Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed standards, conditions & policies for accredited bodies

Submission Form

December 2019

Submission Form

### Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed standards, conditions & policies for accredited bodies

### The Registrar of Companies (Registrar) is seeking written submissions on several matters relating to the accreditation of professional bodies under the Insolvency Practitioners Regulation Act 2019:

### Minimum standards for the accreditation of bodies

### Standard conditions for the accreditation of bodies

### Policies for the modification of conditions for accredited bodies

### Policies for the accreditation process

### Make directions for annual reports and confirmations by accredited bodies

### Accredited bodies will be responsible for carrying out the frontline regulation of insolvency practitioners.

### Please provide your feedback by 5pm on 7 February 2020.

### We appreciate your time and effort taken to respond to this consultation.

### We may contact submitters directly if we require clarification of any matters in submissions.

## Instructions

To make a submission you will need to:

1. Fill out your name, email address, phone number and organisation.
2. Fill out your responses to the discussion document proposals. You can address any or all of the proposals in the discussion document. Where possible, please provide us with evidence to support your views. Examples can include references to independent research or facts and figures.
3. If your submission has any confidential information:
	* 1. Please state this in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. The Companies Office will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
		2. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).

Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

1. Submit your feedback:
	* 1. As a Microsoft Word document by email [*practitioners@companies.govt.nz*](https://mako.wd.govt.nz/otcsdav/nodes/95823018/%20practitioners%40companies.govt.nz)
		2. By post to:

Anna Gibb
Insolvency Practitioners Regulation Act Consultation

Market Services

Ministry of Business, Innovation and Employment
15 Stout Street PO Box 1473
Wellington 6140

1. Note: The Companies Office may contact you directly if we require clarification of any matters in your submission.

## Submission on the *Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed standards, conditions & policies for accredited bodies*

### Your name, Email address, phone number and organisation

|  |  |
| --- | --- |
| **Name** |  |
| **Email address** |  |
| **Phone number** |  |
| **Organisation** |  |

Is this an individual submission or on behalf of a group or organization?

[ ]  Individual

[ ]  Organisation

[ ]  The Privacy Act 1993 applies to submissions. Please tick the box if you do not wish your name or other personal information to be included in any information about submissions that the Companies Office may publish.

[ ]  The Companies Office may upload submissions or a summary of submissions received to the Companies Office website at *companiesoffice.govt.nz* and/or MBIE’s website at [*www.mbie.govt.nz*](http://www.mbie.govt.nz). If you do not want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below.

I do not want my submission placed on the Companies Office and/or MBIE’s website because… *[Insert text]*

### Please check if your submission contains confidential information:

[ ]  I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated** my reasons and grounds under the Official Information Act that I believe apply, for consideration by the Companies Office.

