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# **Implementation of the Insolvency Practitioners Regulation Act 2019: Proposed minimum standards and conditions for the licensing of insolvency practitioners**

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Discussion Paper

November 2019



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# How to have your say

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## Submissions process

The Companies Office is seeking written submissions on proposed minimum standards and conditions for the licensing of insolvency practitioners under the Insolvency Practitioners Regulation Act 2019. The Companies Office is a group within the Ministry of Business, Innovation and Employment (MBIE). The minimum standards will be set by the Registrar of Companies through notices in the *Gazette*.

This discussion paper includes questions you may like to respond to in your submission. Your submission does not need to answer all of these questions. Where possible, please include evidence to support your views, for example, references to facts and figures, or relevant examples.

Please send your submission before **5pm on 13 December 2019**. Please include your name, or the name of your organisation, and contact details. You can make your submission by:

- Completing the online form at [www.mbie.govt.nz/insolvencypractitionerslicensing](http://www.mbie.govt.nz/insolvencypractitionerslicensing)
- Completing the Submission Form at [www.mbie.govt.nz/insolvencypractitionerslicensing](http://www.mbie.govt.nz/insolvencypractitionerslicensing) and attaching it as a Microsoft Word or PDF attachment and sending to [practitioners@companies.govt.nz](mailto:practitioners@companies.govt.nz); or
- Mailing your submission to:  
Anna Gibb  
Service Design Policy  
Ministry of Business, Innovation, and Employment  
PO Box 1473  
Wellington 6140  
New Zealand

Please direct any questions that you may have in relation to the submission process to: [practitioners@companies.govt.nz](mailto:practitioners@companies.govt.nz)

Information about implementation of the Act is available at <https://www.companiesoffice.govt.nz/all-registers/insolvency-practitioners/news-and-updates/>

## Use of information

The information provided in submissions will be used to inform the Registrar's decisions when setting minimum standards and conditions. We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, the Companies Office may post PDF copies of submissions received to the Companies Office website at [companiesoffice.govt.nz](http://companiesoffice.govt.nz) and/or MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). By making a submission, we will consider you to have agreed to us posting your submission, unless you clearly specify otherwise in your submission.

## **Release of information**

Submissions are subject to the Official Information Act 1982. Please tell us as part of your submission if you have any objection to the release of any information in the submission, which parts you consider should be withheld, and include your reasons for withholding the information. The Companies Office will consider any objections you note and consult with you when responding to requests under the Official Information Act 1982.

Please indicate on the front of your submission if it contains confidential information and mark the text accordingly. If you wish to make a submission which includes confidential information, please send us a separate version excluding the relevant information for publication on our website.

## **Private information**

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Companies Office. Any personal information you supply to the Companies Office as part of your submission will only be used to help inform the implementation of the Insolvency Practitioners Regulation Act 2019. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that we may publish.

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## Purpose of this document

This discussion document outlines proposals for minimum standards, conditions and ongoing competence requirements for the licensing of insolvency practitioners under the Insolvency Practitioners Regulation Act 2019. These will be set by the Registrar of Companies through notices in the *Gazette*.

We welcome your written submissions on the proposals included in this document. Once we have considered your submissions, we will develop and draft the *Gazette* notice.

Proposed milestones for this process are:

Due date	Action
13 December 2019	Deadline for submissions
March 2020	<i>Gazette</i> notice published
17 June 2020	The Insolvency Practitioners Regulation Act 2019 comes into force, practitioners may apply to become licensed

## How to use this document

Questions for your consideration and feedback can be found throughout the document. We welcome any other relevant comment or information that you wish to provide on the new scheme.

Information on how to make a submission is provided at the beginning of this document (see *How to have your say*).

## Introduction

### About this discussion document

The Insolvency Practitioners Regulation Act 2019 (the Act) has introduced a co-regulatory scheme to promote quality, expertise, and integrity in the profession of insolvency practitioners. The Act will come into force in June 2020.

The Registrar of Companies (Registrar) has responsibility under the Act to oversee the regulation of insolvency practitioners, including prescribing the minimum standards, conditions and ongoing competence requirements for the licensing of practitioners by notice in the *Gazette*. Before a notice is published the Registrar must consult about his proposals with those substantially affected by the proposal.

This discussion paper is paper one in a suite of two papers relating to the notices that the Registrar may publish in the *Gazette*. It seeks feedback on proposals for the minimum standards and conditions that insolvency practitioners will need to meet in order to become licensed insolvency practitioners.

The second discussion paper relates to the minimum standards for accreditation of accredited bodies and will be issued later this year.

### Background

Prior to the Act, insolvency practitioners were not regulated as a specialist profession.

The Companies Act 1993 and Receiverships Act 1993 set out classes of people who were disqualified from acting as insolvency practitioners, such as an undischarged bankrupt or person under 18 years old. However, any person who was not disqualified could be appointed as a liquidator, administrator or receiver, even if they did not have adequate skills or the knowledge required to undertake an insolvency engagement.

### Co-regulation

The Act has introduced a co-regulatory scheme which will come into force in June 2020, under which:

- accredited bodies will be responsible for carrying out the frontline regulation of insolvency practitioners, including licensing their entry and regulating ongoing competence, investigating complaints about them, and taking disciplinary action where appropriate; and
- the Registrar of Companies (Registrar) will be responsible for oversight of the accredited bodies. Oversight includes accreditation of bodies, ongoing monitoring and reporting, and corrective action to ensure the quality and effectiveness of the accredited bodies' regulatory systems and processes. The Registrar will also maintain a register of insolvency practitioners, which will be publicly searchable.

The purpose of the Act 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 promote compliance with the statutory duties of insolvency practitioners.

From 17 June 2020, a person must be a licensed insolvency practitioner in order to be appointed to act as an insolvency practitioner.<sup>1</sup> This includes liquidators of insolvency companies, administrators and deed administrators of companies, receivers, and trustees of certain individual creditor proposals.<sup>2</sup> Note that this does not include liquidators of solvent companies, who are addressed separately in the regime. A solvent company liquidator may be a licensed insolvency practitioner, a lawyer or a qualified statutory accountant.<sup>3</sup>

Accredited bodies must issue a licence to a person if:<sup>4</sup>

- the accredited body is satisfied that the person—
  - meets the prescribed minimum standards; and
  - is otherwise a fit and proper person to hold a licence; and
- the application is accompanied by payment of the prescribed registration fee; and
- the person is a member of the accredited body, or section 57 applies in respect of the person (which relates to exemptions from the membership requirement for certain practitioners).

Regulations will be made in 2020 setting fees and levies associated with the insolvency practitioners regime.

The Registrar may set minimum standards (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 the conditions or kind of conditions to which licences must or may be subject, and ongoing competence requirements.<sup>5</sup> The Registrar intends to set minimum standards before the Act comes into force. This discussion document contains the Registrar's proposals for these minimum standards.

## **The RITANZ/CAANZ scheme**

The co-regulatory regime under the Act leverages off an existing voluntary non-statutory occupational regulation scheme that was established by Chartered Accountants Australia and New Zealand (CAANZ), New Zealand Institute of Chartered Accountants (NZICA) and the Restructuring Insolvency and Turnaround Association of New Zealand (RITANZ) (the RITANZ/CAANZ scheme). The RITANZ/CAANZ scheme has around 110 "accredited" insolvency practitioners. We understand that this is the majority of insolvency practitioners practising in New Zealand.

The approach was proposed by the Insolvency Working Group.<sup>6</sup> It is expected that CAANZ or NZICA (as the regulatory body responsible for overseeing CAANZ members resident in New Zealand) or a combination thereof will apply to become an accredited body and bring its

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<sup>1</sup> Section 8

<sup>2</sup> Section 5, definition of "insolvency practitioner"

<sup>3</sup> Section 68. The Registrar of Companies may recognise professional bodies whose members may carry out solvent company liquidations – see section 68 and 69

<sup>4</sup> Section 9

<sup>5</sup> Section 22(1)(a),(b),(c)

<sup>6</sup> <https://www.mbie.govt.nz/assets/5a5ee108bb/review-of-corporate-insolvency-law-1.pdf>

scheme into place with relatively minor modifications. Other bodies may also apply to become accredited bodies.

The Insolvency Working Group stated:<sup>7</sup>

- a qualification regime similar to the rules of the RITANZ/CAANZ scheme should apply; and
- the RITANZ/CAANZ scheme contains all the elements that the Working Group considered to be necessary to ensure that insolvency processes are carried out by honest and competent individuals. It noted that the scheme is underpinned by a code of ethics and the systems and processes to drive compliance by practitioners.

Under the RITANZ/CAANZ scheme, an “Accreditation Framework” sets the necessary qualifications, skills and experience that persons must meet in order to become an Accredited Insolvency Practitioner. A summary of the Accreditation Framework is set out in Annex One, and the full Framework is available here:

[www.charteredaccountantsanz.com/-/media/ae764ec77e7842aa975b73ae5e1f7691.ashx](http://www.charteredaccountantsanz.com/-/media/ae764ec77e7842aa975b73ae5e1f7691.ashx)

In this discussion paper, we propose that the criteria for “accreditation” under the RITANZ/CAANZ scheme are generally brought into place for the new licensing regime, and we note where we intend to lift or amend standards or where we expect that the standards could lift and change over time.

The Registrar in his oversight role will monitor licensing and whether the scheme is meeting its aims, and will review the minimum standards. Part of this will include considering whether the minimum standards and conditions for licensing are meeting the objectives of the Act. The Registrar will publish an oversight plan in the second half of 2020 to set out how the Registrar intends to exercise his insolvency practitioners’ regulation function on an ongoing basis.

## Minimum standards for licensing of insolvency practitioners

Under section 22 of the Act, the Registrar of Companies may set:

- 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;
- conditions, or the kinds of conditions, to which licences must be subject, and may be subject if the accredited body thinks fit; and
- requirements for ongoing competence that must be complied with by persons who are issued with a licence.

Section 23 provides that the Registrar may prescribe minimum standards for licensing in any way that the Registrar thinks fit, including in the following ways:

- by requiring a degree or diploma or certificate of a stated kind recognised by the Registrar;
- by requiring the successful completion of a degree, course of studies, or programme recognised by the Registrar;

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<sup>7</sup> <https://www.mbie.govt.nz/assets/5a5ee108bb/review-of-corporate-insolvency-law-1.pdf>

- by requiring a pass in a specified examination or any other assessment;
- by reference to registration with, a licence issued by, or other authorisation from an overseas organisation;
- by requiring experience in the provision of services of a particular kind;
- by requiring a certain level of competence;
- by requiring compliance with conditions related to insurance;
- by requiring compliance with any relevant standard relating to insolvency engagements; and
- by requiring compliance with any relevant code of conduct or ethics.

### **Principles guiding prescribing of minimum standards for licensing**

Section 24 of the Act provides that the principles that guide the Registrar when prescribing minimum standards and other matters are that such matters:

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

## Proposed minimum standards

Under section 22(1)(a), the Registrar may prescribe minimum standards for licensing that a person must meet in order to be issued with a licence by an accredited body. A practitioner's licence may be cancelled if the person does not satisfy or no longer satisfies the prescribed minimum standards.<sup>8</sup>

The focus of the Registrar's minimum standards for licensing is in relation to the experience required for a practitioner to be licensed. This is set out in the following section. We seek your feedback on these proposals.

In addition, the Registrar seeks your feedback on proposed minimum standards in relation to:

- Qualifications (page 16)
- Insurance (page 16)
- Overseas practitioners (page 17)
- Membership (page 18).

## Experience

Minimum standards for licensing may be made in relation to experience in the provision of services of a particular kind, or requiring a certain level of competence.<sup>9</sup>

### RITANZ/CAANZ scheme

The RITANZ/CAANZ scheme has a number of pathways by which practitioners may show that they are competent to carry out insolvency engagements.

*Table 1 - RITANZ/CAANZ scheme Accreditation Criteria summary of competency criteria:*

	Chartered Accountants ANZ Members <sup>10</sup>	RITANZ Members (other than Chartered Accountants ANZ members)
<b>Certificate of Public Practice</b>	Required (unless an approved non-member principal)	Not applicable
<b>Practical insolvency experience or otherwise competent</b>	1,000 hours of practical experience on regulated insolvency engagements over the three years immediately prior to application, at a senior level <b>or</b> Can demonstrate are otherwise competent to undertake regulated insolvency engagements	2,000 hours of practical experience on regulated insolvency engagements over the three years immediately prior to application, at a senior level <b>or</b> Can demonstrate are otherwise competent to undertake regulated insolvency engagements practitioners licences and annual confirmation in subsequent years

<sup>8</sup> Section 17(1)(iii)

<sup>9</sup> Section 23(e),(f)

<sup>10</sup> Including a person approved under Appendix V of NZICA's rules as a non-member principal of an accounting practice who has agreed (amongst other things) to subject themselves to NZICA's disciplinary processes as if they were a member of NZICA.

Under the RITANZ/CAANZ scheme, applicants holding a Certificate of Public Practice (CPP) are required to have at least 1,000 hours of practical experience at senior level on certain engagements over the three years immediately prior to their application for accreditation. Those applicants who do not hold a CPP or are not CAANZ members are required to have completed 2,000 hours over the three year period.

Alternatively, where the practical experience requirement would exclude practitioners who are otherwise competent to act as an insolvency practitioner, an applicant may demonstrate that they are competent by providing evidence relating to:

- general education, qualifications and any relevant professional body memberships;
- insolvency roles and experience including hours worked;
- insolvency training and courses undertaken;
- confirmation from an experienced insolvency practitioner or banker or lawyer specialising in the field of insolvency and restructuring that they consider the applicant to be competent; and/or
- any relevant reviews (such as NZICA practice reviews).

In addition, CAANZ may have regard to experience gained over more than the preceding three years if the applicant has been working part time or taken leave.

### **Registrar's proposed minimum standards**

The Registrar proposes to set a minimum standard for experience based on the RITANZ/CAANZ voluntary scheme. We consider that setting a minimum number of hours of experience at a specified level is an appropriate measure of a practitioner's ability. The Registrar's objective is to set a minimum number of hours that ensures licensed insolvency practitioners have sufficient experience, but not so high that many practitioners are not able to realistically meet that level.

In summary, we propose the following experience requirements:

- 1) a) The person:
  - i) who holds a CPP (or equivalent)<sup>11</sup> must have completed at least 1,000 hours of work on insolvency engagements at a senior level within the five years immediately prior to applying for a licence; or
  - ii) who does not hold such a certificate must have completed at least 2,000 hours of work on insolvency engagements at a senior level within the five years immediately prior to applying for a licence; and
- b) In both cases, the person must have at least five years' insolvency experience (including the senior experience above); or
- 2) The accredited body is satisfied that the person is otherwise competent to act as an insolvency practitioner.

Each of these points is discussed below.

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<sup>11</sup> Note that the 1,000 hours of experience does not need to be obtained while the person is a CPP holder.

## Number of hours

Based on the RITANZ/CAANZ scheme, we have proposed 1,000 hours of experience for CPP (or equivalent) holders, and 2,000 hours experience for practitioners who do not hold such a certificate.

We are satisfied that practitioners who are CPP holders (through NZICA) or Public Practice Certificate holders (through CPA Australia, if that body was to become an accredited body) are required to meet certain standards in order to obtain a certificate, so will have at least a base level of experience and qualifications. The current requirements for obtaining a CPP are set out in Annex Two.

We consider that practitioners who do not hold a CPP (or equivalent) should be required to meet a higher level of minimum hours of practical experience as it is more important that their experience is used to demonstrate their competence.

## Work on insolvency engagements

We are seeking feedback on what work should be included in the 1,000/2,000 hours requirement. We have proposed that the hours of experience must be gained while working on insolvency engagements at a senior level.

“Insolvency engagement” is defined in section 5 of the Act:

**insolvency engagement** includes 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

We have received anecdotal suggestions that limiting the calculation of hours to “insolvency engagements” may be too restrictive. Other types of insolvency-related work still require practitioners to have good knowledge and experience of insolvency legislation and practice, for example, providing advice on business restructuring as an alternative to insolvency.

We are seeking feedback on whether work that is comparable to insolvency engagement work in the view of the accredited body should be counted towards the 1,000/2,000 hours of required experience.

Please note that we separately consider the position of personal insolvency creditor proposal trustees at page 25 below.

## Senior experience

The RITANZ/CAANZ scheme requires experience to be a “senior level”. This is defined in its guidance as being at a manager, director, or partner level.

Licensed insolvency practitioners should be able to demonstrate that they have experience at a high level, because the carrying out of insolvency engagements requires the exercise of judgment and negotiation skills, as well as an in-depth understanding of relevant legislation, and good general commercial knowledge and experience.

We have considered how higher level experience is defined in Australia and the United Kingdom.

We propose that the experience required under the sections above is at a “senior level” to the satisfaction of the accredited body.

Our view is that the assessment of whether experience is at a senior level should be an activity-based assessment, rather than determined by the person’s position in a firm. Our view is that the following matters are likely to be relevant in deciding whether experience is at a senior level:

- whether the person has gained the experience as an insolvency practitioner or reporting to an insolvency practitioner
- whether the person:
  - managed or supervised the insolvency engagement
  - formed opinions and made recommendations as an insolvency practitioner or to an insolvency practitioner about strategic and tactical matters, and the financial and potential legal position of the company
  - was directly involved in planning and managing the conduct of the insolvency engagement (including conducting appropriate investigations of the company’s business, property, affairs and financial dealings) as an insolvency practitioner or on behalf of the insolvency practitioner
  - prepared draft reports to creditors as an insolvency practitioner or on behalf of the insolvency practitioner
  - instructed lawyers and evaluated legal advice as an insolvency practitioner or as directed by the insolvency practitioner
  - supervised staff in respect of insolvency engagements, and had responsibility for allocating these resources
  - led material negotiations with stakeholders in an insolvency engagement.

## Insolvency experience

As well as the requirement to have completed at least 1,000/2,000 hours of work on insolvency engagements at a senior level, we consider that the practitioner should have at least 5 years of general insolvency experience to the satisfaction of the accredited body.

The purpose of this requirement is to ensure that licenced insolvency practitioners have broad experience over a range of engagements and practice. The practitioner’s 1,000/2,000 hours of work on insolvency engagements would be included within the 5 years of experience. The

experience to be considered in this category should be broader than work on insolvency engagements at a senior level.

### Alternative pathway

We note that some competent practitioners may not meet the experience requirements for a number of reasons, such as:

- Senior practitioners such as partners in firms may not work on every aspect of an insolvency engagement;
- Practitioners working in a general accounting or law firm as opposed to a specialist insolvency firm will not work solely on insolvency engagements;
- Practitioners may work part time or have taken leave such as parental leave in the five year period prior to applying for a licence.

The RITANZ/CAANZ scheme currently allows for practitioners to demonstrate their competency through alternate means. Other professions with similar occupational regulation licensing allow for “special circumstances” to be taken into account.<sup>12</sup>

We propose that the accredited body should have discretion to license practitioners who do not meet the hours threshold if the accredited body is satisfied that the person is otherwise competent to act as an insolvency practitioner.

<b>Number of hours</b>	
<b>Q1</b>	Do you agree that non-CPP holders should be required to have a higher amount of insolvency experience than non-CPP holders?
<b>Q2</b>	Do you agree with the proposed 1,000 hours of experience over 5 years for CPP-holders?
<b>Q3</b>	Do you agree with the proposed 2,000 hours of experience over 5 years for non-CPP-holders?
<b>Work on insolvency engagements</b>	
We are seeking feedback on what types of work relating to insolvency practice should be included in the calculation of required hours.	
<b>Q4</b>	Do you think the calculation of required hours should be limited to work on “insolvency engagements” as defined in the Act? Or, do you think the calculation should include other types of insolvency-related work? If so, what types of work should be included?
<b>Senior experience</b>	
<b>Q5</b>	Should the minimum standards require a practitioner’s experience to be at a senior level?
<b>Q6</b>	What are your views on the matters which the Registrar considers are likely to be relevant in deciding whether experience is at a senior level? Should other matters be considered?

<sup>12</sup> See, for example, Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008, regulation 12A.

<b>Q7</b>	<p><b>General experience</b></p> <p>Do you agree the minimum standards should require a practitioner to have at least five years of general insolvency experience?</p>
<b>Q8</b>	<p><b>Alternative pathway</b></p> <p>Do you agree that accredited bodies should have the discretion to waive some or all of the minimum standards in relation to experience to recognise the special circumstances of particular applicants?</p>

## Qualifications

Minimum standards for licensing may be made in relation to qualifications and courses.<sup>13</sup>

Unlike some other regulated professions, such as auditors, there are currently no specific qualifications that a person is required to hold in order to be an insolvency practitioner. While the majority of practitioners accredited under the RITANZ/CAANZ scheme are Chartered Accountants and will have relevant degrees, a number of reliable insolvency practitioners practicing in New Zealand are not Chartered Accountants.

We consider that introducing a requirement in relation to qualifications at this stage would unnecessarily restrict the licensing of insolvency practitioners. We propose that the minimum standards do not require any formal qualifications, however we note that the Registrar may consider in the future whether qualifications or compulsory courses should be required.

<b>Q9</b>	Do you agree that the minimum standards should not require any formal qualifications or completion of specific courses?
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## Insurance

Minimum standards for licensing may be made relating to the requirement to hold insurance.<sup>14</sup>

The RITANZ/CAANZ scheme requires practitioners to hold professional indemnity insurance that is adequate and appropriate to the nature and scale of services offered to the public.

*Table 2 - RITANZ/CAANZ scheme Accreditation Criteria summary of insurance criteria:*

	Chartered Accountants ANZ Members	RITANZ Members (other than Chartered Accountants ANZ members)
<b>Insurance arrangements</b>	Must certify that have adequate professional indemnity insurance cover appropriate to the nature and scale of services offered to the public	Must certify that have adequate professional indemnity insurance cover appropriate to the nature and scale of services offered to the public

We consider that accredited bodies are best placed to determine what level of professional indemnity insurance is adequate, and to assess whether a person holds adequate insurance.

<sup>13</sup> Section 23(a),(b),(c)

<sup>14</sup> Section 23(g)

We propose that the minimum standards provide that licensed practitioners must hold professional indemnity insurance that is adequate and appropriate for the nature and scale of the licensed insolvency practitioner's business activities, but not a specific dollar amount.

As part of the Registrar's oversight role and monitoring of accredited bodies' systems, the Registrar will monitor accredited bodies to ensure that they set and apply insurance conditions.

- Q10** Should the minimum standards require licensed insolvency practitioners to hold professional indemnity insurance?
- Q11** Do you agree with the proposal to allow accredited bodies (and individual practitioners) to assess the amount of insurance that is required, or do you have feedback on another option, such as the Registrar setting the specific dollar amount of insurance?

## Overseas practitioners

Minimum standards for licensing may be made by reference to registration with an overseas organisation.<sup>15</sup>

Australian insolvency practitioners are able to practise in New Zealand subject to the requirements of the Act.<sup>16</sup> They must apply for a licence within 10 days of being appointed to act in respect of an insolvency engagement.<sup>17</sup>

In Australia, a registered liquidator is a natural person who is registered as a liquidator under the Corporations Act 2001. The practitioner's name and Registered Liquidator Number appear on ASIC's Register of Liquidators. Registered liquidators must have certain base level qualifications, experience, knowledge and abilities, hold required insurance, not be disqualified from practice, be resident in Australia, and otherwise be a fit and proper person.

We propose that the minimum standards provide that an Australian practitioner who applies to become a licensed insolvency practitioner must be a registered liquidator under Australian law and must provide evidence of continuing experience since becoming a registered liquidator.

The Registrar may also recognise other overseas jurisdictions for the purposes of the Act by notice in the *Gazette*.<sup>18</sup> We are not proposing that any other jurisdictions are recognised prior to the commencement of the Act in 2020. If a jurisdiction is recognised in the future, it is likely that the minimum standards would need to be amended to refer to registration with an overseas organisation in the relevant jurisdiction.

- Q12** Should the minimum standards require Australian applicants to be registered liquidators and provide evidence of continuing experience?

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<sup>15</sup> Section 23(d)

<sup>16</sup> Section 10

<sup>17</sup> Section 10(3)

<sup>18</sup> Section 5(3)

## Membership of an accredited body

We propose that the minimum standards require that the practitioner must be a member of the accredited body issuing the licence, or that section 57 of the Act applies in respect of the practitioner.

This requirement will ensure that the accredited body has the ability to exercise all regulatory functions and powers under its rules in respect of the practitioners it licenses.

A practitioner's licence may be cancelled if the person does not satisfy, or no longer satisfies, the minimum standards.<sup>19</sup> This means that where the practitioner ceases to be a member of the accredited body, or section 57 no longer applies to the practitioner, the accredited body could cancel the licence.

Section 57 provides for an exemption from the requirement to be a member of an accredited body for members of recognised bodies, certain overseas practitioners, and members of religious societies and orders. The Registrar may recognise a body for the purposes of section 57 by notice in the *Gazette*. In addition to being satisfied that a member of a recognised body meets the minimum standards and is a fit and proper person to be an insolvency practitioner, before licensing such a person the accredited body and the person must enter into an arrangement that meets certain requirements including a binding commitment for the person to abide by the rules of the accredited body.

The Registrar expects to recognise RITANZ as a recognised body under section 57, so that practitioners who cannot become members of an accredited body but who are members of RITANZ can still apply to the accredited body to become licensed. If only accounting professional bodies become accredited bodies, and section 57 did not apply, practitioners who are not Chartered Accountants could not become licensed insolvency practitioners.

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<sup>19</sup> Section 17(1)(b)(iii)

## Proposed conditions

Under section 22(1)(b), the Registrar may prescribe conditions, or the kinds of conditions, to which licences:

- must be subject, or
- may be subject if the accredited body thinks fit.

A practitioner's licence may be cancelled<sup>20</sup> or suspended<sup>21</sup> if the person has failed to comply with a condition of the licence.

This section of the discussion document outlines our proposals for:

- Mandatory conditions that apply to all licensed insolvency practitioners:
  - Complying with rules, code of ethics, and certain other standards
  - Practice reviews
  - Reporting and notifications
  - Insurance
- Discretionary conditions that apply if the accredited body thinks fit:
  - Solvent company liquidations
  - Restricted engagements.

### Conditions to which a licence must be subject

#### Rules and code of ethics

We propose that licences must be subject to conditions requiring practitioners to comply with:

- the accredited body's rules
- the accredited body's code of ethics or conduct that governs the professional conduct of its members
- any relevant standard relating to insolvency engagements
- any other relevant standard including relating to quality control.

This condition would ensure that the licence holder is required to comply with any applicable rules and code of ethics or conduct of an accredited body of which the practitioner is a member. This condition would ensure that the practitioner can be held to account under the bodies' disciplinary procedures if they fail to comply.

We expect that accredited bodies will set standards and requirements on how its members should conduct insolvency engagements. For example, practitioners under the CAANZ/RITANZ scheme are required to comply with the CAANZ Insolvency Engagement Standard, which sets out requirements for its members and firms undertaking insolvency engagements, including ethical requirements. We also expect that accredited bodies will require practitioners to comply with their other standards that are relevant to insolvency practice. These may relate to matters such as quality control, specific insurance requirements, and disclosure to clients.

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<sup>20</sup> Section 17(1)(iv)

<sup>21</sup> Section 18(1)(a)

**Q13**

Do you agree that all licensed insolvency practitioners should be required to comply with their accredited body's rules, code of ethics and applicable standards?

**Practice review**

The RITANZ/CAANZ scheme requires practitioners to meet the practice review requirements set by NZICA. Non-CAANZ members must meet practice review requirements set by CAANZ to mirror these practice review requirements.

*Table 3 - RITANZ/CAANZ scheme Accreditation Criteria summary of practice review criteria:*

	<b>Chartered Accountants ANZ Members</b>	<b>RITANZ Members (other than Chartered Accountants ANZ members)</b>
<b>Practice review results</b>	Ongoing practice review requirements, set by NZICA, must be met. Where the Member's latest practice review was graded as "unsatisfactory" or "re-review" Chartered Accountants ANZ must be satisfied that all major issues have been resolved before issuing or renewing Accredited Status	Ongoing practice review requirements, set by Chartered Accountants ANZ to mirror practice review requirements for Chartered Accountants ANZ Members as far as practicable, must be met in accordance with the Practitioner Compliance Agreement. Any adverse findings by the Registrar of Companies or the Financial Markets Authority would need to be disclosed and reviewed by Chartered Accountants ANZ. Where the Member's latest practice review conducted under the AIP Rules was graded as "unsatisfactory" or "re-review", Chartered Accountants ANZ must be satisfied that all major issues have been resolved before issuing or renewing Accredited Status

The Act does not require that the licensing regime must include practice reviews. However practice reviews are an important aspect of the licensing system, as they monitor whether practitioners have quality control systems in place to ensure compliance with requirements, including codes of ethics and relevant legislation.

We propose that licensed insolvency practitioners must be subject to a condition requiring that they meet practice review requirements set by the accredited body.

**Q14**

Should licensed insolvency practitioners be subject to practice review requirements set by accredited bodies?

**Q15**

Do you have comments on how practice reviews should be carried out?

**Reports and notifications**

We propose that licences must be subject to conditions requiring practitioners to provide specified reports and notifications to the accredited body.

The reports and notifications that need to be made will be set by the accredited body. Reports and notifications that practitioners may be required to provide may include notification of any matters relevant to the practitioner's licence. This may include:

- Any failure to comply with the rules of the accredited body

- Any matter that may impact on whether the person is a fit and proper person to hold a licence (please refer to page 26 regarding the fit and proper person test)
- Any changes to information about the practitioner held on the register, such as leaving or joining a firm
- Loss of insurance cover or notice of a claim that would exhaust the practitioner's insurance cover.

**Q16**

Should licensed insolvency practitioners be obliged to provide reports and notifications to the accredited body?

**Q17**

Do you agree with the matters we have identified which may be subject to reporting and notification conditions?

### **Insurance**

We propose that licences must be subject to conditions which ensure the licensed insolvency practitioner has professional indemnity insurance that is adequate and appropriate for the nature and scale of the licensed insolvency practitioner's business activities.

This condition would ensure that a practitioner's licence can be cancelled (under section 17(1)(b)(iv)) if they fail to hold the required insurance.

**Q18**

Should licensed insolvency practitioners be subject to insurance conditions set by accredited bodies?

**Q19**

**Other**  
Should we consider any other mandatory conditions?

## **Conditions to which a licence may be subject**

### **Solvent company liquidations**

We propose that that licences may be subject to conditions, if the accredited body thinks fit, relating to the licensed insolvency practitioner carrying out solvent company liquidations.

This condition is contemplated by section 22(3), which provides that conditions may relate to a practitioner carrying out solvent company liquidations.

**Q20**

What (if any) special considerations apply to solvent company liquidations?

### **Restricting engagements**

We propose that that licences may be subject to conditions, if the accredited body thinks fit, restricting, or providing a mechanism for restricting or supervising the insolvency engagements that a practitioner can undertake.

This condition may be needed so that accredited bodies may limit the types of engagements a licensed insolvency practitioner could work on.

In particular, we note that this condition may be required in relation to practitioners who only act as personal insolvency creditor proposal trustees. We separately consider the position of personal insolvency creditor proposal trustees at page 25 below.

**Q21**

In what circumstances (if any) would it be appropriate to limit the types of engagement a licensed insolvency practitioner could work on

**Q22**

**Other**

Should we consider any other discretionary conditions an accredited body may apply?

## Ongoing competence

Under section 22(1)(c) the Registrar may set requirements for ongoing competence that licenced practitioners must comply with. A practitioner’s licence may be suspended if the person has not satisfied the requirements of a competence programme that the person is required to complete.<sup>22</sup>

Continuing professional development (CPD) requirements are important to ensure that practitioners’ competence, skills and knowledge remain up-to-date.

Under the RITANZ/CAANZ scheme, practitioners are required to complete 120 hours of CPD over three years with at least 30 of those hours related to insolvency training.

*Table 4 - RITANZ/CAANZ scheme Accreditation Criteria summary of CPD criteria:*

	Chartered Accountants ANZ Members	RITANZ Members (other than Chartered Accountants ANZ members)
<b>CPD training</b>	120 hours over three years with at least 30 hours being related to insolvency training	120 hours over three years with at least 30 hours being related to insolvency training

We recognise that accredited bodies are likely to be members of the International Federation of Accountants (IFAC) and therefore would be required to establish continuing professional development requirements for their members that comply with International Education Standard 7 (IES 7) *Continuing Professional Development*.<sup>23</sup> Practitioners should meet these relevant requirements.

If an accredited body is not a member of IFAC, we consider that 120 hours over a three year period is an appropriate standard.

We propose that a proportion of this training is required to be verifiable training (where the person can provide evidence to prove their participation in the training). This would include attending or presenting at seminars, training courses, conferences or webinars, and working towards formal qualifications or published research works. Non-verifiable training would include reading professional articles, or a mentoring relationship.

We propose that:

- (a) When a practitioner is licensed by an accredited body that is required to meet the International Education Standard 7 (IES 7) *Continuing Professional Development*, the practitioner should at a minimum meet the following requirements:
  - comply with the continuing professional development standard set by the accredited body; and
  - complete at least 20 hours of verifiable training relating to insolvency practice over three years.

<sup>22</sup> Section 18(1)(a)(ii)

<sup>23</sup> <https://www.iaesb.org/publications-resources/ies-7-continuing-professional-development-revised-0>

(b) When the accredited body is not required to follow the requirements set by the International Federation of Accountants, the practitioner should at a minimum meet the following requirements:

- complete 120 hours of continuing professional development over three years with:
  - at least 60 of the 120 hours to be verifiable training;
  - at least 20 of the 60 hours of verifiable training must be related to insolvency practice; and
  - at least 20 of the 120 hours must be completed every year.

Verifiable training that does not relate to insolvency practice specifically would be expected to relate to general commercial matters, such as tax law, employee entitlements, or health and safety.

**Q23** Do you agree with the proposed ongoing competence requirements?

**Q24** Do you agree that the minimum standards should set a minimum of verifiable training that must relate to insolvency practice? What should the minimum be per year?

## Personal insolvency creditor proposal trustees

Under section 5(1) of the Act, a trustee or provisional trustee appointed under subpart 2 of Part 5 of the Insolvency Act 2006 is included in the definition of “insolvency practitioner” for the purposes of the Act. Subpart 2 of Part 5 of the Insolvency Act deals with Part 5 proposals whereby “an insolvent” may make a proposal to creditors. If the proposal succeeds, then the insolvent is bound by the proposal and does not have to comply with the usual provisions of a bankruptcy. Provisional trustees and trustees have duties under the Act to administer proposals.

Section 22(2) of the Act provides that the prescription of the minimum standards, conditions and competence can have general or specific application, and differ according to differences in time or circumstances. This allows the Registrar to prescribe different standards and conditions for different types of insolvency engagement. The categories of insolvency practitioner set out in the Act are:<sup>24</sup>

- administrator and deed administrators of company administrations;
- liquidators of insolvent companies;
- receivers; and
- trustees and provisional trustees of formal creditors proposals.

Of those categories, the first three relate to corporate insolvencies while the last only applies to personal insolvencies. The minimum standards outlined in this discussion document may need to be modified in respect of practitioners who only carry out some types of insolvency engagement, such as acting as a trustee of formal creditors’ proposals. For example, the minimum practical experience requirement for insolvency practitioners carrying out engagements as a provisional trustee or trustee under subpart 2 of part 5 of the Insolvency Act might include personal insolvency-related work such as debt management planning, summary instalment orders and work relating to personal bankruptcies.

The Act allows licences to be subject to conditions restricting, or providing a mechanism for restricting or supervising the insolvency engagements that a practitioner can undertake. This would mean that a practitioner who had been licensed by way of different minimum standards based on the type of insolvency engagements they perform, could be restricted to only practising that type of insolvency engagement.

<b>Q25</b>	Should different minimum standards be introduced for trustees or provisional trustees appointed under subpart 2 of Part 5 of the Insolvency Act 2006? What should these minimum standards be?
<b>Q26</b>	Is it appropriate to limit by way of conditions the type of insolvency engagement a licensed insolvency practitioner can undertake? For example, should an insolvency practitioner who meets the experience requirements in relation to corporate insolvencies only be licensed to carry out corporate insolvencies?
<b>Q27</b>	Are there other types of insolvency engagement where different minimum standards should apply?

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<sup>24</sup> Section 5, definition of “insolvency practitioner”

## Fit and proper person

In addition to satisfying the minimum standards, the Act requires that, to be issued a licence, accredited bodies must be satisfied that a person is a fit and proper person.<sup>25</sup> A practitioner's licence may be cancelled if the person is not a fit and proper person to hold a licence.<sup>26</sup>

Both CAANZ<sup>27</sup> and CPA Australia<sup>28</sup> have existing fit and proper rules and guidance. This includes consideration of matters such as whether the applicant for membership of the body has:

- Any previous criminal convictions (subject to clean slate rules);
- Previously been made bankrupt or subject to other insolvency-related orders;
- Been banned or disqualified as a director or managing a corporation;
- Previously been refused membership of other professional bodies or regulators; and
- Previously or currently been subject to disciplinary proceedings of other professional bodies or regulators.

Applicants are required to disclose such matters. The presence of such a matter does not automatically disqualify an applicant from membership or a licence, but will require the applicant to provide further information in order to satisfy the professional body as to their suitability for membership.

The Act does not give the Registrar a direct role in prescribing a fit and proper person test for individual applicants for an insolvency practitioner licence. The Registrar also has no role in intervening in particular disputes between an applicant and an accredited body, or reviewing or hearing appeals from decisions of an accredited body (applicants may however appeal to the Court<sup>29</sup>). The Registrar will however consider a professional body's overall approach to assessing whether an applicant for an insolvency practitioner licence (and/or membership of the professional body) is a fit and proper person to hold a licence as part of the Registrar's assessment of the body's application for accreditation. In particular, the Registrar must be satisfied as to whether a body applying for accreditation has the ability to implement and maintain adequate and effective regulatory systems.<sup>30</sup> As part of the Registrar's role in monitoring regulatory systems, the Registrar will also consider how accredited bodies are applying those fit and proper tests.<sup>31</sup>

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<sup>25</sup> Section 9(2)

<sup>26</sup> Section 17(1)(iv)

<sup>27</sup> See CAANZ *Insolvency 100 Fit and proper person* available at <https://www.charteredaccountantsnz.com/member-services/member-obligations/regulations-and-guidance/new-zealand-regulations/accredited-insolvency-practitioners>.

<sup>28</sup> See CPA Australia By-Law 3.16 and <https://www.cpaaustralia.com.au/about-us/member-conduct-and-discipline/fit-and-proper-requirement>.

<sup>29</sup> Section 21

<sup>30</sup> Section 34

<sup>31</sup> Section 40

The Registrar expects that applicants will be required by accredited bodies to declare any matters that are relevant to an assessment of whether they are a fit and proper person to be granted a licence. Where such a matters exists, the accredited body will assess the matters and determine if the person is fit and proper.

The Registrar considers that the following matters will likely be relevant to whether the person is fit and proper:

- a) Convictions involving dishonesty. A crime of dishonesty includes:
  - any offence under sections 99 to 106, 108 to 117, and 217 to 266 of the Crimes Act 1961;
  - any offence under sections 15 to 20 of the Summary Offences Act 1981; or
  - any offence under any overseas law which is equivalent to one of those Crimes Act or Summary Offences Act offences set out above.
- b) Convictions, sanctions, penalties, fines, declarations, orders, reprimands or undertakings for any offence under any provision of the financial markets legislation (as defined in the Financial Markets Authority Act 2011) or any offence under any provision of any overseas Act governing auditors, financial markets or financial services, corporations, financial reporting, or requirements for preventing money laundering or financing of terrorism or similar.
- c) Being banned from acting as a director of a company or other incorporated body, or from being involved in the management of any class of incorporated or unincorporated entity.
- d) Having been subject to disciplinary action by any professional body or disciplinary tribunal, or court where those actions resulted in penalties, sanctions, fines, declarations, orders, reprimands or undertakings being imposed or censure.
- e) Having had an adverse court ruling in respect of a civil case relating to the quality of their professional work or professional judgement.
- f) Having been declined membership of any professional body, or had their membership suspended or cancelled or has been declined any registration, licence, authorisation or accreditation required in relation to any profession by any public body, self-regulatory organisation or exchange, or has had any such membership, registration, licence, authorisation or accreditation revoked or withdrawn.
- g) Having been dismissed, or asked to resign, from a position of trust, fiduciary appointment or similar position.
- h) Having been placed into statutory management, or has been a director of a company which has been placed into statutory management.
- i) Having, in the last 10 years, been made bankrupt, or filed for bankruptcy, or made the subject of an official assignment for the benefit of their creditors or been admitted to the no asset procedure under the Insolvency Act 2006.
- j) Having, in the last 10 years, been a director or senior manager of an entity, or other incorporated or unincorporated entity, which has:
  - been placed into insolvent liquidation, administration or receivership (or any overseas equivalent status)
  - entered into any compromise agreement, moratorium or other restructuring to avoid insolvent liquidation, administration or receivership.

- k) the person is subject to pending proceedings which, if any adverse finding is reached, will result in one or more of the matters set out in the paragraphs above applying to the person.

The Registrar considers that the presence of such a matter should not *automatically* disqualify an applicant from being licenced. However, it will require the applicant to provide further information in order to satisfy the professional body as to their suitability. The Registrar expects that more serious events (for example, the matters identified in subparagraphs (a) to (c) above) will require applicants to provide more extensive evidence to satisfy the accrediting body that the applicant is now a fit and proper person to be a licensed insolvency practitioner. This is in keeping with the policy of the Act to raise the standards of insolvency practitioners' practice.

The accredited body may also determine an applicant is, for any other reason, not a fit and proper person to be a licenced insolvency practitioner.

A failure or refusal to provide any declaration, or to consent in any acceptable form, to any reasonable checks being carried out, may be considered to be ground to decline an application.

Note that we have proposed (at page 20 above) that licences must be subject to a condition requiring practitioners to provide specified reports and notifications to the accredited body. We consider that practitioners should provide notification of any matters relevant to the practitioner's license, including any matter that may impact on whether the person would meet the fit and proper person test. This places a continuing obligation on licensed practitioners to disclose any matters that are relevant to whether the person is a fit and proper person.

## Next steps and implementation

We welcome your written submissions on the proposals discussed in this document. Please provide your feedback before 5pm, 13 December 2019. Please see [How to have your say](#) for instructions on how to submit your submission.

Once we have considered the submissions we will develop the final minimum standards for licensing, which will be made by the Registrar by notice in the *Gazette*. Please see [Purpose of this document](#) for a proposed timeline of key milestones.

## Annex One: RITANZ/CAANZ Scheme Accreditation Framework

The RITANZ/CAANZ scheme Accreditation Criteria are summarised in the table below:

	<b>Chartered Accountants ANZ Members<sup>32</sup></b>	<b>RITANZ Members (other than Chartered Accountants ANZ members)</b>
<b>Certificate of Public Practice</b>	Required (unless an approved non-member principal)	Not applicable
<b>Fit and proper person</b>	Persons must be considered fit and proper under the designated criteria. If any of the designated fit and proper criteria apply, the applicant must disclose the relevant details and a decision made whether the applicant is fit and proper.	Persons must be considered fit and proper under the designated criteria. If any of the designated fit and proper criteria apply, the applicant must disclose the relevant details and a decision made whether the applicant is fit and proper.
<b>Practical insolvency experience or otherwise competent</b>	1,000 hours of practical experience on regulated insolvency engagements over the three years immediately prior to application, at a senior level. Or Can demonstrate are otherwise competent to undertake regulated insolvency engagements.	2,000 hours of practical experience on regulated insolvency engagements over the three years immediately prior to application, at a senior level. Or Can demonstrate are otherwise competent to undertake regulated insolvency engagements.
<b>Practice review results</b>	Ongoing practice review requirements, set by NZICA, must be met. Where the Member's latest practice review was graded as "unsatisfactory" or "re-review" Chartered Accountants ANZ must be satisfied that all major issues have been resolved before issuing or renewing Accredited Status.	Ongoing practice review requirements, set by Chartered Accountants ANZ to mirror practice review requirements for Chartered Accountants ANZ Members as far as practicable, must be met in accordance with the Practitioner Compliance Agreement. Any adverse findings by the Registrar of Companies or the Financial Markets Authority would need to be disclosed and reviewed by Chartered Accountants ANZ. Where the Member's latest practice review conducted under the AIP Rules was graded as "unsatisfactory" or "re-review", Chartered Accountants ANZ must be satisfied that all major issues have been resolved before issuing or renewing Accredited Status.

<sup>32</sup> Including a person approved under Appendix V of NZICA's rules as a non-member principal of an accounting practice who has agreed (amongst other things) to subject themselves to NZICA's disciplinary processes as if they were a member of NZICA.

<b>CPD training</b>	120 hours over three years with at least 30 hours being related to insolvency training	120 hours over three years with at least 30 hours being related to insolvency training
<b>Insurance arrangements</b>	Must certify that have adequate professional indemnity insurance cover appropriate to the nature and scale of services offered to the public	Must certify that have adequate professional indemnity insurance cover appropriate to the nature and scale of services offered to the public

## Annex Two: Certificate of Public Practice requirements

The current requirements for obtaining a Certificate of Public Practice through CAANZ are:

- Two years' acceptable practical experience as a Chartered Accountant. To become a Chartered Accountant the person must:
  - Have a CAANZ-accredited (or equivalent) degree
  - Have completed at least three years full-time (or part-time equivalent) approved employment
  - Have completed the Chartered Accountants programme
  - Be a fit and proper person
- Completing the Public Practice Program (or equivalent) within the past two years.

It is open to CPA Australia to apply to become an accredited body. To become Public Practice Certificate holder, a person must meet the following minimum requirements:

- Meet experience requirements as a Certified Practising Accountant (CPA). To become a CPA the person must:
  - Hold a CPA Australia-accredited (or equivalent) degree
  - Have completed at least three years full-time (or part-time equivalent) approved employment
  - Have completed the CPA programme; and
  - Be a fit and proper person
- Have completed the Practice Management and Public Practice programmes.