent third parties in respect of the applicant; and
- a previous history or proven track record of regulatory or quasi-regulatory systems – for example, professional or occupational licensing of other professions, or voluntary professional membership schemes.

Fit and proper

Section 34(3)(c) of the Act provides that the Registrar must be satisfied that an applicant for accreditation is a fit and proper person to perform the regulatory functions for the purposes of this Act. If a joint application is made, the Registrar must be satisfied that each of the joint applicants is fit and proper.

Section 39 of the Act provides that the Registrar must publish policies in relation to how the Registrar proposes to act in determining applications for accreditation. This section of the discussion document outlines the Registrar's proposed policy for determining if an applicant is fit and proper.

Proposal

The Registrar proposes to consider **both** whether the applicant body, **and** certain of its key personnel, are fit and proper to perform regulatory functions. As the applicant body will act under the direction of its key personnel in discharging its regulatory functions, the Registrar considers that it is appropriate to take this broad approach to considering the fit and proper requirement.

Applicant body

The Registrar considers that the following matters will likely be relevant to whether the applicant body is fit and proper:

- (1) Whether the applicant body has been convicted of any crimes involving dishonesty. A crime involving dishonesty is defined in section 2 of the Crimes Act 1961 and (for bodies corporate) includes matters such as bribery and corruption.
- (2) Whether the applicant body has been convicted of any crimes or disciplinary actions involving insolvency, corporate or financial markets legislation. This includes any convictions, sanctions, penalties, fines, declarations, orders, reprimands or undertakings for any offence under any financial markets legislation (as defined in the Financial Markets Authority Act 2011),¹⁷ or any similar overseas legislation.
- (3) Whether the applicant body has been subject to disciplinary action by any regulator, professional body or disciplinary tribunal, or court where those actions resulted in penalties, sanctions, fines, declarations, orders, reprimands or undertakings being imposed or censure.
- (4) Whether the applicant body has been subject to an adverse court ruling raising significant concerns about the quality of its regulatory work or judgements. This would include adverse court rulings in respect of appeals from the accredited body's decisions that relate to the quality of its regulatory work or judgments.
- (5) Whether the applicant body has ever been placed into statutory management.

¹⁷ This includes the Companies Act 1993, Financial Reporting Act 2013, Financial Markets Conduct Act 2013, and Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

- (6) Whether the applicant body has, in the last ten years, been placed into liquidation, administration, receivership, restructuring to avoid insolvent liquidation, or winding up application.
- (7) Whether the applicant body is currently or potentially subject to proceedings that, if any adverse finding is reached, will result in one or more of the matters set out in the paragraphs above applying to the applicant body.

The Registrar considers that the presence of such a matter should not **automatically** disqualify an applicant from becoming an accredited body. However, applicants must disclose such matters and the circumstances that led to the matter. Applicants should describe to the Registrar as to why, despite such matter, the applicant is a fit and proper person to be accredited, and provide supporting information. The Registrar may request further information if the Registrar considers that would be helpful for assessing whether the applicant is a fit and proper person.

Applicant key personnel

The Registrar considers that the following personnel are “key” personnel in respect of an applicant for accreditation:

- (1) members of its governing board (e.g. board of directors); and
- (2) its senior executives with responsibility for or oversight of the regulatory functions of the applicant.

Key personnel should also be fit and proper. The Registrar considers that the following matters will likely be relevant to whether individual personnel are fit and proper:

- (1) Whether the person has been convicted of any crimes involving dishonesty. A crime involving dishonesty is defined in section 2 of the Crimes Act 1961 and includes matters such as theft, deceit, blackmail, forgery, bribery and corruption.
- (2) Whether the person has been convicted of any crimes or disciplinary actions involving insolvency, corporate or financial markets legislation. This includes any convictions, sanctions, penalties, fines, declarations, orders, reprimands or undertakings for any offence under any financial markets legislation (as defined in the Financial Markets Authority Act 2011),¹⁸ or any similar overseas legislation. This includes being subject to a director prohibition order.
- (3) Whether the person has been subject to disciplinary action by any regulator, professional body or disciplinary tribunal, or court where those actions resulted in penalties, sanctions, fines, declarations, orders, reprimands or undertakings being imposed or censure.
- (4) Whether the person has been subject to an adverse court ruling in respect of a civil case relating to the quality of the person’s professional work or professional judgement.

¹⁸ This includes the Companies Act 1993, Financial Reporting Act 2013, Financial Markets Conduct Act 2013, and Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

- (5) Whether the person has ever been declined membership of any professional body, or had their membership suspended or cancelled.
- (6) Whether the person has been declined any registration, licence, authorisation or accreditation required in relation to any profession by any public body, self-regulatory organisation or exchange, or has had any such membership, registration, licence, authorisation or accreditation revoked or withdrawn.
- (7) Whether the person has been dismissed, or asked to resign, from a position of trust, fiduciary appointment or similar position.
- (8) Whether the person has been placed into statutory management, or has been a director of a company which has been placed into statutory management.
- (9) In the last 10 years, whether the person has been made bankrupt, or filed for bankruptcy, or made the subject of an official assignment for the benefit of their creditors or been admitted to the no asset procedure under the Insolvency Act 2006.
- (10) In the last 10 years, whether the person has been a director or manager of an entity, or other incorporated or unincorporated entity, which has:
 - (a) been placed into insolvent liquidation, administration or receivership (or any overseas equivalent status); or
 - (b) entered into any compromise agreement, moratorium or other restructuring to avoid insolvent liquidation, administration or receivership.
- (11) Whether the person is currently or potentially subject to proceedings that, if any adverse finding is reached, will result in one or more of the matters set out in the paragraphs above applying to the person.

