



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Proposed Insolvency Practitioners Regulations: Release of Discussion Paper	Date to be published	29 October 2019

List of documents that have been proactively released

Date	Title	Author
11 September 2019	Proposed Insolvency Practitioners Regulations: Release of Discussion Paper	Office of the Minister of Commerce and Consumer Affairs
11 September 2019	DEV-19-MIN-0243	Cabinet Office – Cabinet Economic Development Committee

Information redacted

NO

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Proposed Insolvency Practitioners Regulations – Release of discussion paper

Proposal

1. This paper seeks approval to consult publicly on proposed regulations to be made to implement the Insolvency Practitioners Regulation Act 2019, including the fees and levies that will apply in the new regulatory scheme.

Executive Summary

2. The Insolvency Practitioners Regulation Act 2019 requires regulations to be made in order to implement the Act, including regulations relating to proposed fees and a levy.
3. I seek agreement to release a discussion paper about the proposed regulations for public consultation on or about 17 September 2019. The consultation will take place over four weeks.
4. I intend to seek Cabinet agreement to the final policy proposals in December 2019.

Background

5. The Insolvency Practitioners Regulation Act 2019 (the Act) and Insolvency Practitioners Regulation (Amendments) Act 2019 (the Amendment Act) received Royal Assent on 17 June 2019. Regulations need to be made as a consequence of passing both Acts so they may be implemented.
6. 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, but 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.
7. The Act introduces a co-regulatory scheme, under which:
 - 7.1. 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

- 7.2. the Registrar of Companies (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.
8. The Act aims to reduce the incidence of unsatisfactory and substandard performance, and generally raise the quality of insolvency practice over time by introducing occupational regulation of insolvency practitioners.
9. The co-regulatory approach leverages off an existing voluntary non-statutory occupational regulation scheme that is jointly operated by Chartered Accountants Australia and New Zealand (CAANZ) and the Restructuring Insolvency and Turnaround Association of New Zealand (RITANZ).
10. In addition, the co-regulatory licensing scheme is modelled on the co-regulatory licensing 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.
11. Under the Act, the Registrar will set minimum standards to prescribe the competence and experience that an insolvency practitioner will need to meet before that person can be licensed. Those standards will also include the conditions that may be imposed on licences and details of continuing professional development. The Registrar will also set standards for accredited bodies. The Registrar will publish the minimum standards in a *Gazette* notice. It is expected that the Registrar will carry out targeted and public consultation on the proposed minimum standards in September 2019, and publish the first set of minimum standards in April 2020. Each *Gazette* notice must be presented to the House of Representatives as a disallowable instrument under the Legislation Act 2012. This will allow Parliament to disallow or amend the instruments.
12. Sections 80 and 81 of the Act provides that the Governor General may, by Order in Council, make regulations to prescribe certain aspects of the new scheme, including:
 - 12.1. Fees and charges of the Registrar;
 - 12.2. A levy on companies or a class of companies;
 - 12.3. Information appearing on the register;
 - 12.4. Information included in the annual report of each accredited body;
 - 12.5. Conditions the Registrar may impose when approving accredited bodies;
 - 12.6. Changes in registered information to be notified to the Registrar; and

- 12.7. Requirements on how information or documentation is to be provided to the Registrar.
13. I am seeking approval to release a discussion paper which seeks feedback on the proposed regulations to be made under the Act, including proposed fees and levies that will apply under the new scheme.

Key proposals for feedback

Proposed funding model

14. Section 80(1)(g) of the Act authorises the setting of fees in connection with the exercise or performance by the Registrar of any function, power, or duty conferred under the Act.
15. Section 81 of the Act authorises the setting of a levy against companies for a portion of the costs of the Registrar in performing or exercising the Registrar's functions, powers and duties under the Act.
16. The fees proposed in the discussion paper relate only to the Registrar's costs. Accredited bodies are likely to pass on to insolvency practitioners any costs they incur in the discharge of their regulatory responsibilities under the Act. The nature of those fees is not yet known.
17. The discussion paper sets out the proposed funding model for the insolvency practitioner regulation scheme. The proposed fees and a levy would be set at a level that will fully recover the Registrar's costs under the scheme.
18. At the time that policy decisions were obtained on the substantive policy behind the Act [EGI-16-MIN-0304 and CAB-16-MIN-0606], it was noted that the cost of the register of licensed insolvency practitioners would be met from existing baselines. It would be more appropriate for the costs associated with the operation of the register to be met by licensed insolvency practitioners. The Crown will meet the costs of establishing the register.
19. The scheme will require the Registrar to undertake the following key activities:
- 19.1. Registration, including updating and maintaining the register of insolvency practitioners, both when licences are issued and an annual confirmation completed, and whenever information is to be updated; and
 - 19.2. Oversight of the scheme, including approval of accredited bodies, scheme compliance, and general management of the scheme.
20. In determining proposals 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 regulation of insolvency practitioners under the Act. 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.
21. Licensed insolvency practitioners are the primary beneficiary of licensing and registration as it grants them access to insolvency practice. Companies benefit from

the improved insolvency environment arising from the Registrar's oversight of the scheme. I therefore propose that the Registrar's costs be fully recovered under the insolvency practitioner regulation scheme through:

21.1. Fees to be paid by all licensed practitioners to recover the cost of updating and maintaining the register with licence information; and

21.2. A levy on all registered companies (payable in new registration fee or the annual return fee as applicable) to cover the costs of oversight.

22. Table 1 below provides a summary of the proposed cost and who is affected by the proposed fees and levy under the insolvency practitioner regulation scheme. The proposed costs, fees and levy in this paper are expressed as GST exclusive except where stated otherwise.

Table 1 – Proposed cost of insolvency practitioner regulation scheme

Function	Activities	Cost (\$m)	Impacted by fee	Recovered through
Register	Maintaining and updating the register	0.017	100 insolvency practitioners licences and annual confirmation in subsequent years	Proposed fees on insolvency practitioners
Oversight of the scheme	Accreditation assessment Scheme compliance: <ul style="list-style-type: none"> • Education/awareness • Monitoring/data analytics/reporting • Enforcement General management	0.702	560,000 companies filing annual returns and 55,000 new company registrations (per year)	Proposed levy on companies
Total cost		0.719		

23. Table 2 shows how much it costs to cover each of the activities (cost to service), calculated by total cost divided by forecast volumes, compared to the proposed fees. The proposed fee has been rounded. The fee in the regulations will be stated as exclusive of GST.

Table 2 – Proposed fees and levy

Proposed fees/levy (\$)	Cost to service	Cost to service GST incl	Proposed fee and levy - Regulations	Proposed fee and levy - Regulations GST incl
License registration fee	\$169.30	\$194.70	\$170.00	\$195.50
Licence registration confirmation fee (annual)	\$108.66	\$124.95	\$105.00	\$120.75
Levy on new incorporation and company annual return	\$1.14	\$1.31	\$1.15	\$1.32

Proposed fee on licensed practitioners

24. The discussion paper proposes to recover the cost to the Registrar of maintaining the register through two fees charged to insolvency practitioners; a new licence registration fee and then a subsequent annual licence registration confirmation fee. This results in a proposed fee of \$170 for licence registration, and \$105 for the annual licence registration confirmation.
25. Through an annual confirmation process, practitioners will confirm that the information on the register is correct. This is to ensure that the register contains up-to-date information.
26. The fee will be collected by accredited bodies and passed on to the Registrar.

Proposed levy on companies

27. I am required under section 81 of the Act to determine the size of the portion of the costs of the Registrar in performing or exercising the Registrar's functions, powers, and duties under the Act that will be recovered through levies, and whether all companies or a class of companies must pay such levies. I am consulting on a proposal that the cost of oversight of the scheme should be recovered from a levy on all companies, which would cover 97.6 percent of the costs of the scheme.
28. The proposed levy of \$1.15 on all registered companies would be collected alongside fees for the registration of new companies and annual return fees for all companies.
29. 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 addition of a levy of \$1.15 on these fees would result in only a small increase in each fee.
30. The levy is based on analysis of the resources required to undertake the functions set out in the Act and has drawn on the experience of the FMA in discharging its comparable functions under the auditor regulation scheme.

