



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.



Cabinet Economic Development Committee

Minute of Decision

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Proposed Insolvency Practitioners Regulations: Policy Approval

Portfolio Commerce and Consumer Affairs

On 12 February 2020, the Cabinet Economic Development Committee (DEV):

Background

- 1 **noted** that on 11 September 2019, DEV agreed to the release of a discussion paper on proposed insolvency practitioners regulations, and invited the Minister of Commerce and Consumer Affairs to report back in December 2019 seeking approval of the final policy proposals and relevant appropriation changes [DEV-19-MIN-0243];

Proposed changes

Registrar's ability to set conditions for accreditation

- 2 **agreed** that the Registrar of Companies (the Registrar) may 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 **agreed** that accredited bodies' annual reports are to include:
- 3.1 information relating to the body's organisational structure, governance systems, regulatory systems and financial stability (including audited financial statements);
 - 3.2 information about licence applications, complaints and disciplinary actions;

Information that the Registrar may specify

- 4 **agreed** that the Registrar be able to specify the information that needs to be provided to the Registrar, the format requirements, and how the information must be made available;

Electronic submission of documents

- 5 **agreed** that the Registrar can refuse to accept documents not submitted electronically;

Information to appear on the register

- 6 **agreed** that the register 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 **agreed** that the register be searchable by a firm's NZBN, by firm, or by home jurisdiction;

Information that accredited bodies need to notify to the Registrar

8 **agreed** that accredited bodies must, within 10 working days, notify the Registrar of any:

8.1 changes to a registered insolvency practitioner's name, contact details, the firm where the practitioner works or the firm's name, contact details or NZBN;

8.2 changes in the conditions on or duration of a licence;

8.3 disciplinary actions imposed on an insolvency practitioner;

Two fees and a levy

9 **agreed** to introduce the following fees and levy, through 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	\$165.00
Annual licence confirmation fee	\$105.00
Company registration and company annual return levy	\$1.00

Financial implications

10 **noted** that the annual surplus/deficit resulting from the insolvency practitioners scheme will be:

10.1 included in the existing Commerce and Consumer Affairs: Registration and Provision of Statutory Information memorandum account;

10.2 reviewed as part of the 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 **agreed** to the increased spending for costs associated with the insolvency practitioners scheme, including registration and oversight of the scheme activities undertaken by the Registrar in accordance with the Insolvency Practitioners Regulation Act 2019;

- 12 **approved** the following changes to appropriations to give effect to paragraphs 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	2023/24 & 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	0.622

Content of the reports to be provided by insolvency practitioners

- 13 **noted** that the Insolvency Practitioners Regulation (Amendments) Act 2019 will amend the Companies Act 1993 and the Receiverships Act 1993 to provide that certain information that insolvency practitioners will be required to disclose in their reports must be prescribed by regulation;
- 14 **noted** that the substance of these disclosure requirements was previously included in a Supplementary Order Paper No. 45 (SOP No. 45) to the Insolvency Practitioners Bill and has been the subject of public consultation through the parliamentary process;
- 15 **agreed** that insolvency practitioners be required to include information about the business in liquidation or receivership in their reports, including:
- 15.1 the appointment of the insolvency practitioner;
 - 15.2 the insolvency process;
 - 15.3 the affairs of the business;
 - 15.4 payments made and received by the practitioner;
 - 15.5 details of recoveries from creditors, shareholders and directors, and payments to creditors;
- 16 **agreed** that the above disclosure requirements 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 **agreed** that insolvency practitioners be required to provide creditors with summaries of amounts paid and received;
- 18 **agreed** that insolvency practitioners be required to provide summary reports to the Registrar, collating information they have already reported as well as other relevant statistical information, to facilitate the performance of the Registrar's oversight functions;
- 19 **noted** 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 **agreed** 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 **agreed** that where a liquidation ceases to be solvent, the next report in respect of that liquidation be required to include all of the information which would have been required to be disclosed if the liquidation had always been insolvent;

Legislative implications

- 22 **authorised** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 23 **authorised** the Minister of Commerce and Consumer Affairs to make minor and technical changes, consistent with the above paragraphs, on any matters that may arise during the drafting process, including transitional arrangements;
- 24 **noted** 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.

Jack Petterson
Committee Secretary

Present:

Hon Kelvin Davis
Hon Phil Twyford
Hon Dr Megan Woods (Chair)
Hon Chris Hipkins
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Shane Jones
Hon Tracey Martin
Hon Kris Faafoi
Hon Willie Jackson
Hon James Shaw
Hon Julie Anne Genter
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister of Commerce and Consumer Affairs