As for accredited bodies, the Registrar considers that the presence of such a matter should not **automatically** disqualify an applicant from becoming an accredited body. However, accredited bodies must disclose such matters about their personnel and the circumstances that led to the matter. Applicants should describe to the Registrar why, despite such matter in respect of one or more of its key personnel, the applicant is a fit and proper person to be accredited, and provide supporting information. The Registrar may request further information if the Registrar considers that would be helpful to assessing whether the applicant is a fit and proper person.

Other matters

In addition, the Registrar considers that the applicant for accreditation should be in good standing with any other regulators that have oversight of the applicant. As this is included as a proposed minimum standard, the Registrar proposes to include consideration of these factors as part of the Registrar's assessment of whether the applicant meets that minimum standard.

Applications for accreditation

The Registrar proposes to adopt a policy for determining applications for accreditation (as required by section 39 of the Act) based on the proposals outlined in this discussion document and feedback provided by submitters.

The Registrar will grant accreditation in accordance with the criteria set out in the Act. In particular:

- Section 34(3)(a) of the Act provides that the Registrar must be satisfied that the applicant will implement and maintain regulatory systems that are adequate and effective;
- Section 34(3)(b) of the Act provides that the Registrar must be satisfied that the applicant will meet the minimum standards for accreditation. These minimum standards are outlined earlier in this discussion document;
- Section 34(3)(c) of the Act provides that the Registrar must be satisfied that the applicant is a fit and proper person to perform the regulatory functions for the purposes of this Act. If a joint application is made, this requirement applies to each of the joint applicants; and
- Section 36(1) of the Act provides that accredited bodies must have rules that provide for certain prescribed matters.

Applicants for accreditation must be able to describe how the applicant, its rules, or its members satisfy the relevant requirements. If necessary, applicants should provide supporting evidence or further information.

Application form and checklist

The Registrar does not propose prescribing a mandatory form or prescribed process for accreditation. The Registrar has however prepared a checklist to help applicants ensure that all necessary information has been provided. The Registrar may request further information in order to process the application for accreditation.

The checklist is set out below. Note that the checklist is based on the proposals set out in this discussion document and will be reviewed and updated following consultation on this discussion document.

Application process

Persons wishing to apply for accreditation should notify the Registrar. The Registrar will make staff available for discussions with persons or bodies considering applying for accreditation. The Registrar expects that the majority of applications will need to provide the information summarised in the checklist, however the Registrar is willing to discuss the information required for the particular circumstances of each applicant.

Upon receipt of all information, the Registrar's staff will review against the statutory criteria and applicable policies (as outlined in this discussion document). If necessary, the Registrar may seek further information, or arrange for further meetings to discuss the applicant and the application. Staff will make a recommendation to the Registrar, who will be responsible for determining whether all criteria for accreditation have been satisfied.

Application fees

There is no fee to apply for accreditation.

Exemptions, waivers and modification

The Registrar has no power to waive, exempt or modify the requirements prescribed in the Act and the minimum standards.

The Registrar can modify the application of the standard conditions of accreditation. If an applicant is asking for the Registrar to modify the standard conditions, applicants must be able to describe why such modification is appropriate and how the policy of the Act will be satisfied with modified conditions.

Time to process applications

There is no prescribed time period for applications to be reviewed and considered. The Registrar will discuss applicants' particular deadlines or timeframes, but typically applicants should allow up to 6 to 8 weeks for an application to be processed from the time that all information is provided.

Checklist

Information	Relevant requirement	Supporting information
Applicant background information		
Applicant name	IPR Act, section 34(4)	
Applicant address	IPR Act, section 34(4) [Minimum Standards for Accreditation Notice, specific clause references to be provided once notice made]	Applicants must have a physical presence in New Zealand.
Applicant legal status and registration numbers	IPR Act, section 34(4)	Applicants should list their legal status (for example, a New Zealand company or incorporated society) and applicable registration, incorporation and NZBN numbers.
Applicant constitutional documents	IPR Act, section 34(4)	Copy of the applicant's constitution, memorandum and articles of association, rules and other similar governing documents.
Prospective members/licensed	IPR Act, section 34(4)	Applicants should describe the nature of their current and proposed membership (e.g.

Information	Relevant requirement	Supporting information
insolvency practitioners ¹⁹		<p>insolvency practitioners under a voluntary scheme, accountants, bookkeepers etc.).</p> <p>Applicants should provide their best estimate of the number of potential licensed insolvency practitioners to whom they may issue licences.</p>
Types of insolvency engagement	IPR Act, section 34(4)	<p>Applicants should describe the types of insolvency engagement for which they may issue licences to insolvency practitioners (e.g. all types of insolvency engagements,²⁰ personal insolvency engagements, corporate insolvency engagements).</p> <p>This may include information as to:</p> <ul style="list-style-type: none"> • the potential number and type of debtors involved in an insolvency engagement • the potential number and type of creditors involved in an insolvency engagement • the size and scale of the potential insolvencies.
Joint applicants	IPR Act, section 34(1)(b)	<p>If two or more persons are applying jointly for accreditation, please provide the information outlined in this checklist for each applicant (e.g. each applicant's name, legal status, rules etc.).</p> <p>If the application is made jointly between two or more bodies, copies of all relevant agreements between the bodies regarding accreditation, licensing and application of the Act.</p> <p>In addition, provide details as to:</p> <ul style="list-style-type: none"> • How the bodies will act together (e.g. will responsibilities be split or shared) • How the bodies will together meet the requirements of the Act and the minimum standards • Copies of the agreements, memoranda of understanding etc.

