



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Insolvency Practitioners Regulation: Commencement and Regulations	Date to be published	13 July 2020

List of documents that have been proactively released

Date	Title	Author
23 June 2020	Insolvency Practitioners Regulation: Commencement and Regulations	Office of the Minister of Commerce and Consumer Affairs
23 June 2020	LEG-20-MIN-0085	Cabinet Office

Information redacted

NO

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In Confidence

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

Insolvency Practitioners Regulation: Commencement and Regulations

Proposal

1. This paper seeks authorisation for submission to the Executive Council of:
 - the Insolvency Practitioners Regulations 2020;
 - the Companies (Reporting By Insolvency Practitioners) Regulations 2020;
 - the Insolvency Practitioners Regulation Act Commencement Order 2020; and
 - the Insolvency Practitioners Regulation (Amendments) Act Commencement Order 2020.

Executive Summary

2. The Insolvency Practitioners Regulation Act 2019 and Insolvency Practitioners Regulation (Amendments) Act 2019:
 - 2.1. creates a compulsory licensing and registration scheme for insolvency practitioners aimed at reducing the incidence of unsatisfactory and substandard performance; and
 - 2.2. makes a number of changes to insolvency law aimed at generally raising the quality of insolvency practice over time.
3. Regulations are required to implement the new scheme before it comes into force.
4. In 2019, the Ministry of Business, Innovation and Employment (MBIE) consulted on proposals:
 - 4.1. to implement the licensing and registration scheme;
 - 4.2. for two fees and a levy to meet costs of the Registrar of Companies' (the Registrar's) functions under the new scheme; and
 - 4.3. for the contents of the reports to be prepared by insolvency practitioners in relation to liquidations, receiverships and voluntary administrations.
5. On 17 February 2020, Cabinet authorised the drafting of regulations to implement the scheme [CAB-20-MIN-0031 refers].

6. The Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019 received Royal Assent on 17 June 2019. Some provisions have already come into force.
7. The remaining provisions were scheduled to come into force on 17 June 2020, which was the first anniversary of the date of Royal Assent. However this date was amended in May 2020 by the COVID-19 Response (Further Management Measures) Legislation Act 2020 to provide for unexpected COVID-19-related delays. The amended backstop date for the commencement of the scheme is 1 June 2021. The Acts allow for provisions to be brought into force earlier by Order in Council (Commencement Order).
8. I propose that Commencement Orders be made so that the remaining provisions of the two Acts commence on 1 September 2020. The Insolvency Practitioners Regulations 2020 and the Companies (Reporting By Insolvency Practitioners) Regulations 2020 are also proposed to come into force on 1 September 2020.

Policy

Insolvency Practitioners Regulations

9. Prior to the new scheme, insolvency practitioners were not regulated as a specialist profession.
10. The Insolvency Practitioners Regulation Act 2019 introduces a co-regulatory scheme, under which:
 - 10.1. 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
 - 10.2. the Registrar of Companies 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.
11. 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. It also provides for fees and levies to be prescribed to meet the costs of the new scheme. Regulations are needed to prescribe more detailed requirements and to set these fees and levies.
12. Cabinet has agreed the regulations should provide [DEV-20-MIN-0002 and CAB-20-MIN-0031]:
 - 12.1. 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;

- 12.2. 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;
- 12.3. 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;
- 12.4. that the Registrar can refuse to accept documents not submitted electronically;
- 12.5. that the register should include an insolvency practitioner's business or firm email address, website address, New Zealand Business Number (NZBN) and home jurisdiction;
- 12.6. for the register to be searchable by a firm's NZBN, by firm or by home jurisdiction;
- 12.7. 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;
- 12.8. 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 scheme;

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

13. The attached Insolvency Practitioners Regulations 2020 (attached as **Appendix 1**) give effect to these decisions.
14. Cabinet authorised me to approve minor and technical changes on issues arising during the drafting process [DEV-20-MIN-0002 and CAB-20-MIN-0031]. Further to that authorisation, I have decided that the register include the registration number assigned by the Registrar of Companies to a practitioner and that the register should be searchable by that registration number and by whether the practitioner's licence is suspended, cancelled, expired or current.

Companies (Reporting by Insolvency Practitioners) Regulations

15. The Insolvency Practitioners Regulation (Amendments) Act 2019 amends both the Companies Act 1993 and the Receiverships Act 1993 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.
16. Cabinet has agreed that these reports should require insolvency practitioners to disclose information about the business in liquidation or receivership in their reports including [DEV-20-MIN-0002 and CAB-20-MIN-0031]:
 - 16.1. the appointment of the insolvency practitioner;
 - 16.2. the insolvency process;
 - 16.3. the affairs of the business;
 - 16.4. payments made and received by the practitioner;
 - 16.5. details of recoveries from creditors, shareholders and directors; and
 - 16.6. payments to creditors.
17. Cabinet also agreed practitioners should be required to provide creditors with summaries of amounts paid and received, and that practitioners should 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 [DEV-20-MIN-0002 and CAB-20-MIN-0031].
18. The attached Companies (Reporting By Insolvency Practitioners) Regulations 2020 (attached as **Appendix 2**) give effect to these decisions.

Commencement

19. The Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019 received Royal Assent on 17 June 2019. Some provisions have already come into force.
20. The remaining provisions were scheduled to come into force on 17 June 2020, which was the first anniversary of the date of Royal Assent (the backstop date). However this date was amended in May 2020 by the COVID-19 Response (Further Management Measures) Legislation Act 2020 to provide for unexpected COVID-19-related delays. The amended backstop date for the commencement of the scheme is 1 June 2021. An earlier date can be appointed by the Governor-General by Order in Council (Commencement Order).
21. There are concerns among stakeholders about a delay of as long as 12 months keeping in mind the increase in liquidations and insolvencies expected in the coming months due to the impact of COVID-19.

