

## **Insolvency Practitioners Regulation Bill**

(Divided from the Insolvency Practitioners Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Insolvency Practitioners Bill as reported from the Economic Development, Science and Innovation Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Insolvency Practitioners Regulation (Amendments) Bill comprising clauses 1 and 2, Parts 1 and 2, and Schedules 1 to 3
- this Bill comprising Parts 3 to 6 and Schedules 4 and 5.



**Key to symbols used in reprinted bill**

**As reported from the committee of the whole House**

text inserted

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*Hon Kris Faafoi*

# **Insolvency Practitioners Regulation Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Insolvency Practitioners Regulation Act **2010**.

**2 Commencement**

- (1) The following sections come into force on the day after the date of Royal assent: 5
- (a) **sections 16 to 20** (which are preliminary provisions relating to this Act):
- (b) **sections 34 to 38** (which enable the Registrar to prescribe licensing and other matters): 10



- (c) **sections 46 to 48** (which relate to the accreditation of bodies):
- (d) **sections 51 and 54 to 61** (which relate to policies, directions, and other matters relating to accredited bodies):
- (e) **sections 68 to 70** (which provide an exemption from membership of an accredited body for certain overseas practitioners, members of recognised bodies, and members of religious societies and orders): 5
- (f) **sections 81 to 92B** (which relate to miscellaneous matters).
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates. 10
- (3) Any provision that is not earlier brought into force under **subsection (2)** comes into force on the first anniversary of the date of Royal assent.

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**Part 3**  
**Preliminary provisions** 15

**16 Purpose**

The purpose of **Parts 3 to 6** is to regulate insolvency practitioners and to establish an independent oversight system in order to promote—

- (a) quality, expertise, and integrity in the profession of insolvency practitioners; and 20
- (b) compliance with the statutory duties of insolvency practitioners.

Compare: 2011 No 21 s 3

**17 Overview**

- (1) In **Parts 3 to 6**,—
  - (a) this Part contains preliminary provisions, including purpose and interpretation provisions: 25
  - (b) **Part 4** relates to the licensing of insolvency practitioners as follows:
    - (i) **subpart 1** requires a person who acts as an insolvency practitioner to hold a licence, and contains provisions relating to licences: 30
    - (ii) **subpart 2** relates to the Registrar prescribing licensing and other matters:
    - (iii) **subpart 3** relates to the register of licensed insolvency practitioners:
    - (iv) **subpart 4** relates to accredited bodies: 35

- (v) **subpart 5** relates to investigations by the Registrar:
- (vi) **subpart 6** relates to overseas practitioners, members of recognised bodies, and members of religious societies and orders:
- (c) **Part 5** imposes duties and restrictions on licensed insolvency practitioners: 5
- (d) **Part 6** contains the following provisions:
  - (i) **subpart 1** relates to solvent company liquidators, and requires a person who acts as a solvent company liquidator to be a licensed insolvency practitioner, a lawyer, a chartered accountant, or a member of a recognised professional body: 10
  - (ii) **subpart 2** contains miscellaneous provisions, including a power for the Registrar to act as an accredited body and an offence provision related to false declarations and representations:
  - (iii) **subpart 3** contains regulation-making powers.
- (2) This section is intended only as a guide to the general scheme and effect of **Parts 3 to 6**. 15

## 18 Interpretation

- (1) In **Parts 3 to 6**, unless the context otherwise requires,—
  - accredited body** means a person that is, or 2 or more persons acting jointly together that are, granted accreditation under **subpart 4 of Part 4** 20
  - company** has the meaning given to it by section 240(1A) of the Companies Act 1993
  - court** means the High Court
  - disciplinary body** means, in relation to an accredited body, the tribunal, committee, or other body that has been— 25
    - (a) set up to take disciplinary action in respect of the members of the accredited body; and
    - (b) approved by the Registrar to act as the disciplinary body
  - firm**, in relation to an insolvency practitioner, means a partnership or body corporate— 30
    - (a) of which the insolvency practitioner is a partner, a director, or an employee; and
    - (b) that carries on the business of providing insolvency services (whether or not it provides other services)
  - insolvency engagement** includes any work or function that is part of acting as an insolvency practitioner 35

**insolvency practitioner** means any of the following:

- (a) an administrator or a deed administrator (as those terms are defined in section 239B of the Companies Act 1993):
- (b) an insolvent company liquidator:
- (c) a receiver (as defined in section 2(1) of the Receiverships Act 1993): 5
- (d) a trustee or provisional trustee appointed under subpart 2 of Part 5 of the Insolvency Act 2006

**insolvent company liquidator**—

- (a) means a liquidator acting in respect of a company; but
- (b) does not include a liquidator acting in respect of a solvent company 10

**lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

**licence** means a licence issued by an accredited body under **subpart 1 of Part 4**

**licensed insolvency practitioner** means a person who holds a licence (and ~~includes a person~~ includes an overseas insolvency practitioner to whom **section 22A(1)** applies) 15

**member**, in relation to an accredited body, includes a person to whom **section 68** applies

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 20

**overseas insolvency practitioner** means a person who is entitled to carry out insolvency work in—

- (a) Australia; or 25
- (b) a recognised jurisdiction

**prescribed minimum standards** means the minimum standards for the issue of a licence prescribed under **subpart 2 of Part 4**

**qualified statutory accountant** has the meaning given to it by section 5(1) of the Financial Reporting Act 2013 30

**recognised jurisdiction** means a jurisdiction that is recognised, by notice in the *Gazette*, by the Registrar in accordance with **subsection (3)** for the purposes of **Parts 3 to 6**

**register** means the register kept under **subpart 3 of Part 4**

**Registrar** means the Registrar of Companies appointed in accordance with section 357(1) of the Companies Act 1993 35

**regulations** means any regulations made under **Parts 3 to 6**

- regulatory function** includes any of the following functions that are performed by an accredited body or a disciplinary body of an accredited body (to the extent that those functions relate to, or are in connection with, persons who apply for, hold, or have held a licence):
- (a) considering applications for licences, issuing licences, and setting conditions of licences: 5
  - (b) adopting, implementing, and monitoring codes of conduct or ethics:
  - (c) monitoring compliance with any relevant standards relating to insolvency engagements:
  - (d) promoting, monitoring, and reviewing the ongoing competence of members: 10
  - (e) inquiring into the conduct of members:
  - (f) investigating complaints against members and former members:
  - (g) hearing complaints about, and taking disciplinary action against, members and former members: 15
  - (h) dealing with appeals against decisions of the disciplinary body
- regulatory systems** means, in relation to an accredited body or a disciplinary body of an accredited body, the relevant body's systems and processes for performing its regulatory functions
- relevant authority** has the meaning given to it by **section 28(1)** 20
- solvent company** means a company to which **section 243A** of the Companies Act 1993 applies
- solvent company liquidator** means a liquidator appointed in respect of a solvent company.
- (2) In **Parts 3 to 6**, unless the context otherwise requires, regulatory systems are **adequate and effective** if they are designed and operate in a manner that promotes— 25
    - (a) quality, expertise, and integrity in the profession of insolvency practitioners; and
    - (b) compliance with the statutory duties of insolvency practitioners. 30
  - (3) The Registrar may recognise a jurisdiction for the purposes of **Parts 3 to 6** only if the Registrar is satisfied that the law or other regulatory requirements of the jurisdiction for the regulation of persons carrying out insolvency work are substantially the same as the requirements set out in **Parts 3 to 6** or sufficiently equivalent to the requirements set out in **Parts 3 to 6**. 35
- 19 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 4** have effect according to their terms.

**20 Parts 3 to 6 bind the Crown****Parts 3 to 6** bind the Crown.**Part 4****Licences, accreditation, and role of Registrar**

## Subpart 1—Licences 5

*Requirement to hold licence***21 Insolvency practitioner must hold licence**

- (1) A person who acts as an insolvency practitioner must be a licensed insolvency practitioner whose licence—
- (a) authorises the person to act as an insolvency practitioner in respect of the insolvency engagement being carried out; and 10
  - (b) is recorded in the register.
- (2) A person who acts as an insolvency practitioner in breach of this section commits an offence and is liable on conviction to a fine not exceeding \$75,000.
- (3) This section does not apply to an Official Assignee. 15
- Compare: 2011 No 21 s 8

*Issue of licence***22 Issue of licence**

- (1) A natural person may apply to an accredited body to be issued with a licence in the manner that is specified by the Registrar. 20
- (2) The accredited body must issue a licence to the person if—
- (a) the accredited body is satisfied that the person—
    - (i) meets the prescribed minimum standards; and
    - (ii) is otherwise a fit and proper person to hold a licence; and
  - (b) the application is accompanied by payment of the prescribed registration fee; and 25
  - (c) either—
    - (i) the person is a member of the accredited body; or
    - (ii) **section 68** applies in respect of the person.
- (3) The accredited body must,— 30
- (a) if the licence is issued, send the prescribed registration fee to the Registrar; or
  - (b) if the licence is not issued, refund the prescribed registration fee to the applicant.

- (4) The accredited body may require the applicant to pay the accredited body's reasonable costs in processing the application and, if it does,—
- (a) the issue of the licence is not subject to payment of the accredited body's costs; and
  - (b) if the licence is not issued, the accredited body's costs are not refundable merely because the licence is not issued. 5

Compare: 2011 No 21 s 11

## 22A Overseas practitioners deemed to have licence for 10 days from appointment

- (1) Despite ~~sections 21(1) and 22(2)~~ **section 21(1)**, a person who is an overseas insolvency practitioner may be appointed to act in respect of an insolvency engagement as if they were a licensed insolvency practitioner who, under **Parts 3 to 6**, is authorised to ~~undertake~~ carry out the type of insolvency engagements that corresponds with the type of insolvency work that the person is entitled to ~~undertake~~ carry out in the person's home jurisdiction. 10 15
- (2) **Parts 3 to 6**, and any other enactment that relates to the carrying out of insolvency engagements, applies to the person—
- (a) as if the person were a licensed insolvency practitioner—
    - (i) whose licence is recorded in the register; and
    - (ii) who is authorised to act in respect of the type of insolvency engagements that correspond to the type of insolvency work that the person is entitled to carry out in the person's home jurisdiction; and 20
  - (b) as if the person were, from the date and time when they were appointed to act, a member of the accredited body to which the person applies for a licence; and 25
  - (c) with any other necessary modifications.
- (3) ~~Subsections (1) and (2)~~ **Subsections (1) and (2)** cease to apply if, 10 days after the person is appointed, the person has not applied for a licence under **section 22**.
- (4) If, when ~~subsections (1) and (2)~~ **subsections (1) and (2)** cease to apply, the person has not applied for a licence under **section 22** (or if the person's application is declined), the person must— 30
- (a) resign from the insolvency engagement without delay; and
  - (b) appoint a licensed insolvency practitioner who is permitted to act in respect of the insolvency engagement. 35
- (5) ~~An accredited body that receives an application from an overseas insolvency practitioner must, as soon as practicable after receiving the application, send to the Registrar notification of the application together with—~~
- (a) the relevant information described in **section 42**; and

- (b) any other prescribed information.
- (6) ~~In this section, **home jurisdiction**, in relation to an overseas insolvency practitioner, means the jurisdiction in which the practitioner is entitled to carry out insolvency work.~~
- (3) **Subsections (1) and (2)** cease to apply if,— 5
- (a) 10 days after the person is appointed, the person has not applied for a licence under **section 22**; or
- (b) the person's application is declined.
- (4) If **subsections (1) and (2)** cease to apply, the person must be treated as having resigned from the insolvency engagement and section 283 of the Companies Act 1993 applies accordingly. 10
- (5) An accredited body that receives an application from an overseas insolvency practitioner must, as soon as practicable after receiving the application, send to the Registrar notification of the application together with any other prescribed information. 15
- (6) In this section, **home jurisdiction**, in relation to an overseas insolvency practitioner, means a jurisdiction—
- (a) that is Australia or a recognised jurisdiction; and
- (b) in which the practitioner is entitled to carry out insolvency work.
- Compare: 2011 No 21 s 12 20

*Licence details to be sent to Registrar*

**23 Accredited body must send licence details to Registrar**

An accredited body must send to the Registrar notification of the issue of a licence, within 5 working days after issuing the licence, together with—

- (a) the relevant information described in **section 42**; and 25
- (b) any other prescribed information.

Compare: 2011 No 21 s 14

*Conditions*

**24 Licence subject to conditions**

- (1) A licence issued to a person by an accredited body— 30
- (a) is subject to any conditions of the kinds prescribed under **section 34(1)(b)(i)**; and
- (b) may be subject to any conditions of the kinds prescribed under **section 34(1)(b)(ii)** that the accredited body thinks fit; and
- (c) must specify a condition relating to the types of insolvency engagements in respect of which the person is authorised to act under the licence. 35

- (2) The condition under **subsection (1)(c)** may specify that the person is authorised to act in respect of all types of insolvency engagements.
- (3) The accredited body or the Registrar may, at any time after the licence is issued,—
- (a) add to any conditions of the licence: 5
- (b) vary, remove, or substitute any conditions of the licence (other than the conditions referred to in **subsection (1)(a)**).
- (4) The accredited body or the Registrar may exercise a power under **subsection (3)** only if—
- (a) the accredited body or the Registrar gives the person at least 10 working days' written notice of the following matters before exercising the power: 10
- (i) that the accredited body or the Registrar may exercise a power under **subsection (3)**; and
- (ii) the reasons why the accredited body or the Registrar is considering exercising that power; and 15
- (b) the accredited body or the Registrar gives the person or the person's representative an opportunity to make written submissions on the matter within that notice period. 20
- Compare: 2011 No 21 s 15

### *Duration of licence*

#### **25 Duration of licence**

- (1) A licence must specify an issue date and an expiry date.
- (2) The expiry date must not be later than 5 years after the issue date.
- (3) A licence continues in force until the close of the expiry date unless sooner suspended or cancelled under **Parts 3 to 6**. 25
- (4) If a licensed insolvency practitioner applies for a new licence before the expiry date of an existing licence that the new licence is intended to replace, and the application is not resolved before the expiry date, the existing licence continues in force until the application is resolved. 30
- Compare: 2011 No 21 s 17

### *Ongoing competence requirements*

#### **26 Ongoing competence requirements**

- (1) An accredited body must, in accordance with any requirements prescribed under **section 34(1)(c)**,— 35



- (a) require its members who are licensed insolvency practitioners to complete competence programmes to maintain their ongoing competence; and
  - (b) otherwise promote, monitor, and review the ongoing competence of its members who are licensed insolvency practitioners. 5
- (2) A member who is a licensed insolvency practitioner must comply with the requirements under **subsection (1)(a)**.
- (3) A competence programme may require a member who is a licensed insolvency practitioner to do 1 or more of the following, within the period, or at the intervals, prescribed in the programme: 10
- (a) pass an examination or assessment (or both):
  - (b) complete a period of practical training:
  - (c) complete a period of practical experience:
  - (d) undertake a course of studies:
  - (e) anything else that the accredited body considers appropriate. 15
- Compare: 2011 No 21 s 18

## 27 Unsatisfactory results of competence programme

- (1) If a member who is required to complete a competence programme does not satisfy the requirements of the programme, the accredited body may—
- (a) vary, remove, add to, or substitute any conditions of the member’s licence under **section 24**; or 20
  - (b) cancel the member’s licence under **section 29**; or
  - (c) suspend the member’s licence under **section 30**.
- (2) This section does not limit **sections 24, 29, 30, and 31**. 25
- Compare: 2011 No 21 s 19

### *Cancellation and suspension of licences*

## 28 Meaning of relevant authority

- (1) In **sections 29 to 32**, **relevant authority** means either or both of the following: 30
- (a) the accredited body that issued the licence:
  - (b) a disciplinary body in accordance with **subsection (2)**.
- (2) The rules of an accredited body may authorise a disciplinary body to act under **sections 29 to 32** and provide for any other reasonable matters, not inconsistent with **Parts 3 to 6**, in respect of the exercise of that power to act.

## 29 Cancellation of licences 35

- (1) A relevant authority may cancel a licence issued to a person—

- (a) if the person, by written notice, requests that the relevant authority do so; or
- (b) if the relevant authority is satisfied on reasonable grounds that—
  - (i) the person has died; or
  - (ii) the person obtained the licence by making a false or misleading representation or declaration (whether oral or written); or 5
  - (iii) the person does not satisfy, or no longer satisfies, the prescribed minimum standards; or
  - (iv) the person has failed to comply with a condition of the licence; or
  - (v) the person is otherwise not a fit and proper person to hold a licence; or 10
- (c) if the relevant authority is satisfied on reasonable grounds that 1 or more insolvency engagements carried out by the person are not being, or have not been, carried out—
  - (i) in accordance with **Parts 3 to 6** or any other enactment that relates to the carrying out of insolvency engagements; or 15
  - (ii) in accordance with any relevant standards relating to insolvency engagements; or
  - (iii) with reasonable care, diligence, and skill.
- (2) A licence may also be— 20
  - (a) treated as cancelled under **section 59**; or
  - (b) cancelled by the Registrar under **subpart 5**.

Compare: 2011 No 21 s 20

### **30 Suspension of licences**

- (1) A relevant authority may suspend a licence issued to a person if the relevant authority is satisfied on reasonable grounds— 25
  - (a) that the person—
    - (i) has failed to comply with a condition of the licence; or
    - (ii) has not satisfied the requirements of a competence programme that the person is required to complete; or 30
  - (b) that 1 or more insolvency engagements carried out by the person are not being, or have not been, carried out—
    - (i) in accordance with **Parts 3 to 6** or any other enactment that relates to the carrying out of insolvency engagements; or
    - (ii) in accordance with any relevant standards relating to insolvency engagements; or 35
    - (iii) with reasonable care, diligence, and skill.

- (2) A suspension is for the period that the relevant authority thinks fit or until the person satisfies any requirements specified by the relevant authority.
- (3) A licence may also be—
- (a) treated as suspended under **section 59**; or
  - (b) suspended by the Registrar under **subpart 5**. 5
- Compare: 2011 No 21 s 21
- 31 Effect of suspension**
- (1) If a person’s licence is suspended, the person is not a licensed insolvency practitioner during the period for which the licence is suspended (but this does not prevent the Registrar from including information in the register in relation to the person). 10
- (2) However, the relevant authority may, on the conditions that the relevant authority thinks fit, permit a person whose licence is suspended under this section to continue with 1 or more specified insolvency engagements despite the suspension and, in relation to the specified insolvency engagement or engagements only, the person’s licence is treated as not suspended. 15
- (3) At the end of the period of suspension, the person’s licence is immediately restored (unless there is some other ground on which to suspend or cancel the licence).
- 32 Procedure relating to exercise of cancellation or suspension powers** 20
- (1) A relevant authority may cancel a licence under **section 29** or suspend a licence under **section 30** only if—
- (a) the relevant authority gives the licensed insolvency practitioner at least 10 working days’ written notice of the following matters before it exercises the power: 25
    - (i) that the relevant authority may ~~cancel or suspend~~ suspend or cancel the licence:
    - (ii) the reasons why it is considering exercising that power; and
  - (b) the relevant authority gives the licensed insolvency practitioner or the licensed insolvency practitioner’s representative an opportunity to make written submissions and to be heard on the ~~matter~~ matters within that notice period. 30
- (2) The relevant authority must, within 5 working days after the cancellation or suspension, give notice of the cancellation or suspension to the licensed insolvency practitioner and the Registrar. 35
- (3) The notice given to the licensed insolvency practitioner must include a statement of the grounds for the cancellation or suspension.

- (4) A relevant authority that fails to comply with **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$30,000.

Compare: 2011 No 21 s 22

*Appeals in respect of licensing and related matters*

- 33 Appeals in respect of licensing and related matters** 5
- (1) A person may appeal to the court against any decision of an accredited body or the Registrar to—
- (a) decline to issue a licence to the person; or
  - (b) include conditions under **section 24(1)(b) or (c)** on the person's licence or proposed licence (or to act under **section 24(3)**); or 10
  - (c) suspend or cancel the person's licence; or
  - (d) make any other order under **subpart 5** in respect of the person.
- (2) A person may appeal to the court against any decision of a disciplinary body to ~~cancel or suspend~~ suspend or cancel the person's licence unless the rules of the accredited body provide for an appeal against the decision to a body established to hear appeals against the disciplinary body's decisions. 15
- (3) An appeal to the court under this section must be brought—
- (a) in accordance with the rules of court; and
  - (b) within 20 working days after notice of the decision is communicated to the appellant, or within any further time the court allows on application made before or after the period expires. 20

Compare: 2011 No 21 s 24

**Subpart 2—Registrar may prescribe licensing and other matters**

- 34 Registrar may prescribe licensing and other matters**
- (1) The Registrar may, by notice in the *Gazette*, prescribe— 25
- (a) the minimum standards for licensing (including standards relating to required competence, qualifications, and experience) that a person must meet in order to be issued with a licence by an accredited body; and
  - (b) conditions, or the kinds of conditions, to which licences—
    - (i) must be subject; and 30
    - (ii) may be subject if the accredited body thinks fit; and
  - (c) requirements for ongoing competence that must be complied with by persons who are issued with a licence; and
  - (d) the minimum standards for accreditation (including standards relating to the adequacy and effectiveness of regulatory systems) that an applicant must meet in order to be granted accreditation by the Registrar; and 35

- (e) the procedure that accredited bodies and disciplinary bodies of accredited bodies must follow when performing regulatory functions; and
  - (f) transitional requirements for the purposes of transitional licences under **Schedule 4** (including requirements relating to required competence, qualifications, and experience). 5
- (2) Matters prescribed may—
- (a) have general or specific application; and
  - (b) differ according to differences in time or circumstance.
- (3) Conditions prescribed under **subsection (1)(b)(ii)** may relate to a licensed insolvency practitioner carrying out solvent company liquidations. 10
- Compare: 2011 No 21 s 32

### 35 Minimum standards for licence

A notice under **section 34(1)(a)** may prescribe minimum standards for licensing in any way that the Registrar thinks fit, including in 1 or more of the following ways: 15

- (a) by requiring a degree or diploma or certificate of a stated kind recognised by the Registrar:
- (b) by requiring the successful completion of a degree, course of studies, or programme recognised by the Registrar: 20
- (c) by requiring a pass in a specified examination or any other assessment:
- (d) by reference to registration with, a licence issued by, or other authorisation from an overseas organisation:
- (e) by requiring experience in the provision of services of a particular kind:
- (f) by requiring a certain level of competence: 25
- (g) by requiring compliance with conditions related to insurance:
- (h) by requiring compliance with any relevant standard relating to insolvency engagements:
- (i) by requiring compliance with any relevant code of conduct or ethics. 30

Compare: 2011 No 21 s 33

### 36 Principles guiding prescribing of licensing and other matters

In prescribing matters under this subpart, the Registrar must be guided by the following principles:

- (a) the matters must be necessary or desirable to—
  - (i) promote quality, expertise, and integrity in the profession of insolvency practitioners; or 35

- (ii) promote compliance with the statutory duties of insolvency practitioners; or
- (iii) carry out, give effect to, or provide for a matter that is incidental to, or consequential on, the matters relating to **subparagraph (i) or (ii)**; and 5
- (b) the matters should not unnecessarily restrict the licensing of insolvency practitioners; and
- (c) the matters should not impose undue costs on insolvency practitioners or on creditors. 10
- Compare: 2011 No 21 s 35 10
- 37 Registrar must consult before publishing notices**
- (1) The Registrar must, before publishing a notice in the *Gazette* under **section 34**, consult—
- (a) persons who the Registrar considers are able to represent the views of insolvency practitioners; and 15
- (b) organisations—
- (i) that the Registrar considers will be substantially affected by the proposal; or
- (ii) whose members the Registrar considers will be substantially affected by the proposal. 20
- (2) A failure to comply with **subsection (1)** does not affect the validity of any notice under **section 34**. 20
- Compare: 2011 No 21 s 36
- 38 Other provisions relating to notices under section 34**
- (1) The Registrar must ensure that an up-to-date version of each notice under **section 34** is available at all reasonable times on an Internet site maintained by or on behalf of the Registrar. 25
- (2) A notice under **section 34** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 30
- Compare: 2011 No 21 s 37
- Subpart 3—Register of licensed insolvency practitioners
- 39 Register of licensed insolvency practitioners**
- The Registrar must establish and maintain a register of licensed insolvency practitioners. 35
- Compare: 2011 No 21 s 38

**40 Operation of and access to register**

- (1) The Registrar must ensure that an up-to-date version of the register is available at all reasonable times—
- (a) on an Internet site maintained by or on behalf of the Registrar; and
  - (b) for access and searching by members of the public. 5
- (2) However, the Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practicable to provide access to the register.

Compare: 2011 No 21 s 39

**41 Purposes of register**

10

The purposes of the register are—

- (a) to enable any person to—
  - (i) determine whether a person is a licensed insolvency practitioner and, if so, the status and relevant history of the person's licence:
  - (ii) choose a suitable person to carry out an insolvency engagement: 15
  - (iii) know which licensed insolvency practitioners have been disciplined within the preceding 7 years:
- (b) to assist any person in the exercise of the person's powers or the performance of the person's functions under **Parts 3 to 6** or any other enactment. 20

Compare: 2011 No 21 s 40

**42 Contents of register**

- (1) The register must contain the following information about each licensed insolvency practitioner (to the extent that the information is relevant):
- (a) the full name and business address of the insolvency practitioner: 25
  - (b) the name of the accredited body that has issued a licence to the insolvency practitioner:
  - (c) the date of each licence that has been issued to the insolvency practitioner:
  - (d) the date on which each licence was recorded in the register: 30
  - (e) the expiry date of each licence that is currently in force (and whether the licence continues in force under **section 25(4)**):
  - (f) the types of insolvency engagements in respect of which the insolvency practitioner is authorised to act under each licence:
  - (g) the conditions placed on each licence that is currently in force: 35
  - (h) details of any suspension or cancellation of a licence that has been issued to the insolvency practitioner or any other action that has been taken on

- a disciplinary matter against the insolvency practitioner under **Parts 3 to 6** by an accredited body, a disciplinary body, or the Registrar in the preceding 7 years:
- (i) details of any prohibition order made in relation to the insolvency practitioner under section 239ADV or 286 of the Companies Act 1993 or section 37 of the Receiverships Act 1993: 5
  - (j) the insolvency practitioner's firm (if any):
  - (k) any other prescribed information.
- (2) The register may also contain— 10
- (a) information about former licensed insolvency practitioners; and
  - (b) information about licences that have been cancelled or suspended or have otherwise expired in the last 7 years; and
  - (c) any other information or documentation that the Registrar considers necessary or desirable for the purposes of the register.
- (3) The Registrar must remove from the register information about a former licensed insolvency practitioner contained in the register under **subsection (2)(a)** if the last licence held by the person was cancelled or expired more than 7 years ago. 15
- (4) The Registrar may, despite **subsection (1)**, omit or remove any information about an insolvency practitioner from the publicly available register if— 20
- (a) the person requests the Registrar to do so on the basis that the information is personal information; and
  - (b) the Registrar considers that the disclosure of the information on the publicly available register would be likely to prejudice the privacy or personal safety of any person. 25

Compare: 2011 No 21 s 41

#### **43 Obligation to notify Registrar of prescribed changes**

- (1) An accredited body must give written notice to the Registrar of any prescribed changes within 10 working days after the accredited body first becomes aware of the changes. 30
- (2) In **subsection (1)**, **prescribed changes** means changes to the information included in the register that are of a kind that is prescribed for the purposes of this section.
- (3) An accredited body that fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$30,000. 35

Compare: 2011 No 21 s 42

#### **44 Registrar must amend register in certain circumstances**

The Registrar must amend the register if—



- (a) an accredited body informs the Registrar of information that is different from the information entered on the register; or
- (b) an annual confirmation contains information that is different from the information entered on the register; or
- (c) the Registrar is satisfied at any time that the register contains a typographical error or a mistake, or omits information supplied to the Registrar; or 5
- (d) regulations otherwise require the register to be amended.

Compare: 2011 No 21 s 44

#### **45 Search of register** 10

- (1) A person may search the register in accordance with **Parts 3 to 6** or regulations.
- (2) The register may be searched only by reference to the following criteria:
  - (a) the name, or any part of the name, of a person:
  - (b) the business address of a person: 15
  - (c) the name of a firm:
  - (d) the name of an accredited body:
  - (e) any other prescribed criteria:
  - (f) any combination of the criteria in **paragraphs (a) to (e)**.
- (3) The register may be searched by— 20
  - (a) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual in accordance with the Privacy Act 1993; or
  - (b) a person for a purpose referred to in **section 41**.
- (4) A person who searches the register for personal information in breach of this section must be treated, for the purposes of Part 8 of the Privacy Act 1993, as having breached an information privacy principle under section 66(1)(a)(i) of that Act. 25

Compare: 2011 No 21 s 46

### **Subpart 4—Accreditation** 30

#### **46 Registrar may grant accreditation**

- (1) The following may apply to the Registrar to become an accredited body:
  - (a) a person:
  - (b) 2 or more persons acting jointly together.