¹⁹ Note that section 5 of the Act defines “member” to include persons to whom section 57 applies, such as members of recognised bodies. See further the discussion of recognised bodies on page 40 below.

²⁰ See section 5, definition of “insolvency engagement”.

Information	Relevant requirement	Supporting information
Recognised bodies	IPR Act, sections 57-59	If an applicant intends to work with a recognised body under section 57-59 of the Act, the information set out in the Recognised body policy (see below).
Regulatory systems and fit and proper	IPR Act, section 34(3)(a) and (c)	
Regulatory systems	IPR Act, section 34(3)(a)	<p>[OPTIONAL] Any information the applicant may wish to provide to support the application, e.g.:</p> <ul style="list-style-type: none"> • Independent reviews, audits, assessments or certifications carried out by independent third parties in respect of the applicant; • A previous history or proven track record of regulatory or quasi-regulatory systems – e.g. professional or occupational licensing of other professions, or voluntary professional membership schemes.
Fit and proper – applicant body	IPR Act, section 34(3)(c)	<p>If none of the fit and proper matters exist in respect of the applicant body (see above), confirmation of that.</p> <p>If one or more of the fit and proper matters exist in respect of the applicant body, the details of each matter and the applicant’s submissions as to why the applicant body is fit and proper for accreditation.</p>
Fit and proper – key personnel	IPR Act, section 34(3)(c)	<p>The name of each of the key personnel (see above).</p> <p>If none of the fit and proper matters exist in respect of each named person (see above), confirmation of that.</p> <p>If one or more of the fit and proper matters exist in respect of one or more named persons, the details of each matter and the applicant’s submissions as to why the applicant body is fit and proper for accreditation.</p> <p>Note that key personnel involved in the regulatory process should also provide a brief CV outlining their skills and experience in relation to regulatory functions (see below).</p>
Minimum standards	IPR Act, section 34(3)(b)	

Information	Relevant requirement	Supporting information
Governance and organisational structures	[Minimum Standards for Accreditation Notice, specific clause references to be provided once notice made]	<p>Applicants should describe the governance and organisation structures, including constitutional and other governing documents, organisational mandate and objectives, governing bodies and committees, and other internal structures and arrangements.</p> <p>Applicants should also provide:</p> <ul style="list-style-type: none"> • Organisational strategy documents • Organisation chart • Policies for appointment to governing body and key committees • Delegation policies.
Conflicts of interest	[Minimum Standards Notice]	Applicants should provide a copy of, or describe, their conflicts of interest policy.
Personnel	[Minimum Standards Notice]	<p>Key personnel involved in the regulatory process should provide a brief CV outlining their skills and experience in relation to regulatory functions (see below).</p> <p>Applicants should describe their policies and processes to:</p> <ul style="list-style-type: none"> • Identify and appoint persons to governing bodies and committees • Employ new staff in regulatory functions
Resources	[Minimum Standards Notice]	<p>Applicants should demonstrate that their income can cover their routine expenditure on an ongoing basis. This may include, for example, providing audited financial statements and/or budget plans for its regulatory functions.</p> <p>If an applicant needs to deploy new systems in order to be accredited, the applicant should demonstrate how such systems will be funded.</p>
Resources – NZ presence	[Minimum Standards Notice]	<p>If an applicant plans to carry out any regulatory functions from outside New Zealand, the applicant should provide a description of which functions, from where, and how such support will continue to be available for as long as they are required for the adequate and effective performance of that regulatory function.</p> <p>Additional financial statements and/or budgets should be provided for the New Zealand office.</p>

Information	Relevant requirement	Supporting information
Standing with other regulators	[Minimum Standards Notice]	Applicants should provide details of other regulators that have oversight of them.
Internal compliance systems and processes	[Minimum Standards Notice]	Applicants should describe how their systems, policies, and processes ensure they comply with, and for monitoring their compliance with, its obligations as an accredited body. Copies of relevant policies should be provided.
Membership and licensing regulatory systems	[Minimum Standards Notice]	<p>Applicants should describe their systems and processes for ensuring applicants for insolvency practitioner licences:</p> <ul style="list-style-type: none"> • Meet the prescribed minimum standards • Are a fit and proper person to be a licensed insolvency practitioner; • Satisfy other applicable legal and membership requirements; and • Are subject to appropriate licence conditions. <p>Applicants should describe how their regulatory systems support the policies and principles of the Act, especially the balance between promoting quality, expertise, and integrity in the profession of insolvency practitioners, and not unnecessarily restricting the licensing of insolvency practitioners or imposing undue compliance costs.</p>
Monitoring and oversight regulatory systems	[Minimum Standards Notice]	<p>Applicants should describe their regulatory systems for monitoring and oversight as part of the accreditation process. This includes systems and processes for monitoring licensed insolvency practitioners compliance with:</p> <ul style="list-style-type: none"> • The prescribed minimum standards and conditions of their licence; • The Act and other applicable law; and • The applicant’s conduct rules.
Complaints, enquiries, investigations and discipline regulatory systems	[Minimum Standards Notice]	<p>Applicants should describe their systems and processes for determining:</p> <ul style="list-style-type: none"> • When to commence an enquiry or investigation into an insolvency practitioner’s conduct; • How to carry out such an enquiry or investigation (including steps to ensure that principles of natural justice are followed);

Information	Relevant requirement	Supporting information
		<ul style="list-style-type: none"> • When disciplinary proceedings or other regulatory enforcement powers should be exercised; • When matters should be referred to other regulators; • Accountability and transparency requirements for such processes; and • The terms of reference or similar establishing the disciplinary body (if not already set out in the rules). <p>Applicants that have existing investigation and discipline functions should also include:</p> <ul style="list-style-type: none"> • A description of a typical complaint and investigation process. • Summary statistics as to the number of complaints: <ul style="list-style-type: none"> ○ received ○ investigated ○ resolved without investigation ○ not yet resolved ○ referred to hearing ○ how resolved ○ not yet heard • Summary statistics as to the number of disciplinary body hearings: <ul style="list-style-type: none"> ○ appealed ○ how resolved ○ not yet heard
Conditions	IPR Act, section 35	
Conditions	Standard conditions	<p>If applicants are satisfied with the standard conditions, applicants should confirm that.</p> <p>If applicants require modifications to the standard conditions, applications should outline the requested modifications. Applicants should provide supporting evidence to show why such modifications are required for the applicant, how the modified conditions will satisfy the Act’s policy and principles, and otherwise impose overall equivalent regulation.</p>
Rules	IPR Act, section 36 ²¹	Applicants should provide a copy of their rules. Please provide references to the applicable rule

²¹ Note that special rules apply to NZICA – see section 36(5).

Information	Relevant requirement	Supporting information
		<p>numbers regarding each of the following matters. Applicants may also wish to summarise or describe how the relevant rule meets the statutory criteria.</p> <p>If applicants intend to change their rules as part of the accreditation process, applicants should provide both their existing and updated rules.</p> <p>Note also that there is some duplication between the discipline-related minimum standards and the discipline-related rules. It is not necessary to duplicate information.</p>
Investigation of complaints	36(1)(a)	Rules and applicable cross references.
Hearing of complaints and other matters by disciplinary body	36(1)(b)	Rules and applicable cross references.
Appeals against decisions of disciplinary body	36(1)(c)	Rules and applicable cross references.
Kinds of conduct for which members may be disciplined	36(1)(d)	Rules and applicable cross references.
Disciplinary actions and penalties	36(1)(e)	Rules and applicable cross references.
Eligibility to carry out insolvency engagements	36(1)(f)	Rules and applicable cross references.
Code of conduct	36(1)(g)	Please provide a copy if not part of the rules.

Status of applicant information

The Official Information Act 1982 applies to information provided to the Registrar in association with applications for accreditation. The Privacy Act 1993 may also apply to certain applicant accreditation information. If the Registrar receives a request for information that includes applicant accreditation information, the Registrar will treat that request in accordance with the applicable provisions of the Official Information Act and Privacy Act.

In submitting information to the Registrar, please indicate what information (if any) is already publicly available and which information is or may be commercially sensitive, subject to obligations of confidence, or otherwise potentially subject to grounds for withholding under

the Official Information Act and Privacy Act. Please also provide reasons or background for why you consider such information to be subject to such grounds. The Registrar will consider this information under the Official Information Act and Privacy Act.

Annual confirmations and reports

Section 37 of the Act provides that accredited bodies must supply annual confirmations and reports to the Registrar, in accordance with a direction prepared by the Registrar. This section of the discussion document sets out the Registrar's proposals for this direction.

Annual confirmations

Section 37(3) of the Act provides that accredited bodies must submit annual confirmations, either confirming insolvency practitioner licence information on the Register is correct, or updating it as required.

Section 30 of the Act sets out the information about licensed insolvency practitioners to be contained on the register, including the name, address, licence term, licence conditions and disciplinary history. Further information to be included on the register may be prescribed by regulation. MBIE has previously consulted on the content of the possible regulations.²² Work on regulations resulting from this consultation is currently underway. The proposals for the regulations include relevant business email addresses and NZBN.

Proposed process

The Registrar proposes adopting a similar process as is used for the equivalent annual confirmation process under the Auditor Regulation Act:

- In early June each year, the Registrar will provide each accredited body with machine-readable data from the register relating to that accredited body's licensed insolvency practitioner (e.g. a CSV file or similar).
- The accredited body will review that data and either confirm it is accurate or note any required updates.
- The accredited body will update data as required using a secure online form (i.e. one submission per insolvency practitioner requiring updates) before 30 June each year.
- Also by 30 June, the accredited body must confirm in writing (by email) that all insolvency practitioner data is, to the best of their knowledge, either:
 - Correct; or
 - Subject to the following changes [to be listed], correct.

The Registrar does not propose prescribing any other forms to be used or information to be supplied.

Fees

MBIE has previously consulted on the fees and levies associated with the insolvency practitioner regime.²³ Work on regulations resulting from this consultation is currently

²² See www.mbie.govt.nz/dmsdocument/6911-implementation-of-the-insolvency-practitioners-regulation-act-2019-proposed-regulations-discussion-paper.

²³ See www.mbie.govt.nz/dmsdocument/6911-implementation-of-the-insolvency-practitioners-regulation-act-2019-proposed-regulations-discussion-paper.

underway. The proposals for the regulations include an annual licence confirmation fee for insolvency practitioners of NZD 105 (plus GST). This reflects the cost to maintain and update the register.

This annual confirmation fee will be collected by accredited bodies (as well as their own professional membership and licensing costs). The Registrar expects that this annual confirmation fee will be passed to the Registrar at the same time the accredited bodies confirm that the insolvency practitioner data is correct.

There is no annual confirmation fee directly payable by accredited bodies.

Reports

Content

Section 37(2)(b) provides that an accredited body's report must contain:

- (i) information relating to the accredited body's performance in carrying out its' regulatory functions for the purposes of this Act; and
- (ii) information relating to any material changes to the accredited body's regulatory systems that it has implemented, is in the process of implementing, or proposes to implement (including stating what it has done in response to any direction issued under section 42); and
- (iii) any other prescribed information .

MBIE has previously consulted on the content of the possible regulations.²⁴ Regulations resulting from this consultation are currently being drafted, but are likely to include provisions authorising the Registrar to specify the information that must be provided as part of the reporting requirement. The report must be supplied in the manner and form specified by the Registrar.

Proposed reporting requirements

The Registrar proposes the report should include the following information:

- (1) Membership and licensing
 - (a) Overview of how insolvency practitioner licensing requests have been assessed
 - (b) Number of licence applications received and approved
 - (c) Total number of current licences
 - (d) A summary of any licence declines
- (2) Monitoring and general oversight
 - (a) Overview of the monitoring activities of the accredited bodies, especially in ensuring compliance with the following areas:
 - (i) Codes of ethics
 - (ii) Conditions of licence
 - (iii) Minimum standards

²⁴ See www.mbie.govt.nz/dmsdocument/6911-implementation-of-the-insolvency-practitioners-regulation-act-2019-proposed-regulations-discussion-paper.

- (iv) Insolvency and corporate laws
- (b) Summary of the outcomes of the above monitoring activities and an overview as to how issues have been addressed
- (c) Overview of current or emerging issues in the insolvency profession
- (d) Summary of any new or developed strategies to address or mitigate issues of non-compliance or other matters of concern
- (3) Education and training
 - (a) Overview of how the accredited body promotes, monitors and reviews licensed insolvency practitioner on-going competence
 - (b) Number of licensed insolvency practitioners that have been reviewed/assessed for on-going competence
 - (c) Summary of any actions taken in response to non-compliance
- (4) Complaints, enquiries, investigations and discipline
 - (a) Overview of the complaint process
 - (b) Number of complaints or referrals received regarding licensed insolvency practitioners
 - (c) Number of investigations performed based on complaints regarding licensed insolvency practitioners
 - (d) Summary of the nature of the investigations, and any identified non-compliance
 - (e) Summary of the outcomes of the investigations and the results of any disciplinary action
- (5) Confirmation of legal obligations
 - (a) Confirmation that the accredited body has complied with its obligations under the conditions of accreditation, including on-going compliance with the minimum standards
 - (b) For any identified issues of non-compliance, the nature of the non-compliance and the proposed remedial action

Very similar requirements are set out under the comparable provisions of the Auditor Regulation Act.

Frequency and timing

Section 37(5) provides that reports must be supplied in accordance with the Registrar's direction as to timing. This may be up to every four years. The Registrar invites submitters' views as to the appropriate frequency of accredited body reports.

Most accredited bodies will have an annual reporting cycle, particular those that are also accredited bodies for the purposes of the Auditor Regulation Act, which provides that reports must be supplied annually. It may be most straightforward to align regulatory regimes by also requiring reports under the Act annually.

On the other hand, there are a relatively small number of insolvency practitioners in New Zealand and licences may be issued for period of up to 5 years. At least some annual reports would not contain any useful information, since there may be no substantive developments in the preceding 12 months. Submitters may consider it most straightforward to provide reports less often than annually.

The Registrar proposes that annual reports be supplied to the Registrar as soon as practicable following the accredited body's end of financial year at the above frequency.

Method

The Registrar proposes that reports should be sent electronically, but does not propose setting a particular form or mechanism (e.g. online filing) at this time.

Recognised bodies

Sections 57 to 59 provide a mechanism for accredited bodies to licence insolvency practitioners that are not members of that accredited body in certain circumstances:

- Overseas insolvency practitioners
- Members of “recognised bodies” (see further below)
- Members of certain religious societies or orders

Licences may only be issued where the accredited body is satisfied that the insolvency practitioner is qualified and competent, and is a fit and proper person to be an insolvency practitioner. In addition, the accredited body and the insolvency practitioner must enter into an arrangement that:

- Is in writing
- States that it is entered into for the purposes of section 58 of the Act
- Includes a binding commitment for the applicant to abide by the rules of the accredited body

The arrangement may provide for other matters, including paying fees to the accredited body.

Under the Act, accredited bodies have regulatory functions and responsibilities in relation to their “members”. The Act defines “member” to include persons to whom section 57 applies. Overseas insolvency practitioners, members of recognised bodies, and members of religious societies are therefore to be treated as if they were members of the accredited body for regulatory purposes.

The “recognised body” mechanism is intended to allow for some flexibility in the regulatory regime so that practitioners who cannot, or do not want to, belong to an accountancy professional body can still become licensed insolvency practitioners. The Registrar may recognise any person (such as an incorporated professional body or industry group) by notice in the *Gazette*. For example, the Registrar anticipates that RITANZ will apply to be a recognised body.

The Registrar intends to take a flexible approach to the process for considering applications for recognition. No formal application form will be prescribed, and there is no fee for applying to be a recognised body. The Registrar is likely to be interested in the following matters, and it would be helpful if applicants for recognition to proactively provide the following information (or an explanation as to why such information is not applicable in a particular case):

- The legal and trading names of the applicant for recognition;
- The constitution, articles of association or similar governing statute of the applicant for recognition;
- The membership of the board or governing body of the applicant for recognition;
- Its NZBN (if applicable)
- Financial statements for the applicant for recognition (audited if available);

- Membership data for the applicant for recognition, including the number of members that intend to, are qualified to, or are otherwise likely to apply for a licence as an insolvency practitioner;
- Any rules, code of ethics or similar documents governing the conduct, ethics and actions of members of the applicant for recognition;
- An outline of the relationship between any accredited body and the applicant for recognition, including copies of any Memoranda of Understanding, Cooperation Agreements, or similar between the bodies; and
- The template or standard arrangement under sections 57 and 58 between the accredited body and members of the applicant for recognition that are licensed as insolvency practitioners.

The Registrar will make staff available to discuss potential applications for recognition on request.

Transitional licensing for recognised body members

Schedule 1 to the Act sets out the transitional provisions for the insolvency practitioner regulatory regime. In particular, clause 2 of Schedule 1 provides a transitional regime for existing “accredited insolvency practitioners”. Accredited insolvency practitioners are:

- members of accredited bodies; and
- a person to whom section 57 of the Act applies (including members of recognised bodies),

that are accredited by an accredited body to undertake insolvency engagements. On the commencement of the regulatory regime (17 June 2020), all accredited insolvency practitioners are to be treated as having a transitional licence as an insolvency practitioner.

The Registrar considers that a body would need to be recognised under section 57 **before** the commencement of the regulatory regime (i.e. before 17 June 2020) in order for the transitional regime to apply to members of the recognised body.

Next steps and implementation

The Registrar welcomes your written submissions on the proposals discussed in this document. Please provide your feedback before 5pm, 7 February 2020. Please see [How to have your say](#) for instructions on how to submit your submission.

Once we have considered the submissions we will develop the final minimum standards for accreditation, which will be made by notice in the *Gazette*. Please see [Purpose of this document](#) for a proposed timeline of key milestones. Other policies and directions will be published on the Companies Office website.

Schedule 1: Proposed Minimum Standards for Accreditation

This Schedule sets out the proposed minimum standards for accreditation, marked up against the Auditor Regulation Act (Prescribed Minimum Standards for Accredited Bodies) Notice 2012. Numbering is from clause 3 of the original, and numbering and formatting changes are not included in this marked up comparison. Such changes will be made in the final version.

Clause 3. Prescribed minimum standards

- (1) An applicant for accreditation must meet, or demonstrate it will on becoming accredited meet, the following minimum standards:

Governance and Organisational Structures

- (a) The applicant must have an adequate and effective organisational structure and governance arrangements, which will support the adequate and effective performance of the regulatory functions of an accredited body, including:
- (i) having an adequate constitution that sets out the responsibilities and authority of the governing body, including providing the governing body with sufficient authority and powers to effectively govern the organisation in accordance with its mandate and objectives and to otherwise ensure the obligations of the organisation are appropriately discharged;
 - (ii) having a clearly defined organisational mandate and objectives, which are consistent with the purposes of the Act and provide a basis for the applicant to perform regulatory functions under the Act;
 - (iii) having a governing body that is responsible and accountable for ensuring the sound management of the entity, and which ensures the sound management of the entity, in accordance with its mandate and objectives, including ensuring ~~audit~~ regulatory systems are adequate and effective, and regulatory functions are appropriately and effectively carried out in accordance with those ~~audit~~ regulatory systems;
 - (iv) having adequate and effective requirements, policies and processes regarding the composition of, and appointments to, the governing body, including ensuring that the governing body includes an acceptable number or proportion of appropriate independent directors;
 - (v) having any committees which are necessary or desirable for the proper and effective governance of the organisation or for the adequate and effective performance of regulatory functions under the Act, including ensuring the role, responsibilities, authority and membership of each of those committees is appropriate, and each committee is subject to appropriate reporting obligations and oversight by the governing body, or the applicant's management;

- (vi) ensuring the role, responsibilities, authority, membership criteria, and reporting and oversight arrangements for all committees which have a role in the governance of the organisation or a role in relation to regulatory functions under the Act are set out in the constitution or terms of reference approved by the governing body in accordance with the constitution;
 - (vii) having an appropriate internal structure that ensures responsibility for work related to regulatory functions is clearly and appropriately assigned, the authority and powers of staff at each level are clearly defined and appropriate, and the reporting lines and systems for accountability are adequate and effective; and
 - (viii) where the applicant's functions or powers are delegated, having adequate and effective systems, policies and processes for granting and documenting the delegations, ensuring any delegations granted are appropriate, and overseeing the exercise of those delegations.
- (b) The applicant must have adequate and effective systems, policies and processes for managing conflicts of interest, which cover members of the governing body, persons appointed to committees, and staff and contractors of the accredited body.

Personnel

- (c) The applicant must have adequate and effective systems, policies and processes for ensuring that the members of its governing body, persons appointed to committees, and staff and contractors, with functions or responsibilities relating to the governance of the organisation or to the performance of regulatory functions:
- (i) have the skills, knowledge and experience required of their position or role; and
 - (ii) are fit and proper persons to be involved in the regulation of [insolvency practitioners](#)~~auditors~~.
- (d) The applicant must have adequate and effective systems, policies and processes for ensuring that the members of each committee or team responsible for performing regulatory functions collectively have the skills, knowledge and experience required to adequately and effectively perform the functions of that committee or team in accordance with relevant ~~audit~~ regulatory systems.

Resources to Perform Regulatory Functions

- (e) The applicant must be financially sustainable, including:
- (i) having sufficient income to meet its expenses;
 - (ii) having sufficient financial resources to meet any necessary, planned or committed capital expenditure (including any costs associated with implementing systems, policies and processes, or creating or obtaining infrastructure, required for the purposes of the Act); and

- (iii) having sufficient access to funds to accommodate reasonable but unforeseen expenditure demands.
- (f) The applicant must allocate sufficient, appropriate resources (including financial, technological, and human resources) for the performance of its ~~audit~~ regulatory systems, such that its regulatory functions can be carried out adequately and effectively.
- (g) The applicant's resourcing arrangements must provide sufficient flexibility to allow for changes to the organisation's ~~audit~~ regulatory systems which are necessary or desirable as a result of changes to external circumstances or where potential improvements are identified.
- (h) The applicant must have a physical presence in New Zealand and must identify which of its regulatory functions will be:
 - (i) performed in New Zealand;
 - (ii) partially performed in New Zealand, but carried out with support from overseas; or
 - (iii) performed from outside New Zealand.
- (i) The New Zealand-based branch or office must be adequately resourced for the functions carried out at that branch or office.
- (j) Where any regulatory function is performed, or supported, from outside New Zealand, the applicant must ensure that the regulatory function will be performed to at least the same standard as if it were performed wholly in New Zealand, including that ~~audit~~ regulatory systems relating to that function are adequate and effective.
- (k) Where the performance of a regulatory function relies, in whole or in part, on resources or support from outside New Zealand, the applicant must demonstrate that the resources or support will continue to be available for as long as they are required for the adequate and effective performance of that regulatory function.

Internal Compliance Procedures

- (l) The applicant must have adequate and effective systems, policies, and processes for ensuring it complies with, and for monitoring its compliance with, its obligations as an accredited body, including:
 - (i) having adequate and effective governance of the organisation;
 - (ii) having adequate and effective ~~audit~~ regulatory systems; and
 - (iii) complying with its conditions of accreditation and its obligations under the Act; and for rectifying any detected non-compliance with its obligations as an accredited body, or its systems, policies and procedures for meeting its obligations as an accredited body.
- (m) The applicant must have adequate and effective systems, policies and processes for reviewing and, as appropriate, improving its systems, policies and processes relating to

its performance of regulatory functions and its other functions and obligations as an accredited body.

- (n) The applicant must have an adequate and effective process for setting or amending systems, policies and processes relating to its performance of regulatory functions and its other functions and obligations as an accredited body, including policies and processes which ensure appropriate consultation is undertaken.

~~Membership of Relevant International Bodies~~

- ~~(o) — The applicant must be a member of the International Federation of Accountants (IFAC) and be in compliance with the current membership criteria of IFAC.~~

Standing With Other Regulators

- (p) Where an applicant has a regulatory role in relation to [other professional services accountants or auditors outside in](#) New Zealand [or overseas](#), the applicant must be in good standing with [the](#) relevant regulators ~~in the other jurisdictions in which it operates.~~

Policies

- (q) The applicant must have adequate documented policies regarding the exercise of all key judgements and discretions relating to its regulatory functions under the Act, which reflect the organisation's delegation framework and facilitate effective performance of its regulatory functions and must have processes for reporting on the application of those policies.

~~Audit Regulatory Systems – Membership, Licensing and Registrations~~

- ~~(r) — The applicant must have adequate and effective systems, policies and processes for assessing and approving academic qualifications, and must have published a list of the academic qualifications which have been approved, for the purposes of the minimum standards for licensed auditors prescribed by FMA under the Act.~~
- (s) The applicant must have membership criteria, processes for granting membership, and conduct rules which are appropriate and effective in terms of the role of an accredited body and the purposes of the Act.
- ~~(t) — The applicant must have adequate and effective systems, policies and processes for approving licensed auditors to act as assessors, and for monitoring the assessment and supervision of prospective licensed auditors by assessors.~~
- (u) The applicant must have appropriate documented policies in relation to how it acts, or proposes to act, in imposing, varying, removing or adding conditions to [auditor insolvency practitioner](#) licences ~~and audit firm registrations~~, and must have processes for reporting on the application of those policies.

~~Audit Regulatory Systems – Monitoring and General Oversight~~

- (v) The applicant must have adequate and effective systems, policies and processes for:

- (i) monitoring licensed [insolvency practitioners](#)~~auditors' and registered audit firms'~~ compliance with conditions of license ~~and registration, respectively~~;
 - (ii) monitoring continued compliance with the minimum standards for licensed [insolvency practitioners](#)~~auditors and registered audit firms~~;
 - (iii) monitoring compliance with other requirements applying to licensed [insolvency practitioners](#)~~auditors or registered audit firms~~ under the Act and any other enactment that relates to the conduct of [insolvency engagements](#)~~issuer audits~~;
 - (iv) monitoring compliance with the applicant's conduct rules by licensed [insolvency practitioners](#)~~auditors~~; and
 - (v) identifying and monitoring other current or emerging issues in the [insolvency](#)~~audit~~ profession.
- (w) The applicant must have adequate and effective processes for developing and implementing strategies to address, or mitigate, issues of non-compliance or other matters of concern, including those identified through complaints and monitoring.

