



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Insolvency Practitioners Bill: Approval to table a Supplementary Order Paper	Date to be published	1 July 2019

List of documents that have been proactively released

Date	Title	Author
Considered by LEG on 30 April 2019	Cabinet paper: <i>Insolvency Practitioners Bill: Approval to table a Supplementary Order Paper</i>	Office of Minister of Commerce and Consumer Affairs
30 April 2019	Cabinet Committee minute: <i>LEG-19-MIN-0043</i>	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 Bill: Approval to table a Supplementary Order Paper

Proposal

1. I am seeking approval to table the attached Supplementary Order Paper (SOP) to the Insolvency Practitioners Bill (the Bill) at the Committee of the Whole House stage of that Bill.

Policy

2. The Bill was introduced in April 2010, was reported back by the Commerce Committee in May 2011, and had its second reading in November 2013.
3. In November of 2016, Cabinet reconsidered the policy behind the Bill. Cabinet made decisions which resulted in the development of SOP No 45 [EGI-16-MIN-0304 and CAB-16-MIN-0606 refer], which largely rewrote the Bill as reported back by the Commerce Committee in 2013.
4. SOP No 45 substantially altered the policy of the Bill and replaced the registration system for insolvency practitioners with a co-regulatory licensing model.
5. Under that co-regulatory approach, professional bodies will be responsible for carrying out the frontline regulation of insolvency practitioners, and the Registrar of Companies will monitor and report on the adequacy and effectiveness of the professional bodies' regulatory systems and processes. The SOP that I am proposing will provide for the funding of the Registrar's independent oversight. It will also make various minor and technical changes that do not have any policy implications.
6. SOP No 45 has been reported back by the Economic Development, Science and Innovation Committee and the Bill (as amended by SOP No 45) is awaiting its next Parliamentary stages.
7. At the time policy decisions were sought from Cabinet on the development of SOP No 45, it was noted that "the Minister of Commerce and Consumer Affairs intends to make a Budget bid in 2017 to seek an appropriation for independent oversight, to be funded through the annual return fee for companies".
8. When those decisions were obtained, it was not recognised that the fee-setting powers in the Companies Act do not enable the funding of functions outside that Act.

The SOP to the Bill

9. Cabinet has agreed to address this problem by inserting a regulation-making power into the Insolvency Practitioners Bill, so that a levy can be imposed to fund this function [DEV-19-MIN-0065 and CAB-19-MIN-0142]. This levy will enable the Registrar to recover the costs of providing independent oversight of insolvency practitioners from companies (and other entities able to be liquidated, such as limited partners). It is likely that the levy will be about \$1.50 per company each year.
10. This decision is in keeping with the intent of the Cabinet decisions obtained in 2016.
11. The SOP also includes a number of other amendments to the Bill to address minor technical and drafting issues, and to clarify aspects of the transitional provisions. None of these changes requires Cabinet decisions.

Impact analysis

12. A regulatory impact assessment was prepared by the Ministry of Business, Innovation and Employment in accordance with the necessary requirements, and was submitted at the time that Cabinet committee approval of the policy relating to the SOP was sought [DEV-19-SUB-0065].

Compliance

13. The SOP complies with:

- 13.1. the principles of the Treaty of Waitangi;
- 13.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 13.3. the disclosure statement requirements – a disclosure statement has been prepared and is attached to the paper;
- 13.4. the principles and guidelines set out in the Privacy Act 1993; and
- 13.5. the LDAC Guidelines on the Process and Content of Legislation (2018 edition).

Consultation

14. No consultation has taken place on the SOP. However, consultation will take place in relation to the amount of the levy to be charged.

Binding on the Crown

15. The SOP does not itself specify whether it will be binding on the Crown. However, the provisions in the SOP will be binding on the Crown once the Bill is enacted, because the relevant parts of the Bill (including the part to be amended by the SOP) will be binding on the Crown.

Allocation of decision making powers

- 16.** The SOP involves the allocation of decision making powers to the Minister responsible for the administration of the Insolvency Practitioners Regulation Act for determining the quantum of the levy charged to businesses. The Minister will be required to consult with potential levy payers and others who may be significantly affected before the amount of the levy is set. Officials anticipate providing me with a discussion document, later this year, seeking input on the amount of the levy.

Associated regulations

- 17.** Regulations will be needed to bring the levy provided for in the SOP into operation. Those regulations will need to address the following substantive matters:
 - 17.1.** the class or classes of companies that are required to pay a levy;
 - 17.2.** the amount of levies, or method of calculating or ascertaining the amount of levies;
 - 17.3.** the ability to include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs;
 - 17.4.** the payment and collection of levies; and
 - 17.5.** waivers or refunds of the whole or any part of a levy for any case or class of cases.
- 18.** The regulations will be largely modelled on provisions in the Financial Markets Authority (Levies) Regulations 2012. I anticipate that the regulations would be made no more than nine months after the date of Royal Assent.

Other instruments

- 19.** The SOP does not include provision to make other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister

- 20.** The SOP contains a definition of "Minister".
- 21.** The Cabinet Office has been informed of this definition.

Commencement of legislation

- 22.** I propose that the SOP will be tabled at the Committee of the Whole House stage under Standing Order 306 so that it forms part of the Bill as enacted.
- 23.** The provisions in the SOP that empower the making of regulations to impose a levy come into force on the day after the Bill receives Royal Assent. The co-regulatory licensing regime will come into force 12 months after the date of Royal Assent. I anticipate that the regulations would be made no more than nine months after the date of Royal Assent.

Parliamentary stages

24. The SOP should be tabled by 18 June 2019, and the Bill should be enacted by July 2019.

Proactive Release

25. I will release this paper proactively subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

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

1. **note** that the Insolvency Practitioners Bill holds a category 3 priority (to be passed if possible in 2019) on the 2019 Legislation Programme;
2. **note** that the attached Supplementary Order Paper will insert a power to make regulations that impose a levy into the Insolvency Practitioners Bill to enable companies (and other entities able to be liquidated) to be levied to fund the provision of independent oversight of insolvency practitioners;
3. **note** that a departmental disclosure statement is attached;
4. **approve** tabling the attached Supplementary Order Paper to the Insolvency Practitioners Bill; and
5. **agree** that the Supplementary Order Paper be tabled by 18 June 2019.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs