



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Proposed Insolvency Practitioners Regulations: Policy Approval	Date to be published	15 April 2020

List of documents that have been proactively released

Date	Title	Author
12 February 2020	Proposed Insolvency Practitioners Regulations: Policy Approval	Office of the Minister of Commerce and Consumer Affairs
12 February 2020	Appendix 1 – Regulatory Impact Assessment: Insolvency Practitioners Regulations	MBIE
12 February 2020	Appendix 2 – Regulatory Impact Assessment: Insolvency Practitioners Reporting Requirements	MBIE
12 February 2020	Appendix 3 – Cost Recovery Impact Statement: Regulations to Introduce Insolvency Practitioners Scheme Fees and Levy	MBIE
12 February 2020	Appendix 4 – Tables Relating to the Proposed Fees And Levy	Office of the Minister of Commerce and Consumer Affairs
12 February 2020	Appendix 5 – Memorandum Account Impact for Proposed Costs, Fees and Levy	Office of the Minister of Commerce and Consumer Affairs
12 February 2020	DEV-20-MIN-0002	Cabinet Office – Cabinet Economic Development Committee

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Economic Development Committee

Proposed Insolvency Practitioners Regulations: Policy Approval

Proposal

1. This paper proposes:
 - 1.1. regulations to implement the licensing and registration scheme introduced by the Insolvency Practitioners Regulation Act 2019 and Insolvency Practitioners Regulation (Amendments) Act 2019;
 - 1.2. regulations for two fees and a levy to meet the Registrar's costs of the new scheme;
 - 1.3. an increase in funding in the Commerce and Consumer Affairs: Registration and Provision of Statutory Information appropriation within Vote Business, Science and Innovation, funded by the proposed fees and levy; and
 - 1.4. regulations to prescribe the contents of the reports to be prepared by insolvency practitioners in relation to liquidations, receiverships and voluntary administrations.

Executive Summary

2. The Insolvency Practitioners Regulation Act 2019 and Insolvency Practitioners Regulation (Amendments) Act 2019 create a new scheme: a compulsory licensing regime for insolvency practitioners aimed at reducing the incidence of unsatisfactory and substandard performance and generally raising the quality of insolvency practice over time.
3. A co-regulatory scheme has been introduced under which:
 - 3.1. accredited bodies will be responsible for carrying out the frontline regulation of insolvency practitioners; and
 - 3.2. the Registrar of Companies (Registrar) will be responsible for oversight of the accredited bodies and the register of insolvency practitioners.
4. Royal Assent took place on 17 June 2019 and regulations are now required to implement the new licensing and registration scheme before it comes into force on 17 June 2020.

5. The regulations will concern:
 - 5.1. the Registrar's ability to set conditions for accreditation;
 - 5.2. details necessary for accredited bodies' annual reports to the Registrar;
 - 5.3. information that the Registrar may specify;
 - 5.4. electronic submission of documents;
 - 5.5. information to appear on the register;
 - 5.6. searchability of the register;
 - 5.7. information that accredited bodies need to notify to the Registrar;
 - 5.8. two fees to be paid by all licensed practitioners to recover the Registrar's cost of updating and maintaining the register with licence information;
 - 5.9. a levy on all existing registered companies and those applying to be registered to cover the Registrar's costs of oversight; and
 - 5.10. contents of the reports to be prepared by insolvency practitioners.
6. The Commerce and Consumer Affairs: Registration and Provision of Statutory Information appropriation within Vote Business, Science and Innovation will be increased and funded from third party fees and a levy.
7. A fees review will be conducted in 2021/22.
8. Submissions were invited on the proposed regulations and these have been incorporated into the recommendations.

Background

Background to the new scheme

9. Prior to the new scheme created by the Insolvency Practitioners Regulation Act 2019 and Insolvency Practitioners Regulation (Amendments) Act 2019, insolvency practitioners were not regulated as a specialist profession.
10. The quality of an insolvency practitioner's advice and decisions can impact on whether a business is rehabilitated or liquidated and on the total amount available for distribution to creditors. All insolvency practitioners are placed in a position of managing and protecting other people's money and property. Consequently, insolvency practitioners must act honestly, fairly and impartially at all times.
11. The current voluntary non-statutory occupational regulation scheme run by Chartered Accountants Australia and New Zealand (CAANZ) and the Restructuring Insolvency and Turnaround Association of New Zealand (RITANZ) was aimed at raising standards of competence and professionalism. The disadvantage of this scheme was that it was voluntary and only applied to those who chose to join.