- (2) An application must be made in the manner that is specified by the Registrar and be accompanied by payment of the prescribed fee for the application (if any).
- (3) The Registrar must grant accreditation to the applicant if the Registrar is satisfied that— 5
- (a) the applicant will implement and maintain regulatory systems that are adequate and effective; and
  - (b) the applicant meets the minimum standards prescribed under **section 34(1)(d)**; and
  - (c) if the applicant is a person, the person is a fit and proper person to perform regulatory functions for the purposes of **Parts 3 to 6**; and 10
  - (d) if the applicant is 2 or more persons acting jointly together, each person is a fit and proper person to perform regulatory functions for the purposes of **Parts 3 to 6**.
- (4) An applicant must provide to the Registrar any information that is required by the Registrar to assist the Registrar in determining the application. 15

Compare: 2011 No 21 s 48

#### 47 Accreditation subject to conditions

- (1) The following may be accredited as an accredited body subject to any conditions that the Registrar thinks fit: 20
- (a) a person:
  - (b) 2 or more persons acting jointly together.
- (2) The conditions may include—
- (a) conditions relating to the procedure that an accredited body must follow when performing regulatory functions: 25
  - (b) conditions to ensure that the accredited body's regulatory systems are adequate and effective:
  - (c) conditions requiring the accredited body to seek consent from the Registrar before making any material changes to the rules of the body in relation to the licensing of insolvency practitioners: 30
  - (d) any other prescribed conditions, or conditions that relate to prescribed matters.
- (3) If 2 or more persons acting jointly together are accredited as an accredited body,—
- (a) each of the persons is liable for ensuring compliance with every obligation of the accredited body imposed by or under **Parts 3 to 6**: 35
  - (b) if a court is satisfied that one of the persons has contravened a provision of, or committed an offence under, this Act, each of the other persons must be treated as having contravened the provision or committed the

offence (regardless of each of the other persons' conduct or state of mind):

- (c) a suspension or cancellation of the accreditation under **section 57** applies in relation to all of the persons:
  - (d) the provisions of **Parts 3 to 6** apply with all necessary modifications. 5
- (4) The Registrar may, at any time after accreditation is granted or treated as having been granted, by written notice to any accredited body, vary, remove, add to, or substitute any conditions of accreditation.
- Compare: 2011 No 21 s 49
- 48 Rules of accredited bodies** 10
- (1) An accredited body must have rules that provide for—
    - (a) the investigation of complaints against a member or former member of the accredited body:
    - (b) the hearing of complaints and other matters by a disciplinary body:
    - (c) appeals against decisions of a disciplinary body: 15
    - (d) the kinds of conduct for which a member or former member of the accredited body may be disciplined:
    - (e) the actions that may be taken in respect of, and the penalties that may be imposed on, a member or former member of the accredited body for such conduct: 20
    - (f) eligibility to carry out insolvency engagements:
    - (g) the code of conduct or ethics that governs the professional conduct of the members of the accredited body.
  - (2) The rules may contain any other provisions that are not inconsistent with **Parts 3 to 6** or any other Act or any rule of law. 25
  - (3) The accredited body must, not later than 5 working days after amending or replacing its rules, provide a copy of the new or amended rules to the Registrar for registration.
  - (4) The rules of an accredited body that relate to the matters referred to in **subsection (1)** are a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 30
  - (5) If the New Zealand Institute of Chartered Accountants is accredited as an accredited body,—
    - (a) **subsections (1) to (4)** do not apply in relation to the rules or the code of ethics described in section 8 of the New Zealand Institute of Chartered Accountants Act 1996; and 35
    - (b) in relation to the Institute, a reference in **Parts 3 to 6** to the rules or to a code of ethics must be read as a reference to the rules or to the code of

ethics described in section 8 of the New Zealand Institute of Chartered Accountants Act 1996.

**49 Accredited bodies must supply report and annual confirmation to Registrar**

- (1) An accredited body must supply a report and an annual confirmation to the Registrar as specified by the Registrar in a direction under **subsection (4)**. 5
- (2) The report must—
- (a) be supplied in the manner and form specified by the Registrar in a direction under **subsection (4)**; and
  - (b) contain— 10
    - (i) information relating to the accredited body’s performance in carrying out regulatory functions for the purposes of **Parts 3 to 6**; and
    - (ii) information relating to any material changes to the accredited body’s regulatory systems that it has implemented, is in the process of implementing, or proposes to implement (including stating what it has done in response to any direction issued under **section 54**); and 15
    - (iii) any other prescribed information.
- (3) The annual confirmation must— 20
- (a) be supplied in the form (if any) specified by the Registrar in a direction under **subsection (4)** and be accompanied by the prescribed fee (if any); and
  - (b) either—
    - (i) confirm that, as at the date of the confirmation, the information supplied to the Registrar in respect of the licences issued by the accredited body is correct to the best of the accredited body’s knowledge; or 25
    - (ii) contain updated information to ensure that, as at the date of the confirmation, the information referred to in **subparagraph (i)** is correct to the best of the accredited body’s knowledge; and 30
  - (c) contain, or be accompanied by, any other prescribed information or documents.
- (4) The Registrar must—
- (a) prepare a direction that specifies the following: 35
    - (i) when reports and annual confirmations must be supplied:
    - (ii) the manner and form in which reports must be supplied:
    - (iii) the form (if any) in which annual confirmations must be supplied; and

- (b) send a copy of the direction to each accredited body; and
- (c) publish the direction on an Internet site maintained by or on behalf of the Registrar.
- (5) The direction must provide for each report (other than the first report supplied by an accredited body) to be supplied not more than 4 years after the last report was supplied (but may provide for reports to be supplied more frequently). 5
- (6) An accredited body that fails to supply a report and an annual confirmation in accordance with this section commits an offence and is liable on conviction to a fine not exceeding \$50,000. 10
- Compare: 2011 No 21 ss 43, 51
- 50 Registrar must publish plan relating to insolvency practitioner regulation and oversight**
- (1) The Registrar must, at intervals of not more than 4 years, publish on an Internet site maintained by or on behalf of the Registrar a plan relating to its intentions in relation to insolvency practitioner regulation and oversight under **Parts 3 to 6**. 15
- (2) The plan must relate to the next financial year and 3 or more further financial years.
- (3) The plan must describe, in relation to insolvency practitioner regulation and oversight,— 20
- (a) the specific effects, outcomes, or objectives that the Registrar seeks to achieve or contribute to; and
- (b) the ways in which the Registrar expects accredited bodies to contribute to those effects, outcomes, or objectives; and
- (c) how the Registrar proposes to monitor accredited bodies under **section 52**. 25
- (4) In this section and **section 53**, **financial year** means a period of 12 months starting on 1 July and ending on the close of 30 June. 30
- Compare: 2011 No 21 s 52
- 51 Publication of policies**
- The Registrar must publish, on an Internet site maintained by or on behalf of the Registrar, policies in relation to how the Registrar acts, or proposes to act,—
- (a) in determining applications for accreditation; and
- (b) in imposing, varying, removing, or adding to conditions of accreditation. 35
- Compare: 2011 No 21 s 53

**52 Registrar must monitor regulatory systems**

- (1) The Registrar must monitor the regulatory systems of each accredited body in order to determine the extent to which those systems are adequate and effective.
- (2) An accredited body must give all reasonable assistance to the Registrar to enable the Registrar to act under **subsection (1)**. 5
- (3) An accredited body commits an offence if the accredited body—
- (a) fails to comply with **subsection (2)**; or
- (b) otherwise hinders, obstructs, or delays the Registrar in acting under **subsection (1)**. 10
- (4) An accredited body that commits an offence under **subsection (3)** is liable on conviction to a fine not exceeding \$30,000.

Compare: 2011 No 21 s 54

**53 Registrar must report on regulatory systems of each accredited body**

- (1) The Registrar must, at intervals of not more than 4 years, prepare a report on the extent to which the regulatory systems of each accredited body are adequate and effective. 15
- (2) However, the Registrar does not need to prepare a report in respect of an accredited body if the Registrar has, in the preceding financial year, been monitoring the accredited body under **section 52** for less than 6 months. 20
- (3) If, in the period since the latest report under **subsection (1)** was published, the Registrar has issued a notice or direction to an accredited body under **Parts 3 to 6**, the report under **subsection (1)** must describe the extent to which the accredited body has complied with the notice or direction.
- (4) The Registrar must, not later than 1 month after preparing a report, publish a notice in the *Gazette* that— 25
- (a) states that the Registrar has published a report on the adequacy and effectiveness of the regulatory systems of 1 or more accredited bodies; and
- (b) names the accredited bodies covered by the report; and 30
- (c) summarises any directions given under **section 54** in the preceding financial year (but not the reasons); and
- (d) specifies where a copy of the report may be inspected or obtained.
- (5) The Registrar must, after publishing a notice in the *Gazette*, publish a copy of the report on an Internet site maintained by or on behalf of the Registrar. 35
- (6) This section does not prevent the Registrar from preparing and publishing at any time any other reports about the extent to which the regulatory systems of an accredited body are adequate and effective.

Compare: 2011 No 21 s 55

**54 Registrar may give directions**

- (1) The Registrar may give a direction under this section to an accredited body if the Registrar is satisfied on reasonable grounds that—
- (a) the body’s regulatory systems are not adequate and effective; or
  - (b) the adequacy or effectiveness of its regulatory systems can be improved in order to better meet the purposes of **Parts 3 to 6**; or 5
  - (c) its regulatory systems are inconsistent in a material respect with the Registrar’s plan under **section 50**.
- (2) The direction may require the accredited body, within the time and in the manner specified by the Registrar in the direction, to amend its regulatory systems to effectively address the matters that caused the Registrar to give the directions. 10

Compare: 2011 No 21 s 56

**55 Requirements relating to directions**

A direction given under **section 54** must be in writing and state the grounds on which it is given. 15

Compare: 2011 No 21 s 57

**56 Offence to contravene directions**

An accredited body that fails to comply with a direction under **section 54** commits an offence and is liable on conviction to a fine not exceeding \$50,000. 20

Compare: 2011 No 21 s 58

**57 Registrar may suspend or cancel accreditation or censure accredited body in certain circumstances**

- (1) **Subsections (2) and (3)** apply if the Registrar is satisfied on reasonable grounds that— 25
- (a) an accredited body has failed to—
    - (i) comply with a condition of its accreditation; or
    - (ii) supply a report or an annual confirmation in accordance with **section 49**; or
    - (iii) comply with a direction under **section 54**; or 30
    - (iv) comply with **section 23, 26, 43, 52(2), or 65**; or
  - (b) the regulatory systems of an accredited body are not adequate and effective.
- (2) The Registrar may make an order that does 1 or more of the following: 35
- (a) suspends the accreditation of the accredited body—
    - (i) for any period that the Registrar thinks fit; or

- (ii) until the body does the things specified by the Registrar in order to demonstrate that accreditation should be reinstated:
- (b) cancels, with effect from a specified date, the accreditation of the accredited body:
- (c) provides that a body whose accreditation has been cancelled may not apply to be re-accredited before the expiry of a specified period: 5
- (d) censures the accredited body:
- (e) requires the accredited body to pay to the Registrar any sum that the Registrar considers just and reasonable towards the costs and expenses of, and incidental to, the Registrar's consideration of whether to take any action under this section: 10
- (f) does anything that can be done by an order under **section 59**.
- (3) However, the Registrar may suspend or cancel the accreditation of an accredited body only if the Registrar is satisfied on reasonable grounds that,—
- (a) in the case of **subsection (1)(a)**, the failure or failures (as the case may be) are serious or persistent; or 15
- (b) in the case of **subsection (1)(b)**, the regulatory systems of the accredited body are seriously inadequate or ineffective.
- (4) The Registrar must cancel the accreditation of an accredited body if the accredited body surrenders its accreditation. 20
- Compare: 2011 No 21 s 59

## 58 Requirements relating to orders

An order made under **section 57** must be in writing and state the grounds on which it is made.

Compare: 2011 No 21 s 60

## 59 Effect of suspension or cancellation on licences issued by accredited body or former accredited body

- (1) If the accreditation of an accredited body (**B**) is—
- (a) suspended under **section 57**, each licence issued by B is treated as suspended during the period in which B's accreditation is suspended: 30
- (b) cancelled under **section 57**, each licence issued by B is treated as cancelled.
- (2) The Registrar may order, on the conditions that the Registrar thinks fit, that **subsection (1)** does not apply to 1 or more licences, 1 or more classes of licence, or all licences issued by B. 35
- (3) An order under **subsection (2)** may, in relation to a licence, a class of licences, or all licences issued by B, be made in respect of 1 or more insolvency engagements, 1 or more classes of insolvency engagement, or all insolvency engagements.



- (4) If any licences issued by B continue in force as a result of an order under **subsection (2)**, the Registrar may order, on the conditions that the Registrar thinks fit, that another accredited body may perform regulatory functions in respect of those licences as if the other accredited body issued those licences (and that other accredited body may be the Registrar acting under **section 84**). 5

Compare: 2011 No 21 s 61

## 60 Registrar must give opportunity to make submissions

The Registrar may exercise a power referred to in **section 47(4), 54, or 57** only if— 10

- (a) the Registrar gives the accredited body at least 10 working days' written notice of the following matters before exercising the power:
- (i) that the Registrar may exercise a power under **section 47(4), 54, or 57** (as the case may be); and
  - (ii) the reasons why the Registrar is considering exercising that power; and 15
- (b) the Registrar gives the accredited body or its representative an opportunity to make written submissions and to be heard on the matter within that notice period.

Compare: 2011 No 21 s 62 20

## 61 Appeals

- (1) A person may appeal to the court against any decision of the Registrar—
- (a) to decline to grant accreditation to the person under this subpart; or
  - (b) to include conditions under **section 47** on the person's accreditation or proposed accreditation; or 25
  - (c) to give a direction under **section 54** in respect of the person's accreditation; or
  - (d) to make an order under **section 57** in respect of the person's accreditation; or
  - (e) to decline to make an order under **section 59(2)** in respect of the person's licence. 30
- (2) An appeal must be brought—
- (a) in accordance with the rules of court; and
  - (b) within 20 working days after notice of the decision is communicated to the appellant, or within any further time the court allows on an application made before or after the period expires. 35
- (3) The court may make an order, or otherwise exercise a power, on an appeal under **subsection (1)(e)** only in respect of 1 or more of the parties to the proceedings.

- (4) In **subsection (1)(a) to (d)**, references to a **person** may include 2 or more persons acting jointly together that have applied to become an accredited body.  
Compare: 2011 No 21 s 63
- 62 Provisions relating to disciplinary proceedings conducted by accredited bodies** 5
- (1) Sections 9 to 13 and 16 of the New Zealand Institute of Chartered Accountants Act 1996 apply (with any necessary modifications) to an accredited body in relation to persons to whom it has issued a licence as if references to—
- (a) the Professional Conduct Committee were references to the committee or other authority of the accredited body that has the function of investigating complaints against members and former members of the accredited body; and 10
- (b) a disciplinary body were references to a disciplinary body of the accredited body; and
- (c) the Institute were references to the accredited body; and 15
- (d) the rules were references to the rules of the accredited body published under **section 48**.
- (2) **Subsection (1)** does not apply if the accredited body is the New Zealand Institute of Chartered Accountants. 20  
Compare: 2011 No 21 s 64

### Subpart 5—Investigations by Registrar

- 63 Registrar may start or take over investigation or investigate in conjunction with accredited body**
- (1) The Registrar may, if satisfied on reasonable grounds that it is in the public interest to do so,— 25
- (a) start an investigation; or
- (b) take over an investigation started by an accredited body; or
- (c) conduct an investigation in conjunction with an accredited body.
- (2) However, the Registrar must not investigate, under this subpart, the conduct of a member of an accredited body in respect of an insolvency engagement unless— 30
- (a) the Registrar is satisfied on reasonable grounds that—
- (i) the accredited body has decided not to investigate the matter; or
- (ii) the matter is not being investigated promptly or otherwise in a reasonable manner by, or on behalf of, the accredited body; or 35
- (b) the accredited body has asked the Registrar to act under this subpart in respect of the matter.

- (3) In this subpart, an **investigation** is an investigation into the conduct of a licensed insolvency practitioner in respect of 1 or more insolvency engagements.
- (4) This subpart does not limit any other powers of the Registrar, under any other enactment, to investigate or inquire into any matter. 5  
 Compare: 2011 No 21 s 75
- 64 Relationship between Registrar’s investigation and other investigations or proceedings**
- (1) If the Registrar starts, or takes over, an investigation under this subpart in respect of a member of an accredited body, the accredited body may do the following only with the Registrar’s written approval: 10
- (a) start or continue another investigation into the same matter:
  - (b) take any disciplinary or other action against the licensed insolvency practitioner in respect of the same matter.
- (2) However, the Registrar may not act under this subpart in respect of the conduct of a licensed insolvency practitioner if the conduct is, or has been, the subject of proceedings before a disciplinary body. 15  
 Compare: 2011 No 21 s 76
- 65 Accredited body must give reasonable assistance**
- (1) An accredited body must give all reasonable assistance to the Registrar to enable an investigation by the Registrar involving a member of the accredited body to be carried out. 20
- (2) Without limiting **subsection (1)**, the Registrar may, by written notice, require an accredited body to do 1 or more of the following: 25
- (a) supply to the Registrar, within the time and in the manner specified in the notice, any information or class of information specified in the notice: 25
  - (b) produce to the Registrar, or to a person specified in the notice acting on the Registrar’s behalf in accordance with the notice, any document or class of documents specified in the notice (within the time and in the manner specified in the notice): 30
  - (c) reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice):
  - (d) appear before the Registrar, at a time and place specified in the notice, to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice. 35
- (3) If a document is produced in response to a notice under **subsection (2)**, the Registrar, or the person to whom the document is produced, may—

- (a) inspect and make records of that document; and
- (b) take copies of the document or extracts from the document.
- (4) An accredited body commits an offence if the accredited body—
- (a) fails to comply with **subsection (1)** or a notice under **subsection (2)**;  
or 5
- (b) otherwise hinders, obstructs, or delays the Registrar in carrying out an investigation.
- (5) An accredited body that commits an offence under **subsection (4)** is liable on conviction to a fine not exceeding \$30,000. 10
- Compare: 2011 No 21 s 77 10
- 65A Accredited bodies required to provide information have privileges of witnesses in court**
- Every person required to provide information and documents to the Registrar under **section 65** has the same privileges as witnesses in proceedings before a court. 15
- 66 Disciplinary powers of Registrar**
- (1) The Registrar may, after acting under **section 63**, make 1 or more of the orders specified in **subsection (2)** if satisfied on reasonable grounds that 1 or more insolvency engagements carried out by a licensed insolvency practitioner (**P**) are not being, or have not been, carried out— 20
- (a) in accordance with—
- (i) the requirements imposed by or under **Parts 3 to 6** or any other enactments that relate to the carrying out of insolvency engagements; or
- (ii) any relevant standards relating to insolvency engagements; or 25
- (b) with reasonable care, diligence, and skill.
- (2) The orders are—
- (a) an order that P’s licence be cancelled:
- (b) an order that P may not apply to be relicensed, whether with the same or a different accredited body, before the expiry of a specified period: 30
- (c) an order that P’s licence be suspended for the period that the Registrar thinks fit:
- (d) an order prohibiting P from acting in respect of a specified insolvency engagement or a specified class or specified classes of insolvency engagement, or as a solvent company liquidator,— 35
- (i) permanently; or
- (ii) for any period that the Registrar thinks fit:

- (e) an order that P pay to the Registrar any sum that the Registrar considers just and reasonable towards the costs and expenses of, and incidental to, the Registrar's investigation and the proceedings:
- (f) an order that P complete a specified competence programme, and **section 26(3)** applies, with any necessary modifications, in relation to a competence programme: 5
- (g) an order prohibiting P from acting in respect of a specified insolvency engagement or a specified class or specified classes of insolvency engagement, or as a solvent company liquidator, except under the supervision of another licensed insolvency practitioner: 10
- (h) an order that P comply with any specified requirement that the Registrar considers appropriate in connection with the grounds referred to in **subsection (1)**.
- (3) The Registrar may exercise a power referred to in this section in relation to P only if— 15
- (a) the Registrar gives P at least 10 working days' written notice of the following matters before exercising the power:
- (i) that the Registrar may exercise a power under this section; and
- (ii) the reasons why the Registrar is considering exercising that power; and 20
- (b) the Registrar gives P or P's representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- (4) An order under this section may take effect immediately or at a later date specified in the order. 25
- Compare: 2011 No 21 s 78

## 67 Miscellaneous matters relating to orders

- (1) An order made under **section 66** must be in writing and state the grounds on which it is made.
- (2) The Registrar must give a copy of the order to— 30
- (a) the licensed insolvency practitioner against whom the order is made; and
- (b) the accredited body that issued the licence to that licensed insolvency practitioner.