31. I will consider feedback received during consultation before recommending making regulations providing for levies.

Fees review

32. I expect to commence a fees review in 2021/22, in line with the next review of Companies Office fees. At this time the fees and levy can be adjusted to ensure 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 four to five years, in line with Companies Office's periodic fees reviews and the Treasury's guidelines.

Accounting for revenue and expenditure over time

33. Based on the proposed fees and levy, the impact on revenue collected by forecast volumes against the appropriation is detailed in table 3 below.

Table 3 – Memorandum account impact for proposed costs, fees and levy

Forecast revenue (\$)	2020/21	2021/22	2022/23	2023/24
Licence registration fee	17,000	510	510	510
Licence registration confirmation fee (annual)		10,500	10,815	11,130
Levy on new incorporation and company annual return	707,250	721,395	735,823	750,539
Total revenue	724,250	732,405	747,148	762,179
Total expense	718,824	718,824	718,824	718,824
Net surplus/(deficit)	5,426	13,581	28,324	43,355
Accumulated balance	5,426	19,007	47,331	90,686

34. The revenue in this table reflects the proposed fees and levy exclusive of GST. Due to the rounding from the cost to service to the proposed fees/levy, a minor surplus or deficit will result annually. To calculate the revenue in future years, the forecast volumes are 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 and be part of Companies Office's periodic fee reviews to ensure fees and levies are set so that the memorandum account moves to a nil position over time.

Other proposals for regulations

35. The discussion paper also sets out proposals for regulations to be made in relation to:

- 35.1. Additional conditions the Registrar may impose when approving accredited bodies – proposed conditions could relate to the accredited body's ongoing compliance with any minimum standards for accreditation prescribed by the Registrar, the accredited body's resources and financial position, and,

ensuring that the accredited body's governance and organisational structure is adequate and effective;

- 35.2. Information to be included in accredited bodies' annual reports to the Registrar – proposed additional information would relate to the body's organisational structure, governance systems and financial stability, and details of the applications and disciplinary processes run by the bodies;
- 35.3. Requirements around how information is to be supplied under the Act;
- 35.4. The content of the register – proposed additional information to be included on the register includes the practitioner's business email address, business address, and a firm's New Zealand Business Number, when applicable; and
- 35.5. Notifying changes to information on the register – proposed changes that should be notified to the Registrar within 10 business days includes any change to the name of a practitioner.

Insolvency Practitioners Regulation (Amendments) Act

36. Regulations will also need to be made to prescribe the contents of reports prepared by insolvency practitioners in relation to individual liquidations, receiverships and voluntary administrations. 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. They are aimed at providing useful information to creditors and other interested parties. Some of the information will also be aggregated by the Registrar and used for statistical purposes.
37. I am also asking Cabinet to note that I have authorised MBIE officials to carry out targeted consultation in relation to the contents of the interest statements and reports prepared by insolvency practitioners. There are three reasons that targeted consultation will be more appropriate in relation to those matters.
38. Firstly, the detailed requirements were originally included in Supplementary Order Paper No 45 (SOP No 45) to the Insolvency Practitioners Bill. This detailed content was removed from SOP No 45, following its consideration by select committee, because it was considered that it was more suited for inclusion in secondary legislation. Submissions that were made on those disclosure provisions to the select committee are being taken into consideration in the design of the regulations.
39. Secondly, the proposed requirements are largely consistent with existing Cabinet approvals – obtained when SOP No 45 was developed [EGI-16-MIN-0304 and LEG-18-MIN-0087].
40. Thirdly, targeted consultation will provide the opportunity to engage directly and thoroughly with those most directly and significantly impacted by the proposals. Their expert technical insight into the likely effects, costs, and impacts of the proposals will help ensure that the proposals emerging from the public consultation through the SOP process are refined to be as effective as possible. MBIE officials intend to centrally involve RITANZ in the targeted consultation. RITANZ's membership

includes a range of insolvency and recovery professionals including insolvency practitioners, insolvency law specialists, bankers and credit controllers. MBIE will also consult with the Inland Revenue Department, given that they are the largest creditor in the New Zealand economy.