The new scheme

12. The new scheme creates a compulsory licensing regime for insolvency practitioners aimed at reducing the incidence of unsatisfactory and substandard performance and generally raising the quality of insolvency practice over time.
13. Consequential amendments have been made to the Companies Act 1993 and Receiverships Act 1993.
14. A co-regulatory scheme will be introduced, under which:
 - 14.1. accredited bodies will be responsible for carrying out the frontline regulation of insolvency practitioners, including regulating entry and ongoing competence, and investigating complaints and taking disciplinary action where appropriate; and
 - 14.2. the Registrar will be responsible for oversight of the accredited bodies. Oversight includes accreditation of bodies, ongoing monitoring and reporting, and corrective action relating to 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
15. The new co-regulatory scheme is modelled on the co-regulatory scheme in the Auditor Regulation Act 2011, under which responsibility is split between CAANZ and CPA Australia as the frontline regulators and the Financial Markets Authority (FMA) as the oversight body.
16. Royal Assent took place on 17 June 2019 and the new scheme will come into force on 17 June 2020.
17. The Governor-General may, by Order in Council, make regulations to prescribe certain aspects of the new scheme. Regulations are now required to implement the detail of the new scheme before it comes into force.
18. On 16 September 2019, Cabinet agreed to public consultation on proposals for regulations to be made to implement the Insolvency Practitioners Regulation Act 2019, which took place between 18 September 2019 and 15 October 2019 [DEV-19-MIN-0243 refers].

Regulations relating to the Registrar's functions

19. The Insolvency Practitioners Regulation Act 2019 already prescribes some conditions for accreditation, matters to be included in annual reports, content of the register and changes to registered information.
20. I propose to promulgate regulations that include additional requirements to these. Detail on the analysis of the proposal can be found in the Regulatory Impact Assessments (RIA) (Appendixes 1 and 2).

Registrar's ability to set conditions for accreditation

21. I propose that the Registrar be able to set conditions relating to:
 - 21.1. an accredited body's ongoing compliance with any minimum standards for accreditation prescribed by the Registrar;
 - 21.2. an accredited body's resources, financial position, and financial stability; and
 - 21.3. the adequacy and effectiveness of an accredited body's governance and organisational structure.
22. This will allow the Registrar to perform his role in monitoring whether accredited bodies are meeting their statutory responsibilities.

Details necessary for accredited bodies' annual reports to the Registrar

23. I propose that the annual reports include information relating to the body's organisational structure, governance systems, regulatory systems and financial stability (including submitting audited financial statements). This will provide the Registrar with more information about an accredited body's systems so that the Registrar can remain satisfied that the accredited body retains the ability to discharge its responsibilities.
24. I also propose that annual reports include information relating to the number and nature of licence applications, complaints and disciplinary actions. It will be important for the Registrar to gather such information so he can assess the sector and monitor the adequateness and effectiveness of an accredited body's regulatory systems over time.

Information that the Registrar may specify

25. I propose that a regulation be made authorising the Registrar to specify the information that accredited bodies and practitioners must provide to the Registrar.
26. The Registrar will be able to specify certain requirements for the information in relation to:
 - 26.1. what information is to be supplied or made available;
 - 26.2. the format and medium of the information;
 - 26.3. requirements with which information must comply (for example, that a document be signed by a specified person); and
 - 26.4. requirements on information or documents supplied for the register.
27. This will enable the Registrar to require that information is provided in a certain manner for operational efficiency reasons or for compliance reasons.

Electronic submission of documents

28. I propose that the Registrar be able to refuse to accept documents not submitted electronically via the internet site on which the register is kept. This will improve the operational efficiency of the register and help reduce the costs to practitioners of registration.

Information to appear on the register

29. I propose that the register include the practitioner's business (or firm's) email address and business website address (if any). Inclusion of this information on the register should allow the users of the register, including the Registrar, to contact the practitioner. The Registrar is able to omit information about a practitioner from the publicly available register due to privacy or safety concerns in certain circumstances.
30. I also propose that the register include the firm's New Zealand Business Number (NZBN) if that firm has an NZBN. This will facilitate updates of the register of insolvency practitioners when changes are made to other registers that the Companies Office maintains.
31. Finally, I propose that the register include details of the practitioner's home jurisdiction. Australian insolvency practitioners may carry out insolvency work in accordance with the new s home and practitioners from other jurisdictions could be recognised in the future. This information will allow users of the register to know if a particular practitioner is regulated in an overseas jurisdiction.

Searchability of the register

32. I propose that the register be searchable by the firm's NZBN, by firm or by home jurisdiction. This will allow the register to be searchable by the new information I am proposing to add.

Information that accredited bodies need to notify to the Registrar

33. I propose that the Registrar be notified within 10 working days of: changes to an insolvency practitioner's name, contact details, the firm where the practitioner works or the firm's name, contact details or NZBN; changes in the conditions on or the duration of a licence; and disciplinary actions imposed on an insolvency practitioner (other than suspension or cancellation).
34. Members of the public treat information on the website as true and correct and the Registrar must take all precautions for published information to remain up to date and to protect the register's integrity.

Other options regarding the Registrar's functions

35. I have considered whether there would be other ways to implement the new scheme.

36. An option would be to rely on the current statutory provisions without adding more of these details in regulations. I do not recommend this option because the items that I am proposing to add aim to provide the Registrar with the tools needed to effectively perform his statutory registration, accreditation and monitoring role.
37. Guidelines or education tools could not replace regulations to alert stakeholders to what information the Registrar will need, the requirements to be met by the information and when the Registrar may refuse to accept a document. This would be a good complementary measure but it should not replace the promulgation of regulations because, for the success of the new scheme, there need to be ways to enforce obligations imposed on those regulated.
38. No practical non-regulatory measures exist that would be capable of achieving the desired objectives.

Fees and levy for funding the regime

Cost recovery proposal

39. The cost recovery proposal in this document only relates to the costs of the Registrar's functions. Accredited bodies will recover their costs associated with their licensing function from practitioners through their own arrangements. The nature of those fees is not yet known.
40. In determining this proposal for the Registrar's cost recovery, consideration was given to who will benefit and to what extent (i.e. equity across those who benefit) from the regulation of insolvency practitioners. The efficiency of the cost of collection of any charges was also considered – the costs of collection of revenue should be balanced against the other considerations and minimised where possible. Detail on the analysis of the proposal can be found in the Cost Recovery Impact Statement (CRIS) (Appendix 3).
41. The annual cost to the Registrar to maintain the insolvency practitioner regulation scheme has been estimated at \$0.622 million made up of \$0.017 million to maintain the register and \$0.605 million to conduct oversight activities. Detail on who will be impacted and how costs will be recovered can be found in Appendix 4 which includes two tables on the summary forecast cost and how that applies to the activities that will be funded.

Proposed fees on licensed practitioners

42. I propose to recover the cost to the Registrar of maintaining the register through two fees charged to insolvency practitioners: a new licence registration fee of \$165.00 (GST exclusive) and a subsequent annual licence confirmation fee of \$105.00 (GST exclusive). These fees will not be a heavy burden on those who will need to pay them. However it is important to note that, additionally, accredited bodies will recover their licensing costs. These figures are not known at this stage.

43. Through an annual licence confirmation process, practitioners will confirm that the information on the register is correct. This is so that the register contains up-to-date information.
44. Cost recovery is based on a forecasted 100 insolvency practitioner licence registrations. This is a conservative forecast based on the current number of approximately 110 practitioners under the informal RITANZ/CAANZ regime.
45. The fee will be collected by accredited bodies and passed on to the Registrar.

Proposed levy on companies

46. I propose that the cost of oversight of the scheme be recovered from a \$1 levy on all companies, which will cover 97.3 per cent of the costs of the scheme. This is the remaining amount not covered by the fees on insolvency practitioners.
47. The proposed levy on all registered companies will be collected with fees for the registration of new companies and annual return fees for all companies.
48. The current company annual return fee is \$36 and the current fee for registration of a new company is \$105 (both figures exclude GST and include levies of \$9 for the FMA and \$6 for the External Reporting Board). The levy I am proposing is a small increase in these fees.
49. The levy is based on an analysis of the resources required to undertake the statutory functions and has drawn on the experience of the FMA in discharging its comparable functions under the auditor regulation scheme.

Options for fees and levy

50. I have considered whether there would be other ways to meet the costs of the new scheme.
51. An option could be to recover the full cost of regulation of the insolvency practice profession from practitioners. This is not the preferred option because it would mean that the amount of the fees would be much higher, in the range of \$6,000 per practitioner. This would likely drive some practitioners out of the market, harm competition and result in higher costs being passed on to creditors. Also, all companies will enjoy benefits of the new scheme through having higher quality insolvency practitioners, so it is reasonable to expect that they also contribute to the costs.
52. Another option could be for the levy for oversight costs to be apportioned between practitioners and companies, but even if the portion to practitioners is say 25 per cent, in the range of \$1,500, the levy per practitioner would still be a burden disproportionate to the general benefit of those costs.
53. Some submitters suggested that costs be met through a "Registrar Fee" to be paid by the estate of a company in liquidation, covering costs from existing baselines or only from the levy to companies in lieu of the fees proposed to be charged to insolvency practitioners.

54. Although the benefits of the new scheme are wide, insolvency practitioners will be the direct beneficiaries of the register. Public registration will make them easier to find for insolvency engagements. Having a licence and being able to verify this through registration, builds confidence in practitioners' services as they will be recognised as having a certain level of expertise. This is why the cost of updating and maintaining the register should be met by insolvency practitioners rather than the company in liquidation or all registered companies.
55. The costs cannot be absorbed within the existing appropriation and also, a solution like this would result in cross subsidisation with other registry functions.

Changes following consultation

56. Feedback has been considered and the following changes have been made to the options to incorporate submitters' views in the current proposals.
57. Three submissions considered the forecast oversight costs too high. They considered that the low number of estimated licensed insolvency practitioners and the fact that accredited bodies would carry out the frontline regulatory role meant that the oversight cost would be lower than forecast.
58. Taking into account the submissions, officials reviewed the costs and, on balance, agreed that they could be reduced. However it is important to ensure that there are sufficient funds for the oversight function. Therefore the oversight costs originally forecast at \$0.701 million have been revised down to \$0.605 million, as a result of reducing general management from 1.0 FTE (in the Discussion Paper¹) to 0.5 FTE and reduced overheads as a result of this change.
59. As a consequence, the levy of \$1.15 has been reduced to \$1.00.
60. Also, the licence registration fee that had been rounded up to \$170.00 is now proposed to be rounded down to \$165.00, all GST exclusive.
61. The annual licence confirmation fee remains the same at \$105.00 (GST exclusive) as proposed in the Discussion Paper.
62. A fees review will be conducted in 2021/22 in line with the next review of Companies Office fees. This will ensure that the fees and levy cover the actual and ongoing costs of the scheme and are based on actual volumes.

¹ The Ministry of Business, Innovation and Employment's "Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed regulations" Discussion Paper, dated September 2019.

Contents of reports to be prepared by insolvency practitioners

Background

63. The Insolvency Practitioners Regulation (Amendments) Act 2019 makes a number of changes to the Companies Act 1993 and the Receiverships Act 1993 to:
- 63.1. reflect the new requirements in the Insolvency Practitioners Regulation Act 2019 for insolvency practitioners to be licensed; and
 - 63.2. address the professional conduct of insolvency practitioners.
64. The Insolvency Practitioners Regulation (Amendments) Act 2019 will also amend both of those Acts to provide that the content of the reports which practitioners are required to prepare, during an insolvency, need to be prescribed in regulations. These reports comprise an initial report soon after the practitioner is appointed, reports every six months during the course of the insolvency process and a final report after the insolvency process has been concluded.
65. The substance of these reports was originally included in Supplementary Order Paper No. 45 to the Insolvency Practitioners Bill (SOP No. 45) and was the subject of public consultation through the parliamentary scrutiny of that Bill. In response to submissions on SOP No. 45, the Economic Development, Science and Innovation Committee recommended that the detailed requirements of these reports should be removed from the Bill and instead included in regulations.
66. Officials have also recently undertaken targeted consultation with stakeholders on proposed refinements to the contents of these reports, in response to submissions on SOP No. 45 [DEV-19-MIN-0243 refers].

Analysis

67. I am proposing that practitioners' disclosure obligations should be largely consistent with those previously proposed for inclusion in SOP No. 45 – which themselves built on the disclosure obligations currently in the Companies Act 1993 and Receiverships Act 1993. The overall package of reporting I am proposing is aimed at:
- 67.1. providing creditors with the information they need to assess the likelihood that they will be repaid and the extent of any repayment; and
 - 67.2. assisting creditors, accredited professional bodies and the Registrar to detect inappropriate conduct by insolvency practitioners.
68. In particular, I am proposing that these reports should require insolvency practitioners to disclose the following types of information:

- 68.1. details of the business in liquidation or receivership (e.g. the Company name, its Company number, its NZBN and its Business Industry Classification Code);
- 68.2. details about the appointment of the insolvency practitioner (e.g. their licence number and contact details);
- 68.3. the progress of the insolvency (e.g. the estimated date of completion) and the actions the practitioner has taken or proposes to take;
- 68.4. information about the affairs of the insolvent business (e.g. information about its assets, debts and liabilities);
- 68.5. information about the payments made and received by the practitioner (e.g. payments by or to the business and payments by or to the insolvency practitioner);
- 68.6. details of recoveries from creditors, shareholders and directors; and
- 68.7. information about payments to creditors.
69. Insolvency practitioners will also be required to provide summary reports to the Registrar. These reports will bring together information they have already reported, as well as other relevant statistical information, to facilitate the Registrar performing his oversight functions.
70. Finally, I would also like to draw the Committee's attention to the following substantive changes to these reporting obligations being made in response to submissions on SOP No. 45:
- 70.1. Firstly, practitioners will not be required to provide creditors with detailed information about each payment they make or receive. I agree with submitters that requiring granular reporting about each payment:
- 70.1.1. risks the information which is most useful to creditors being hidden behind overly detailed reporting; and
- 70.1.2. will impose costs on insolvency practitioners which will end up being passed on to creditors for little benefit.
- 70.2. Secondly, reports to creditors about solvent liquidations where all creditors will be paid in full will not be required to contain information about:
- 70.2.1. business assets and debts; and
- 70.2.2. amounts received and paid by the liquidator.
- I agree with submitters that creditors' interest in this information is not enough to justify overriding commercial confidentiality where all creditors will be repaid in full.

71. I am also mindful to ensure that creditors should not be disadvantaged if a liquidation is incorrectly classified as being solvent. I am therefore also proposing that, where this happens, the next report in respect of that liquidation should be required to include all of the information which would have been required to be disclosed if the liquidation had always been insolvent.

Consultation

Submissions

72. Industry and professional bodies have been consulted on the proposals. Five submissions in total were received (from CAANZ, RITANZ, two insolvency firms and one individual) on the regulations relating to the Registrar's functions and the fees and levy. While the number of submissions from practitioners was low, comprehensive submissions were received from the two professional bodies that represent the interests of practitioners.
73. Submitters broadly agreed with the proposed regulations relating to the Registrar's functions. As noted above, the forecast oversight costs and a fee and levy were reduced after consideration of feedback from submissions.
74. Three submissions were received on the content of the reports to be prepared by insolvency practitioners. In particular they noted that:
- 74.1. the nature of an insolvent liquidation is that creditors are unlikely to be fully repaid, and
 - 74.2. the benefits of additional reporting must be balanced against the cost of providing that reporting.
75. Feedback has been considered and changes have been made to the options to incorporate submitters' views in the current proposals.

Interdepartmental consultation

76. The Treasury, Inland Revenue, the Office of the Privacy Commissioner and the Parliamentary Counsel Office have been consulted on the contents of this paper.
77. The Department of the Prime Minister and Cabinet was informed of the contents of this paper.

Private sector

78. The following private organisations were consulted on the content of the reports to be prepared by insolvency practitioners:
- 78.1. CAANZ;
 - 78.2. CPA Australia;

- 78.3. RITANZ;
- 78.4. The New Zealand Bankers' Association;
- 78.5. Business NZ;
- 78.6. Consumer NZ; and
- 78.7. The New Zealand Credit & Finance Institute.