Compare: 2011 No 21 s 79

Subpart 6—Overseas practitioners, members of recognised bodies, and members of religious societies and orders

- 68 Exemption from membership requirement for certain overseas practitioners, members of recognised bodies, and members of religious societies and orders** 5
- (1) This section applies in respect of a person (**P**) if—
- (a) the accredited body is satisfied that **P** is,—
    - (i) an overseas insolvency practitioner; or
    - (ii) a member of a recognised body; or
    - (iii) a practising member of a religious society or order whose doctrines or beliefs preclude membership of any organisation or body other than the religious society or order of which **P** is a member; and 10
  - (b) the accredited body has entered into a written arrangement with **P** that complies with **section 69**; and 15
  - (c) the accredited body is satisfied that **P**—
    - (i) has satisfactory competence, qualifications, and experience to act as an insolvency practitioner; and
    - (ii) is otherwise a fit and proper person to be an insolvency practitioner. 20
- (2) In this section, a **recognised body** is a person (for example, an incorporated professional body or industry group) that is recognised, by notice in the *Gazette*, by the Registrar for the purposes of this section.
- Compare: 2013 No 101 ss 36R, 36S
- 69 Requirements for arrangement** 25
- (1) For the purposes of **section 68**, the arrangement must—
- (a) state that the arrangement is entered into for the purposes of this section; and
  - (b) include a binding agreement by **P** to be subject to the rules of the accredited body that are described in **section 48(1)**. 30
- (2) The arrangement may provide for any other matters that the accredited body thinks fit, including matters relating to—
- (a) ongoing competence requirements:
  - (b) reports and access to information:
  - (c) the promotion of compliance with the requirements imposed by or under any enactment that relate to the carrying out of insolvency engagements: 35

- (d) the promotion of compliance with any relevant standards relating to insolvency engagements:
- (e) the promotion of reasonable care, diligence, and skill in the carrying out of insolvency engagements:
- (f) the payment of fees: 5
- (g) the term of the arrangement.
- (3) Without limiting the means of enforcing the arrangement, the arrangement is binding on P as if P were a member of the accredited body.  
Compare: 2013 No 101 s 36T
- 70 End of exemption from membership requirement** 10
- Section 68** ceases to apply in respect of a person (**P**) and the accredited body must revoke any licence issued to P in reliance on **section 68** if—
- (a) the accredited body ceases to be satisfied as referred to in **section 68(1)(a)** and gives written notice of that fact to P; or
- (b) the written arrangement is terminated or otherwise comes to an end (unless a subsequent arrangement that complies with **section 69** is entered into); or 15
- (c) the accredited body is satisfied that P failed to comply with the written arrangement in any material respect.
- Compare: 2013 No 101 s 36R(2) 20

## Part 5

### Provisions relating to insolvency practitioners

#### Subpart 1—Duty to report serious problems

- 71 Duty of insolvency practitioners to report serious problems**
- (1) A person must take the steps set out in **subsections (3) and (4)** if the person has reasonable grounds to believe that a serious problem has arisen in relation to a company in respect of which the person acts as an insolvency practitioner. 25
- (2) ~~A—~~In this section, a **serious problem** means any of the following circumstances:
- (a) the company, or a past or present director, officer, or shareholder of the company, has committed an offence: 30
- (b) a person who has taken part in the formation, administration, management, liquidation, or receivership of the company—
- (i) has misapplied or retained or become liable or accountable for the company's money or property (whether in New Zealand or elsewhere); or 35

- (ii) is guilty of negligence, default, or breach of duty or trust in relation to the company:
  - (c) a past or present director of the company has breached a director's duty in a material respect:
  - (d) the company has been managed in a way that has materially contributed to the company being a company described in section 385(1) of the Companies Act 1993. 5
- (3) As soon as practicable after identifying the serious problem, the person must report it to—
  - (a) the Registrar; and 10
  - (b) if the company is a licensed insurer (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010), the Reserve Bank of New Zealand; and
  - (c) if the serious problem concerns the possible commission of an offence, one or both of the following: 15
    - (i) the New Zealand Police:
    - (ii) the body responsible for investigating or prosecuting the offence.
- (4) The report must identify each person to whom the report is provided.
- (5) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 20
- (6) Nothing in this section requires an insolvency practitioner to take any steps to investigate whether a serious problem has arisen.

## 72 Insolvency practitioner must provide further assistance after providing report

- (1) If a person makes a report under **section 71**, the person must give the persons to whom the report was provided any assistance that they may reasonably require by way of— 25
  - (a) information; and
  - (b) access to documents; and
  - (c) facilities for inspecting and copying documents. 30
- (2) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

## 73 Confidentiality of information and documents

- (1) This section applies to the following information and documents:
  - (a) information and documents supplied or disclosed to, or obtained by, the Registrar under **section 71 or 72**: 35
  - (b) information derived from information and documents referred to in **paragraph (a)**.



- (2) The Registrar must not publish or disclose any information or document to which this section applies unless—
- (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
  - (b) the information is in a statistical or summary form; or 5
  - (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the Registrar by this Act or any other enactment; or
  - (d) the publication or disclosure of the information or document is made to a law enforcement or regulatory agency for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the law enforcement or regulatory agency by any enactment; or 10
  - (e) the publication or disclosure of the information or document is to a person who the Registrar is satisfied has a proper interest in receiving the information or document; or 15
  - (f) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential. 20
- (3) In relation to personal information, this section applies subject to the Privacy Act 1993.  
Compare: 2011 No 5 s 59
- 74 Conditions relating to publication or disclosure of information or documents 25**
- (1) The Registrar may, by written notice to a person to whom any information or document is published or disclosed under **section 73(2)(c) to (f)**, impose any conditions in relation to the publication, disclosure, or use of the information or document by the person.
  - (2) The Registrar must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of an individual. 30
  - (3) Conditions imposed under **subsection (1)** may include, without limitation, conditions relating to—
    - (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993): 35
    - (b) the storing of, the use of, or access to anything provided:
    - (c) the copying, returning, or disposing of copies of documents provided.

- (4) A person who refuses or fails, without reasonable excuse, to comply with a condition commits an offence and is liable on conviction to a fine not exceeding \$75,000.  
Compare: 2011 No 5 s 60
- 75 Protection of persons who report serious problems** 5
- (1) Civil, criminal, or disciplinary proceedings must not be brought against a person because the person made a protected disclosure.
- (2) A person must not terminate the appointment of another person because the other person made a protected disclosure.
- (3) A tribunal, a body, or an authority that has jurisdiction in respect of the professional conduct of a person must not make an order against, or do any act in relation to, the person because that person made a protected disclosure. 10
- (4) In this section, **protected disclosure** means a disclosure of information made in accordance with **section 71 or 72**.
- Subpart 2—Restrictions on insolvency practitioners 15
- 77 Meaning of arm’s-length terms**
- A purchase or transaction described in **section 78 or 79** is on **arm’s-length terms** if it is on terms that—
- (a) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or 20
- (b) are less favourable than the terms referred to in **paragraph (a)** for—
- (i) a person described in **section 78(1)**, in the case of **section 78**; or
- (ii) a person defined as P, in the case of **section 79**. 25
- 78 Restriction on purchase of assets**
- (1) This section applies—
- (a) to a person acting as the insolvency practitioner in respect of a company in administration or under a deed of company arrangement, or a company in liquidation, or in respect of the receivership of any property of a company: 30
- (b) if the insolvency practitioner described in **paragraph (a)** is a director, an officer, or an employee of a body corporate,—
- (i) to the body corporate:
- (ii) to any other director, officer, or employee of the body corporate: 35
- (c) if the insolvency practitioner described in **paragraph (a)** is a partner, an officer, or an employee of a partnership or limited partnership,—

- (i) to the partnership or limited partnership:
  - (ii) to any other partner, officer, or employee of the partnership or limited partnership:
  - (d) to a member of the creditors' committee of a company in administration or under a deed of company arrangement: 5
  - (e) to a member of the liquidation committee of a company in liquidation:
  - (f) if a person described in any of **paragraphs (a) to (e)** is a beneficiary or settlor of a trust, to any trustee of the trust.
  - (2) A person to whom this section applies must not, without the leave of the court, purchase any part of the assets of the company unless the purchase is on arm's-length terms. 10
  - (3) A person who fails to comply with **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$75,000.
  - (4) The court may give leave for the purpose of **subsection (2)** on the terms and conditions that it thinks fit. 15
  - (5) The court may set aside a purchase that does not comply with **subsection (2)** and grant the consequential relief that it thinks fit.
- 79 Restriction on purchase of goods or services from person connected with insolvency practitioner**
- (1) This section applies to an insolvency practitioner who is acting as an administrator, a deed administrator, a liquidator, or a receiver of a company. 20
  - (2) An insolvency practitioner must not, without the leave of the court, purchase for the company any goods or services from a person (**P**) if the insolvency practitioner knows, or ought to know, that the insolvency practitioner's connection with P would result in the insolvency practitioner directly or indirectly obtaining a portion of any benefit arising out of the transaction. 25
  - (3) However, **subsection (2)** does not apply to—
    - (a) a transaction that is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between,— 30
      - (i) in the case of a company in administration, in liquidation, or under a deed of company arrangement, the company and P; and
      - (ii) in the case of the receivership of property of a company, the company and P; or
    - (b) a transaction that is conducted on arm's-length terms; or 35
    - (c) a transaction that is conducted with the leave of the court.
  - (4) A person who fails to comply with **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$75,000.

- (5) The court may give leave for the purpose of **subsection (2)** on the terms and conditions that it thinks fit.
- (6) The court may disallow or order the recovery of any benefit made contrary to **subsection (2)**.

## Part 6

5

### Solvent company liquidators, miscellaneous matters, and regulations

#### Subpart 1—Solvent company liquidators

#### 80 Solvent company liquidators

- (1) A person who acts as a solvent company liquidator must be one of the following: 10
- (a) a licensed insolvency practitioner:
  - (b) a lawyer:
  - (c) a qualified statutory accountant:
  - (d) a member of a professional body recognised under **section 81**.
- (2) A person who acts as a solvent company liquidator in breach of this section commits an offence and is liable on conviction to a fine not exceeding \$75,000. 15

#### 81 Power of Registrar to recognise professional body

- (1) The Registrar may, after receiving an application or at the Registrar's discretion, recognise a professional body for the purposes of **section 80(1)(d)** if, after taking into account the prescribed matters (if any), the Registrar is satisfied that— 20
- (a) the body satisfies the requirements that are prescribed for the purposes of this section; and
  - (b) the members or a class of members of the body have the required skills to carry out solvent company liquidations; and 25
  - (c) the body's rules contain effective disciplinary processes and systems, including in relation to failures by members to comply with their ethical obligations.
- (2) The Registrar may, by written notice,—
- (a) revoke or suspend recognition of a body if— 30
    - (i) the Registrar ceases to be satisfied of the matters in **subsection (1)**; or
    - (ii) any conditions referred to in **paragraph (b) or (c)** are not met; or
  - (b) impose any conditions that the Registrar thinks fit on the recognition of that body; or 35

- (c) vary, revoke, add to, or substitute the conditions referred to in **paragraph (b)**.
- (3) If the Registrar revokes or suspends recognition of a recognised body (**B**), every member of B ceases to be a person who is permitted to act as a liquidator of a solvent company. 5
- (4) The Registrar may order, on the conditions that the Registrar thinks fit, that **subsection (3)** does not apply to 1 or more members of B or in respect of 1 or more solvent liquidations, 1 or more classes of solvent liquidation, or all solvent liquidations.

## Subpart 2—Other miscellaneous matters 10

### 82 Registrar's functions

The Registrar has the following functions under **Parts 3 to 6**:

- (a) to prescribe licensing and other matters under **subpart 2 of Part 4**:
- (b) to establish and maintain a register of licensed insolvency practitioners under **subpart 3 of Part 4**: 15
- (c) to grant accreditation under **subpart 4 of Part 4**:
- (d) to monitor the regulatory systems of accredited bodies, report on the adequacy and effectiveness of those systems, and take action in respect of those systems that are inadequate or ineffective:
- (e) to conduct investigations under **subpart 5 of Part 4**: 20
- (f) to perform or exercise any other functions, powers, and duties conferred or imposed on the Registrar by or under **Parts 3 to 6**.

Compare: 2011 No 21 s 5

### 83 Registrar's power of inspection

- (1) The Registrar may exercise a power described in **subsection (2)**— 25
- (a) if, in the Registrar's opinion, it is in the public interest to do so; and
- (b) for any of the following purposes:
- (i) ascertaining whether information provided to the Registrar is correct:
- (ii) ascertaining whether a licensed insolvency practitioner, or any other person acting in connection with an insolvency engagement, is complying, or has complied, with **Parts 3 to 6**: 30
- (iii) ascertaining whether the Registrar should exercise any of the Registrar's rights or powers under **Parts 3 to 6**:
- (iv) detecting offences against **Parts 3 to 6**, the Companies Act 1993, and the Receiverships Act 1993. 35
- (2) The Registrar may—

- (a) require a person, in relation to information provided to the Registrar, to—
- (i) confirm that the information is correct; or
  - (ii) correct the information; or
- (b) require a person to produce for inspection relevant documents within the person's possession or control; or 5
- (c) inspect and take copies of relevant documents; or
- (d) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; or 10
- (e) retain relevant documents for a period that is, in all the circumstances, reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence.
- (3) When exercising the powers described in **subsection (2)(a) or (b)**, the Registrar may specify— 15
- (a) a particular form in which the confirmation or correction must be provided; and
  - (b) a date by which the confirmation or correction must be provided; and
  - (c) whether the confirmation or correction must be verified by the production of original documents or certified copies of original documents or by a statutory declaration. 20
- (4) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while the Registrar or authorised person is exercising a power conferred by **subsection (2)**.
- (5) Any person who fails to comply with a requirement under **subsection (2)(a) or (b)** or who acts in contravention of **subsection (4)** commits an offence and is liable on conviction to a fine not exceeding \$30,000. 25
- (6) In this section, **relevant document**, in relation to a company, means a document that contains information relating to—
- (a) the company; or 30
  - (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the company; or
  - (c) the insolvency engagement.
- Compare: 1993 No 105 s 365
- 84 Registrar may act as accredited body** 35
- (1) The Registrar may act as an accredited body if the Registrar—
- (a) suspends or cancels the accreditation of a body under **section 57**; and

- (b) considers that it is in the public interest for the Registrar to act as an accredited body having regard to the purpose of **Parts 3 to 6**.
- (2) If the Registrar decides to act under **subsection (1)**, the Registrar must be treated as being an accredited body (except for the purposes of **subpart 4 of Part 4**). 5
- Compare: 2011 No 21 s 91
- 85 Protection from liability for accredited bodies and others**
- (1) An accredited body is not liable for anything it may do or fail to do in the course of the performance or exercise, or intended performance or exercise, of its functions, powers, or duties under **Parts 3 to 6**, unless it is shown that it acted in bad faith or without reasonable care. 10
- (2) An officer, an employee, or a person (an **agent**) acting on behalf of an accredited body is not liable for anything the agent does or says, or fails to do or say, in the course of the performance or exercise, or intended performance or exercise, of the accredited body's functions, powers, or duties under **Parts 3 to 6**, unless it is shown that the agent acted in bad faith. 15
- (3) Despite **subsections (1) and (2)**, this section does not affect or limit any person's liability for an offence under **Parts 3 to 6** or any other enactment.
- Compare: 2011 No 21 s 93
- 86 Sharing of information and documents between accredited bodies and Registrar** 20
- (1) An accredited body may provide to the Registrar any information, or a copy of any document, that the accredited body—
- (a) holds in relation to the performance or exercise of the accredited body's functions, powers, or duties under the rules of the accredited body or under any enactment; and 25
- (b) considers may assist the Registrar in the performance or exercise of the Registrar's functions, powers, or duties under **Parts 3 to 6** or any other enactment.
- (2) An accredited body may, subject to any conditions imposed by the Registrar, use any information, or a copy of any document, provided to it by the Registrar under any enactment in the accredited body's performance or exercise of its functions, powers, or duties under the rules of the accredited body or under any enactment. 30
- (3) This section applies despite anything to the contrary in any enactment, contract, deed, or document. 35
- Compare: 2011 No 21 s 94

**87 Notice and service of documents**

- (1) Unless **Parts 3 to 6** provides otherwise, if a provision of **Parts 3 to 6** requires or authorises any notice or other document, or any notification, to be given or provided to a person, the notice, document, or notification must be given in writing to the person— 5
- (a) by delivering it personally or by an agent (such as a courier) to the person; or
  - (b) by sending it by post addressed to the person at the person’s usual or last known place of residence or business; or
  - (c) by sending it by email to the person at an email address that is used by the person; or 10
  - (d) in any other manner that the court directs.
- (2) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with **subsection (1)(b)** must be treated as having been given or provided to the person when it would have been delivered in the ordinary course of the post, and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted. 15
- (3) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with **subsection (1)(c)** must be treated as having been given or provided to the person on the next working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that it was properly addressed and sent to the email address. 20
- (4) If a person has died, the notice, document, or notification may be given, in accordance with **subsection (1)**, to the person’s personal representative. 25
- Compare: 2011 No 21 s 95

**88 False declarations and representations**

- (1) A person commits an offence if the person, for the purpose of obtaining any licence or accreditation under **Parts 3 to 6** or for any other purpose relating to **Parts 3 to 6**, either on the person’s own behalf or on behalf of any other person,— 30
- (a) either orally or in writing, makes any declaration or representation to a specified body that, to the person’s knowledge, is false or misleading in any material particular; or
  - (b) provides to a specified body any document knowing that the document— 35
    - (i) contains any declaration or representation that is false or misleading in any material particular; or
    - (ii) is not genuine; or
  - (c) makes use of any document knowing that the document—



- (i) contains any declaration or representation that is false or misleading in any material particular; or
- (ii) is not genuine.
- (2) In **subsection (1), specified body** means an accredited body or the Registrar.
- (3) A person who is convicted of an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$50,000. 5  
Compare: 2011 No 21 s 96
- 89 Registrar may refuse to take step before fee, charge, or cost paid**
- The Registrar may refuse to perform a function or exercise a power under **Parts 3 to 6** in respect of which a fee, charge, or cost is payable unless the fee, charge, or cost is first paid in accordance with **Parts 3 to 6**. 10
- 90 Registrar may refuse to accept document**
- The Registrar may refuse to accept a document under **Parts 3 to 6** if that document—
- (a) is not in the required form (if any); or 15
- (b) does not comply with prescribed requirements (if any).  
Compare: 2011 No 21 s 45
- 91 Power of Registrar to delegate**
- (1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar's functions, duties, and powers under **Parts 3 to 6** except the power of delegation. 20
- (2) A delegation—
- (a) must be in writing; and
- (b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and 25
- (c) may be revoked, in writing, at any time; and
- (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by **Parts 3 to 6** and not by delegation. 30
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.  
Compare: 2011 No 21 s 47

Subpart 3—Regulations and levy provisions**92 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing changes for the purposes of **section 43**: 5
  - (b) prescribing information or documents for the purposes of **sections 23 and 49**:
  - (c) prescribing conditions or matters that conditions may relate to for the purposes of **section 47(2)(d)**:
  - (d) prescribing, or authorising the Registrar to specify,— 10
    - (i) information to be supplied or made available for the purposes of **Parts 3 to 6**:
    - (ii) the format and medium for supplying information or making information available for the purposes of **Parts 3 to 6**:
    - (iii) requirements with which information supplied or made available 15
 for the purposes of **Parts 3 to 6** must comply (for example, that a document be signed by a specified person):
    - (iv) requirements with which information or documents sent or delivered for registration must comply:
  - (e) authorising the Registrar to require payment of any costs incurred by the 20 Registrar:
  - (f) prescribing procedures, requirements, and other matters, not inconsistent with **Parts 3 to 6**, for the register, including matters that relate to— 25
    - (i) the operation of the register:
    - (ii) the form of the register:
    - (iii) the information to be contained in the register:
    - (iv) access to the register:
    - (v) the location of, and hours of access to, the register:
    - (vi) search criteria for the register:
  - (g) prescribing fees and charges that the Registrar may require to be paid to 30 the Registrar (or the rate at which, or the method by which, fees and charges are to be calculated) in connection with the exercise or performance by the Registrar of any function, power, or duty conferred by or under **Parts 3 to 6**:
  - (h) providing for any other matters contemplated by **Parts 3 to 6**, necessary 35 for its administration, or necessary for giving it full effect.
- (2) Regulations made under ~~subsection (1)(f) or (h)~~ **subsection (1)(e) or (g)** may—

- (a) prescribe the method of payment of a fee, charge, or cost; and
  - (b) authorise the Registrar to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee, charge, or cost in relation to any person or class of persons.
- (3) Any fee, charge, cost, or other amount payable to the Registrar by or under **Parts 3 to 6** is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Registrar. 5

Compare: 2011 No 21 s 84

### **92A Levy of persons registered or incorporated under certain Acts**

- (1) Every company, or every company that is included in a prescribed class of companies, must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations. 10
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levies.
- (3) Levies must be prescribed on the basis that the following costs should be met fully out of the levies: 15
  - (a) a portion of the costs of the Registrar in performing or exercising the Registrar's functions, powers, and duties under **Parts 3 to 6**, where the size of the portion to be met by levies under **Parts 3 to 6** is determined by the Minister; and 20
  - (b) the costs of collecting the levy money.
- (4) Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.
- (5) The regulations may— 25
  - (a) specify the class or classes of companies that are required to pay a levy:
  - (b) specify the amount of levies, or method of calculating or ascertaining the amount of levies:
  - (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs: 30
  - (d) refund, or provide for refunds of, any over-recovery of the actual costs:
  - (e) provide for the payment and collection of levies:
  - (f) provide different levies for different classes of companies:
  - (g) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced: 35
  - (h) for the first financial year to which a levy applies, include in a levy amount or method the costs relating to establishing the register:

- (i) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced;
- (j) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases. 5
- (6) If a company is in 2 or more classes of companies in respect of which different levies have been prescribed, the company must pay each of those levies (unless the regulations provide otherwise).
- (7) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Registrar, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown. 10

Compare: 2011 No 5 s 68

## **92B Minister must consult about levy regulations**

- (1) Before recommending the making of regulations under **section 92A**, the Minister must consult— 15
- (a) the persons or organisations that the Minister considers are able to represent the views of the companies that will be liable to pay a levy under the proposed regulations; and
- (b) any other representatives of persons whom the Minister believes to be significantly affected by the proposed regulations. 20
- (2) Regulations made under **section 92A** are not invalid on the grounds that—
- (a) **subsection (1)** was not complied with before the Minister recommended the making of the regulations; or
- (b) the consultation carried out was about a specific rate or specific rates of levy that differ from the rate or rates set in the regulations. 25

## **93 Consequential amendments**

The enactments specified in **Schedule 5** are amended in the manner indicated in that schedule.

## Schedule 4

### Transitional, savings, and related provisions

s 19

#### Part 1

#### Provisions relating to Parts 3 to 6 as enacted 5

#### 1 Interpretation

In this Part,—

**4-month date** means the day that immediately follows the expiry of the 4-month period that starts on the commencement date

**accredited insolvency practitioner** means a person who, on the commencement date,— 10

(a) is accredited by an accredited body to undertake insolvency engagements; and

(b) is either—

(i) a member of the accredited body; or 15

(ii) a person to whom **section 68** applies

~~**commencement date**, in relation to a provision of **Parts 3 to 6**, means the date on which the provision comes into force~~

**commencement date** means the date on which **section 21** comes into force

**first anniversary** means the day that immediately follows the expiry of the 12-month period that starts on the commencement date 20

**transitional licence** means a licence that an accredited insolvency practitioner is treated as holding under **clause 2(1)**

**transitional requirements** means requirements prescribed under **section 34(1)(f)** for the purpose of this schedule. 25

#### 2 Accredited insolvency practitioner to be treated as licensed insolvency practitioner on commencement

(1) A person who is an accredited insolvency practitioner and who satisfies the transitional requirements (if any) must be treated, on and from the commencement date, as a licensed insolvency practitioner who holds a licence under **sub-part 1 of Part 4** that— 30

(a) authorises the person to undertake the types of insolvency engagements for which the person is accredited; and

(b) is recorded in the register.

(2) The provisions of **Part 3 to 6** (except for **sections 22, 23, and 25**) apply in relation to a transitional licence. 35

### 3 When transitional licence expires

**Clause 2(1)** ceases to apply to an accredited insolvency practitioner, and the practitioner is no longer to be treated as holding a licence under **subpart 1 of Part 4**,—

- (a) if the Registrar (acting under **section 57**) suspends or cancels the accreditation of the accredited body that accredited the practitioner, from the date on which the Registrar suspends or cancels the accreditation: 5
- (b) in relation to a practitioner to whom **section 68** applies, from the date on which **section 68** ceases to apply in respect of the practitioner:
- (c) if the transitional licence is ~~suspended or cancelled~~ under **subpart 1 of Part 4**, from the date on which the licence is ~~suspended or cancelled~~: 10
- (d) if the practitioner fails to apply for a licence before the end of the 4-month date, from the end of that day:
- (e) if the practitioner does apply for a licence before the end of the 4-month date and— 15
  - (i) the accredited body decides not to issue the licence, from the end of the day that is 20 working days after notice of the decision is communicated to the practitioner:
  - (ii) the licence is issued, from the issue date of the licence:
  - (iii) the accredited body has not made a decision on the application before the end of the first anniversary, from the end of the first anniversary. 20

### 4 Transitional provisions relating to register

- (1) This clause applies in relation to an accredited insolvency practitioner who holds a transitional licence. 25
- (2) Not later than 3 working days after the commencement date, each accredited body must notify the Registrar of the following information:
  - (a) the full name and address of the practitioner:
  - (b) the date on which the insolvency practitioner received accreditation:
  - (c) the types of insolvency engagements for which the practitioner is accredited to act. 30
- (3) The Registrar must ensure that the register maintained under **subpart 3 of Part 4** contains the information that is described in **subclause (2)** for each accredited insolvency practitioner who holds a transitional licence.
- (4) This clause applies in place of **sections 42(1) and 43**. 35

### 5 Application to insolvency engagements already underway

- (1) **Parts 3 to 6** do not apply to—

- (a) the liquidation of a company under Part 16 of the Companies Act 1993 for which a liquidator was appointed before the commencement date; or
- (b) the administration of a company under Part 15A of the Companies Act 1993 for which an administrator was appointed before the commencement date; or 5
- (ba) a company under a deed of company arrangement under Part 15A of the Companies Act 1993 for which the deed of company arrangement was executed before the commencement date; or
- (c) a receivership under the Receiverships Act 1993 for which a receiver was appointed before the commencement date; or 10
- (d) a proposal under subpart 2 of Part 5 of the Insolvency Act 2006 for which a trustee or provisional trustee was appointed before the commencement date.
- (2) Despite **subclause (1)(a)**, a person who, ~~on the commencement date,~~ is the liquidator of a company and who, on the first anniversary, is not a licensed insolvency practitioner must resign on the first anniversary, and section 283 of the Companies Act 1993 (as amended by **Part 1 of the Insolvency Practitioners Act 2010**) applies accordingly. 15
- (3) However, **subclause (2)** does not apply if—
- (a) the board of the company passed a resolution described in section 243(8) of the Companies Act 1993 within 20 working days of the appointment of a liquidator under section 241(2)(a) or (b) of ~~the Companies Act 1993; that Act;~~ and 20
- ~~(b) section 244 of the Companies Act 1993 does not apply in relation to the company.~~ 25
- (b) the liquidator has not called (and is not required to call) a meeting of creditors of the company under section 244 of the Companies Act 1993.
- (4) If **subclause (2)** applies to the liquidation of a company, **sections 280 and 283A** of the Companies Act 1993 (as amended and inserted by **Part 1 of the Insolvency Practitioners Act 2010**) and **Parts 3 to 6** apply to the liquidation on and from the first anniversary. 30
- 6 First plan published under section 50**
- (1) For the purpose of the first plan published under **section 50**, this clause applies in place of **section 50(1) and (2)**.
- (2) The Registrar must publish the first plan— 35
- (a) as soon as is reasonably practicable after **section 50** comes into force; but
- (b) not later than 6 months after **section 50** comes into force.
- (3) The first plan must relate to the following:

- (a) the remaining part of the financial year in which it is published:
- (b) 3 or more further financial years.

**7 Description of compliance with notices or directions in first report published under section 53**

- (1) For the purpose of the first report published under **section 53**, this clause 5 applies in place of **section 53(3)**.
- (2) If, in the period since the commencement of **section 53**, the Registrar has issued a notice or direction to an accredited body under **Parts 3 to 6**, the first report must describe the extent to which the accredited body has complied with the notice or direction. 10



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## Schedule 5

### Consequential amendments

s 93

#### Part 1

#### Amendment to Act

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##### Privacy Act 1993 (1993 No 28)

Schedule 2: insert after the item relating to the Insolvency Act 2006:

**Parts 3 to 6 of the Insolvency Practitioners Act 2010**                      **Section 39**

#### Part 2

#### Amendment to regulations

##### Domestic Violence (Public Registers) Regulations 1998 (SR 1998/342)

10

Schedule 1: insert after the item relating to the Insolvency Act 2006:

**Parts 3 to 6 of the Insolvency Practitioners Act 2010**                      **Section 39**

#### Legislative history

29 May 2019

Divided from Insolvency Practitioners Bill (Bill 141–3) as Bill 141–4B