~~Audit~~ *Regulatory Systems – Complaints, Enquiries, Investigations and Discipline*

- (x) The applicant's systems, policies and processes must ensure that principles of natural justice are applied at all times in relation to handling complaints, conducting enquiries and investigations, and conducting disciplinary proceedings (including appeals in relation to disciplinary proceedings).
- (y) The applicant's systems, policies and processes must ensure accountability and transparency in relation to handling complaints, conducting enquiries and investigations, and conducting disciplinary proceedings (including appeals in relation to disciplinary proceedings).
- (z) The applicant's systems, policies and processes relating to disciplinary proceedings, including decisions whether to commence disciplinary proceedings, must ensure a principled, fair and consistent approach to addressing misconduct.
- (aa) The applicant must have a sufficiently independent disciplinary body [for the purposes of section 16\(2\) of the Act](#) ~~to adjudicate on alleged breaches of:~~
 - ~~(i) — auditing and assurance standards;~~
 - ~~(ii) — the Act or any other enactment that relates to the conduct of issuer audits;~~
 - ~~(iii) — the accredited body's conduct rules; or~~
 - ~~(iv) — conditions of licences or registration.~~
- (ab) Any appeals panels must be sufficiently independent, including of the disciplinary body and any other appeals panels who have previously considered matter before it.
- (ac) The range of penalties which may be imposed by the disciplinary body and any appeals panels must include penalties which are sufficiently stringent to address the most

serious breaches, and must include a scale of penalties which ensures a proportionate penalty can be imposed in relation to all breaches.

General Obligations

- (ad) The applicant must have adequate and effective systems, policies and procedures which will enable it to comply with its conditions of accreditation, and to otherwise perform its functions and meet its obligations under the Act.

Schedule 2: Proposed Standard Conditions of Accreditation

Continuing compliance with minimum standards

Primary condition:

- (1) The accredited body must comply, on an ongoing basis, with the minimum standards for granting accreditation;

Potential more detailed conditions:

- (2) The accredited body must promptly notify the Registrar of any proposed significant change to the regulatory systems of the accredited body;
- (3) The accredited body must maintain appropriate organisational and governance structures, conducive to maintaining adequate and effective regulatory systems; and
- (4) The accredited body must ensure regulatory systems are adequately resourced at all times.

See Auditor standard conditions paragraphs (a), (c), (d), and (e).

Informing the Registrar of accreditation matters and regulatory functions

- (5) The accredited body must promptly notify the Registrar of any events, circumstances or actions by any party that may prevent or impede the accredited body's performance of its regulatory functions;
- (6) The accredited body must, as soon as practicable following the end of its financial year, provide the Registrar with a copy of its audited financial statements for that financial year;
- (7) The accredited body must promptly notify the Registrar of any appointment, resignation or dismissal, of a member of the governing body, a senior manager, or other key personnel;
- (8) The accredited body must promptly notify the Registrar of any action taken by another regulatory body against the accredited body;

Auditor standard conditions paragraphs (b), (f), (g) and (i).

Informing the Registrar of monitoring and enforcement matters

- (9) The accredited body must promptly notify the Registrar of any material breach of the Act, the Insolvency Act 2006, Parts 15, 15A or 16 of the Companies Act 1993, the Receiverships Act 1993, the conditions of license or registration, or the professional body's rules or code of ethics, by a licensed insolvency practitioner (or a person who was a licensed insolvency practitioner at the time of the breach), together with an explanation of the action the accredited body has taken or proposes to take;
- (10) The accredited body must promptly notify the Registrar of any cancellation of a licence (including at the request of the licensee), together with the reason for that cancellation; and

See Auditor standard conditions paragraphs (j), and (k).

Marked up version

- (a) The accredited body must comply, on an ongoing basis, with the minimum standards for granting accreditation;
- (b) The accredited body must promptly notify ~~FMA~~[the Registrar](#) of any events, circumstances or actions by any party that may prevent or impede the accredited body's performance of its regulatory functions;
- (c) The accredited body must promptly notify ~~FMA~~[the Registrar](#) of any proposed significant change to the ~~audit~~-regulatory systems of the accredited body;
- (d) The accredited body must maintain appropriate organisational and governance structures, conducive to maintaining adequate and effective ~~audit~~-regulatory systems;
- (e) The accredited body must ensure ~~audit~~-regulatory systems are adequately resourced at all times;
- (f) The accredited body must, [as soon as practicable](#) within ~~three months of~~ the end of its financial year, provide ~~FMA~~[the Registrar](#) with a copy of its audited financial statements for that financial year;
- (g) The accredited body must promptly notify ~~FMA~~[the Registrar](#) of any appointment, resignation or dismissal, of a member of the governing body, a senior manager, or other key personnel;
- ~~(h) The accredited body must have processes which provide for FMA to confirm appointments of members to its disciplinary body, and to be involved in the appointment of members of its appeals panel;~~
- (i) The accredited body must promptly notify ~~FMA~~[the Registrar](#) of any action taken by an [another](#)~~overseas~~ regulatory body against the accredited body;
- (j) The accredited body must promptly notify ~~FMA~~[the Registrar](#) of any [material](#) breach of [the Act, the Insolvency Act 2006, Parts 15, 15A or 16 of the Companies Act 1993, the Receiverships Act 1993, auditing and assurance standards,](#) conditions of license or registration, the professional body's rules or code of ethics, ~~or any other requirement under the Act~~ by a licensed [insolvency practitioner](#) ~~auditor~~ (or a person who was a licensed [insolvency practitioner](#) ~~auditor~~ at the time of the breach), ~~a registered audit firm, or any other person in relation to an issuer audit,~~ together with an explanation of the action the accredited body has taken or proposes to take;
- (k) The accredited body must promptly notify ~~FMA~~[the Registrar](#) of any cancellation of a licence (including at the request of the licensee), together with the reason for that cancellation; and
- ~~(l) The accredited body must promptly notify FMA if it becomes aware of any breach of the Financial Reporting Act by, or in relation to, an issuer.~~

Note that numbering and formatting changes are not included in this marked up comparison. Such changes will be made in the final version.