### Responses to discussion paper proposals

#### Proposed minimum standards

|  |  |
| --- | --- |
| **1** | The Registrar considers that the minimum standards for accreditation of bodies under the insolvency practitioners’ regulation scheme should closely match the minimum standards set by the Auditor Regulation Act 2011 and Auditor Regulation Act (Prescribed Minimum Standards for Accredited Bodies) Notice 2012 (**the Auditor Regulation Notice**). Changes should only be made where clearly justified by differences between the auditor regulatory regime and practice, and the insolvency practitioners’ regulatory regime and practice.If you believe that other changes should be made to reflect differences between the audit and insolvency regimes, or between audit and insolvency professional practice, please provide details as to that nature of such differences and why a different approach may be necessary or desirable. |
| *[Please insert any comments or response here]* |
| **2** | **Governance and organisational structures**The Registrar proposes that an applicant for accreditation must have adequate and effective organisational structures and governance arrangements to support the performance of the regulatory functions of an accredited body. This includes matters such as constitutional and other governing documents, organisational mandate and objectives, governing bodies and committees, and other internal structures and arrangements. The role of an accredited body as a front-line regulator must be clearly established and not (for example) secondary to the body’s other roles as a membership or representative organisation. |
| *[Please insert any comments or response here]* |
| **3** | **Conflicts of interest**The Registrar proposes that applicants for accreditation must have effective policies and mechanisms to identify and manage potential conflicts of interest. |
| *[Please insert any comments or response here]* |
| **4** | **Personnel**The Registrar proposes that an applicant’s personnel must have the skills, knowledge and experience to enable the body to effectively discharge its functions as an accredited body. Accredited bodies should also have a process for identifying the skills, knowledge and experience required by a role or within a team, and for ensuring the person appointed to that role has, or the people appointed into that team collectively have the skills, knowledge and experience required. |
| *[Please insert any comments or response here]* |
| **5** | **Resources to perform regulatory functions**The Registrar proposes that accredited bodies must have the financial and other resources needed to perform their regulatory functions effectively and in a manner consistent with the purposes of the Act. In order to do this, an accredited body must to be financially stable. Applicants will need to demonstrate that their income can cover their routine expenditure on an ongoing basis. |
| *[Please insert any comments or response here]* |
| **6** | **Standing with other regulators**The Registrar anticipates that most applicants for accreditation will have some oversight role in respect of other professional services. The Registrar proposes to have regard to the applicant’s standing with other regulators in both New Zealand and overseas.Note that these proposals do have some differences to the Auditor Regulation Notice. The Registrar believes these changes better reflect the New Zealand regulatory environment, and will not impose any additional compliance costs on applicants for accreditation. |
| *[Please insert any comments or response here]* |
| **7** | **Internal compliance systems and processes**The Registrar proposes to review applicants for accreditation’s internal compliance systems and processes of applicants for accreditation, including discharge of functions, rectifying issues, and continuous self improvement. |
| *[Please insert any comments or response here]* |
| **8** | **Membership and licensing regulatory systems** The Registrar proposes to review applicants for accreditation’s regulatory systems for membership and licensing. |
| *[Please insert any comments or response here]* |
| **9** | **Monitoring and oversight regulatory systems**The Registrar proposes to review applicants for accreditation’s regulatory systems for monitoring and oversight. Note that these proposals do have some differences to the Auditor Regulation Notice, particularly removing references that are inapplicable to the insolvency profession.  |
| *[Please insert any comments or response here]* |
| **10** | **Complaints, enquiries, investigations and discipline regulatory systems**The Registrar proposes to review applicants for accreditation’s regulatory systems for dealing with complaints, enquiries, investigations and discipline. |
| *[Please insert any comments or response here]* |
| **11** | **Other minimum standards**In your view, are there any other minimum standards that should apply to applicants for accreditation? |
| *[Please insert any comments or response here]* |

#### Conditions of accreditation

|  |  |
| --- | --- |
| 12 | As for minimum standards, the Registrar considers that the insolvency practitioner conditions of accreditation should closely match the auditor conditions. Changes should only be made where clearly justified by differences between the auditor regulatory regime and practice, and the insolvency practitioners’ regulatory regime and practice.If you believe that other changes should be made to reflect differences between the audit and insolvency regimes, or between audit and insolvency professional practice, please provide details as to that nature of such differences and why a different approach may be necessary or desirable. |
| *[Please insert any comments or response here]* |
| **13** | **Continuing compliance with minimum standards** The Registrar proposes an ongoing condition of accreditation that accredited bodies continue to comply with the minimum standards for accreditation.The equivalent conditions for auditor accreditation include some additional conditions that could fit within a continuing obligation to comply with the minimum standards. The Registrar invites submitters’ thoughts on whether a single overarching condition is sufficient or whether additional more detailed conditions are helpful. |
| *[Please insert any comments or response here]* |
| **14** | **Informing the Registrar of accreditation matters and regulatory functions**The Registrar proposes conditions to ensure that accredited bodies keep the Registrar informed on matters affecting, or potentially affecting, the body’s accredited status or performance of its regulatory functions.Note that the auditor standard conditions refer only to notification of actions by overseas regulatory bodies. The Registrar proposes that all regulatory actions be notified. In addition, the auditor standard conditions require the FMA to be involved in the appointment of members to accredited bodies’ disciplinary and appeals bodies. The Registrar does not propose including this requirement.The Registrar invites comments on these proposed differences. |
| *[Please insert any comments or response here]* |
| **15** | **Informing the Registrar of monitoring and enforcement matters**The Registrar proposes conditions to ensure that accredited bodies keep the Registrar informed of significant events in relation to licensed insolvency practitioners and compliance with the Act and wider regulatory regime.There are some substantive differences to the proposed conditions and the equivalent auditor standard conditions. In particular, the auditor conditions require notification of detected breaches of audit standards; there are no equivalent insolvency practice standards. Instead, the Registrar proposes that the accredited bodies be obliged to notify the Registrar of any detected material breaches of relevant insolvency statutes.The Registrar invites comments on these proposals. |
| *[Please insert any comments or response here]* |
| **16** | **Standard conditions and modifying conditions**The Registrar proposes and standard set of conditions that are likely to be of general application, but may be modified:* At the request of an applicant for accreditation/accredited body
* In response to regulatory concerns
* In response to changes in law
 |
| *[Please insert any comments or response here]* |