22. Officials agree with those stakeholders that there are increased risks in the current environment (including, for example, practitioners undertaking substandard work) and it would prejudice companies and the public as a whole to delay the start of a regulatory scheme that is expected to bring trust and confidence in the insolvency practitioners' profession, especially at such a time.
23. The implementation work necessary to accredit professional bodies and operationalise the scheme is underway. It is expected that at least one professional body will be able to be accredited by July 2020.
24. I propose that Commencement Orders be made so that the commencement date of the scheme is 1 September 2020. This date best balances allowing for preparations to get it operationalised and the risks of an excessive delay. The Insolvency Practitioners Regulation Act Commencement Order 2020 and Insolvency Practitioners Regulation (Amendments) Act Commencement Order 2020 are attached as **Appendixes 3 and 4**.

Timing and 28-day rule

25. If you agree, the provisions of the Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019 that have not already been brought into force, as well as the Insolvency Practitioners Regulations 2020 and the Companies (Reporting By Insolvency Practitioners) Regulations 2020, will come into force on 1 September 2020.

Compliance

26. The regulations comply with:
 - 26.1. the principles of the Treaty of Waitangi;
 - 26.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 26.3. the principles and guidelines set out in the Privacy Act 1993;
 - 26.4. relevant international standards and obligations; and
 - 26.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

27. I do not foresee any grounds for the Regulations Review Committee to draw these regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

28. The Regulations and Commencement Orders were certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

29. Two Regulatory Impact Assessments and a Cost Recovery Impact Statement were prepared in accordance with the necessary requirements and were submitted when Cabinet approval of the policy relating to the regulations was sought [DEV-20-MIN-0002].
30. MBIE's Regulatory Impact Analysis Review Panel considered that the information and analysis summarised in the 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, met the criteria required for Ministers to make informed decisions on the policy proposals.
31. MBIE's Regulatory Impact Analysis Review Panel considered that the Impact Summary in respect of the contents of reports to be prepared by insolvency practitioners partially met the criteria necessary for Ministers to make informed decisions on the policy proposals. The Panel noted that despite best endeavours to engage with affected stakeholders the Impact Summary relied heavily on the views of insolvency practitioners and that no evidence was presented on how much it would cost insolvency practitioners to provide information on individual transactions.

Publicity

32. Stakeholders and the general public have been kept informed through the Companies Office website and through responses to enquiries made to MBIE.
33. MBIE will communicate the effect of the new regulations on its website and directly to stakeholders following the Executive Council's approval.

Proactive release

34. I propose to release the paper proactively within 30 business days of Cabinet's approval. Appropriate redactions may be made in line with the Official Information Act 1982.

Consultation

35. Consultation on the proposed regulations took place between 18 September and 15 October 2019. MBIE received comments from five submitters on the proposed regulations relating to the Registrar's functions and the fees and levy. Three submissions were received on the content of the reports to be prepared by insolvency practitioners. Feedback was considered and changes were made to the options to incorporate submitters' views.
36. The Treasury was consulted and the Department of the Prime Minister and Cabinet was informed of the contents of this paper.
37. The principles used in the fees review align with the Audit Office's Guidelines on Costing and Charging for Public Sector Goods and Services and with the Treasury's Guidelines for Setting Charges in the Public Sector.

Recommendations

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

1. **note** that on 17 February 2020, Cabinet authorised the drafting of regulations to implement the licensing and registration scheme introduced by the Insolvency Practitioners Regulation Act 2019 and Insolvency Practitioners Regulation (Amendments) Act 2019, including setting fees and a levy [CAB-20-MIN-0031 refers];
2. **note** that the Insolvency Practitioners Regulations 2020 and the Companies (Reporting By Insolvency Practitioners) Regulations 2020 give effect to the decision referred to in recommendation 1 above;
3. **note** that Cabinet authorised the Minister of Commerce and Consumer Affairs to approve minor and technical changes on issues arising during the drafting process [para 23 of DEV-20-MIN-0002 and CAB-20-MIN-0031 refer], and I have approved two drafting decisions to address issues highlighted during drafting;
4. **note** that the backstop dates for the commencement of the Insolvency Practitioners Regulation Act 2019 and Insolvency Practitioners Regulation (Amendments) Act 2019 have been amended from 17 June 2020 to 1 June 2021 to allow for COVID-related delays by the COVID-19 Response (Further Management Measures) Legislation Act 2020;
5. **agree** to the remaining provisions of the Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019 that have not already been brought into force, as well as the Insolvency Practitioners Regulations 2020 and the Companies (Reporting By Insolvency Practitioners) Regulations 2020, coming into force on 1 September 2020;
6. **agree** to the promulgation of an Order in Council under the Insolvency Practitioners Regulation Act 2019 and an Order in Council under the Insolvency Practitioners Regulation (Amendments) Act 2019 to make the commencement date 1 September 2020;
7. **authorise** the submission to the Executive Council of the Insolvency Practitioners Regulation Act Commencement Order 2020, the Insolvency Practitioners Regulation (Amendments) Act Commencement Order 2020, the Insolvency Practitioners Regulations 2020 and the Companies (Reporting By Insolvency Practitioners) Regulations 2020.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs