

House of Representatives

Supplementary Order Paper

Thursday, 28 June 2018

Insolvency Practitioners Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper (SOP) amends the Insolvency Practitioners Bill.

Background

As introduced, the Bill proposed a negative licensing system that would give the Registrar of Companies the power to prohibit individuals from providing corporate insolvency services, or to place them under supervision, for up to 5 years. The select committee recommended replacing the proposed negative licensing system with a registration framework, under which insolvency practitioners would be required to be registered under a new Part 16A of the Companies Act 1993. (The select committee's recommendations were subsequently adopted by the House at second reading.)

Summary of changes

This SOP proposes to change the regulatory framework set out in the Bill to a co-regulatory licensing framework. Rather than being registered under a new Part 16A of the Companies Act 1993, insolvency practitioners would be required to be licensed by an accredited body under a new stand-alone Act (comprising the provisions set out in *new Parts 3 to 6* of the Bill as amended by this SOP).

In addition, this SOP makes changes to the Bill that—

- impose a duty on insolvency practitioners to provide information and assistance to an insolvency practitioner that replaces them;
- empower the court to make an order compensating any person who has suffered loss as a result of an insolvency practitioner's failure to comply with any relevant enactment, rule of law, or court order;
- empower the court to make other orders to sanction insolvency practitioners who fail to comply with any relevant enactment, rule of law, or court order;
- provide that, at a meeting of the creditors of a company or an entity in liquidation or administration, the vote of a related creditor will be disregarded (unless the court orders otherwise);
- extend the circumstances in which an insolvency practitioner will be disqualified from acting in relation to an insolvency engagement by reason of the practitioner's association with the affected company or entity;
- impose obligations on insolvency practitioners to provide detailed reports on insolvency engagements.

This SOP also makes technical, consequential, and drafting amendments.

Clause-by-clause analysis

Clause 2, which is the commencement clause, is amended to provide that certain provisions come into force on the day after the date of Royal assent and that the rest of the Bill's provisions come into force 1 year later (unless brought into force sooner by an Order in Council). The provisions that come into force on the day after the date of Royal assent are the provisions that are required for preparatory steps (for example,

the making of regulations) to support the rest of the provisions that come into force later.

Part 1

Amendments to Companies Act 1993

Part 1 amends the Companies Act 1993.

Subpart 1—Amendments to principal Act

Amendment to Part 1 (Preliminary)

Clause 3A is amended to refer to a licensed insolvency practitioner rather than a registered insolvency practitioner. This reflects the new licensing regulatory framework. Consequential amendments are made throughout the Bill for consistency with the amended terminology.

Amendments to Part 15A (Voluntary administration)

Clause 3B, which substitutes *new sections 239F and 239G*, is amended.

New section 239F is amended to provide that, in order to be appointed as an administrator, a person must be a licensed insolvency practitioner who is permitted to act as the administrator under *Parts 3 to 6*. The amendment also adds a further ground for disqualification from appointment as administrator. The further ground for disqualification is that the person is prohibited from acting as the administrator by an order made under section 239ADV(1). *New section 239F(4)*, which makes it an offence for a person to be appointed as an administrator despite being disqualified, is replaced with a provision that requires that, in order to commit the offence, the person must know or ought reasonably to know that they are disqualified.

New section 239G is amended to provide that a person must, before being appointed as an administrator, certify in writing that they are a licensed insolvency practitioner and permitted to act as administrator of the company under *Parts 3 to 6* (in addition to certifying that they are not disqualified from appointment). The amendment makes it an offence for a person to be appointed as administrator despite failing to certify the relevant matters.

Clause 3C(1), which amends section 239H(2), is deleted. This maintains the status quo by removing the Registrar's ability to appoint a replacement administrator in the event that an administrator's registration as an insolvency practitioner is cancelled.

Clause 3D is amended as a consequence of the change in approach from registration of insolvency practitioners to licensing of insolvency practitioners.

Clause 3E, which amends section 239R, is amended to provide that a person must, before a resolution to appoint that person as a replacement administrator is considered, table the certificate (as well as the written consent) required by *new section 239G* at the relevant meeting of creditors.

Clause 3G, which inserts *new section 239TA*, is amended to improve that section's effectiveness and clarity. The new section imposes obligations on an administrator to provide information and assistance to their successor.

Clause 3H is replaced. The effect is that section 239AI is repealed rather than amended. Section 239AI requires an administrator to report misconduct to the Registrar. This duty is replaced by a new duty on insolvency practitioners to report serious problems (*see subpart 1 of Part 5*).

New clause 3HA is inserted. This clause amends section 239AM. Currently, section 239AM provides that the court may make certain orders, including to set aside a resolution, in circumstances where the outcome of voting on a resolution at a creditors' meeting is determined by a related creditor's vote. The amendment provides that a related creditor's vote on a resolution will be disregarded unless the court orders otherwise. The grounds on which a court may make an order that a related creditor's vote be taken into account are set out in *new section 239AM(2B)*.

New clause 3HB is inserted. This clause inserts *new sections 239AMA and 239AMB*.

New section 239AMA provides that, where the administrator considers that a creditor is a related creditor and the creditor hasn't given the administrator notice to that effect, the administrator must disregard the creditor's vote unless the court orders otherwise. The creditor can apply to the court for an order that its vote be taken into account on the basis that the creditor is not a related creditor.

New section 239AMB provides for the situation where, after a creditors' meeting, the administrator becomes aware that a creditor that voted on a resolution at the meeting was a related creditor, that the related creditor's vote should have been disregarded, and that the outcome would have been different if the vote had been disregarded. In those circumstances, the administrator must notify all known creditors of that fact. The administrator or a creditor may apply to the court for certain orders, including that the resolution be set aside.

Clause 3I, which inserts *new sections 239AP and 239APA*, is amended.

New section 239AP is amended to require the administrator to table at the first creditors' meeting the written consent and certificate required by *new section 239G* (as inserted by *clause 3B*).

New section 239APA sets out the requirements for the interests statement required under *new sections 239R(2)(b)(ii), 239AP(1)(a), and 239ACZAA(1)*.

Clause 3J, which amends section 239ABY, is amended. Section 239ABY provides that, in certain circumstances where a company that is in administration goes into liquidation, the former administrator becomes the liquidator of the company. It is amended to add, as a circumstance in which the administrator becomes the liquidator by default, the circumstance that the person nominated to be the liquidator is not a licensed insolvency practitioner permitted to act as the liquidator under *Parts 3 to 6*. In that case, the administrator must appoint a licensed insolvency practitioner who is permitted to act as the liquidator.

Clause 3K, which inserts *new section 239ABYA*, is amended to improve that section's effectiveness and clarity. The new section requires the person acting as administrator before the appointment of a liquidator to provide information and assistance to the liquidator.

Clause 3L, which substitutes *new sections 239ACD to 239ACEA*, is amended.

New section 239ACD is amended to provide that, in order to be appointed as a deed administrator, a person must be a licensed insolvency practitioner who is permitted to act as the deed administrator under *Parts 3 to 6*. The amendment also adds a further ground for disqualification from appointment as deed administrator. The further ground for disqualification is that the person is prohibited from acting as an administrator, or as a deed administrator, by an order made under section 239ADV(1). *New section 239ACD(4)*, which makes it an offence for a person to be appointed as a deed administrator despite being disqualified, is replaced with a provision that requires that, in order to commit the offence, the person must know or ought reasonably to know that they are disqualified.

New section 239ACE is amended to provide that a person must, before being appointed as a deed administrator,—

- certify in writing that they are a licensed insolvency practitioner and permitted to act as deed administrator of the company under *Parts 3 to 6* (in addition to certifying that they are not disqualified from appointment); and
- table their written consent, certificate, and an interests statement at the watershed meeting or, if applicable, circulate the documents with the draft deed under section 239ACP.

New section 239ACEA sets out the requirements for the interests statement that the deed administrator must table (or circulate, as the case may be).

Technical amendments are made to *clause 3M*, which amends section 239ACH.

Clause 3N, which inserts *new section 239ACJA*, is amended to improve that section's effectiveness and clarity. The new section imposes obligations on a deed administrator who is vacating office to provide information and assistance to their successor.

Clause 3P, which amends section 239ACZ, is amended. *New section 239ACZ(4)* makes it an offence for an administrator not to file accounts with the Registrar as required.

Clause 3Q is amended to insert *new section 239ACZAA*, which requires an administrator to send to creditors regular updates in respect of the interests statement that was prepared when the administrator was appointed.

Clause 3R is replaced. The replacement clause inserts *new sections 239ADUA and 239ADUB*. Those new sections provide for the court to make a compensatory order if satisfied that an administrator or a deed administrator has failed to comply with an enactment, a rule of law, or a court order that applies to them in their capacity as administrator or deed administrator, and that a person has suffered, or is likely to suffer, loss or damage as a result of the failure to comply. The court may make any order it

thinks just to compensate the aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage.

Clause 4, which amends section 239ADV, is amended. Section 239ADV relates to court orders that prohibit a person from acting as an administrator or as a deed administrator. The amendment provides for a copy of the prohibition order to be delivered to the Registrar, and for the Registrar to provide a copy to each accredited body (within the meaning of *Parts 3 to 6*).

New clause 4AB is inserted. This clause amends section 239ADW to provide that a notice of appointment of an administrator must identify who made the appointment or, if the administrator was appointed by the court, who applied to the court for the appointment.

New clause 4AC is inserted. This clause inserts *new section 239ADWA*, which requires a deed administrator who is appointed by the creditors at the watershed meeting to lodge a notice of appointment with the Registrar.

Amendments to Part 16 (Liquidations)

Clause 4B, which amends section 240, is amended. Section 240 is an interpretation section. The definition of liquidator is amended to clarify that that term includes an interim liquidator appointed under section 246.

New clause 4BA is inserted. This clause amends section 240B to provide that *Parts 3 to 6* apply to an association put into liquidation as if the association were a company.

New clause 4BB is inserted. This clause substitutes *new section 241AA*, which imposes restrictions on the appointment of a liquidator by shareholders or by the board after an application has been filed for the court appointment of a liquidator.

New clause 4BC is inserted. This clause inserts *new sections 241AB to 241AE*, which provide that a disposition of company property in the period beginning with an application to appoint a liquidator and ending with the liquidator's appointment is voidable (except in certain circumstances).

New section 241AC provides that a liquidator who wishes to set aside a voidable disposition must file a notice with the court and serve the notice on the party to which the disposition was made and any other party from whom the liquidator intends to recover. The notice must, among other things, specify the disposition and the property or amount that the liquidator wishes to recover. A person who is served with a notice to set aside a voidable disposition may respond with a written notice of objection. If they do not object within 20 working days after they have been served with the notice, the disposition is automatically set aside. If they do object within that time, the disposition is not automatically set aside, but the court may set it aside on the liquidator's application.

New section 241AD empowers the court to make various orders if a disposition is set aside. *New section 241AE* protects the position of third parties who have innocently acquired an interest or a title in the property in certain circumstances (for example, where the third party acquired the interest or title from a person other than the com-

pany, for valuable consideration, and not knowing the circumstances under which the property was acquired from the company).

New clause 4DA is inserted. This clause amends section 245A. Currently, section 245A provides that the court may make certain orders, including to set aside a resolution, in circumstances where the outcome of voting on a resolution at a meeting of creditors is determined by a related creditor's vote. The amendment provides that a related creditor's vote on a resolution will be disregarded unless the court orders otherwise. The grounds on which a court may make an order that a related creditor's vote be taken into account are set out in *new section 245A(2B)*.

New clause 4DB is inserted. This clause inserts *new sections 245B and 245C*.

New section 245B provides that, where the liquidator considers that a creditor is a related creditor and the creditor hasn't given the liquidator notice to that effect, the liquidator must disregard the creditor's vote unless the court orders otherwise. The creditor can apply to the court for an order that its vote be taken into account on the basis that the creditor is not a related creditor.

New section 245C provides for the situation where, after a meeting of creditors, the liquidator becomes aware that a creditor that voted on a resolution at the meeting was a related creditor, that the related creditor's vote should have been disregarded, and that the outcome would have been different if the vote had been disregarded. In those circumstances, the liquidator must notify all known creditors of that fact. The liquidator or a creditor may apply to the court for certain orders, including that the resolution be set aside.

Clause 4E, which amends section 255, is amended to—

- align it with *new sections 255A to 255C*, which are inserted by *new clause 4EA*; and
- require that the notice of appointment (which the liquidator is required to send to the Registrar) identify who made or initiated the appointment of the liquidator; and
- provide that the requirement to prepare an interests statement does not apply to an Official Assignee.

New clause 4EA inserts *new sections 255A to 255C*, which expand the requirements for a liquidator's initial report and subsequent 6-monthly reports.

Clause 4F, which amends section 256, is amended. Section 256 sets out a liquidator's duties in relation to accounts. The amendment replaces the whole section and provides that a liquidator must retain the accounts and records of a liquidation for at least 6 years after the completion of the liquidation (or longer if the Registrar requires).

Clause 4G, which inserts *new section 256A*, is amended to clarify that, where a liquidator deposits the money of a company into a trust account, the liquidator must hold the money on trust for the benefit of the persons legally entitled to those funds. Other technical amendments are also made to *new section 256A*.

Clause 4H, which amends section 257, is amended, and *new clause 4HA*, which inserts *new section 257A*, is added. The amendments set more detailed requirements for a liquidator's final report.

New clause 4HB is inserted to repeal sections 258A and 258B. Section 258A requires the liquidator of a company to report misconduct to the Registrar and section 258B empowers the Registrar to forward reports to the Financial Markets Authority. That duty and that power are replaced by a new duty on insolvency practitioners to report serious problems (*see subpart 1 of Part 5*).

Clause 5, which substitutes *new section 280*, is amended. *New section 280(1A)* is added to set out the criteria that a person must satisfy in order to be appointed a liquidator of a solvent company. *New section 280(2) to (3)* adds further grounds on which a person is disqualified from being appointed or acting as a liquidator of a company. *New section 280(4)*, which makes it an offence for a person to be appointed as a liquidator despite being disqualified, is replaced with a provision that requires that, in order to commit the offence, the person must know or ought reasonably to know that they are disqualified. *New section 280(6)* is added to reflect that an Official Assignee is not subject to the licensing requirement for insolvency practitioners.

Clause 5B, which substitutes *new section 282*, is amended to provide that a person must, before being appointed as a liquidator, certify that they are a licensed insolvency practitioner (in addition to certifying that they are not disqualified from the particular appointment). *New section 282(2)* makes it an offence for a person, with their consent, to be appointed as liquidator despite failing to certify the relevant matters. The offence is punishable by a fine of up to \$10,000.

Clause 5C, which amends section 283, is amended as follows:

- *new section 283(3A)* requires a person who was appointed as a liquidator of a solvent company, and who is not a licensed insolvency practitioner, to resign as liquidator if they become aware that the company is insolvent or that the company was insolvent at the time of their appointment:
- *new section 283(5)* requires a person vacating the office of liquidator to notify the Registrar of that vacancy:
- *new section 283(6)* provides that, if the office of liquidator becomes vacant and, as a result, no person is acting as the liquidator, the Registrar may appoint the Official Assignee or a licensed insolvency practitioner as liquidator:
- *new section 283(9)* makes it an offence for a person to vacate the office of liquidator and fail to notify the Registrar. The offence is punishable by a fine of up to \$10,000.

Clause 5D, which inserts *new section 283A*, is amended to improve that section's effectiveness and clarity. The new section imposes obligations on a liquidator to provide information and assistance to their successor.

Clause 5E, which repeals section 285 and substitutes *new sections 285 and 285A*, is amended. Those new sections provide for the court to make a compensatory order if satisfied that a liquidator has failed to comply with an enactment, a rule of law, or a

court order that applies to them in their capacity as liquidator, and that a person has suffered, or is likely to suffer, loss or damage as a result of the failure to comply. The court may make any order it thinks just to compensate the aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage.

Clause 6, which amends section 286, is amended. Section 286 is amended to give the court additional powers to sanction liquidators who do not comply with relevant duties.

Clause 7A, which had inserted *new Part 16A* (comprising *new sections 316C to 316ZB*), is deleted. *New Part 16A* had required insolvency practitioners to be registered, required the Registrar to establish a register of insolvency practitioners, set out criteria for registration of insolvency practitioners, and set out various duties and restrictions that applied to insolvency practitioners. These provisions have been superseded by the more comprehensive licensing regime set out in *Parts 3 to 6* of the Bill (which, it is proposed, will be enacted as a stand-alone Act).

Amendments to Part 20 (Registrar of Companies)

Clause 7A (replacing the deleted *clause 7A*) amends section 357 to provide that there must be as many Deputy Registrars as may be necessary for the purposes of *Parts 3 to 6* and that the Registrar and Deputy Registrars may exercise and perform the powers, duties, and functions of a Registrar under *Parts 3 to 6*.

Amendments to Part 21 (Offences and penalties)

Clause 8 is amended. The amendment is consequential on other amendments made by *Part 1*.

Amendment to Part 22 (Miscellaneous)

Clause 10 is amended. The amendment is consequential on the deletion of *clause 7A*.

Subpart 2—Consequential amendments and transitional provisions

New clause 10A is inserted. This clause inserts transitional, savings, and related provisions (relating to amendments made by *Part 1*) into Schedule 1AA.

Clauses 11A and 11B are deleted. These clauses were transitional provisions. Transitional matters are now dealt with in Schedule 1AA (as amended by *new clause 10A*).

Part 2

Amendments to Receiverships Act 1993

Part 2 amends the Receiverships Act 1993.

Clause 12A, which amends section 2, is amended to refer to a licensed insolvency practitioner rather than a registered insolvency practitioner. This reflects the new licensing regulatory framework.

New clause 12B is inserted. This clause inserts *new sections 3A and 3B*. *New section 3A* provides for transitional, savings, and related provisions, relating to *Part 2* of the Bill, in *Schedule 3* of the Bill. *New section 3B* provides that the Act binds the Crown.

Clause 13, which substitutes section 5, is amended. *New section 5(1)* is amended to provide that, in order to be appointed as a receiver, a person must be a licensed insolvency practitioner who is permitted to act as a receiver under *Parts 3 to 6*. *New section 5(2)* is amended to add further grounds on which a person is disqualified from being appointed or acting as a receiver. *New section 5(3)*, which makes it an offence for a person to be appointed as a receiver despite being disqualified, is replaced with a provision that requires that, in order to commit the offence, the person must know or ought reasonably to know that they are disqualified.

Clause 13A, which inserts *new section 6A*, is amended to provide that a person must, before being appointed as a receiver, consent to the appointment, certify that they are a licensed insolvency practitioner (as well as certifying that they are not disqualified from appointment), and provide the certificate and consent to the grantor. The amendment makes it an offence for a person to be appointed as receiver despite failing to certify the relevant matters, or to fail to provide the certificate and consent to the grantor.

Clause 13B, which amends section 8, is replaced. Section 8 relates to the notice of appointment that a receiver must provide following the receiver's appointment. *New clause 13B* replaces section 8(1) and (3). *New section 8(1)* requires the notice to be given to the grantor, to the Registrar, and publicly before the end of the next working day after appointment. *New section 8(3)* requires the notice to include a statement that receivers are required to be licensed insolvency practitioners.

Clause 13C, which amends section 11, is amended. In the event of a vacancy in the office of receiver, section 11 requires the person vacating office to give public notice of the vacancy and to notify the person who appointed the receiver.

Clause 13D, which inserts *new section 11A*, is amended to improve that section's effectiveness and clarity. The new section imposes obligations on a receiver to provide information and assistance to their successor.

Clause 13G, which amends section 24, is deleted. Those amendments are included in amendments made by *clause 13H*, which substitutes *new section 24* and inserts *new section 24A*. *New section 24* expands the reporting requirements for receivers.

New clause 13HA is inserted. This clause amends section 26(4) with the effect that a copy of every report prepared under section 23 or 24 must be provided to the Registrar (not just those reports that are prepared in relation to a grantor that is a body corporate).

New clause 13HB is inserted. This clause repeals section 28, which requires a receiver of a grantor that is a company to report suspected offences to the Registrar. This duty is replaced by a new duty on insolvency practitioners to report serious problems (see *subpart 1 of Part 5*).

New clause 13HC is inserted. This clause amends section 29, which requires a receiver to notify the Registrar of the end of a receivership if the grantor is a body corporate. The effect of the amendment is to require a receiver to notify the Registrar of the end of the receivership, whether or not the grantor is a body corporate.

Clause 13I, which substitutes section 36, is amended. The amendment inserts *new section 36A*. *New sections 36 and 36A* provide for the court to make a compensatory order if satisfied that a receiver has failed to comply with an enactment, a rule of law, or a court order that applies to them in their capacity as receiver, and that a person has suffered, or is likely to suffer, loss or damage as a result of the failure to comply. The court may make any order it thinks just to compensate the aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage.

Clause 14, which amends section 37, is amended. The amendments give the court additional powers to sanction receivers who do not comply with relevant duties.

New clause 14A makes a technical amendment to section 40C.

New clause 14B is inserted. This clause inserts the *Schedule 1AA* set out in *Schedule 3* of the Bill. *Schedule 1AA* relates to transitional, savings, and related provisions.

Technical amendments are made in *clause 15*, which amends the Schedule.

Part 3 Preliminary provisions

New clause 16 is the purpose clause. The purpose of *Parts 3 to 6* of the Bill is to regulate insolvency practitioners and to establish an independent oversight system in order to promote—

- quality, expertise, and integrity in the profession of insolvency practitioners; and
- compliance with the statutory duties of insolvency practitioners.

New clause 17 contains an overview of *Parts 3 to 6*.

New clause 18 relates to interpretation.

New clause 19 provides for transitional, savings, and related provisions, relating to *Parts 3 to 6*, in *Schedule 4*.

New clause 20 provides that *Parts 3 to 6* bind the Crown.

Part 4 Licences, accreditation, and role of Registrar

Subpart 1—Licences

Requirement to hold licence

New clause 21 requires a person who acts as an insolvency practitioner to hold a licence that authorises the person to act as an insolvency practitioner in respect of the

insolvency engagement being carried out (being a licence that is recorded in the register of licensed insolvency practitioners). A person who breaches this requirement commits an offence and is liable to a fine not exceeding \$75,000.

Issue of licence

New clause 22 provides for an accredited body to issue a licence to a natural person if—

- the person meets the minimum standards for the issue of a licence that are prescribed by the Registrar and is otherwise a fit and proper person to hold a licence; and
- the person's application for a licence is accompanied by the prescribed fee; and
- the person is a member of the accredited body (or is exempt from the membership requirement under *new clause 68*).

Licence details to be sent to Registrar

New clause 23 requires an accredited body to send to the Registrar (who will maintain the register) notification of the issue of licences.

Conditions

New clause 24 provides for an accredited body to issue a licence subject to conditions (being conditions prescribed under *new subpart 2* as conditions that may, or must, be imposed). It also provides for an accredited body or the Registrar to change the conditions of a licence after the licence is issued.

Duration of licence

New clause 25 provides that a licence must specify the date of its expiry (being not later than 5 years after the date of the issue of the licence).

Ongoing competence requirements

New clauses 26 and 27 provide for—

- persons issued with a licence to complete competence programmes to maintain their ongoing competence; and
- the consequences of failing to satisfy the requirements of the competence programme (for example, changing the conditions of the licence or suspension of the licence).

Cancellation and suspension of licences

New clause 28 sets out the meaning of relevant authority for the purposes of *new clauses 29 to 32*. In those clauses, a relevant authority is an accredited body or a disciplinary body of an accredited body authorised, by the rules of the accredited body, to act under those clauses.

New clauses 29 to 31 provide for the cancellation or suspension of the licence of a person in various circumstances (for example, if the person no longer satisfies the

prescribed minimum standards for the issue of a licence, the person has failed to comply with a condition of the licence, or the person has failed to comply with various obligations under *Parts 3 to 6*).

New clause 32 provides for a licensed insolvency practitioner to have an opportunity to make submissions to the relevant authority before their licence is suspended or cancelled.

Appeals in respect of licensing and related matters

New clause 33 provides for appeals to the court in respect of licensing and certain other decisions of an accredited body or the Registrar.

Subpart 2—Registrar may prescribe licensing and other matters

New clauses 34 and 35 provide for the Registrar to prescribe the following matters in respect of the licensing system established by *Parts 3 to 6* of the Bill:

- the minimum standards for licensing;
- the conditions to which licences must, or may, be subject;
- the requirements for ongoing competence;
- the minimum standards for accreditation that a person must meet in order to be granted accreditation by the Registrar under *new subpart 4*;
- the procedure that accredited bodies must follow when performing regulatory functions;
- various transitional arrangements.

New clause 36 requires the Registrar to be guided by the following principles when prescribing matters:

- the matters must be necessary or desirable to promote quality, expertise, and integrity in the profession of insolvency practitioners or to promote compliance with the statutory duties of insolvency practitioners (or for incidental or consequential matters); and
- the matters should not unnecessarily restrict the licensing of insolvency practitioners; and
- the matters should not impose undue costs on insolvency practitioners or on creditors.

New clause 37 requires the Registrar to consult on proposed notices published under the subpart.

New clause 38 provides that each notice published under *new clause 34* must be made available on the Internet and that each notice is a disallowable instrument for the purposes of the Legislation Act 2012.

Subpart 3—Register of licensed insolvency practitioners

New subpart 3 (new clauses 39 to 45) provides for a register of licensed insolvency practitioners that will be maintained by the Registrar. The register will contain vari-

ous information about licensed insolvency practitioners and the status and relevant history of their licences.

The purpose of the register is—

- to enable any person—
 - to determine whether a person is a licensed insolvency practitioner and, if so, the status and relevant history of the person’s licence; and
 - to choose a suitable person to carry out an insolvency engagement; and
 - to know which licensed insolvency practitioners have been disciplined within the preceding 7 years; and
- 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.

New subpart 3 requires accredited bodies to notify the Registrar of certain relevant changes within 10 working days of the accredited body first becoming aware of the change.

It also provides for searches of the register (including search criteria and search purposes).

Subpart 4—Accreditation

New subpart 4 (new clauses 46 to 62) provides for the accreditation of bodies. Accredited bodies may issue licences and carry out various other regulatory functions for the purposes of *Parts 3 to 6* of the Bill.

New clause 46 provides that the Registrar may grant accreditation to a person (or 2 or more persons jointly) if the Registrar is satisfied that the person (or those persons)—

- will implement and maintain regulatory systems that are adequate and effective; and
- meets the minimum standards for the grant of accreditation prescribed under *new subpart 2*; and
- is a fit and proper person (or, as the case may be, are fit and proper persons) to perform regulatory functions for the purposes of *Parts 3 to 6*.

New clause 47 provides that accreditation may be granted subject to conditions, including—

- conditions relating to the procedure that an accredited body must follow when performing regulatory functions;
- conditions to ensure that the accredited body’s regulatory systems are adequate and effective;
- 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.

New clause 48 provides that accredited bodies must have rules covering certain conduct and disciplinary matters (including, for example, the investigation of complaints,

the hearing of complaints, and appeals against decisions of a disciplinary body). The rules must not be inconsistent with *Parts 3 to 6*. The rules are disallowable instruments for the purposes of the Legislation Act 2012. This means that, among other things, they must be presented to the House of Representatives. The requirement to have rules does not apply to the New Zealand Institute of Chartered Accountants (if the Institute is accredited as an accredited body) because the Institute is already required to have rules covering the same matters under section 8 of the New Zealand Institute of Chartered Accountants Act 1996.

New clause 49 requires every accredited body to supply to the Registrar an annual report that includes information relating to its performance in carrying out regulatory functions for the purposes of *Parts 3 to 6* and information relating to any material changes to its regulatory systems. Each accredited body must also supply an annual confirmation that confirms (or, if necessary, updates) the information supplied to the Registrar in respect of licences issued by the accredited body.

New clauses 50 and 51 require the Registrar to publish,—

- at least every 4 years, a plan relating to the Registrar’s intentions in relation to insolvency practitioner regulation and oversight under the Bill; and
- policies in relation to how the Registrar acts, or proposes to act, in determining applications for accreditation and in imposing conditions of accreditation.

New clauses 52 and 53 require the Registrar to monitor the regulatory systems of each accredited body in order to determine the extent to which those systems are adequate and effective (and to report on those systems).

New clauses 54 to 56 provide for the Registrar to give directions to an accredited body if—

- its regulatory systems are not adequate and effective; or
- the adequacy or effectiveness of the regulatory systems can be improved in order to better meet the purposes of *Parts 3 to 6*; or
- its regulatory systems are inconsistent with the Registrar’s plan under *new clause 50*.

A direction may require the accredited body to amend its regulatory systems to effectively address the matters that caused the Registrar to give the direction. An accredited body that fails to comply with a direction commits an offence and is liable to a fine not exceeding \$50,000.

New clauses 57 and 58 allow the Registrar to suspend or cancel accreditation or to censure an accredited body in certain circumstances, including that—

- the accredited body has failed to comply with a condition of its accreditation, to supply an annual report under *new clause 49*, or to comply with a direction; or
- the regulatory systems of the accredited body are not adequate and effective.

New clause 59 provides that, if the accreditation of a body is cancelled or suspended, each licence issued by the body is treated as cancelled or suspended (unless the Registrar orders otherwise).

New clause 60 provides for an accredited body to have an opportunity to make submissions to the Registrar before various decisions are made under *new subpart 4*.

New clause 61 provides for appeals to the court against decisions of the Registrar under *new subpart 4*.

New clause 62 provides that certain provisions of the New Zealand Institute of Chartered Accountants Act 1996 that relate to disciplinary proceedings apply to accredited bodies that are not the Institute.

Subpart 5—Investigations by Registrar

New clause 63 allows the Registrar to start or take over an investigation or investigate in conjunction with an accredited body if the Registrar is satisfied that it is in the public interest to do so. However, the Registrar may not act in the case of a member of an accredited body unless satisfied that the matter is not being investigated promptly or otherwise in a reasonable manner by, or on behalf of, the accredited body or the accredited body has asked the Registrar to act.

New clause 64 provides that,—

- if the Registrar starts, or takes over, an investigation in respect of a member of an accredited body, the body may investigate or take action against the insolvency practitioner in respect of the same matter only with the Registrar's written approval; but
- the Registrar may not act in respect of conduct that is, or has been, the subject of proceedings before a disciplinary body.

New clause 65 requires an accredited body to give all reasonable assistance to the Registrar to enable an investigation to be carried out. An accredited body commits an offence (with a fine of up to \$30,000) if it fails to give the assistance or otherwise hinders, obstructs, or delays the Registrar in carrying out an investigation.

New clause 66 allows the Registrar to make various orders if the Registrar is satisfied that a licensed insolvency practitioner has failed to comply with various requirements, including orders cancelling or suspending the practitioner's licence. The Registrar's decision can be appealed under *new clause 33*.

New clause 67 provides for various miscellaneous matters relating to the orders.

Subpart 6—Recognised bodies and religious societies and orders

New subpart 6 (new clauses 68 to 70) relates to members of a recognised body and to practising members of a religious society or order whose doctrines or beliefs preclude membership of any organisation or body other than the religious society or order. The subpart allows a person who is a member of such a body, society, or order to be exempt from the requirement that a person must be a member of an accredited body in order to be eligible for a licence. In order to be exempt, the person must enter into a

written arrangement with the accredited body, under which they agree to be bound by the rules that apply to members of the accredited body. The person must also satisfy the accredited body that they have satisfactory competence, qualifications, and experience to act as an insolvency practitioner and that they are a fit and proper person to be an insolvency practitioner.

Part 5

Provisions relating to insolvency practitioners

Subpart 1—Duty to report serious problems

New subpart 1 (new clauses 71 to 75) provides for an insolvency practitioner to report any serious problem that the practitioner has reasonable grounds to believe has arisen in relation to a company in respect of which the practitioner acts as an insolvency practitioner. The term serious problem is defined and includes, for example, circumstances in which the company, or a past or present director, officer, or shareholder of the company, has committed an offence in relation to the company. Serious problems must be reported to the Registrar and, if the serious problem concerns the possible commission of an offence, it must also be reported to the Police or to another body responsible for investigating or prosecuting the offence.

The subpart details the further assistance that an insolvency practitioner who has reported a serious problem must provide to the Registrar (and, if relevant, the Police or the investigating or prosecuting body), contains provisions restricting the publication and disclosure of any information and documents supplied to the Registrar in relation to a serious problem, and provides protections from liability for an insolvency practitioner who reports a serious problem under the subpart.

Subpart 2—Restrictions on insolvency practitioners

New clause 76 provides that an insolvency practitioner must not (unless authorised by *Parts 3 to 6*, the Companies Act 1993, or the Receiverships Act 1993) receive any benefit for carrying out an insolvency engagement beyond the remuneration to which they are entitled as an insolvency practitioner. It also prohibits an insolvency practitioner from making an arrangement for giving their remuneration to any person. A failure to comply with *clause 76* is an offence with a fine of up to \$75,000.

New clause 77 provides a definition for the purposes of *new clauses 78 and 79*.

New clause 78 provides that insolvency practitioners acting in relation to a company or an entity and directors, officers, employees, and certain other people associated with the insolvency practitioner must not, without the leave of the court, purchase assets of the company or entity unless the purchase is on arm's-length terms. A failure to comply is an offence with a fine of up to \$75,000.

New clause 79 provides that an insolvency practitioner (in their capacity as an administrator, deed administrator, liquidator, or receiver in respect of a company or an entity) must not, without the leave of the court, purchase goods or services from a person who has a connection with the insolvency practitioner if the insolvency practitioner

knows, or ought to know, that it would result in the insolvency practitioner directly or indirectly obtaining a portion of the benefit (if any) arising out of the transaction. However, transactions that are an integral part of certain existing continuing business relationships and that are conducted on arm's-length terms are permissible. A failure to comply is an offence with a fine of up to \$75,000.

Part 6

Solvent company liquidators, miscellaneous matters, and regulations

Subpart 1—Solvent company liquidators

New clause 80 provides that, to act as the liquidator of a solvent company, a person must be a member of a recognised professional body or a licensed insolvency practitioner. *New clause 81* relates to the Registrar's power to recognise professional bodies for the purposes of *new clause 80*.

Subpart 2—Other miscellaneous matters

New clause 82 relates to the Registrar's functions under *Parts 3 to 6* of the Bill, including—

- to prescribe certain licensing matters:
- to grant accreditation to persons as accredited bodies and to monitor those accredited bodies:
- to conduct investigations.

New clause 83 provides a power of inspection for the Registrar. If, in the Registrar's opinion, it is in the public interest to exercise the power, the Registrar may exercise the power for one of several specified purposes (including, for example, the purpose of ascertaining whether information provided to the Registrar is correct, or the purpose of detecting offences). The power includes the power to require a person to confirm that information provided to the Registrar is correct, to correct information provided to the Registrar, and to produce relevant documents for inspection. Failing to comply with a requirement by the Registrar and obstructing or hindering the Registrar are offences, punishable by a fine of up to \$30,000.

New clause 84 provides that the Registrar can act as an accredited body in certain circumstances.

New clause 85 provides protection from liability for accredited bodies (or officers, employees, or other persons acting on behalf of an accredited body) in relation to things done (or not done) under *Parts 3 to 6*. The protection does not apply if the body or person acted in bad faith or, in the case of an accredited body, the body acted without reasonable care.

New clause 86 relates to the sharing of information and documents between the Registrar and accredited bodies.

New clause 87 sets out the manner in which notices and other documents are given or provided under *Parts 3 to 6*.

New clause 88 provides that it is an offence to make certain false declarations or representations. The penalty for the offence is a fine of up to \$50,000.

New clause 89 provides that the Registrar may refuse to take a step under *Parts 3 to 6* while any fee, charge, or cost payable for that step remains unpaid.

New clause 90 provides that the Registrar may refuse to accept a document under *Parts 3 to 6* if the document is not in the required form or does not comply with any prescribed requirements.

New clause 91 relates to the delegation of the Registrar's functions, powers, and duties under *Parts 3 to 6*.

Subpart 3—Regulations

New clause 92 authorises the making of regulations for the purposes of *Parts 3 to 6* of the Bill.

New clause 93 relates to consequential amendments.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at [http://legislation.govt.nz/disclosure.aspx?type=sop &subtype=government&year=2018&no=45&](http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2018&no=45&)

The Honourable Kris Faafoi, in Committee, to propose the amendments shown in the following document.

Hon Kris Faafoi

Insolvency Practitioners Bill

Government Bill

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Part 6
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Consequential amendments

The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

~~This Act comes into force 9 months after the date on which it receives the Royal assent.~~

- (1) The following sections come into force on the day after the date of Royal assent:

- (a) section 10 (which enables the making of regulations relating to **Parts 1 and 2**):
 - (b) sections 16 to 20 (which are preliminary provisions relating to **Parts 3 to 6**):
 - (c) sections 34 to 38 (which enable the Registrar to prescribe licensing and other matters):
 - (d) sections 46 and 47 (which relate to the accreditation of bodies):
 - (e) sections 51 and 54 to 61 (which relate to policies, directions, and other matters relating to accredited bodies):
 - (f) sections 68 to 70 (which provide an exemption from membership of an accredited body for certain members of recognised bodies and religious societies and orders):
 - (g) sections 81 to 92 (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.
- (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.

Part 1

Amendments to Companies Act 1993

3 Principal Act amended

This **Part** amends the Companies Act 1993.

Subpart 1—Amendments to principal Act

Amendment to Part 1 (Preliminary)

3A Interpretation

Section 2(1) is amended by inserting the following ~~definitions in their definition in its~~ appropriate alphabetical order:

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

- (a) ~~an administrator or deed administrator (as defined in section 239B):~~
- (b) ~~a liquidator (as defined in section 240(1)):~~
- (e) ~~a receiver (as defined in section 2(1) of the Receiverships Act 1993)~~

~~registered insolvency practitioner~~ means an insolvency practitioner who is registered under **section 316H**

licensed insolvency practitioner has the same meaning as in **section 18(1) of Parts 3 to 6 of the Insolvency Practitioners Act 2010**

Amendments to Part 15A (Voluntary administration)

3B New sections 239F and 239G substituted

Sections 239F and 239G are repealed and the following sections substituted:

239F Who may be appointed as administrator

- (1) ~~A person who is a registered insolvency practitioner, and who is not disqualified under **subsection (2)**, may be appointed as the administrator of a company.~~
- (1) A person may be appointed as the administrator of a company if the person—
- (a) is a licensed insolvency practitioner who is permitted to act as the administrator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
 - (b) is not disqualified under **subsection (2)**.
- (2) ~~Unless the court orders otherwise, a person is disqualified from appointment as an administrator of a company if the person would be disqualified from appointment as a liquidator of that company under **section 280(2)**.~~
- (2) Unless the court orders otherwise, a person is disqualified from appointment as an administrator of a company if the person—
- (a) would be disqualified from appointment as a liquidator of the company under **section 280(2)**; or
 - (b) is prohibited from acting as the administrator of a company in a current or other administration, or as the deed administrator of a company under a current or other deed of company arrangement, by an order made under section 239ADV(1).
- (3) For the purpose of **subsection (2)**,—
- (a) ~~the reference in **section 280(2)** to the commencement of the liquidation must be read as if it were a reference to the commencement of the administration; and~~
 - (b) ~~references in **section 280(2) and (3)** to the company in liquidation must be read as if they were references to the company in administration; and~~
 - (a) in **section 280**,—
 - (i) a reference to the commencement of the liquidation must be read as if it were a reference to the commencement of the administration;
 - (ii) a reference to a company must be read as if it were a reference to the company in liquidation; and
 - (c) **section 280(3)(c)** does not apply.

- (4) ~~A person who is appointed as the administrator of a company despite being disqualified under **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 373(2).~~
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—
- (a) the person knows or ought reasonably to know that they are disqualified under **subsection (2)**; and
- (b) the person,—
- (i) with their consent, is appointed as an administrator; or
- (ii) acts as an administrator.
- (5) **See also section 21(2) of Parts 3 to 6 of the Insolvency Practitioners Act 2010.**

239G What administrator must do before appointment

- (1) A person must not be appointed as the administrator of a company unless ~~that~~ the person has—
- (a) consented in writing and has not withdrawn the consent at the time of appointment; and
- (b) certified in writing that ~~he or she is not disqualified from appointment by **section 239F(2)**; the person—~~
- (i) is a licensed insolvency practitioner; and
- (ii) is permitted to act as administrator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
- (iii) is not disqualified from appointment under **section 239F(2)**.
- (2) A person who, with their consent, is appointed as administrator despite failing to certify the matters in **subsection (1)(b)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

3C Who may appoint administrator

- (1) ~~Section 239H(2) is amended by inserting the following paragraph after paragraph (b):~~
- (ba) ~~the Registrar, as a replacement administrator for an administrator whose registration as an insolvency practitioner has been cancelled; or~~
- (2) Section 239H(2)(c) is amended by omitting “disqualified” and substituting “disqualified from appointment by under **section 239F(2)**”.
- (3) Section 239H is amended by adding the following subsection:
- (3) The appointment of a replacement administrator by a company must be made by a resolution of the board of the company.

3D When office of administrator is vacant

- (1) Section 239P is amended by repealing paragraph (a) and substituting the following paragraph:
- (a) ~~resigns under~~ in accordance with section 239Q; or
- (2) Section 239P is amended by adding “; or” and also by adding the following paragraph:
- (e) ~~has had his or her registration as an insolvency practitioner cancelled under **section 316M or 316N**.~~
- (e) ceases to be a licensed insolvency practitioner who is permitted to act as administrator for the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**.

3E Removal of administrator

- (1) Section 239R(2)(a) is amended by omitting “another person who is not disqualified” and substituting “a registered licensed insolvency practitioner who is permitted to act as administrator for the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010** and not disqualified from appointment by under **section 239F(2)**”.
- (2) Section 239R(2) is amended by repealing paragraph (b) and substituting the following paragraph:
- (b) ~~the person named in the resolution as the new administrator has, before the resolution is considered,—~~
- (i) ~~certified in writing that he or she is not disqualified from appointment by **section 239F(2)**; and~~
- (ii) ~~tabled at the meeting—~~
- (A) ~~a signed, written consent to act as administrator; and~~
- (B) ~~the certificate described in **subparagraph (i)**; and~~
- (C) ~~an interests statement that complies with **section 316Y**.~~
- (b) the person named in the resolution as the new administrator has, before the resolution is considered, tabled at the meeting—
- (i) the written consent and certificate required under **section 239G**; and
- (ii) an interests statement that complies with **section 239APA**.
- (3) Section 239R is amended by adding the following subsection:
- (3) A person who, with the person’s consent, is appointed as a replacement administrator under subsection (2) but who has not tabled an interests statement that complies with **section 316Y 239APA** commits an offence and is liable on conviction to the penalty set out in section 373(2).

3F Section 239S repealed

Section 239S is repealed.

3G New section 239TA inserted

The following section is inserted after section 239T:

239TA Provision of documents and property to administrator's successor information and assistance to replacement administrator

- (1) This section applies if the office of administrator becomes vacant and a new replacement administrator is appointed.
- (2) The person who was acting as administrator immediately before the office of administrator became vacant must, where practicable, provide to his or her successor the information and assistance that the successor reasonably requires to take over the duties of administrator, including providing—
- (a) books, records, and documents of the company;
 - (b) other property of the company;
 - (c) all claims;
 - (d) accounts and records of the administration.
- (2) The previous administrator must, where practicable, provide to the replacement administrator the information that the previous administrator has in their possession or under their control and that the replacement administrator reasonably requires to carry out the functions and duties of administrator.
- (2A) The information referred to in **subsection (2)** includes—
- (a) the records and other documents of the company;
 - (b) any information necessary to provide the replacement administrator with control over the property of the company;
 - (c) any information relating to claims;
 - (d) accounting records and other documents of the administration.
- (2B) The previous administrator must, where practicable, provide to the replacement administrator any assistance that the replacement administrator reasonably requires to carry out the functions and duties of administrator.
- (3) A person who fails to comply with **subsection (2) or (2B)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

3H Administrator must report misconduct

Section 239AI is amended by adding the following subsection:

- (4) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to the penalty set out in section 373(2).

3H Section 239AI repealed

Section 239AI is repealed.

3HA Power of court where outcome of voting at creditors' meeting determined by related entity

- (1) Section 239AM is amended by omitting the heading and substituting the following heading: “**Related creditor’s vote disregarded unless court orders otherwise**”.
- (2) Section 239AM is amended by repealing subsections (1) and (2) and substituting the following subsections:
 - (1) The administrator must disregard a related creditor’s vote on a resolution at the creditors’ meeting unless the court orders otherwise.
 - (2) A related creditor may apply to the court for an order that its vote be taken into account.
 - (2A) A related creditor that intends to apply for an order must,—
 - (a) before a vote is taken on the resolution, give notice in writing to the administrator that the creditor—
 - (i) is a related creditor; and
 - (ii) intends to apply to the court for an order that its vote be taken into account; and
 - (b) within 10 working days of the creditors’ meeting, make an application to the court.
 - (2B) The court may order that a related creditor’s vote be taken into account only if satisfied that ordering that the applicant’s vote (or the applicants’ votes) be taken into account—
 - (a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and
 - (b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors who voted against the resolution or for it, as the case may be, to an extent that is unreasonable having regard to—
 - (i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and
 - (ii) the nature of the relationship between the applicant (or the applicants) and the company, or between the related creditors and the company; and
 - (iii) any other relevant matter.
- (3) Section 239AM(3) is amended by inserting “and **sections 239AMA and 239AMB**” after “this section”.

3HB New sections 239AMA and 239AMB inserted

The following sections are inserted after section 239AM:

239AMA Creditor's vote disregarded if administrator considers creditor is related creditor

- (1) If the administrator considers that a creditor that votes on a resolution at a creditors' meeting is a related creditor, and the creditor has not given notice under **section 239AM(2A)**, the administrator must (unless the court orders otherwise)—
 - (a) disregard the creditor's vote; and
 - (b) give notice in writing to the creditor stating the reasons for the administrator's view.
- (2) The court may, on the application of the creditor, order that the creditor's vote be taken into account if the court is satisfied that the creditor is not a related creditor.
- (3) The creditor must make any application under this section to the court within 10 working days of receiving the notice.

239AMB Power of court where outcome of voting at creditors' meeting determined by related creditor

- (1) This section applies in relation to a resolution at a creditors' meeting under this Part if,—
 - (a) after the meeting, the administrator becomes aware that a creditor that voted on the resolution is a related creditor; and
 - (b) the administrator is satisfied that,—
 - (i) in accordance with section 239AM or **239AMA**, the related creditor's vote should have been disregarded; and
 - (ii) the resolution would not have been passed, defeated, or required to be decided by a casting vote (as the case may be) if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.
- (2) The resolution is valid and effective, despite sections 239AM and **239AMA**, unless the court orders otherwise under **subsection (4)**.
- (3) The administrator must, as soon as practicable after becoming aware that this section applies to the resolution, give notice of that fact to every known creditor.
- (4) The court may, on the application of the administrator or a creditor,—
 - (a) order that the resolution be set aside;
 - (b) order that a new meeting be held to consider and vote on the resolution:

- (c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it;
- (d) make any other orders that the court thinks necessary.
- (5) An administrator who fails to comply with **subsection (3)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

31 New ~~section~~ sections 239AP and 239APA substituted

Section 239AP is repealed and the following ~~section~~ sections substituted:

239AP Administrator must table documents at first creditors' meeting

- (1) The administrator must table at the first creditors' meeting—
 - (aa) the written consent and certificate required under **section 239G**; and
 - (a) an interests statement that complies with **section 316Y 239APA**; and
 - (b) a notice stating that ~~insolvency practitioners administrators~~ are required to be registered, that the Registrar can cancel a person's registration on a number of grounds, licensed, and that more information about the regulation of insolvency practitioners is available from the Registrar.
- (2) A person who fails to comply with **subsection (1)(a) (1)(aa), (a), or (b)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

239APA Requirements of interests statement

- (1) This section sets out the requirements for the interests statement referred to in **sections 239R(2)(b)(ii), 239AP(1)(a), and 239ACZAA.**
- (2) The interests statement must disclose—
 - (a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as administrator, including anything that would, but for a court order to the contrary, have disqualified the person—
 - (i) from being appointed as or acting as administrator (*see* **section 280(2)**); or
 - (ii) from being a licensed insolvency practitioner; and
 - (b) the nature of the actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and
 - (c) how the insolvency practitioner intends to manage the conflict of interest.
- (3) In preparing the interests statement, the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.

- (4) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

3J Former administrator is default liquidator

Section 239ABY(b) is amended by omitting “is disqualified from acting as the liquidator” and substituting “does not meet the requirements of **section 280(1)**”.

- (1) Section 239ABY is amended by repealing paragraph (b) and substituting the following paragraph:

- (b) the person nominated—
- (i) is disqualified from acting as the liquidator under **section 280(2)**; or
 - (ii) has not satisfied the requirements of **section 282**; or
 - (iii) is not a licensed insolvency practitioner who is permitted to act as liquidator for the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; or

- (2) Section 239ABY is amended by adding the following subsection as subsection (2):

- (2) However, the former administrator must appoint another person as the liquidator if the former administrator is disqualified from acting as the liquidator or is not a licensed insolvency practitioner who is permitted to act as the liquidator of the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**.

3K New section 239ABYA inserted

The following section is inserted after section 239ABY:

239ABYA Provision of documents and property information and assistance to liquidator

- (1) A person who was acting as administrator immediately before the appointment of a liquidator to a company in administration must, where practicable, provide to the liquidator the information and assistance that the liquidator reasonably requires, including providing—
- (a) books, records, and documents of the company;
 - (b) other property of the company;
 - (c) all claims;
 - (d) accounts and records of the administration.
- (1) This section applies if a person was acting as administrator before the appointment of a liquidator to a company in administration.
- (1A) The administrator must, where practicable, provide to the liquidator the information that the administrator has in their possession or under their control and

that the liquidator reasonably requires to carry out the functions and duties of liquidator.

- (1B) The information referred to in **subsection (1A)** includes—
- (a) the records and other documents of the company;
 - (b) any information necessary to provide the liquidator with control over the property of the company;
 - (c) any information relating to claims;
 - (d) accounting records and other documents of the voluntary administration.
- (1C) The administrator must, where practicable, provide to the liquidator any assistance that the liquidator reasonably requires to carry out the functions and duties of liquidator.
- (2) A person who fails to comply with ~~**subsection (1) (1A) or (1C)**~~ commits an offence and is liable on conviction to the penalty set out in section 373(2).

3L New sections 239ACD and 239ACE to 239ACEA substituted

Sections 239ACD and 239ACE are repealed and the following sections substituted:

239ACD Who may be appointed as deed administrator

- (1) ~~A person who is a registered insolvency practitioner, and who is not disqualified under **subsection (2)**, may be appointed as a deed administrator of a company.~~
- (1) A person may be appointed as a deed administrator of a company if the person—
- (a) is a licensed insolvency practitioner who is permitted to act as the deed administrator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
 - (b) is not disqualified under **subsection (2)**.
- (2) ~~Unless the court orders otherwise, a person is disqualified from appointment as a deed administrator of a company if the person would be disqualified from appointment as a liquidator of that company under **section 280(2)**.~~
- (2) Unless the court orders otherwise, a person is disqualified from appointment as a deed administrator of a company if the person—
- (a) would be disqualified from appointment as a liquidator of the company under **section 280(2)**; or
 - (b) is prohibited from acting as the administrator of a company in a current or other administration, or as the deed administrator of a company under a current or other deed of company arrangement, by an order made under section 239ADV(1).
- (3) For the purpose of **subsection (2)**,—

- (a) ~~the reference in **section 280(2)** to the commencement of the liquidation must be read as if it were a reference to the execution of the deed of company arrangement; and~~
- (b) ~~references in **section 280(2) and (3)** to the company in liquidation must be read as if they were references to the company under a deed of company arrangement; and~~
- (a) in **section 280**,—
- (i) a reference to the commencement of the liquidation must be read as if it were a reference to the execution of the deed of company arrangement;
- (ii) a reference to a company must be read as if it were a reference to the company under a deed of company arrangement; and
- (c) **section 280(3)(c)** does not apply.
- (4) ~~A person who is appointed as a deed administrator despite being disqualified under **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 373(2).~~
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—
- (a) the person knows or ought reasonably to know that they are disqualified under **subsection (2)**; and
- (b) the person,—
- (i) with their consent, is appointed as a deed administrator; or
- (ii) acts as a deed administrator.
- (5) **See also section 21(2) of Parts 3 to 6 of the Insolvency Practitioners Act 2010.**

239ACE What deed administrator must do before appointment

- (1) ~~A person must not be appointed as a deed administrator unless that person has of a company unless the person has—~~
- (a) ~~consented in writing and has not withdrawn the consent at the time when the deed of company arrangement is executed; and~~
- (b) ~~certified in writing that he or she is not disqualified from appointment by **section 239ACD(2)**; and the person—~~
- (i) is a licensed insolvency practitioner; and
- (ii) is permitted to act as deed administrator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
- (iii) is not disqualified from appointment under **section 239ACD(2)**; and
- and

- (c) ~~tabled at the watershed meeting (or, if section 239ACP applies, circulated to creditors with the draft deed under that section) an interests statement that complies with **section 316Y**.~~
- ~~(i) the written consent and certificate required under **paragraphs (a) and (b)**; and~~
- ~~(ii) an interests statement that complies with **section 239ACEA**.~~
- (2) ~~A person who fails to comply with **subsection (1)(c)** commits an offence and is liable on conviction to the penalty set out in section 373(2).~~
- (2) ~~A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—~~
- ~~(a) the person, with their consent, is appointed as deed administrator despite failing to certify the matters in **subsection (1)(b)**; or~~
- ~~(b) the person fails to comply with **subsection (1)(c)**.~~

239ACEA Requirements of interests statement

- (1) ~~This section sets out the requirements for the interests statement referred to in **section 239ACE(1)(c)(ii)**.~~
- (2) ~~The interests statement must disclose—~~
- ~~(a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner’s role as deed administrator, including anything that would, but for a court order to the contrary, have disqualified the person—~~
- ~~(i) from being appointed as or acting as deed administrator (*see **section 280(2)***); or~~
- ~~(ii) from being a licensed insolvency practitioner); and~~
- ~~(b) the nature of the actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and~~
- ~~(c) how the insolvency practitioner intends to manage the conflict of interest.~~
- (3) ~~In preparing the interests statement, the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.~~
- (4) ~~The interests statement must be in writing and be dated and signed by the insolvency practitioner.~~

3M When office of deed administrator vacant

- (1) Section 239ACH is amended by repealing paragraph (a) and substituting the following paragraphs:
- (a) ~~resigns under in accordance with section 239ACI; or~~

- (ab) dies; or
- (2) Section 239ACH is amended by adding “; or” and also by adding the following paragraph:
- (d) ~~has had his or her registration as an insolvency practitioner cancelled under **section 316M or 316N**.~~
- (d) ceases to be a licensed insolvency practitioner who is permitted to act as deed administrator for the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**.

3N New section 239ACJA inserted

The following section is inserted after section 239ACJ:

- 239ACJA Provision of documents and property to deed administrator’s successor information and assistance to replacement deed administrator**
- (1) ~~This section applies if the office of deed administrator becomes vacant and a new a replacement deed administrator is appointed.~~
- (2) ~~The person who was acting as deed administrator immediately before the office of deed administrator became vacant must, where practicable, provide to his or her successor the information and assistance that the successor reasonably requires to take over the duties of deed administrator, including providing—~~
- ~~(a) books, accounts, records, and documents of the company;~~
- ~~(b) other property of the company;~~
- ~~(c) all claims.~~
- (2) The previous deed administrator must, where practicable, provide to the replacement deed administrator the information that the previous deed administrator has in their possession or under their control and that the replacement deed administrator reasonably requires to carry out the functions and duties of deed administrator.
- (2A) The information referred to in **subsection (2)** includes—
- (a) the records and other documents of the company;
- (b) any information necessary to provide the replacement deed administrator with control over the property of the company (to the extent permitted by the deed);
- (c) any information relating to claims;
- (d) accounting records and other documents of the administration of the deed of company arrangement.
- (2B) The previous deed administrator must, where practicable, provide to the replacement deed administrator any assistance that the replacement deed administrator reasonably requires to carry out the functions and duties of deed administrator.

- (3) A person who fails to comply with **subsection (2) or (2B)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

3O Heading to subpart 14 of Part 15A amended

The heading to subpart 14 of Part 15A is amended by adding “and summary reports”.

3P Administrator must file accounts

- (1) ~~Section 239ACZ(3)(a) is amended by omitting “payments” and substituting “payments, including payer and payee details”.~~
- (2) Section 239ACZ is amended by adding the following subsection:
- (4) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2).

3Q ~~New section 239ACZA~~ sections 239ACZAA and 239ACZA inserted

The following ~~section is~~ sections are inserted after section 239ACZ:

239ACZAA Administrator must file updates to interests statement

- (1) An administrator must, within 20 working days after the end of each period of 6 months following the date on which the administrator was appointed, prepare and send to every known creditor an updated interests statement that complies with **section 239APA**.
- (2) The updated interests statement may be in the form of a statement to be read in conjunction with previous interests statements and updates.

239ACZA ~~Administrator and deed administrator~~ must file summary report

- (1) This section applies to—
- (a) a person who ~~was~~ is the administrator at the end of an administration; and
- (b) a person who ~~was~~ is the deed administrator on the termination of a deed of company arrangement.
- (2) As soon as practicable after completing his or her duties in relation to the administration or deed of company arrangement (as the case may be), the person must provide to the Registrar, in the manner specified by the Registrar, a summary report.
- (3) The summary report must contain the ~~information prescribed for the purpose of this section by regulations made under **section 395(1)(cba)**~~ prescribed information.
- (4) A person who fails to comply with ~~subsection (2)~~ this section commits an offence and is ~~subject~~ liable on conviction to the penalty set out in section 373(2).