Financial Implications

Increase in funding in the appropriation

- 79. I propose an increase in the appropriation Commerce and Consumer Affairs: Registration and Provision of Statutory Information within Vote Business, Science and Innovation by \$0.622 million in 2020/21 and outyears to provide for the costs the Registrar of Companies will incur to meet his obligations under the Insolvency Practitioners Regulation Act 2019.
- 80. To fund this increase in appropriation I propose a fee of \$165.00 for licence registration, a fee of \$105.00 for annual licence confirmation and a levy of \$1.00 on all existing registered companies and any new company registration.

Accounting for revenue and expenditure over time

- 81. Due to the rounding from the cost to service to the proposed fees/levy and actual volumes, a minor surplus or deficit will result annually. To calculate the revenue in future years, the forecast volumes have been multiplied by the fees/levy and will impact future years' surplus/deficit position. The accumulated balance will be included in the existing Registration and Provision of Statutory Information memorandum account (which had a surplus balance of \$18.017 million as at 30 June 2019) and be part of Companies Office's periodic fee reviews so that fees and levies are set allowing for the memorandum account to trend towards a zero balance over time.
- 82. Appendix 5 includes a table showing the impact over time of the proposed costs, volumes, fees and levy on the memorandum account.

Fees review

- 83. A fees review will be conducted in 2021/22, in line with the next review of Companies Office fees. At this time the fees and levy can be adjusted so that they cover the actual and ongoing costs of the scheme and are based on actual volumes. Any changes to fees or the levy would be implemented at the beginning of 2022/23. Thereafter, the fees and levy would be reviewed every three to five years, in line with Companies Office's periodic fees reviews and Treasury guidelines.

Legislative Implications

- 84. Regulations are required to implement proposals.

Impact Analysis

85. The Ministry of Business, Employment and Innovation's (MBIE) Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Assessments and Cost Recovery Impact Statement prepared by MBIE in respect of the regulations to be made under the Insolvency Practitioners Regulation Act 2019. The Panel considers that the information and summarised analysis meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.
86. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Summary prepared by MBIE in respect of the contents of reports to be prepared by insolvency practitioners. The Panel considers that the information and analysis summarised in the Impact Summary partially meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper. The Panel notes that despite best endeavours to engage with affected stakeholders the Impact Summary relies heavily on the views of insolvency practitioners. The Panel also notes that no evidence is presented on how much it would cost insolvency practitioners to provide information on individual transactions.

Human Rights

87. There are no human rights implications. The proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender Implications

88. The proposals in this paper do not have any gender implications.

Disability Perspective

89. The proposals in this paper do not have any disability implications.

Publicity

90. Subject to the regulations being approved, all practitioners accredited under the voluntary scheme (run by CAANZ and RITANZ) will be contacted to inform them of the fees and regulations.
91. Communications will be coordinated alongside announcements about implementation of the scheme.

Proactive Release

92. Subject to any appropriate redactions, this paper, the summary of submissions, the two Regulatory Impact Assessments and the Cost Recovery Impact Statement will be proactively released on MBIE's website within 30 working days of Cabinet's approval.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

Implementation of the new scheme

1. **note** that on 16 September 2019 Cabinet agreed to public consultation on proposals for regulations to be made to implement the Insolvency Practitioners Regulation Act 2019, which took place between 18 September 2019 and 15 October 2019 [DEV-19-MIN-0243 refers];

Registrar's ability to set conditions for accreditation

2. **agree** for the Registrar to impose conditions for accreditation relating to accredited bodies' compliance with minimum standards, financial position and stability and the effectiveness of governance and organisational structures;

Details necessary for accredited bodies' annual reports to the Registrar

3. **agree** for accredited bodies' annual reports to include information relating to the body's organisational structure, governance systems, regulatory systems and financial stability (including audited financial statements); and information about licence applications, complaints and disciplinary actions;

Information that the Registrar may specify

4. **agree** for the Registrar to be able to specify the information that needs to be provided to the Registrar, the format, requirements and how it must be made available;

Electronic submission of documents

5. **agree** that the Registrar can refuse to accept documents not submitted electronically;

Information to appear on the register

6. **agree** that the register should include an insolvency practitioner's business or firm email address, website address, New Zealand Business Number (NZBN) and home jurisdiction;

Searchability of the register

7. **agree** for the register to be searchable by a firm's NZBN, by firm or by home jurisdiction;

Information that accredited bodies need to notify to the Registrar

8. **agree** that accredited bodies must, within 10 working days, notify the Registrar of: changes to a registered practitioner's name, contact details, the firm where the practitioner works or the firm's name, contact details or NZBN;

changes in the conditions on or duration of a licence; and disciplinary actions imposed on an insolvency practitioner;

Two fees and a levy

9. **agree** to introduce the fees and levy in the following table under regulations to recover the Registrar's costs of updating and maintaining the register, and oversight of the regime;

Description of fee/levy	Proposed amount (GST exclusive)
Licence registration fee	\$1.65.00
Annual licence confirmation fee	\$1.05.00
Company registration and Company annual return levy	\$1.00

Financial implications

10. **note** the annual surplus/deficit resulting from this scheme will be included in the existing Commerce and Consumer Affairs Registration and Provision of Statutory Information memorandum account and will be reviewed as part of Companies Office's periodic fee reviews so that fees and levies are set for the memorandum account to trend towards a zero balance over time;
11. **agree** to the increase spending for costs associated with the Insolvency Practitioners scheme, including registration and oversight of the scheme activities undertaken by the Registrar of Companies in accordance with the Insolvency Practitioners Regulation Act 2019;
12. **approve** the following changes to appropriations to give effect to the policy decisions in recommendations 9 and 11 with no corresponding impact on the operating balance and net core Crown debt;

	\$m – increase/(decrease)			
	2019/20	2020/21	2021/22	2022/23 & outyears
Vote Business, Science and Innovation				
Minister of Commerce and Consumer Affairs				
Departmental Output Expense:				
Commerce and Consumer Affairs: Registration and Provision of Statutory Information (funded by revenue other)	-	0.622	0.622	0.622

Content of the reports to be provided by insolvency practitioners

13. **note** that the Insolvency Practitioners Regulation (Amendments) Act 2019 will amend the Companies Act 1993 and the Receiverships Act 1993 to provide that certain information which insolvency practitioners will be required to disclose in their reports must be prescribed by regulation;

14. **note** that the substance of these disclosure requirements was previously included in SOP No. 45 to the Insolvency Practitioners Bill and has been the subject of public consultation through the parliamentary process;
15. **agree** that insolvency practitioners should be required to include information about the business in liquidation or receivership in their reports including the appointment of the insolvency practitioner, the insolvency process, the affairs of the business, payments made and received by the practitioner, details of recoveries from creditors, shareholders and directors, and payments to creditors;
16. **agree** that these disclosure requirements should be materially consistent with those previously included in SOP No. 45 to the Insolvency Practitioners Bill as approved for introduction [LEG-18-MIN-0087];
17. **agree** that practitioners should be required to provide creditors with summaries of amounts paid and received;
18. **agree** that insolvency practitioners should be required to provide summary reports to the Registrar of Companies collating information they have already reported as well as other relevant statistical information, to facilitate the performance of the Registrar's oversight functions;
19. **note** that a solvent liquidation is a liquidation where the directors of the company declare that the business will be able to pay its debts in full within 12 months;
20. **agree** that reports to creditors about solvent liquidations should not be required to contain information about that business' assets and debts or amounts received and paid by the liquidator;
21. **agree** that where a liquidation ceases to be solvent the next report in respect of that liquidation should be required to include all of the information which would have been required to be disclosed if the liquidation had always been insolvent;

Authorisation for drafting instructions and minor or technical changes

22. **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations 2 to 9, 11, 12, 15 to 18, 20 and 21;
23. **authorise** the Minister of Commerce and Consumer Affairs to make minor and technical changes, consistent with the Cabinet decisions in recommendations 2 to 9, 11, 12, 15 to 18, 20 and 21 above, on any matters that may arise during the drafting process, including transitional arrangements;

Publicity

24. **note** that, subject to redactions as appropriate, the Cabinet paper, the summary of submissions, the Regulatory Impact Assessments and the Cost Recovery Impact Statement will be proactively released on the Ministry of Business, Innovation and Employment's website within 30 working days of Cabinet's approval; and

Final approval

25. **note** that the Minister of Commerce and Consumer Affairs will seek final approval of the regulations from the Cabinet Legislation Committee in the second quarter of 2020.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

PROACTIVELY RELEASED