#### Adequate and effective regulatory systems

|  |  |
| --- | --- |
| **17** | The Registrar proposes to generally take a risk-based approach when determining applications for accreditation and whether an applicant for accreditation will implement and maintain regulatory systems that are adequate and effective. The Registrar considers it is appropriate that adequacy and effectiveness must be assessed in light of the size, scope and role of the accredited body. This may include consideration of:* the potential number of insolvency practitioners affected;
* the potential number and type of debtors affected;
* the potential number and type of creditors affected;
* the size and scale of the potential insolvencies; and
* the potential impact if a matter is or is not done.

The Registrar invites comments on these proposals. In particular, whether there are any other factors that may be appropriate to consider. |
| *[Please insert any comments or response here]* |

#### Fit and proper

|  |  |
| --- | --- |
| **18** | The Registrar proposes to consider **both** whether the applicant body, **and** certain of its key personnel, are fit and proper to perform regulatory functions. As the applicant body will act under the direction of its key personnel in discharging its regulatory functions, the Registrar considers that it is appropriate to take this broad approach to considering the fit and proper requirement.The Registrar proposes that the presence of such a matter should not **automatically** disqualify an applicant from becoming an accredited body. However, applicants must disclose such matters and the circumstances that led to the matter. |
| *[Please insert any comments or response here]* |
| **19** | **Applicant body**The Registrar proposes a range of matters that may be relevant to determining whether an applicant body is fit and proper to be accredited, including previous crimes of dishonestly, crimes or disciplinary actions involving insolvency, corporate or financial markets legislation, adverse court rulings and previous insolvencies. The Registrar invites comments on these proposals. In particular, whether there are any other factors that may be appropriate to consider. |
| *[Please insert any comments or response here]* |
| **20** | **Key personnel**The Registrar proposes that the following are “key” personnel in respect of an applicant for accreditation:* members of its governing board (e.g. board of directors); and
* its senior executives with responsibility for or oversight of the regulatory functions of the applicant.

The Registrar proposes a range of matters that may be relevant to determining whether an applicant body is fit and proper to be accredited, including previous crimes of dishonestly, crimes or disciplinary actions involving insolvency, corporate or financial markets legislation, adverse court rulings and previous insolvencies. The Registrar invites comments on these proposals. In particular, whether there are any other factors that may be appropriate to consider, and whether any other staff are likely to be key personnel. |
| *[Please insert any comments or response here]* |

#### Annual confirmations and reports

|  |  |
| --- | --- |
| **21** | **Annual confirmations**Accredited bodies must submit annual confirmations, either confirming insolvency practitioner licence information on the Register is correct, or updating it as required. The Registrar proposes adopting a similar process as is used for the equivalent annual confirmation process under the Auditor Regulation Act involving annual review and confirmation prior to 30 June each year. The Registrar does not propose prescribing forms.Note that annual confirmation fees are not included in this discussion document and will be set by regulation. |
| *[Please insert any comments or response here]* |
| **22** | **Reports - content**Accredited bodies must submit reports as directed by the Registrar.The Registrar proposes that reports include:* membership and licensing data
* monitoring and oversight summary
* education and training summary
* complaints, enquiries, investigations and discipline data
* confirmation of legal obligations

Very similar requirements are set out under the comparable provisions of the Auditor Regulation Act. |
| *[Please insert any comments or response here]* |
| **23** | **Reports - timing**Reports must be supplied in accordance with the Registrar’s direction as to timing. This may be up to every four years. The Registrar invites submitters’ views as to the appropriate frequency of accredited body reports. |
| *[Please insert any comments or response here]* |
| **24** | **Other**Please provide any other comments or responses regarding annual confirmations and reports by accredited bodies. |
| *[Please insert any comments or response here]* |

#### Recognised bodies

|  |  |
| --- | --- |
| **25** | Accredited bodies may licence insolvency practitioners that are not members of that accredited body in certain circumstances:* Overseas insolvency practitioners
* Members of “recognised bodies”
* Members of certain religious societies or orders

The Registrar proposes a flexible approach to the process for considering applications for recognition. No formal application form will be prescribed, and there is no fee for applying to be a recognised body. |
| *[Please insert any comments or response here]* |

#### Other

|  |  |
| --- | --- |
| **26** | Do you have any other feedback on the proposals in the discussion paper?  |
| *[Please insert any comments or response here]* |