3R Administrator may seek directions

Section 239ADR(1) is amended by omitting “the administrator’s” and substituting “his or her”.

3R New sections 239ADUA and 239ADUB inserted

The following sections are inserted after section 239ADU:

239ADUA Meaning of failure to comply

- (1) In sections 239ADUB and 239ADV, failure to comply means a person’s failure to comply with an enactment, a rule of law, or a court order to the extent that the enactment, rule, or order applies to the person in the person’s capacity as an administrator or deed administrator.
- (2) In proceedings under section 239ADUB or 239ADV,—
 - (a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact;
 - (b) a finding described in paragraph (a) may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

239ADUB Compensatory orders

- (1) The court may make an order under this section if the court is satisfied that—
 - (a) there has been a failure to comply by an administrator or a deed administrator; and
 - (b) a person (the aggrieved person) has suffered, or is likely to suffer, loss or damage as a result of the failure to comply.
- (2) The court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage.
- (3) An order may include—
 - (a) an order to direct the administrator or deed administrator to pay to the aggrieved person the amount of the loss or damage (in whole or in part);
 - (b) an order for the recovery of any property.
- (4) **Subsection (3) does not limit subsection (2).**
- (5) An application for an order may be made by the Registrar or any aggrieved person.
- (6) The court may make an order whether or not the aggrieved person is a party to the proceedings.

Compare: 2013 No 69 ss 494, 495

239ADUC Limitation defences

- (1) The Limitation Act 2010 prescribes a defence to a money claim that is a claim for monetary relief under **section 239ADUB** (for example, an order described in **section 239ADUB(3)(a)**).
- (2) **Subsections (3) to (5)** apply to a claim for relief (other than any form of monetary relief or declaratory relief) under **section 239ADUB**.
- (3) It is a defence to the claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based.
- (4) The claim has both a late knowledge period and a longstop period, and sections 11(3)(a) and (b) and 14 of the Limitation Act 2010 apply to it—
 - (a) as if it were a money claim; and
 - (b) as if the period in **subsection (3)** were its primary period.
- (5) The defence prescribed by this section is subject to the exceptions and modifications set out in the Limitation Act 2010 as if the defence were prescribed by that Act.
- (6) A term or expression that is defined in the Limitation Act 2010 and used in this section has the same meaning as in the Limitation Act 2010.

Compare: 2010 No 110 s 37

4 Prohibition order

- (1) Section 239ADV is amended by repealing subsection (3) and substituting the following subsection:
 - (3) A person to whom a prohibition order applies must not—
 - (a) act as ~~an~~ the administrator of a company in a current or other administration; or
 - (b) act as ~~a~~ the deed administrator of a company under a current or other deed of company arrangement.
- (2) Section 239ADV(4) is amended by omitting “or deed administrator of a company in administration” and substituting “of a company in administration, or a past or current deed administrator of a company under a deed of company arrangement.”.
- (3) Section 239ADV is amended by repealing ~~subsection (5) and substituting the following subsection~~ subsections (5) to (7) and substituting the following subsections:
 - (5) In this section, **failure to comply** means a failure of a person to comply with an enactment, a rule of law, or a court order, to the extent that it applies to the person in the person’s capacity as an insolvency practitioner.
 - (5) A copy of every order made under subsection (1) must, before the end of the working day after the order is made, be delivered to the Registrar.

(6) The Registrar must, before the end of the working day after the Registrar receives a copy of the order, provide a copy of the order to each accredited body (within the meaning of **Parts 3 to 6 of the Insolvency Practitioners Act 2010**).

(4) ~~Section 239ADV(6) is repealed.~~

(5) ~~Section 239ADV(7) is amended by omitting “Official Assignee for New Zealand who must keep it on a file indexed by reference to the name of the administrator or deed administrator concerned” and substituting “Registrar”.~~

4A Administrator must give notice of appointment

~~Section 239ADW(1) is amended by omitting “, or by the creditors under section 239R(2)(a)” and substituting “, by the creditors under section 239R(2)(a), or by the Registrar under **section 316P(2)**”.~~

4AB Administrator must give notice of appointment

Section 239ADW is amended by adding the following subsection:

(3) A notice of appointment must identify who made the appointment and, if the administrator was appointed by the court, who applied to the court for the appointment.

4AC New section 239ADWA inserted

The following section is inserted after section 239ADW:

239ADWA Deed administrator must give notice of appointment

(1) This section applies if the creditors at the watershed meeting, by resolution, appoint a person other than the administrator of the company to be the deed administrator.

(2) The deed administrator must,—

(a) before the end of the next working day after appointment, lodge a notice of the appointment with the Registrar; and

(b) not later than 3 working days after appointment, advertise the appointment in accordance with section 3(1)(b).

(3) A notice of appointment must state that the appointment was made by the creditors at the watershed meeting.

Amendments to Part 16 (Liquidations)

4B Interpretation

(1) Section 240(1) is amended by inserting the following definition in its appropriate alphabetical order:

liquidator means ~~the~~ a person who is appointed ~~the~~ as a liquidator of a company in liquidation (and includes a person who is appointed as an interim liquidator of a company in liquidation under section 246)

- (2) Paragraph (a) of the definition of **creditor** in section 240(1) is amended by omitting “and 289” and substituting “**280**, and 289”.

4BA Liquidation of associations

Section 240B is amended by inserting the following subsection:

- (2) **Parts 3 to 6 of the Insolvency Practitioners Act 2010** apply to an association put into liquidation under this Part as if the association were a company.

4BB New section 241AA substituted

Section 241AA is repealed and the following section substituted:

241AA Restriction on appointment of liquidator by shareholders or board after application filed for court appointment

- (1) **Subsection (2)** applies if an application has been filed for the appointment of a liquidator of a company by the court under section 241(2)(c) (except section 241(2)(c)(iv)).
- (2) A liquidator may be appointed under section 241(2)(a) or (b) only if the liquidator is appointed within 10 working days after the application is served on the company.
- (3) **Subsection (4)** applies if an application has been filed for the appointment of a liquidator of a company by the court under section 241(2)(c)(iv).
- (4) A liquidator may be appointed under section 241(2)(a) or (b) only if the creditor who filed the application consents to the appointment.
- (5) **Subsections (2) and (4)** cease to apply from the time that the court disposes of the application for appointment of a liquidator.

4BC New sections 241AB to 241AE inserted

The following sections are inserted after section 241AA:

241AB Dispositions of property after application and before appointment of liquidator

- (1) A disposition of a company’s specified property is voidable if it is made during the specified period.
- (2) However, the disposition is not voidable if it was made—
- (a) in the ordinary course of business of the company; or
 - (b) by an administrator, a deed administrator, or a receiver, on the company’s behalf; or
 - (c) under an order of the court.

- (3) In this section,—
- disposition** has the meaning given in section 345(2) of the Property Law Act 2007
- non-current assets** has the meaning given to it under generally accepted accounting practice
- specified period** means the period beginning on the date on which an application is made to appoint a liquidator under section 241(2)(c) and ending at the time the liquidator is appointed (or the court otherwise disposes of the application)
- specified property** means—
- (a) any non-current assets; or
 - (b) any assets of the company that were non-current assets at any time during the period of 6 months before the disposition was made; or
 - (c) any proceeds of the property described in **paragraphs (a) and (b).**

241AC Procedure for setting aside dispositions

- (1) A liquidator who wishes to set aside a disposition that is voidable under **section 241AB** must—
- (a) file a notice with the court; and
 - (b) serve the notice as soon as practicable on—
 - (i) the party to which the disposition was made; and
 - (ii) any other party from whom the liquidator intends to recover.
- (2) The notice must—
- (a) be in writing; and
 - (b) state the liquidator’s postal, email, and street addresses; and
 - (c) specify the disposition to be set aside; and
 - (d) describe the property or state the amount that the liquidator wishes to recover; and
 - (e) state that the person named in the notice may object to the disposition being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at an address stated in the liquidator’s notice within 20 working days after the notice has been served on that person; and
 - (f) state that the written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting; and
 - (g) state that the disposition will be set aside as against the person named in the notice if that person does not object; and

- (h) state that if the person named in the notice does object, the liquidator may apply to the court for the disposition to be set aside.
- (3) The disposition is automatically set aside as against the person on whom the liquidator has served the notice unless that person has sent to the liquidator a written notice of objection that is received by the liquidator at an address stated in the liquidator's notice within 20 working days after the liquidator's notice has been served on that person.
- (4) The notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.
- (5) A disposition that is not automatically set aside may still be set aside by the court on the liquidator's application.

241AD Other orders

If a disposition is set aside under **section 241AC**, the court may make 1 or more of the following orders:

- (a) an order that a person transfer to the company—
 - (i) property that the company disposed of;
 - (ii) any proceeds of property referred to in **subparagraph (i)**;
 - (iii) property that, in the court's opinion, fairly represents the application of proceeds referred to in **subparagraph (ii)**;
- (b) an order that a person pay to the company an amount that, in the court's opinion, fairly represents some or all of the benefits that the person has received because of the disposition;
- (c) an order releasing, in whole or in part, a charge given by the company;
- (d) an order requiring security to be given for the discharge of an order made under this section;
- (e) an order specifying the extent to which a person affected by the setting aside of a disposition by an order made under this section is entitled to claim as a creditor in the liquidation.

241AE Additional provisions relating to setting aside dispositions

- (1) The setting aside of a disposition or an order made under **section 241AD** does not affect the title or interest of a person in property that the person has acquired—
 - (a) from a person other than the company; and
 - (b) for valuable consideration; and
 - (c) without knowing the circumstances in which the property was acquired from the company.

- (2) The setting aside of a charge or an order made under **section 241AD** does not affect the title or interest of a person in property that the person has acquired—
- (a) as the result of the exercise of a power of sale by the grantee of the charge; and
 - (b) for valuable consideration; and
 - (c) without knowing the circumstances relating to the giving of the charge.
- (3) A court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act, any other enactment, or in law or in equity, if the person from whom recovery is sought (A) proves that when A received the property—
- (a) A acted in good faith; and
 - (b) a reasonable person in A’s position would not have suspected, and A did not have reasonable grounds to suspect, that the company was, or would become, insolvent; and
 - (c) A gave value for the property or altered A’s position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside.
- (4) Nothing in the Land Transfer Act 2017 restricts the operation of this section or **sections 241AB to 241AD**.

4C Liquidator to summon meeting of creditors

Section 243(2)(a) is amended by omitting “report and notice” and substituting “report, interests statement, and notices”.

4D Liquidator may dispense with meetings of creditors

Section 245(2) is amended by omitting “report and notice” and substituting “report, interests statement, and notices”.

4DA Power of court where outcome of voting at meeting of creditors determined by related entity

- (1) Section 245A is amended by omitting the heading and substituting the following heading: “**Related creditor’s vote at meeting of creditors to be disregarded unless court orders otherwise**”.
- (2) Section 245A is amended by repealing subsections (1) and (2) and substituting the following subsections:
 - (1) The liquidator must disregard a related creditor’s vote on a resolution at the meeting of creditors unless the court orders otherwise.
 - (2) A related creditor may apply to the court for an order that its vote be taken into account.
- (2A) A related creditor that intends to apply for an order must,—

- (a) before a vote is taken on the resolution, give notice in writing to the liquidator that the creditor—
 - (i) is a related creditor; and
 - (ii) intends to apply to the court for an order that its vote be taken into account; and
 - (b) within 10 working days of the meeting of creditors, make an application to the court.
- (2B) The court may order that a related creditor’s vote be taken into account only if satisfied that ordering that the applicant’s vote (or the applicants’ votes) be taken into account—
- (a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and
 - (b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors who voted against the resolution or for it, as the case may be, to an extent that is unreasonable having regard to—
 - (i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and
 - (ii) the nature of the relationship between the applicant (or the applicants) and the company, or between the related creditors and the company; and
 - (iii) any other relevant matter.

4DB New sections 245B and 245C inserted

The following sections are inserted after section 245A:

245B Creditor’s vote disregarded if liquidator considers creditor is related creditor

- (1) If the liquidator considers that a creditor that votes on a resolution at a meeting of creditors is a related creditor, and the creditor has not given notice under **section 245A(2A)**, the liquidator must (unless the court orders otherwise)—
 - (a) disregard the creditor’s vote; and
 - (b) give notice in writing to the creditor stating the reasons for the liquidator’s view.
- (2) The court may, on the application of the creditor, order that the creditor’s vote be taken into account if the court is satisfied that the creditor is not a related creditor.
- (3) The creditor must make any application under this section to the court within 10 working days of receiving the notice.

245C Power of court where outcome of voting at meeting of creditors determined by related creditor

- (1) This section applies in relation to a resolution at a meeting of creditors if,—
- (a) after the meeting, the liquidator becomes aware that a creditor that voted on the resolution is a related creditor; and
 - (b) the liquidator is satisfied that,—
 - (i) in accordance with section 245A or **245B**, the related creditor's vote should have been disregarded; and
 - (ii) the resolution would not have been passed, defeated, or required to be decided by a casting vote (as the case may be) if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.
- (2) The resolution is valid and effective, despite sections 245A and **245B**, unless the court orders otherwise under **subsection (4)**.
- (3) The liquidator must, as soon as practicable after becoming aware that this section applies to the resolution, give notice of that fact to every known creditor.
- (4) The court may, on the application of the liquidator or a creditor,—
- (a) order that the resolution be set aside;
 - (b) order that a new meeting be held to consider and vote on the resolution;
 - (c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it;
 - (d) make any other orders that the court thinks necessary.
- (5) A liquidator who fails to comply with **subsection (3)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

4E Other duties of liquidator

- (1AA) Section 255(2)(a)(i) is amended by inserting “, specifying who made the appointment (*see* section 241(2)) and, if the liquidator was appointed by the court, who applied to the court for the appointment” after “liquidator's appointment”.
- (1AB) Section 255(2) is amended by repealing paragraph (b) and substituting the following paragraph:
- (b) before the end of the next working day after appointment, deliver to the Registrar for registration a notice of the liquidator's appointment; and
- (1AC) Section 255(2)(c) is amended by repealing subparagraph (i) and substituting the following subparagraph:
- (i) prepare a list of every known creditor of the company and, if known, each creditor's address for communications (which may be an electronic address); and

(1AD) Section 255(2)(c)(ii) is amended by repealing subparagraph (A) and substituting the following subparagraph:

(A) an initial report containing the information specified in **section 255A**; and

(1) Section 255(2)(ii) is amended by adding repealing subparagraph (C) and substituting the following subparagraphs:

(~~D~~C) an interests statement that complies with **section 316Ysection 255B**; and

(~~E~~D) a notice stating that ~~insolvency practitioners liquidators of insolvent companies~~ are required to be registered, that the Registrar can cancel a person's registration on a number of grounds, licensed insolvency practitioners, and that more information about the regulation of insolvency practitioners is available from the Registrar; and

(1A) Section 255(2) is amended by repealing paragraph (d) and substituting the following paragraph:

(d) within 20 working days after the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and every shareholder, and to the Registrar for registration, a report containing the information specified in **section 255C**.

(2) Section 255 is amended by inserting the following subsections after subsection (3):

(3A) The report referred to in subsection (2)(d) must show, for each period, a statement of realisation and distribution that lists all amounts received and paid, including payer and payee details.

(3B) However, a liquidator may omit from the report referred to in subsection (2)(d) details of any amount received or paid if the liquidator considers that their inclusion would materially prejudice the exercise of his or her functions.

(3C) A person who fails to comply with subsection (2)(c) or **(d)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

(3D) **Subsection (2)(c)(ii)(C) and (D)** does not apply to an Official Assignee.

(3) Section 255(4) is amended by repealing paragraph (a) and substituting the following paragraph:

(a) exempt the liquidator from compliance with subsection (2)(c) or **(d)** or any of **sections 255A to 255C**; or

4EA New sections 255A to 255C inserted

The following sections are inserted after section 255:

255A Contents of liquidator's initial report

- (1) The initial report referred to in **section 255(2)(c)(ii)(A)** must contain—
 - (a) a statement of—
 - (i) who appointed the liquidator or, if the liquidator was appointed by the court, who applied to the court for the appointment; and
 - (ii) the subsection and paragraph (if applicable) of section 241 under which the liquidation was commenced; and
 - (b) a brief summary of the reasons for commencing the liquidation; and
 - (c) a summary of the actions the liquidator proposes to take in the liquidation and, if practicable, the estimated dates on which those actions will be taken; and
 - (d) if practicable, the estimated date of completion of the liquidation; and
 - (e) a statement of the company's affairs.
- (2) The statement of the company's affairs must include, as at the date of the report,—
 - (a) a list of every known creditor of the company and, if known, each creditor's address for communications (which may be an electronic address); and
 - (b) a summary of the company's known assets that includes, for each asset or class of assets,—
 - (i) the estimated fair value; and
 - (ii) the related charges or encumbrances (if known); and
 - (iii) the estimated net proceeds of realisation; and
 - (c) a summary of the company's known debts and liabilities (including contingent liabilities), including the amount owed to different classes of creditors (preferential creditors referred to in Schedule 7, secured creditors, and unsecured creditors); and
 - (d) an estimate of the amounts likely to be available for payment of each of the classes of creditors identified under **paragraph (c)**; and
 - (e) any known current or pending proceedings to which the company is a party.
- (3) The liquidator may omit from the initial report the estimated fair value, or estimated proceeds of realisation, of an asset or a class of assets if the liquidator considers that the inclusion of those details in the report would materially prejudice the exercise of the liquidator's functions.
- (4) The liquidator must omit from the initial report the address for communications of any creditor who is an individual (unless the individual has consented to the disclosure of the address in the report).

255B Requirements of interests statement

- (1) This section sets out the requirements for the interests statement referred to in **sections 255(2)(c)(ii)(C)** and **255C(1)(d)**.
- (2) The interests statement must disclose—
 - (a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner’s role as liquidator, including anything that would, but for a court order to the contrary, have disqualified the person—
 - (i) from being appointed as or acting as liquidator (see **section 280(2)**); or
 - (ii) from being a licensed insolvency practitioner; and
 - (b) the nature of the actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and
 - (c) how the insolvency practitioner intends to manage the conflict of interest.
- (3) In preparing the interests statement, the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.
- (4) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

255C Contents of liquidator’s 6-monthly reports

- (1) The 6-monthly report referred to in **section 255(2)(d)** must contain—
 - (a) a summary of the actions the liquidator has taken in the liquidation since the commencement of the liquidation; and
 - (b) details of any material changes to the actions the liquidator proposes to take in the liquidation; and
 - (c) the estimated date of completion of the liquidation and, if that is different from the estimated date of completion given in the liquidator’s previous report, the reasons for the difference; and
 - (d) an updated interests statement that complies with **section 255B** (which may be in the form of a statement to be read in conjunction with previous interests statements and updates); and
 - (e) an updated statement of the company’s affairs.
- (2) The updated statement of the company’s affairs must include—
 - (a) the information specified in **section 255A(2)**; and
 - (b) the reasons for any material differences between the information included in the updated statement under **paragraph (a)** and the information included in the previous statement; and

- (c) details of each amount received and paid in respect of the liquidation since the liquidator's previous report; and
 - (d) details of all fees, allowances, reimbursements, or other benefits paid to the liquidator since the commencement of the liquidation; and
 - (e) a summary of all amounts received and paid in respect of the liquidation since the commencement of the liquidation.
- (3) Despite **subsection (2)(c)**, a liquidator may omit from the report details of any amount received or paid if the liquidator considers that their inclusion would materially prejudice the exercise of the liquidator's functions.
- (4) **Subsection (1)(d)** does not apply if the liquidator is an Official Assignee.

4F Duties in relation to accounts

Section 256 is amended by adding the following subsection:

- (3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(2).

4F New section 256 substituted

Section 256 is repealed and the following section substituted:

256 Duties in relation to records

- (1) The liquidator of a company must—
- (a) keep accounting records and other documents of the liquidation and permit those records, and the records and other documents of the company, to be inspected by—
 - (i) any liquidation committee appointed under section 314, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and
 - (ii) if the court so orders, a creditor or shareholder; and
 - (b) keep the accounting records and other documents of the liquidation, and the records and other documents of the company, for not less than 6 years after completion of the liquidation (or any longer period specified in a notice referred to in **subsection (3)**).
- (2) The Registrar may, before or after the completion of the liquidation, require any records and documents to be retained for longer than 6 years after the completion of the liquidation.
- (3) The Registrar must give notice of a requirement under **subsection (2)** on an Internet site maintained by or on behalf of the Registrar.
- (4) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

4G New section 256A inserted

The following section is inserted after section 256:

256A Duties in relation to company funds money

- (1) A liquidator must deposit the funds money of a company under his or her administration at a registered bank and in—
 - (a) a bank account to the credit of the company; or
 - (b) a general or separate trust account.
- (2) However, the liquidator may invest, in financial products issued by a registered bank, or in Government securities or in a public security, or in any other securities—financial products as authorised by the court, any amount of the company's money that is—
 - (a) ~~standing to the credit of the company~~ in the bank account or trust account; and
 - (b) not required for the time being to meet claims made against the company.
- (3) All dividends, interest, and other profits from ~~the investments~~ an investment described in **subsection (2)** must, as soon as practicable after they are received, be paid into the bank account or trust account.
- (3A) Money that is deposited in a trust account under **subsection (1)(b)** must be held by the liquidator on trust for the benefit of the persons legally entitled to that money.
- (4) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (5) In this section, **public security** has the meaning given in section 2(1) of the Public Finance Act 1989.
- (6) This section does not limit section 260.

4H Duties in relation to final report and accounts

- (1) ~~Section 257(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph:~~
 - (i) ~~the final report and statement of realisation and distribution, which must list all amounts received and paid in respect of the liquidation, including payer and payee details; and~~
- (1) Section 257(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph:
 - (i) a final report containing the information specified in **section 257A**; and
- (2) Section 257(1) is amended by adding the following paragraph:

- (c) provide to the Registrar, in the manner specified by the Registrar, a summary report that contains the information prescribed for the purpose of this section by regulations made under **section 395(1)(cba)** prescribed information.
- (3) Section 257 is amended by adding the following subsection:
- (3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(2).

4HA New section 257A inserted

The following section is inserted after section 257:

257A Contents of liquidator's final report

The final report referred to in **section 257(1)(a)(i)** must contain—

- (a) a summary of the actions the liquidator has taken in the liquidation; and
- (b) details of each amount received and paid in respect of the liquidation since the liquidator's previous report; and
- (c) details of all fees, allowances, reimbursements, or other benefits paid to the liquidator since the commencement of the liquidation; and
- (d) a summary of all amounts received and paid in respect of the liquidation since the commencement of the liquidation (including, in respect of each amount received or paid, the payer or the recipient); and
- (e) details of any material differences between the amounts referred to in **paragraph (d)** and the estimates in the liquidator's previous report in respect of those amounts, and the reasons for any differences; and
- (f) details of any recoveries from creditors, shareholders, or directors of the company; and
- (g) details of any amount paid to a creditor or class of creditors (including details of the amount paid to preferential creditors and the amount paid to other unsecured creditors); and
- (h) details of any company asset that has been disclaimed or distributed without realisation, and the reasons why it has been disclaimed or distributed without realisation; and
- (i) details of any company debt or liability, or class of company debt or liability, that has not been satisfied in full, and the reasons why it has not been satisfied in full.

4HB Sections 258A and 258B repealed

Sections 258A and 258B are repealed.

4I Heading above section 280 amended

The heading above section 280 is amended by omitting “*Qualifications*” and substituting “*Appointment*”.

5 New section 280 substituted

Section 280 is repealed and the following section substituted:

280 Who may be appointed as liquidator

- (1) ~~A person who is a registered insolvency practitioner, and who is not disqualified under **subsection (2)**, may be appointed as a liquidator of a company.~~
- (1) A person may be appointed as a liquidator of a company if the person—
- (a) is a licensed insolvency practitioner who is permitted to act as a liquidator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
 - (b) is not disqualified under **subsection (2)**.
- (1A) If the company is a solvent company (within the meaning of **section 18 of Parts 3 to 6 of the Insolvency Practitioners Act 2010**), a person may be appointed as a liquidator of the company if the person—
- (a) is appointed within 20 working days after a copy of a resolution described in section 243(8) is delivered to the Registrar; and
 - (b) is permitted to act as a liquidator of a solvent company in accordance with **section 80 of Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
 - (c) is not disqualified under **subsection (2)**.
- (2) Unless the court orders otherwise, the following persons are disqualified from being appointed or acting as a liquidator of a company:
- (a) a creditor of the company ~~in liquidation~~;
 - (b) a person who has, within the 2 years immediately before the commencement of the liquidation, been a ~~shareholder, director, promoter, an~~ auditor, or a receiver of the company or of a related company;
 - (ba) a person who has, within the 2 years immediately before the commencement of the liquidation, been a director of a creditor of the company;
 - (bb) a person who has, or who has had, within the 2 years immediately before the commencement of the liquidation,—
 - (i) a direct interest in a share issued by the company; or
 - (ii) an interest, direct or indirect, in 5% or more of any class of shares issued by a creditor of the company;
 - (bc) a person who has an interest, whether direct or indirect, in 20% or more of any class of shares issued by a related company of the company;

- (bd) if an instrument confers a power to appoint a receiver of any assets of the company, a person who is disqualified by the instrument from acting as the receiver of any assets of the company:
- (c) a person who is a relative of a person described in ~~paragraph (b)~~ any of **paragraphs (a) to (bd)**:
- (d) a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation,—
- (i) provided professional services to the company; or
- (ii) had a continuing business relationship with the company, ~~its majority shareholder, or any of its directors.~~ any of its directors, or any of its shareholders that have a special power to appoint or remove a director of the company:
- (e) a person who is prohibited from acting as a liquidator in a current or other liquidation by an order made under **section 286(5)**:
- (f) a person who has been convicted of any offence involving dishonesty.
- (2A) For the purpose of **subsection (2)(ba)**, each of the following is a director of a creditor of a company:
- (a) if the creditor is a company, a person occupying the position of a director of the company, by whatever name called:
- (b) if the creditor is a limited partnership, a general partner (within the meaning of the Limited Partnerships Act 2008):
- (c) if the creditor is a partnership other than a limited partnership, a partner:
- (d) if the creditor is any other body corporate or unincorporated body, a person occupying a position in the body that is comparable with that of a director of a company.
- (3) A person is not disqualified under **subsection (2)(d)**—
- (a) ~~by reason only that the company, or a secured creditor of the company, has appointed the person, or the person's firm, to investigate, monitor, or advise on the affairs of the company; or~~
- (a) if the professional services are provided, or the relationship arises, by reason only of the appointment of the person, or the person's firm,—
- (i) by, or at the instigation of, the company or a creditor or other party having an actual or potential financial interest in the company; and
- (ii) to investigate or to advise on the solvency of the company; or
- (b) if all the creditors consent to the appointment of the person in question; or
- (c) if, within 20 working days before the person's appointment as liquidator,—

- (i) the board of the company resolves that the company will, on the appointment of the liquidator, be able to pay its debts; and
 - (ii) a copy of the resolution is delivered to the Registrar for registration.
- (4) ~~A person who is appointed as a liquidator despite being disqualified under **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 373(2).~~
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—
- (a) the person knows or ought reasonably to know that they are disqualified under **subsection (2)**; and
 - (b) the person,—
 - (i) with their consent, is appointed as a liquidator; or
 - (ii) acts as a liquidator.
- (5) See also **section 21(2) of Parts 3 to 6 of the Insolvency Practitioners Act 2010.**
- (6) This section does not apply to an Official Assignee.

5A Validity of acts of liquidators

Section 281 is amended by omitting “is not qualified to act as a liquidator” and substituting “does not meet the requirements of **section 280(1)**”.

5B New section 282 substituted

Section 282 is repealed and the following section substituted:

282 What liquidator must do before appointment

- (1) ~~The appointment of a person, other than an Official Assignee, as liquidator is of no effect. A person must not be appointed as the liquidator of a company unless the person has—~~
- (a) ~~consented in writing to the and has not withdrawn the consent at the time of appointment; and~~
 - (b) ~~certified in writing that he or she is not disqualified from appointment by **section 280(2)**; they are—~~
 - (i) a licensed insolvency practitioner; and
 - (ii) permitted to act as liquidator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
 - (iii) not disqualified from appointment under **section 280(2)**.
- (2) A person who, with their consent, is appointed as liquidator despite failing to certify the matters in **subsection (1)(b)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

(3) This section does not apply to an Official Assignee.

5C Vacancies in office of liquidator

(1) Section 283 is amended by repealing subsection (1) and substituting the following subsection:

(1) The office of liquidator becomes vacant if the person holding office—

- (a) ~~resigns under subsection (2) or (3);~~ or
- (b) dies; or
- (c) becomes disqualified under **section 280(2)**; or
- (d) ~~has had his or her registration as an insolvency practitioner cancelled under **section 316M or 316N**.~~
- (d) ceases to be a licensed insolvency practitioner who is permitted to act as liquidator for the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; or
- (e) in the case of a person appointed in accordance with **section 280(1A)**, ceases to be a person who is permitted to act as the liquidator of a solvent company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**.

(2) ~~Section 283(5) is amended by omitting “Official Assignee for New Zealand” and substituting “Registrar”.~~

(2) Section 283(2) is amended by omitting “and sending or delivering notice in writing of the appointment of his or her successor to the Registrar for registration”.

(2A) Section 283 is amended by inserting the following subsection after subsection (3):

(3A) A person who was appointed as a liquidator of a solvent company in accordance with **section 280(1A)** must, unless **section 280(1)** applies to the person, resign without delay if the person becomes aware that the company is (or, at the time of the liquidator’s appointment, was) an insolvent company (within the meaning of **section 18 of Parts 3 to 6 of the Insolvency Practitioners Act 2010**).

(3) ~~Section 283 is amended by repealing subsection (6) subsections (5) and (6) and substituting the following subsection subsections:~~

(5) If a vacancy occurs in the office of liquidator, the person vacating office must, as soon as practicable, give written notice of the vacancy to the Registrar.

(6) ~~If, as the result of the vacation of office by a liquidator other than an Official Assignee, no person is acting as liquidator, the Registrar may appoint a person to act as an Official Assignee or a licensed insolvency practitioner as liquidator.~~

(4) Section 283(7) is amended by omitting “, or the Official Assignee for New Zealand”.

- (5) ~~Section 283(9) is repealed.~~
- (5) Section 283 is amended by repealing subsection (9) and substituting the following subsections:
- (9) A person who fails to comply with **subsection (5)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

5D New section 283A inserted

The following section is inserted after section 283:

283A Provision of documents and property to liquidator's successor information and assistance to replacement liquidator

- (1) ~~This section applies if the office of liquidator becomes vacant and a new a replacement liquidator is appointed.~~
- (2) ~~The person who was acting as liquidator immediately before the office of liquidator became vacant must, where practicable, provide to his or her successor the information and assistance that the successor reasonably requires to take over the duties of liquidator, including providing—~~
- (a) ~~books, records, and documents of the company;~~
- (b) ~~other property of the company;~~
- (c) ~~all claims;~~
- (d) ~~accounts and records of the liquidation.~~
- (2) The previous liquidator must, where practicable, provide to the replacement liquidator the information that the previous liquidator has in their possession or under their control and that the replacement liquidator reasonably requires to carry out the functions and duties of a liquidator.
- (2A) The information referred to in **subsection (2)** includes—
- (a) the records and other documents of the company;
- (b) any information necessary to provide the replacement liquidator with control over the property of the company;
- (c) any information relating to claims;
- (d) accounting records and other documents of the voluntary administration.
- (2B) The previous liquidator must, where practicable, provide to the replacement liquidator any assistance that the replacement liquidator reasonably requires to carry out the functions and duties of a liquidator.
- (3) A person who fails to comply with **subsection (2) or (2B)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

5E New section ~~285~~ sections 285 and 285A substituted

Section 285 is repealed and the following ~~section~~ sections are substituted:

285 Meaning of failure to comply

- (1) ~~In section 286~~ **sections 285A** and 286, **failure to comply** means a person's failure of a person to comply with an enactment, a rule of law, or a court order; to the extent that ~~it~~ the enactment, rule, or order applies to the person in the person's capacity as ~~an insolvency practitioner~~ a liquidator.
- (2) In proceedings under **section 285A** or 286,—
- (a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact;
- (b) a finding described in **paragraph (b)** may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

285A Compensation for failure to comply

- (1) The court may make an order under this section if the court is satisfied that—
- (a) there has been a failure to comply by a liquidator; and
- (b) a person (the **aggrieved person**) has suffered, or is likely to suffer, loss or damage as a result of the failure to comply.
- (2) The court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage.
- (3) An order may include—
- (a) an order to direct the liquidator to pay to the aggrieved person the amount of the loss or damage (in whole or in part);
- (b) an order for the recovery of any property.
- (4) **Subsection (3)** does not limit **subsection (2)**.
- (5) An application for an order may be made by the Registrar or any aggrieved person.
- (6) The court may make an order whether or not the aggrieved person is a party to the proceedings.

Compare: 2013 No 69 ss 494, 495

6 Orders to enforce liquidator's duties

- (1) Section 286(1) is amended by adding the following paragraph:
- (i) the Registrar.
- (1A) Section 286(4) is amended by omitting “section 280” in each place where it appears and substituting in each case “**section 280(2)**”.
- (1A) Section 286 is amended by repealing subsections (3) to (5) and substituting the following subsections:

- (3) If the court is satisfied that there is, or has been, a failure to comply, the court may—
- (a) relieve the liquidator of the duty to comply wholly or in part; or
 - (b) order the liquidator to comply to the extent specified in the order; or
 - (c) remove the liquidator from office; or
 - (d) make a prohibition order.
- (4) A court may, in relation to a person who is or becomes disqualified under **section 280(2)** from becoming or remaining a liquidator,—
- (a) remove the person from office; or
 - (b) order that the person may be appointed and act, or may continue to act, as liquidator, despite **section 280(2)**.
- (5) If the court is satisfied that a person is unfit to act as a liquidator by reason of persistent failures to comply or the seriousness of a failure to comply, the court must make a prohibition order.
- (5A) The period of a prohibition order under this section is a matter for the discretion of the court, and the court may make a prohibition order permanent.
- (5B) However, the court may make a prohibition order permanent, or for a period longer than 10 years, only in the most serious of cases for which an order may be made.
- ~~(1B) Section 286(9) is amended by omitting “Official Assignee for New Zealand who must keep it on a file indexed by reference to the name of the liquidator concerned” and substituting “Registrar”.~~
- (1B) Section 286 is amended by repealing subsection (9) and substituting:
- (9) A copy of every order made under this section must, within 10 working days of the order being made, be delivered by the applicant to the Registrar.

7 Establishment of Liquidation Surplus Account

Section 316(4) is amended by adding “; or” and also by adding the following paragraph:

- (c) paid, subject to such any conditions as that the Official Assignee for New Zealand may impose, to the Registrar to meet or assist in meeting the reasonable costs and expenses incurred by the Registrar in exercising powers, performing functions or duties, or providing services under this Act or the Receiverships Act 1993 in relation to insolvency practitioners liquidations.

7A New Part 16A inserted

The following Part is inserted after section 316B:

Part 16A

Insolvency practitioners

316C Purpose of Part

The purpose of this Part is to establish a compulsory register of insolvency practitioners to enable—

- (a) the public to access certain information about insolvency practitioners; and
- (b) the Registrar to more effectively regulate insolvency practitioners.

316D Ministry must review and report on operation of this Part

- (1) The Ministry must, no later than 4 years after the commencement of this Part,—
 - (a) review the operation of this Part since the commencement of this section; and
 - (b) prepare a report on the review for the Minister.
- (2) The report on the review must include recommendations to the Minister on whether any amendments to the law regulating insolvency practitioners are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.
- (4) In this section,—

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

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

Subpart 1—Registration of insolvency practitioners

Registration of insolvency practitioners

316E Insolvency practitioners must be registered

- (1) A person must not, unless the person is a registered insolvency practitioner,—
 - (a) be appointed or act as an insolvency practitioner; or
 - (b) hold out that he or she is eligible to be appointed or act as an insolvency practitioner.
- (2) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(3).
- (3) This section does not apply to an Official Assignee.

316F Eligibility for registration

- (1) A person is eligible to be a registered insolvency practitioner if the person is a natural person of at least 18 years of age.
- (2) However, unless the court orders otherwise, a person is not eligible to be a registered insolvency practitioner if the person—

Specific prohibitions

- (a) is prohibited from acting as an administrator in a current or other administration, or a deed administrator of a current or other deed of company arrangement, by an order made under section 239ADV(1);
- (b) is prohibited from acting as a liquidator in a current or other liquidation, or a receiver in a current or other receivership, by an order made under section 286(5) of this Act or section 37(6) of the Receiverships Act 1993;
- (c) has, within the preceding 5 years,—
- (i) had his or her registration as an insolvency practitioner cancelled under **section 316M(1)(a)** (unless the person is a person specified in **paragraph (a) or (b)** of this subsection);
- (ii) been convicted of an offence against **section 316G(5) or 316L(4)**;

Expulsions from relevant professional bodies

- (d) is a lawyer whose membership of the New Zealand Law Society is revoked or suspended;
- (e) is an accountant whose membership of the New Zealand Institute of Chartered Accountants is revoked or suspended;
- (f) is a member of a prescribed professional body whose membership of that body is revoked or suspended;

Prohibitions from being director

- (g) has, at any time within the preceding 5 years, been a person described in section 151(2)(b) to (f) (certain disqualifications from being appointed or holding office as a director of a company);
- (h) is prohibited under section 299(1)(a) to (c) of the Insolvency Act 2006 from entering into, carrying on, or taking part in the management or control of a business or class of business, being a director of a company, or directly or indirectly being concerned, or taking part, in the management of a company;

Personally insolvent

- (i) has made a proposal to creditors for the payment or satisfaction of debts under section 326 of the Insolvency Act 2006, and those debts remain outstanding;

- (j) is subject to a summary instalment order made under subpart 3 of Part 5 of the Insolvency Act 2006;
 - (k) is a debtor participating in the no asset procedure under subpart 4 of Part 5 of the Insolvency Act 2006:
- Other*
- (l) has been convicted of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961);
 - (m) is, or is deemed to be, subject to a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

316G Application to be registered

- (1) A person who wishes to be a registered insolvency practitioner may apply to the Registrar in writing.
- (2) The application must include the following:
 - (a) the person's full name;
 - (b) the person's business address (physical and postal);
 - (c) the name and contact details of any relevant professional body of which the person is a member (for example, the New Zealand Institute of Chartered Accountants or the New Zealand Law Society).
- (3) The application must be accompanied by the following:
 - (a) the application fee (if any) prescribed by regulations for the purposes of this section;
 - (b) certification by the person that he or she is eligible to be an insolvency practitioner.
- (4) The application must include or be accompanied by any other information or documents prescribed by regulations for the purposes of this section.
- (5) A person commits an offence, and is liable on conviction to the penalty set out in section 373(3), who, in applying for registration as an insolvency practitioner, makes a representation or an omission knowing that the representation or omission makes the application false or misleading in a material particular.

316H Registration of insolvency practitioners

If the Registrar accepts that a person is eligible under **section 316F** and has applied in accordance with **section 316G**, the Registrar must—

- (a) register the person as an insolvency practitioner by recording the person's details on the register; and
- (b) notify the person of the month in which the person's annual confirmation under **section 316L** is due each year.

316I Rejection of application for registration

- (1) The Registrar must reject a person's application for registration if—
 - (a) the person is not eligible under **section 316F**; or
 - (b) the person has not applied in accordance with **section 316G**.
- (2) As soon as practicable after rejecting a person's application for registration, the Registrar must give the person written notice of the following matters:
 - (a) that the person's application has been rejected;
 - (b) the reasons for rejecting the application;
 - (c) that there is a right to appeal against the Registrar's decisions under section 370.

Duties of insolvency practitioners relating to registration

316J Insolvency practitioners must notify Registrar of changes in registration details

A registered insolvency practitioner must, as soon as practicable after a change in any of the details recorded on the register in relation to that practitioner, notify the Registrar of the change.

316K Insolvency practitioners must notify Registrar if no longer eligible for registration

- (1) A registered insolvency practitioner must, as soon as practicable after he or she becomes ineligible under **section 316F(2)** to be a registered insolvency practitioner, notify the Registrar of that fact.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(3).

316L Insolvency practitioners must file annual confirmation of registration details

- (1) A registered insolvency practitioner must file with the Registrar an annual confirmation of the registration details relating to that insolvency practitioner.
- (2) The annual confirmation must—
 - (a) be filed each year no later than the end of the month in which it is due (as notified by the Registrar under **section 316H**); and
 - (b) be in the form (if any) required by the Registrar; and
 - (c) confirm that the person is still eligible under **section 316F** to be a registered insolvency practitioner; and
 - (d) confirm that the person's registration details are correct; and
 - (e) be accompanied by the fee prescribed by regulations (if any) for the purposes of this section; and

- (f) include, or be accompanied by, any other information or documents prescribed by regulations for the purposes of this section.
- (3) Despite **subsection (2)(a)**, a registered insolvency practitioner—
- (a) is not required to file an annual confirmation earlier than 1 year after becoming registered; and
- (b) may, with the written approval of the Registrar, file the annual confirmation in a different month from that notified by the Registrar under **section 316H**.
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(3), who, in an annual confirmation, makes a representation or an omission knowing that the representation or omission makes the application false or misleading in a material particular.

Cancellation of registration of insolvency practitioners

316M Cancellation of registration

- (1) The Registrar must cancel a person's registration as an insolvency practitioner, after complying with the notice requirements set out in **section 316O**, if the Registrar is satisfied that the person is—
- (a) unfit to act as an insolvency practitioner by reason of 2 or more failures to comply or the seriousness of a failure to comply; or
- (b) registered as an insolvency practitioner because of a false or misleading representation or omission; or
- (c) no longer eligible to be a registered insolvency practitioner.
- (2) The Registrar may cancel a person's registration as an insolvency practitioner, after the notice period described in **section 316O**, if the Registrar is satisfied that the person has failed to file an annual confirmation in accordance with **section 316L**.
- (3) As soon as practicable after cancelling a person's registration, the Registrar must—
- (a) remove the person's details from the register; and
- (b) give the person written notice of the following matters:
- (i) that the person's registration has been cancelled;
- (ii) the reasons for cancelling the registration;
- (iii) that there is a right to appeal against the Registrar's decisions under section 370.
- (4) In **subsection (1)(a)**, **failure to comply** means a failure to comply as defined in **section 239ADV(5) or 285** of this Act or **section 36** of the Receiverships Act 1993.

316N Person may request that Registrar cancel registration

- (1) A registered insolvency practitioner who is not currently appointed as, or acting as, an insolvency practitioner may request in writing that the Registrar cancel the person's registration.
- (2) As soon as practicable after receiving the request, or on a future date requested by the person, the Registrar must—
 - (a) cancel the person's registration; and
 - (b) remove the person's details from the register; and
 - (c) give the person written notice that the person's registration has been cancelled.

316O Notice of intention to cancel registration

- (1) Before cancelling a person's registration under **section 316M**, the Registrar must comply with **subsection (3)**.
- (2) However, the Registrar need not comply with **subsection (3)** if the person has notified the Registrar under **section 316K** that he or she is no longer eligible to be a registered insolvency practitioner.
- (3) The Registrar must—
 - (a) give the person at least 20 working days' written notice (the **notice period**) of the following matters:
 - (i) that the Registrar may cancel the person's registration under **section 316M**; and
 - (ii) the reasons why the Registrar is considering cancelling the person's registration; and
 - (b) give the person the opportunity to object, in writing, during the notice period; and
 - (c) consider any objections made by the person.

316P Effect of cancelled registration on current administrations and liquidations

- (1) This section applies if—
 - (a) the Registrar cancels a person's registration as an insolvency practitioner (**person A**); and
 - (b) person A was, immediately before the registration was cancelled, acting as the administrator of a company in administration, deed administrator of a company under a deed of company arrangement, or liquidator of a company in liquidation.
- (2) The Registrar must appoint another person (**person B**) to act as the administrator, deed administrator, or liquidator (as the case may be).

- (3) The Registrar must not appoint a person under **subsection (2)** who is not eligible to be appointed—
- (a) under **section 239F**, if the person is to act as an administrator; or
 - (b) under **section 239ACD**, if the person is to act as a deed administrator; or
 - (c) under **section 280**, if the person is to act as a liquidator.
- (4) Person B must, as soon as practicable after being appointed,—
- (a) give each director, officer, creditor, and shareholder of the company in administration or liquidation written notice of the following matters:
 - (i) that person B has been appointed by the Registrar to act as the administrator, deed administrator, or liquidator (as the case may be);
 - (ii) that person A is no longer eligible to act as an insolvency practitioner because the Registrar has cancelled that person's registration;
 - (iii) the grounds on which the Registrar cancelled person A's registration; and
 - (b) if appointed as an administrator, comply with section 239T.

Subpart 2—Register of insolvency practitioners

316Q Register of insolvency practitioners

The Registrar must establish and maintain a register of insolvency practitioners.

316R Operation of and access to register

- (1) The register may be kept as an electronic register or in any other manner that the Registrar thinks fit.
- (2) Subject to **subsection (3)**, the register must be available for access and searching by members of the public at all times.
- (3) The Registrar may refuse access to the register or suspend its operation, in whole or in part, if the Registrar considers that it is not practical to provide access to the register.

316S Purposes of register

The purposes of the register are—

- (a) to enable members of the public to—
 - (i) determine whether a person is a registered insolvency practitioner; and
 - (ii) choose an insolvency practitioner from a list of registered insolvency practitioners; and

- (iii) know how to contact an insolvency practitioner; and
- (b) to assist any person in the exercise of the person's powers, or the performance of the person's functions, under this Act or any other enactment.

316T Contents of register

The register must contain the following information about each registered insolvency practitioner:

- (a) the person's full name;
- (b) the person's business address (physical and postal);
- (e) the name and contact details of any relevant professional bodies of which the person is a member (for example, the New Zealand Institute of Chartered Accountants or the New Zealand Law Society);
- (d) any other information or documents prescribed by regulations for the purpose of this section.

316U Registrar may amend, omit, remove, or restrict access to information in register

The Registrar may make any amendments to the register that are necessary to—

- (a) reflect any changes in the information that is contained in the register; or
- (b) correct a mistake caused by any error or omission on the part of the Registrar.

316V Searches of register

The register may be searched for the following purposes:

- (a) by 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;
- (b) by a person for a purpose specified in **section 316S(a)**;
- (e) by a person exercising powers or performing functions under this Act or any other enactment, for a purpose specified in **section 316S(b)**;
- (d) by a person for the purpose of advising another person in connection with any of the purposes referred to in this section.

316W When search breaches information privacy principle

A person who searches the register for personal information for a purpose that is not a purpose set out in **section 316S** must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act.

316X Crown and Registrar not liable for act or omission

The Crown and the Registrar cannot be sued for any act or omission in relation to the maintenance of the register done or omitted to be done in good faith and with reasonable care.

Subpart 3—Miscellaneous

316Y Interests statement

- (1) This section sets out the requirements for the interests statement referred to in—
- (a) ~~sections 239R(2)(b)(ii)(C) and 239AP(1)(a)~~, in the case of an administrator;
 - (b) ~~section 239AGE(1)(c)~~, in the case of a deed administrator;
 - (c) ~~section 255(2)(c)(ii)(D)~~, in the case of a liquidator.
- (2) The interests statement must disclose whether the insolvency practitioner, or a firm of which the insolvency practitioner is a partner, has a relationship (whether professional, business, or personal) with,—
- (a) in the case of an administrator, the company in administration or any of its officers, shareholders, or creditors; or
 - (b) in the case of a deed administrator, the company under the deed of company arrangement or any of its officers, shareholders, or creditors; or
 - (c) in the case of a liquidator, the company in liquidation or any of its officers, shareholders, or creditors.
- (3) The insolvency practitioner must, in preparing the interests statement, make the inquiries that are reasonably necessary for ensuring that the interests statement is complete.

316Z Restrictions relating to remuneration

- (1) An insolvency practitioner must not, unless authorised by this Act or the Receiverships Act 1993, make any arrangement for, or accept from any person, any benefit beyond the remuneration to which he or she is entitled as administrator, deed administrator, liquidator, or receiver, as the case may be.
- (2) An insolvency practitioner must not make any arrangement for giving up, whether in whole or in part, his or her remuneration to any person.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2).

316ZA Restriction on purchase of assets

- (1) This section applies to the following persons:
- (a) in the case of a company in administration,—
 - (i) the administrator;

- (ii) a member of a creditors' committee:
- (b) in the case of a company under a deed of company arrangement,—
 - (i) the deed administrator:
 - (ii) a member of a creditors' committee:
- (e) in the case of a company in liquidation,—
 - (i) the liquidator:
 - (ii) a member of a liquidation committee:
- (d) in the case of a company or other entity in receivership, the receiver.
- (2) A person to whom this section applies must not purchase any part of the assets of the company or entity (as the case may be) without the leave of the court.
- (3) A person who fails to comply with **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (4) The court may give leave for the purpose of **subsection (2)** on the terms and conditions that it thinks fit.
- (5) The court may set aside a purchase that does not comply with **subsection (2)** and grant the consequential relief that it thinks fit.

316ZB Restriction on purchase of goods or services from person connected with insolvency practitioner

- (1) An insolvency practitioner must not, without the leave of the court, in that person's capacity as an administrator, deed administrator, liquidator, or receiver, purchase goods or services from a person (**person A**) whose connection with the insolvency practitioner would result in the insolvency practitioner directly or indirectly obtaining a portion of the benefit (if any) arising out of the transaction.
- (2) However, **subsection (1)** does not apply to transactions that are an integral part of a continuing business relationship between,—
 - (a) in the case of a company in administration, that company and person A; and
 - (b) in the case of a company under a deed of company arrangement, that company and person A; and
 - (c) in the case of an entity in receivership, that entity and person A.
- (3) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (4) The court may give leave for the purpose of **subsection (1)** on the terms and conditions that it thinks fit.
- (5) The court may disallow or recover any benefit made contrary to **subsection (1)**.

*Amendments to Part 20 (Registrar of Companies)***7A Registrar and Deputy Registrars of Companies**

- (1) Section 357(1)(b) is amended by inserting “, **Parts 3 to 6 of the Insolvency Practitioners Act 2010**,” after “purposes of this Act”.
- (2) Section 357(2) is amended by inserting “**Parts 3 to 6 of the Insolvency Practitioners Act 2010**,” after “under this Act.”

*Amendments to Part 21 (Offences and penalties)***8 Penalty for failure to comply with Act**

- (1) Section 373(2) is amended by inserting the following paragraphs after paragraph (l):
 - (la) **section 239F(4)** (which relates to being appointed as an administrator when disqualified):
 - (laa) **section 239G(2)** (which relates to the duty of administrators to certify certain matters before appointment):
 - (lb) **section 239R(3)** (which relates to the duty of replacement administrators tabling to table an interests statement):
 - (lc) **section 239TA(3)** (which relates to the duty of administrators providing to provide information and assistance to their successor-~~on vacating~~ office):
 - (ld) **section 239AI(4)** (which relates to administrators reporting misconduct):
 - (ld) **section 239AMB(5)** (which relates to the duty of administrators to give notice to creditors in certain circumstances):
 - (le) **section 239AP(2)** (which relates to the duty of administrators tabling an interests statement to table certain documents):
 - (lf) **section 239ABYA(2)** (which relates to the duty of administrators providing to provide information and assistance to liquidators):
 - (lg) **section 239ACD(4)** (which relates to being appointed as a deed administrator when disqualified):
 - (lh) **section 239ACE(2)** (which relates to the duty of deed administrators tabling an interests statement to certify certain matters and table certain documents before appointment):
 - (li) **section 239ACJA(3)** (which relates to the duty of deed administrators providing to provide information and assistance to their successor-~~on vacating~~ office):
 - (lj) **section 239ACZ(4)** (which relates to the duty of administrators filing to file accounts):

- (lk) **section 239ACZA(4)** (which relates to the duty of administrators and deed administrators submitting to file summary reports):
- (ll) **section 245C(5)** (which relates to the duty of liquidators to give notice to creditors in certain circumstances):
- (2) Section 373(2) is amended by ~~inserting the following paragraphs after paragraph (m) repealing paragraph (ma) and substituting the following paragraphs:~~
- ~~(ma) section 255(3C)~~ (which relates to the duty of liquidators sending to send an interests statement and interim initial and 6-monthly reports):
- ~~(mabmb) section 256(3)256(4)~~ (which relates to the duty of liquidators keeping accounts and records to keep records and documents):
- ~~(maemc) section 256A(4)~~ (which relates to liquidators' duties in relation to company funds money):
- ~~(madmd) section 257(3)~~ (which relates to the duty of liquidators submitting to submit final reports and summary reports):
- (3) Section 373(2) is amended by repealing paragraph (n) and substituting the following paragraphs:
- (n) **section 280(4)** (which relates to being appointed as a liquidator when disqualified):
- (naa) **section 282(2)** (which relates to the duty of liquidators to certify certain matters before appointment):
- (nab) **section 283(9)** (which relates to the duty of liquidators to notify the Registrar when vacating office):
- (na) **section 283A(3)** (which relates to the duty of liquidators providing to provide information and assistance to their successor on vacating office):
- (nb) **section 316Z(3)** (which relates to remuneration of insolvency practitioners):
- (ne) **section 316ZA(3)** (which relates to insolvency practitioners purchasing assets of a company in administration or liquidation, a company under a deed of company arrangement, or an entity in receivership):
- (nd) **section 316ZB(3)** (which relates to insolvency practitioners purchasing goods or services from a connected person):
- (4) Section 373(3) is amended by adding the following paragraphs:
- (d) **section 316E(2)** (which relates to being appointed or acting as an insolvency practitioner when not registered):
- (e) **section 316G(5)** (which relates to a false or misleading representation or omission in an application to be registered as an insolvency practitioner):
- (f) **section 316K(2)** (which relates to insolvency practitioners notifying the Register after becoming ineligible for registration):

- (g) ~~section 316L(4)~~ (which relates to a false or misleading representation or omission in an insolvency practitioner's annual confirmation of registration details):

Amendment to Part 22 (Miscellaneous)

10 Regulations

Section 395(1) is amended by inserting the following paragraphs ~~paragraphs~~ paragraph after paragraph (cb):

- (cba) prescribing information that must be contained in a summary report for the purpose of—
- (i) **section 239ACZA(3)**, in the case of an administrator or deed administrator; or
 - (ii) **section 257(1)(c)**, in the case of a liquidator; or
 - (iii) **section 24A(2)** of the Receiverships Act 1993, in the case of a receiver appointed in respect of property in receivership under that Act:
- (ebb) ~~prescribing professional bodies for the purpose of **section 316F(2)(f)** (which makes a person ineligible for registration as an insolvency practitioner if the person's membership of that body has been revoked or suspended):~~
- (ebe) ~~prescribing information or documents that must be included in or with an application for registration as an insolvency practitioner for the purpose of **section 316G(4)**:~~
- (ebd) ~~prescribing information or documents that must be included in or with an annual confirmation for the purpose of **section 316L(2)(f)**:~~
- (ebe) ~~prescribing information that must be contained in the register of insolvency practitioners for the purpose of **section 316T(d)**:~~

Subpart 2—Consequential amendments and transitional provisions

Consequential amendments

10A New Part 2 added to Schedule 1AA

Schedule 1AA is amended by adding the **Part 2** set out in **Schedule 1** of this Act.

11 Consequential amendments

The enactments listed in the ~~Schedule~~ The enactments specified in **Schedule 2** are amended in the manner indicated in that schedule.

Transitional provisions

11A Delayed application of section 316E

~~Section 316E~~ of the principal Act, as inserted by ~~section 7A~~ of this Act, does not apply to a person until the earlier of the following:

- (a) the day on which the person is first registered as an insolvency practitioner under ~~section 316H~~ of the principal Act as inserted by ~~section 7A~~ of this Act;
- (b) 3 months after the day on which ~~section 316E~~ comes into force.

11B Existing court orders relating to appointments

(1) This section applies to a court order that—

- (a) is made under ~~section 239F(2), 239ACD(2), or 280(2)~~ of the principal Act, or section 5(1) of the Receiverships Act 1993, as in force immediately before the day on which this Act comes into force; and
- (b) permits a person to be appointed—
 - (i) as administrator, deed administrator, or liquidator (as the case may be) despite being a person described in section 280(1)(d) to (m) of the principal Act as in force immediately before the day on which this Act comes into force; or
 - (ii) as receiver despite being a person described in section 5(2)(e) to (l) of the Receiverships Act 1993 as in force immediately before the day on which this Act comes into force; and
- (c) is in force on the day on which this Act comes into force.

(2) Until the order ceases to be in force, the order must be treated as if it—

- (a) were made under ~~section 316F(2)~~ of the principal Act (as inserted by ~~section 7A~~ of this Act); and
- (b) provides that the person is eligible to be a registered insolvency practitioner despite the person being ineligible under ~~section 316F(2)~~.

(3) However, a person is not eligible to be a registered insolvency practitioner if the person is ineligible under ~~section 316F(2)~~ for a reason that is not covered by the court order.

Part 2

Amendments to Receiverships Act 1993

12 Principal Act amended

This **Part** amends the Receiverships Act 1993.

12A Interpretation

Section 2(1) is amended by inserting the following ~~definitions in their definition in its~~ appropriate alphabetical order:

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

- (a) ~~an administrator or deed administrator (as defined in section 239B of the Companies Act 1993);~~
- (b) ~~a liquidator (as defined in section 240(1) of the Companies Act 1993);~~
- (c) ~~a receiver~~

~~registered insolvency practitioner~~ means an insolvency practitioner who is registered under ~~section 316H~~ of the Companies Act 1993

licensed insolvency practitioner has the same meaning as in **section 18(1) of Parts 3 to 6 of the Insolvency Practitioners Act 2010**

12B New sections 3A and 3B inserted

The following sections are inserted after section 3:

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

3B Act binds the Crown

This Act binds the Crown.

13 New section 5 substituted

Section 5 is repealed and the following section substituted:

5 Who may be appointed as receiver

- (1) ~~A person who is a registered insolvency practitioner, and who is not disqualified under **subsection (2)**, may be appointed as a receiver.~~
- (1) A person may be appointed as a receiver if the person—
 - (a) is a licensed insolvency practitioner who is permitted to act as a receiver in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
 - (b) is not disqualified under **subsection (2)**.
- (2) Unless the court orders otherwise, the following persons are disqualified from being appointed or acting as a receiver:
 - (a) a mortgagee of the property in receivership;
 - (b) a person who is, or who has, within the period of 2 years immediately preceding 2 years immediately before the commencement of the receivership, been,—

- (i) a director or an auditor of the grantor or of a related company (within the meaning of section 2(3) of the Companies Act 1993) of the grantor; or
- (ii) a director of the mortgagee of the property in receivership:
- (c) a person who has, or who has had, within the period of 2 years preceding 2 years immediately before the commencement of the receivership, an interest, whether direct or indirect, in—
 - (i) a direct interest in a share issued by the grantor; or
 - (ii) an interest, whether direct or indirect, in 5% or more of any class of shares issued by the mortgagee of the property in receivership:
- (ca) if the grantor is a company, a person who has an interest, whether direct or indirect, in 20% or more of any class of shares issued by a related company (within the meaning of section 2(3) of the Companies Act 1993) of the grantor:
- (d) a person who is a relative (as defined in section 2(1) of the Companies Act 1993) of a person specified in ~~paragraph (b) or (c)~~ any of **paragraphs (b) to (ca)**:
- (e) a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver:
- (f) a person who is prohibited from acting as a receiver in a current or other receivership by an order made under **section 37(6)**:
- (g) if the property in receivership includes a company, a current or former administrator, deed administrator, or liquidator of the company:
- (h) a person who has been convicted of any offence involving dishonesty.
- (3) A person who is appointed or acts as a receiver despite being disqualified under **subsection (2)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (3) A person commits an offence if—
 - (a) the person knows or ought reasonably to know that they are disqualified under **subsection (2)**; and
 - (b) the person,—
 - (i) with their consent, is appointed as a receiver; or
 - (ii) acts as a receiver.
- (4) A person who commits an offence under **subsection (3)** is liable on conviction to a fine not exceeding \$10,000.
- (5) See also **section 21(2) of Parts 3 to 6 of the Insolvency Practitioners Act 2010.**

13A New section 6A inserted

The following section is inserted after section 6:

6A What receiver must do before appointment

- (1) A person must not be appointed as a receiver unless ~~that person has certified in writing to the appointor of the receiver that he or she is not disqualified from appointment by **section 5(2)**~~; the person has—
- (a) consented in writing to the appointment and has not withdrawn the consent at the time of the appointment; and
 - (b) certified in writing that the person is a licensed insolvency practitioner who is not disqualified from appointment under **section 5(2)**; and
 - (c) provided to the grantor the written consent and certificate required under **paragraphs (a) and (b)**.
- (2) A person commits an offence if—
- (a) the person, with their consent, is appointed as receiver despite failing to certify the matters in **subsection (1)(b)**; or
 - (b) the person fails to comply with **subsection (1)(c)**.
- (3) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$10,000.

13B Notice of appointment

- (1) Section 8(1) is amended by repealing paragraph (a) and substituting the following paragraph:
- (a) give to the grantor—
 - (i) written notice of his or her appointment; and
 - (ii) a notice stating that insolvency practitioners are required to be registered, that the Registrar can cancel a person's registration on a number of grounds, and that more information about the regulation of insolvency practitioners is available from the Registrar; and
- (2) Section 8(1)(b) is amended by adding the following subparagraph:
- (v) the notice referred to in **paragraph (a)(ii)**.

13B Notice of appointment

- (1) Section 8 is amended by repealing subsection (1) and substituting the following subsection:
- (1) A receiver must, before the end of the next working day after appointment,—
 - (a) give to the grantor written notice of the receiver's appointment; and
 - (b) give to the Registrar written notice of the receiver's appointment, including—

- (i) the receiver's full name:
 - (ii) the date of the appointment:
 - (iii) the receiver's business address:
 - (iv) a brief description of the property in receivership:
 - (v) a copy of the notice referred to in **paragraph (a)**:
 - (vi) the name of the person who appointed the receiver or, if the receiver was appointed by the court, the name of the person who applied for the receiver to be appointed:
 - (vii) a description of the deed, agreement, or instrument by or under which the receiver was appointed; and
- (c) give public notice of the receiver's appointment, including the matters described in **paragraph (b)(i) to (iv)**.

(2) Section 8 is amended by repealing subsection (3) and substituting the following subsection:

(3) A notice given under this section must include a statement that receivers are required to be licensed insolvency practitioners, and that more information about the regulation of insolvency practitioners is available from the Registrar.

13C Vacancy in office of receiver

(1) Section 11 is amended by repealing subsection (1) and substituting the following subsection:

- (1) The office of receiver becomes vacant if the person holding office—
- (a) ~~resigns under in accordance with~~ subsection (2); or
 - (b) dies; or
 - (c) becomes disqualified under **section 5(2)**; or
 - (d) ~~has had his or her registration as an insolvency practitioner cancelled under **section 316M or 316N** of the Companies Act 1993.~~
 - (d) ceases to be a licensed insolvency practitioner who is permitted to act as receiver for the property in receivership in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**.

(2) Section 11 is amended by repealing subsections (3) and (4) and substituting the following ~~subsections~~ subsection:

(3) If a vacancy occurs in the office of receiver, the person vacating office ~~or, if that person is unable to act, his or her personal representative~~ must,—

- (a) as soon as practicable,—
 - (i) give public notice of the vacancy; and
 - (ii) give written notice of the vacancy to the person ~~by whom the receiver was appointed~~ who appointed the receiver (unless the vacancy arose under **subsection (1)(a)**); and

- (b) if the receiver held office in relation to the property of a company, give written notice of the vacancy, ~~within 7 days of the vacancy occurring, to the Registrar for registration in the register of charges before the end of the next working day after the vacancy arose, to the Registrar (unless the vacancy arose under **subsection (1)(d)**).~~
- (4) However,—
- (a) ~~a person who vacates office under **subsection (1)(a)** need not comply with **subsection (3)(a)(ii)**; and~~
- (b) ~~a person who vacates office under **subsection (1)(d)** need not comply with **subsection (3)(b)**.~~
- (3) Section 11(6) is repealed.
- (3A) Section 11(8) is amended by omitting “or subsection (4)”.
- (4) Section 11(8) is amended by omitting “\$5,000” and substituting “\$10,000”.

13D New section 11A inserted

The following section is inserted after section 11:

11A Provision of documents and property to receiver’s successor information and assistance to replacement receiver

- (1) ~~This section applies if the office of receiver becomes vacant and a new a replacement receiver is appointed.~~
- (2) ~~The person who was acting as receiver immediately before the office of receiver became vacant must, where practicable, provide to his or her successor the information and assistance that the successor reasonably requires to take over the duties of receiver, including providing any accounts and records of the receivership.~~
- (2) The previous receiver must, where practicable, provide to the replacement receiver the information that the previous receiver has in their possession or under their control and that the replacement receiver reasonably requires to carry out the functions and duties of receiver, including any accounting records and other documents relating to the property in receivership.
- (2A) The previous receiver must, where practicable, provide to the replacement receiver any assistance that the replacement receiver reasonably requires to carry out the functions and duties of receiver.
- (3) A person who fails to comply with **subsection (2) or (2A)** commits an offence and is liable on ~~summary~~ conviction to a fine not exceeding \$10,000.

13E Duty in relation to money

Section 21 is amended by adding the following subsection as subsection (2):

- (2) A person who fails to comply with **subsection (1)** commits an offence and is liable on ~~summary~~ conviction to a fine not exceeding \$10,000.

13F Accounting records

Section 22 is amended by adding the following subsection:

- (3) A person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

13G Further reports by receiver

- (1) Section 24 is amended by repealing subsection (1) and substituting the following subsection:

- (1) A receiver must, no later than 2 months after the end of each period of 6 months after his or her appointment as receiver, unless the receivership has ended, prepare a further report summarising—

- (a) the conduct of the receivership, including all amounts received and paid, during the period; and
- (b) the state of affairs with respect to the property in receivership as at the end of the period.

- (2) Section 24(2) is amended by adding “; and” and also by adding the following paragraphs:

- (e) the receiver’s receipts and payments since the date of any previous report, including payer and payee details; and
- (f) the aggregates of the receiver’s receipts and payments since the day on which the receiver was appointed.

- (3) Section 24(3) is amended by omitting “required to be prepared in accordance with **subsection (1)(a)**”.

13H New sections 24 and 24A inserted substituted

The following section is inserted after section 24. Section 24 is repealed and the following sections substituted:

24 Further reports by receiver

- (1) The receiver must, not later than 2 months after the end of each period of 6 months after the receiver’s appointment, prepare a further report on the receivership.

- (2) A person who was a receiver at the end of the receivership must, not later than 2 months after the end of the receivership, prepare a further report on the receivership.

- (3) Each report prepared under this section must contain—

- (a) details of each amount received and paid in respect of the receivership since the receiver’s or former receiver’s previous report; and
- (b) details of property disposed of since the date of any previous report and any proposals for the disposal of property in receivership; and

- (c) details of all fees, allowances, reimbursements, or other benefits paid to the receiver or former receiver since the commencement of the receivership; and
 - (d) a summary of all amounts received and paid in respect of the receivership since the commencement of the receivership; and
 - (e) details of amounts owing, as at the date of the report,—
 - (i) to any person in whose interests the receiver was appointed; and
 - (ii) to creditors of the grantor having preferential claims; and
 - (f) details of amounts likely to be available, as at the date of the report, for payment to creditors other than those referred to in **paragraph (e)**; and
 - (g) the state of affairs with respect to the property in receivership as at the end of the period.
- (4) A receiver preparing a report under **subsection (1)** may exclude from the report details of any proposals for disposal of property in receivership if the receiver considers that their inclusion would materially prejudice the exercise of the receiver’s functions.
- (5) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

24A Summary report by receiver

- (1) The person who was a receiver at the end of a receivership must, as soon as practicable after completing ~~his or her~~ the person’s duties in relation to the receivership, provide to the Registrar, in the manner specified by the Registrar, a summary report on the receivership.
- (2) The summary report must contain the information prescribed for the purpose of this section by regulations made under **section 395(1)(cba)** of the Companies Act 1993.
- (3) A person who fails to comply with this section commits an offence and is liable on ~~summary~~ conviction to a fine not exceeding \$10,000.

13HA Persons entitled to receive reports

Section 26(4) is amended by omitting “that is a body corporate”.

13HB Section 28 repealed

Section 28 is repealed.

13HC Notice of end of receivership

Section 29(1) is amended by omitting “the receivership of a grantor that is a body corporate” and substituting “a receivership”.

13I New ~~section 36~~ sections 36 and 36A substituted

Section 36 is repealed and the following ~~section~~ sections are substituted:

36 **Meaning of failure to comply**

- (1) ~~In section 37~~ sections **36A** and **37**, **failure to comply** means a person's failure of a person to comply with any of the following, to the extent that they apply to the person in the person's capacity as an insolvency practitioner receiver:
- (a) the deed, agreement, or order of the court by or under which the receiver was appointed:
 - (b) an enactment:
 - (c) a rule of law:
 - (d) a court order.
- (2) In proceedings under **section 36A** or **37**,—
- (a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact:
 - (b) a finding described in **paragraph (a)** may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

36A **Compensatory orders**

- (1) The court may make an order under this section if the court is satisfied that—
- (a) there has been a failure to comply by a receiver; and
 - (b) a person (the **aggrieved person**) has suffered, or is likely to suffer, loss or damage as a result of the failure to comply.
- (2) The court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage.
- (3) An order may include—
- (a) an order to direct the receiver to pay to the aggrieved person the amount of the loss or damage (in whole or in part):
 - (b) an order for the recovery of any property.
- (4) **Subsection (3)** does not limit **subsection (2)**.
- (5) An application for an order may be made by the Registrar or any aggrieved person.
- (6) The court may make an order whether or not the aggrieved person is a party to the proceedings.

Compare: 2013 No 69 ss 494, 495

14 **Orders to enforce receiver's duties**

- (1AA) ~~Section 37(5) is amended by omitting “section 5” in each place where it appears and substituting in each case “**section 5(2)**”.~~

- (1) ~~Section 37 is amended by repealing subsection (6) and substituting the following subsection:~~
- (6) ~~If the court is satisfied that a person is unfit to act as a receiver because of persistent failures to comply or the seriousness of a failure to comply,—~~
- ~~(a) the court must make a prohibition order; and~~
- ~~(b) the period of the order is a matter for the discretion of the court, and the court may make a prohibition order for an indefinite period.~~
- (1) Section 37 is amended by repealing subsections (4) to (6) and substituting the following subsections:
- (4) If the court is satisfied that there is, or has been, a failure to comply, the court may—
- (a) relieve the receiver of the duty to comply wholly or in part; or
- (b) order the receiver to comply to the extent specified in the order; or
- (c) remove the receiver from office; or
- (d) make a prohibition order.
- (5) The court may, in respect of a person who is or becomes disqualified under **section 5(2)** from becoming or remaining a receiver,—
- (a) remove the person from office; or
- (b) order that the person may be appointed and act or may continue to act as a receiver, despite **section 5(2)**.
- (6) If the court is satisfied that a person is unfit to act as a receiver because of persistent failures to comply or the seriousness of a failure to comply, the court must make a prohibition order.
- (6A) The period of a prohibition order under this section is a matter for the discretion of the court, and the court may make a prohibition order permanent.
- (6B) However, the court may make a prohibition order permanent, or for a period longer than 10 years, only in the most serious of cases for which an order may be made.
- (2) ~~Section 37(9) is amended by omitting “Official Assignee for New Zealand who must keep it on a public file indexed by reference to the name of the receiver concerned” and substituting “Registrar”.~~
- (2) Section 37 is amended by repealing subsection (9) and substituting:
- (9) A copy of every order made under this section must, within 10 working days of the order being made, be delivered by the applicant to the Registrar.

14A Powers and duties of receivers

Section 40C(2) is amended by omitting “the Schedule” and substituting “**Schedule 1**”.

14B New Schedule 1AA inserted

The **Schedule 1AA** set out in **Schedule 3** of this Act is inserted as the first schedule to appear after the last section of the principal Act.

15 Schedule amended

- (1) The heading to the Schedule is amended by omitting “**Schedule**” and substituting “**Schedule 1**”.
- (2) Clause 6 of the Schedule is repealed and the following clause substituted:

6 Persons disqualified from appointment

- (1) In addition to the persons specified in **section 5(2)**, a person disqualified by section 3 of the Local Authorities (Members’ Interests) Act 1968 or clause 1 of Schedule 7 of the Local Government Act 2002 from holding office as a member of the local authority is disqualified from being appointed as, or acting as, a receiver, unless the court orders otherwise.
- (2) The reference in **section 5(3)** to being disqualified under **section 5(2)** must be read as if it included a reference to being disqualified under **subclause (1)**.

Part 3
Preliminary provisions

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
- (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:
- (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:
 - (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:

- (v) **subpart 5** relates to investigations by the Registrar:
- (vi) **subpart 6** relates to recognised bodies and religious societies or orders:
- (c) **Part 5** imposes duties and restrictions on licensed insolvency practitioners:
- (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 or a member of a recognised professional body:
 - (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**.

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**
 - company** has the meaning given to it in 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—
 - (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
 - insolvency engagement** means any work or function that is part of acting as an insolvency practitioner
 - 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);
 - (d) a trustee or provisional trustee appointed under subpart 2 of Part 5 of the Insolvency Act 2006

insolvent company means a company that does not satisfy the solvency test set out in section 4(1) of the Companies Act 1993

insolvent company liquidator means a liquidator acting in respect of an insolvent company

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

member and member who is a licensed insolvency practitioner, in relation to an accredited body, include a person to whom **section 68** applies and who is issued a licence by the accredited body in accordance with **section 22(2)(c)(ii)**

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

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

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:
- (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:
- (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:
- (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 in **section 28(1)**

solvent company means a company that satisfies the solvency test set out in section 4(1) of the Companies Act 1993

solvent company liquidator means a liquidator appointed in respect of a solvent company.

- (2) For the purposes of the definitions of **insolvent company** and **solvent company**,—
- (a) a reference in section 4(1) of the Companies Act 1993 to a company is to be treated as a reference to a company as defined in **subsection (1)**; and
- (b) section 4 of the Companies Act 1993 applies with any necessary modifications.
- (3) 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—
- (a) quality, expertise, and integrity in the profession of insolvency practitioners; and
- (b) compliance with the statutory duties of insolvency practitioners.

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

Requirement to hold licence

21 Insolvency practitioner must hold licence

- (1) A person who acts as an insolvency practitioner must hold a licence—
- (a) that authorises the person to act as an insolvency practitioner in respect of the insolvency engagement being carried out; and
- (b) that 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.

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 a licence in the manner that is specified by the Registrar.
- (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
 - (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,—
 - (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.

Compare: 2011 No 21 s 11

Licence details to be sent to Registrar

23 Accredited body must send licence details to Registrar

An accredited body must, before the end of the next working day after issuing a licence to a person, send to the Registrar notification of the issue of the licence together with—

- (a) the relevant information described in **section 42**; and
- (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—
 - (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.
- (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:
 - (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 must not exercise a power referred to in **subsection (3)** unless—
 - (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:
 - (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
 - (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.

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**.
- (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.

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)**,—
- (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.
- (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:
- (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.

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
 - (c) cancel the member's licence under **section 30**; or
 - (b) suspend the member's licence under **section 30**.
- (2) This section does not limit **sections 24, 29, 30, and 31**.

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:

- (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**

- (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
 - (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
 - (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
 - (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—
 - (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—
 - (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

- (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
 - (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**.

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).
- (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.
- (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

- (1) A relevant authority must not cancel a licence under **section 29** or suspend a licence under **section 30** unless—
 - (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:
 - (i) that the relevant authority may cancel or suspend 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 within that notice period.

- (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.
- (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

- (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
- (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 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.
- (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.

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*,—
- (a) prescribe 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) prescribe conditions, or the kinds of conditions, to which licences—
- (i) must be subject; and
- (ii) may be subject if the accredited body thinks fit; and

- (c) prescribe requirements for ongoing competence that must be complied with by persons who are issued with a licence; and
 - (d) prescribe 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
 - (e) prescribe the procedure that accredited bodies and disciplinary bodies of accredited bodies must follow when performing regulatory functions; and
 - (f) prescribe transitional requirements for the purposes of transitional licences under **Schedule 4** (including requirements relating to required competence, qualifications, and experience).
- (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.

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 the Registrar thinks fit, including in 1 or more of the following ways:

- (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:
- (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:
- (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.

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
 - (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
- (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.

Compare: 2011 No 21 s 35

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
 - (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.
- (2) A failure to comply with **subsection (1)** does not affect the validity of any notice under **section 34**.

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.
- (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.

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.

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.

(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 Purpose of register

The purpose of the register is—

- (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; and
 - (ii) choose a suitable person to carry out an insolvency engagement; and
 - (iii) know which licensed insolvency practitioners have been disciplined within the preceding 7 years; and
- (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.

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 licensed insolvency practitioner;
- (b) the name of the accredited body that has issued a licence to the licensed insolvency practitioner;
- (c) the date of each licence that has been issued to the licensed insolvency practitioner;

- (d) the date on which each licence was recorded in the register:
 - (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 licensed insolvency practitioner is authorised to act under each licence:
 - (g) the conditions placed on each licence that is currently in force:
 - (h) any suspension or cancellation of a licence that has been issued to the licensed insolvency practitioner or any other action that has been taken on a disciplinary matter against the licensed 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 licensed insolvency practitioner under section 239ADV or 286 of the Companies Act 1993 or section 37 of the Receiverships Act 1993:
 - (j) any other prescribed information.
- (2) The register may also contain—
- (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.
- (4) The Registrar may, despite **subsection (1)**, omit or remove any information about an insolvency practitioner from the publicly available register if—
- (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.

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.

- (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.

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
- (d) regulations otherwise require the register to be amended.

Compare: 2011 No 21 s 44

45 Search of register

- (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;
- (c) the name of an accredited body;
- (d) any other prescribed criteria;
- (e) any combination of the criteria in **paragraphs (a) to (d)**.
- (3) The register may be searched by—
- (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.

Compare: 2011 No 21 s 46

Subpart 4—Accreditation

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—
 - (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, that the person is a fit and proper person to perform regulatory functions for the purposes of **Parts 3 to 6**; and
 - (d) if the applicant is 2 or more persons acting jointly together, that 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.

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:
 - (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;
 - (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;
 - (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 under **Parts 3 to 6**:
 - (b) a failure to comply with an obligation of an accredited body by the accredited body or by any of the persons is to be treated as a failure to comply with the obligation by each of the persons:
 - (c) a suspension or cancellation of the accreditation under **section 57** applies in relation to all of the persons:
 - (d) a penalty for or consequence of a failure to comply with an obligation of an accredited body (other than a suspension or cancellation of the accreditation, but including, for example, a fine or an order that a body may not apply to be re-accredited before the expiry of a specified period) applies to each of the persons severally:
 - (e) the provisions of **Parts 3 to 6** apply with all necessary modifications.
- (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

- (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:
 - (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:
 - (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.
- (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 disallowable instruments for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (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
- (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 annual report and annual confirmation to Registrar

- (1) An accredited body must supply an annual report and an annual confirmation to the Registrar each year within the time specified by the Registrar in a direction under **subsection (4)**.
- (2) The annual report must—
- (a) be supplied in the manner and form specified by the Registrar in a direction under **subsection (4)**; and
- (b) contain—
- (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
- (iii) any other prescribed information.
- (3) The annual confirmation must—
- (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

- (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
 - (c) contain, or be accompanied by, any other prescribed information or documents.
 - (4) The Registrar must—
 - (a) prepare a direction that specifies the following:
 - (i) the time within which annual reports and annual confirmations must be supplied;
 - (ii) the manner and form in which annual 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) An accredited body that fails to supply an annual 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.

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**.
- (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,—
 - (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**.
- (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.

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.

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)**.
- (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)**.
- (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.
- (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.
- (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, no later than 1 month after preparing a report, publish a notice in the *Gazette* that—
 - (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
 - (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.
- (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
- (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.

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.

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.

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—
- (a) an accredited body has failed to—
- (i) comply with a condition of its accreditation; or
- (ii) supply an annual report and an annual confirmation in accordance with **section 49**; or
- (iii) comply with a direction under **section 54**; or

- (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 do 1 or more of the following:
- (a) cancel, with effect from a specified date, the accreditation of the accredited body:
 - (b) order that a body whose accreditation has been cancelled may not apply to be re-accredited before the expiry of a specified period:
 - (c) suspend 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:
 - (d) censure the accredited body:
 - (e) require 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:
 - (f) make an order under **section 59**.
- (3) However, the Registrar may cancel or suspend 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
 - (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.

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 cancellation or suspension on licences issued by accredited body or former accredited body

- (1) If the accreditation of an accredited body (**B**) is—
- (a) cancelled under **section 57**, each licence issued by B is treated as cancelled:
 - (b) suspended under **section 57**, each licence issued by B is treated as suspended during the period in which B’s accreditation is suspended.

- (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.
- (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 engagements, 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**).

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—

- (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
- (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

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
 - (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.
- (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.
- (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

- (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
 - (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
 - (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.
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,—
 - (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 may not investigate, under this subpart, the conduct of a member of an accredited body in respect of an insolvency engagement unless—

- (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
- (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.

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:
 - (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.

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.
- (2) Without limiting **subsection (1)**, the Registrar may, by written notice, require an accredited body to do 1 or more of the following:
 - (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;
 - (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);
 - (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.
- (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
 - (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.

Compare: 2011 No 21 s 77

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—
 - (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
 - (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;
 - (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 classes of insolvency engagement, or as a solvent company liquidator,—
 - (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:
 - (g) an order prohibiting P from acting in respect of a specified insolvency engagement or a specified class or classes of insolvency engagement, or as a solvent company liquidator, except under the supervision of another licensed insolvency practitioner:
 - (i) 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 must not exercise a power referred to in this section in relation to P unless—
- (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
 - (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.

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 made under **section 66** to—
 - (a) the licensed insolvency practitioner against which 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—Recognised bodies and religious societies and orders

68 Exemption from membership requirement for certain members of recognised bodies and religious societies and orders

- (1) This section applies in respect of a person (P) if—
 - (a) the accredited body is satisfied that P is—

- (i) a member of a recognised body; or
- (ii) 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
- (b) the accredited body has entered into a written arrangement with P that complies with **section 69**; and
- (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.
- (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

- (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)**.
- (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;
 - (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;
 - (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 for certain members of religious societies, religious orders, or recognised bodies

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** applying to P 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
- (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)

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.
- (2) A **serious problem**, in relation to a company, 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 in relation to the company:
 - (b) a person who has taken part in the formation, promotion, 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
 - (ii) may be 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 mismanaged by 1 or more past or present directors, or persons who at any time have been concerned in or have taken part in the management of the company, in a way that has materially contributed to the company being a company described in section 385(1) of the Companies Act 1993.

- (3) As soon as practicable after identifying the serious problem, the person must report it to—
- (a) the Registrar; and
 - (b) if the company is a licensed insurer (within the meaning of section 6 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 in relation to the company, 1 or both of the following:
 - (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.

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—
- (a) information; and
 - (b) access to documents; and
 - (c) facilities for inspecting and copying documents.
- (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**;
 - (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
 - (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
 - (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
 - (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.
- (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

- (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.
- (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);
 - (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

- (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.
- (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

76 Restrictions relating to remuneration

- (1) An insolvency practitioner must not—
- (a) accept any direct or indirect benefit for the insolvency practitioner in relation to the carrying out of an insolvency engagement; or
 - (b) make any arrangement that would result in any direct or indirect benefit (for the insolvency practitioner or any other person) in relation to the carrying out of an insolvency engagement.
- (2) However, **subsection (1)** does not apply to—
- (a) the remuneration to which the insolvency practitioner is entitled as administrator, deed administrator, liquidator, or receiver (as the case may be);
 - (b) any other benefit that is authorised by or under **Parts 3 to 6**, the Companies Act 1993, or the Receiverships Act 1993.
- (3) An insolvency practitioner must not make any arrangement for giving, in whole or in part, the insolvency practitioner’s remuneration to any person.
- (4) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$75,000.

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
- (b) are less favourable than the terms referred to in **paragraph (a)** for the person to whom **section 78 or 79** applies (as the case may be).

78 Restriction on purchase of assets

- (1) This section applies to—
- (a) 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 or other entity;

- (b) if the insolvency practitioner described in **paragraph (a)** is a director, an officer, or an employee of a body corporate,—
 - (i) the body corporate:
 - (ii) any other director, officer, or employee of the body corporate:
 - (c) if the insolvency practitioner described in **paragraph (a)** is a partner, an officer, or an employee of a partnership or limited partnership,—
 - (i) the partnership or limited partnership:
 - (ii) any other partner, officer, or employee of the partnership or limited partnership:
 - (d) a member of the creditors' committee of a company in administration or under a deed of company arrangement:
 - (e) 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, 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 or entity (as the case may be) unless the purchase is on arm's-length terms.
 - (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.
 - (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) An insolvency practitioner, acting as an administrator, deed administrator, liquidator, or receiver, must not purchase for the relevant company or entity goods or services from a person (P) if the insolvency practitioner knows, or ought to know, that their connection with P would result in the insolvency practitioner directly or indirectly obtaining a portion of any benefit arising out of the transaction.
- (2) However, **subsection (1)** 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,—
 - (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 an entity (including a company), the entity and P; or

- (b) a transaction that is conducted on arm's-length terms; or
- (c) a transaction that is conducted with the leave of the court.
- (3) A person who fails to comply with **subsection (1)** 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 (1)** on the terms and conditions that it thinks fit.
- (5) The court may disallow or order the recovery of any benefit made contrary to **subsection (1)**.

Part 6

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:
 - (a) a member of a recognised professional body;
 - (b) a licensed insolvency practitioner.
- (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.
- (3) In this section, **recognised professional body** means any of the following:
 - (a) the New Zealand Institute of Chartered Accountants;
 - (b) the New Zealand Law Society;
 - (c) a professional body recognised by the Registrar under **section 81**.

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** if, after taking into account the prescribed matters (if any), the Registrar is satisfied that—
 - (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
 - (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—

- (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
 - (c) vary, revoke, add to, or substitute the conditions referred to in **paragraph (b)**.
- (3) If the Registrar revokes or suspends recognition of a body, every member of the body ceases to be a person who is permitted to act as the liquidator of a solvent company.

Subpart 2—Other miscellaneous matters

82 Registrar's functions

The Registrar's functions under **Parts 3 to 6** are the following:

- (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**;
- (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**;
- (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)**—
- (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**;
 - (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.
- (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
 - (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
 - (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—
- (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.
- (4) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while 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.
- (6) In this section, **relevant document**, in relation to a company, means a document that contains information relating to—
- (a) the company; or
 - (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

- (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**).

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.
- (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.

Compare: 2011 No 21 s 93

86 Sharing of information and documents with Registrar

- (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
 - (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.
- (3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.

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—
- (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
 - (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.
- (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.
- (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.

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,—
- (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—
 - (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.

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**.

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
- (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.
- (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
- (c) is revocable at any time, in writing; 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.
- (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

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**:

- (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,—
 - (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 for the purposes of **Parts 3 to 6** must comply (for example, that a document be signed by a specified person):
 - (e) requirements with which information or documents sent or delivered for registration must comply:
 - (f) authorising the Registrar to require payment of any costs incurred by the Registrar:
 - (g) prescribing procedures, requirements, and other matters, not inconsistent with **Parts 3 to 6**, for the register, including matters that relate to—
 - (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:
 - (h) prescribing fees and charges that the Registrar may require to be paid to 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**:
 - (j) providing for any other matters contemplated by **Parts 3 to 6**, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under **subsection (1)(f) or (h)** 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.

Compare: 2011 No 21 s 84

93 **Consequential amendments**

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

Schedule 1
New Part 2 of Schedule 1AA inserted

s 10A

Part 2

Provisions relating to Part 1 of Insolvency Practitioners Act 2010

5 Interpretation

In this Part,—

amendment Act means **Part 1 of the Insolvency Practitioners Act 2010 commencement date**, in relation to a provision of this Act, means the date on which it is amended or inserted by the amendment Act

company, in relation to a liquidation under Part 16, has the meaning given in section 240(1A)

insolvent company has the same meaning as in **section 18 of Parts 3 to 6 of the Insolvency Practitioners Act 2010**

new, in relation to a provision of this Act, means the provision as amended or inserted by the amendment Act

old, in relation to a provision of this Act, means the provision as in force immediately before its amendment or repeal by the amendment Act

solvent company has the same meaning as in **section 18 of Parts 3 to 6 of the Insolvency Practitioners Act 2010**.

6 Application of new provisions to insolvency engagements already underway

(1) The new provisions apply on and from the commencement date in relation to the liquidation of an insolvent company under Part 16 (regardless of whether a liquidator was appointed before or after the commencement date).

(2) The new provisions do not apply (and the old provisions continue to apply) in relation to—

(a) the administration of a company under Part 15A for which an administrator was appointed before the commencement date; or

(b) a company under a deed of company arrangement under Part 15A for which the deed of company arrangement was executed before the commencement date; or

(c) the liquidation of a solvent company under Part 16 for which a liquidator was appointed before the commencement date.

(3) However, despite **subclause (2)**, the following provisions apply on and from the commencement date:

- (a) in relation to the administration of a company under Part 15A (regardless of whether an administrator was appointed before or after the commencement date):
 - (i) new **section 239TA**:
 - (ii) new section 239AM:
 - (iii) new **section 239AMA**:
 - (iv) new **section 239AMB**:
 - (v) new **section 239ABYA**:
- (b) in relation to a company under a deed of company arrangement under Part 15A (regardless of whether the deed of company arrangement was executed before or after the commencement date):
 - (i) new section 239ADW:
 - (ii) new **section 239ADWA**.
- (c) in relation to the liquidation of a solvent company under Part 16 (regardless of whether a liquidator was appointed before or after the commencement date):
 - (i) new section 245A:
 - (ii) new **section 245B**:
 - (iii) new **section 257A**:
 - (iv) new **section 283A**:
 - (v) new **section 285**:
 - (vi) new **section 285A**.

7 Existing court orders relating to appointments continue to have effect

- (1) This clause applies to each court order that—
 - (a) is made under old section 239F(2), 239ACD(2), or 280(1) and permits a person to be appointed as administrator, deed administrator, or liquidator despite being a person described in old section 280(1)(d) to (m); and
 - (b) is in force on the commencement date.
- (2) Until the court order ceases to be in force, the order must be treated as if it were made under the new provision that replaces the old provision under which the court order is made.
- (3) However, a person is not eligible to be appointed as administrator, deed administrator, or liquidator (as the case may be) if the person is ineligible under any new provision of this Act for a reason that is not covered by the court order.

Schedule 2

Consequential amendments

s 11

Part 1

Amendments to Act

Privacy Act 1993 (1993 No 28)

Item relating to the Companies Act 1993 in Part 1 of Schedule 2: insert “**316Q**,” after “189.”

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

Section 158: omit “239AI.”

Section 158: omit “257(1)(a)(i) or (ii)” and substitute “257(1)(a)(i) and (ii) and **(c)**”.

Part 2

Amendments to regulations

Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)

Regulation 29: revoke.

Regulations 31 and 32: revoke.

Regulation 34: revoke.

Regulations 37 and 38: revoke.

Form 1 of the Schedule: after the item “Telephone No: *[area code and number]*”, insert:

Address for communications: *[email address]*

Form 1 of the Schedule: after the item “Full particulars of the claim are set out, and any supporting documents that substantiate the claim are identified, on the reverse of this form.”, insert:

[The abovenamed creditor *[is/is not]* a related entity of the company in liquidation. (See section 245A(3) of the Companies Act 1993.)

Form 2 of the Schedule: after the item “Telephone No: *[area code and number]*”, insert:

Address for communications: *[email address]*

Form 2 of the Schedule: after the item “Full particulars of the valuation, claim, and charge are set out, and any supporting documents that substantiate the claim and the charge, are identified on the reverse of this form.”, insert:

[The abovenamed creditor *[is/is not]* a related entity of the company in liquidation. (See section 245A(3) of the Companies Act 1993.)

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

~~Item relating to the Companies Act 1993 in Schedule 1: insert “**316Q**,” after “189,”.~~

Schedule 3
New Schedule 1AA inserted

s 14B

Schedule 1AA
Transitional, savings, and related provisions

s 3A

Part 1

Provisions relating to Part 2 of Insolvency Practitioners Act 2010

1 Interpretation in this Part

In this Part,—

amendment Act means **Part 2 of the Insolvency Practitioners Act 2010 commencement date**, in relation to a provision of this Act, means the date on which it is amended or inserted by the amendment Act

new, in relation to a provision of this Act, means the provision as amended or inserted by the amendment Act

old, in relation to a provision of this Act, means the provision as in force immediately before its amendment or repeal by the amendment Act.

2 Application of new provisions to insolvency engagements already underway

(1) The new provisions do not apply (and the old provisions continue to apply) in relation to a receivership under this Act for which a receiver was appointed before the commencement date.

(2) However, despite **subclause (1)**, the following provisions apply on and from the commencement date in relation to a receivership under this Act (regardless of whether a receiver was appointed before or after the commencement date):

(a) new **section 11A**:

(b) new section 21:

(c) new section 22:

(d) new section 29:

(e) new **section 36**:

(f) new **section 36A**.

3 Existing court orders relating to appointments continue to have effect

(1) This clause applies to each court order that—

-
- (a) is made under old section 5(1) or old clause 6 of the Schedule and permits a person to be appointed as receiver despite being a person described in old section 5(1)(e) to (l) or old clause 6(b) of the Schedule; and
- (b) is in force on the commencement date.
- (2) Until the court order ceases to be in force, the order must be treated as if it were made under the new provision that replaces the old provision under which the court order is made.
- (3) However, the person is not eligible to be appointed as a receiver if the person is ineligible under any new provision for a reason that is not covered by the court order.

Schedule 4

Transitional, savings, and related provisions

s 19

Part 1

Provisions relating to Parts 3 to 6 as enacted

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,—

- (a) is accredited by an accredited body to undertake insolvency engagements; and
- (b) is either—
 - (i) a member of the accredited body; or
 - (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 it comes into force

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

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.

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 authorises the person to undertake the types of insolvency engagements for which the person is accredited.
- (2) The provisions of **Part 3 to 6** (except for **sections 22, 23, and 25**) apply in relation to a transitional licence.

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**) cancels or suspends the accreditation of the accredited body that accredited the practitioner, from the date on which the Registrar cancels or suspends the accreditation:
- (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 cancelled or suspended under **subpart 1 of Part 4**, from the date on which the licence is cancelled or suspended:
- (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—
 - (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.

4 Transitional provisions relating to register

- (1) This clause applies in relation to an accredited insolvency practitioner who holds a transitional licence.
- (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.
- (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**.

5 Application to insolvency engagements already underway

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

- (a) the liquidation of a solvent 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 commencement date; or
 - (c) a receivership under the Receiverships Act 1993 for which a receiver was appointed before the commencement date; or
 - (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) A person who, on the commencement date, is the liquidator of an insolvent company and who, on or after the commencement date, is not a licensed insolvency practitioner must resign without delay and section 283 of the Companies Act 1993 applies accordingly.

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—
- (a) as soon as is reasonably practicable after **section 50** comes into force;
 - (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 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.

Schedule 5
Consequential amendments

s 93

Part 1
Amendment to Act

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 **Section 39**
2010

Part 2
Amendment to legislative instrument

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

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

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