Consultation

41. The Treasury has been consulted and no significant concerns were raised.

Timing

42. Following Cabinet approval, the discussion document will be released for public consultation in mid-September 2019. The consultation period will run for four weeks until mid-October 2019.
43. I expect to report back to Cabinet in December 2019 on the outcome of consultation and to seek approval of final proposals for regulations.

Financial Implications

44. The fees and levy proposed in the discussion paper are for cost recovery only. The fiscal implications that will arise will be addressed when policy decisions are sought from Cabinet including the final fees and levy. An increase in appropriation will be sought, funded from revenue other. It will be proposed that the levy be deemed as departmental revenue and as such no Crown funding is anticipated.
45. Funding is not being sought from the proposed fees and levy to recover the cost of setting up the scheme. The estimated cost to the Registrar to establish the scheme is \$149,000 which will be funded from existing Crown-funded baselines.

Legislative Implications

46. The release of the discussion paper itself does not raise any legislative implications. Regulations will need to be prepared to give effect to the proposals in the documents. Approvals to make the regulations and to issue drafting instructions will be sought from Cabinet following the completion of public consultation and cost recovery impact assessments.
47. The regulations will need to come into force before June 2020 so the Registrar can begin to accredit professional bodies and to give the industry time to prepare before the substantive provisions of the Act come into force on 17 June 2020.

Impact Analysis

48. MBIE's Regulatory Impact Analysis Review Panel has reviewed the discussion document and confirms that the discussion paper functions as an interim Regulatory Impact Assessment and will likely lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions.

Human Rights

49. The proposals of this Cabinet paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Publicity

50. MBIE will post the discussion paper on its website, provide copies to interested parties, and proactively engage with the industry to seek feedback on the proposals. The closing date for submissions will provide the industry with sufficient time to consider and make submissions on the proposals.
51. Under section 82 of the Act I am required to consult with persons or organisations that I consider are able to represent the views of the companies that will be liable to pay a levy under the proposed regulations, and any other representatives of persons whom I believe to be significantly affected by the proposed regulations. The inclusion of the levy proposals in the discussion paper and the consultation outlined above will satisfy this requirement.
52. The proposed levy may be controversial as the power to make the levy on companies was not included in earlier versions of the Bill, so submitters did not have the opportunity to comment on it before the Act was passed.
53. MBIE will consider feedback received during consultation.

Proactive Release

54. I will release this paper proactively subject to redactions as appropriate under the Official Information Act 1982. MBIE will publish a copy of this paper on its website within 30 working days of the final decision being made by Cabinet.

Recommendations

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

1. note that the Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019 were passed in June 2019 and come fully into force in June 2020;
2. note that regulations are required to implement the Insolvency Practitioners Regulation Act 2019 and give effect to amendments made by the Insolvency Practitioners Regulation (Amendments) Act 2019;
3. note that the Minister of Commerce and Consumer Affairs proposes that the Registrar's costs in carrying out its functions, powers and duties in relation to oversight should be met by a levy on companies;
4. note that the attached discussion paper proposes that fees be paid by licensed practitioners to recover the cost of updating and maintaining the register; a levy on all registered companies to cover the costs of oversight to be collected alongside new company registrations and all company annual returns; and regulations relating to

the information maintained on the register and the ability to develop conditions for accreditation;

5. authorise the release of the attached discussion paper for public consultation;
6. authorise the Minister of Commerce and Consumer Affairs to make minor and/or technical amendments to the discussion papers before they are released;
7. note that MBIE officials will undertake targeted consultation on the content of the reports to be prepared by insolvency practitioners;
8. note that the Registrar intends to carry out targeted and public consultation on proposed minimum standards for licensing of insolvency practitioners and accreditation of professional bodies in September 2019; and
9. invite the Minister of Commerce and Consumer Affairs to report back to Cabinet in December 2019 on the outcome of consultation and to seek approval of final policy proposals for regulations under the Insolvency Practitioners Regulation Act 2019 and give effect to amendments made by the Insolvency Practitioners Regulation (Amendments) Act 2019 and relevant appropriation changes.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs