Accreditation policy

This document sets out the Registrar of Companies' policy for accreditation for the purposes of section 39 of the Insolvency Practitioners Regulation Act 2019 (the Act):

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Statutory requirements

The Registrar will grant accreditation in accordance with the criteria set out in the Act. These criteria, and the Registrar's policy regarding those criteria, are further set out below.

Applicants for accreditation must be able to describe how the applicant, its rules, or its members satisfy the relevant requirements. If necessary, applicants should provide supporting evidence or further information.

Application form and checklist

There is no prescribed a mandatory form or process for accreditation. The Companies Office has prepared a checklist to help applicants ensure that all necessary information has been provided. We may request further information in order to process the application for accreditation.[1]

Application process

If you wish to apply for accreditation, please contact practitioners@companies.govt.nz. We expect that the majority of applications will need to provide the information set out in the checklist, but will discuss the information required for your particular circumstances.

Once all information has been provided, we will review your application. If necessary, we may request further information, or arrange for further meetings to discuss the applicant and the application.

Application fees

There is no fee to apply for accreditation.

Exemptions, waivers and modification

The Registrar has no power to waive, modify, or exempt an applicant from, the requirements prescribed in the Act.

The Registrar can, however, modify the application of the standard conditions of accreditation. If applicable, applicants should describe why such modification is appropriate, and how the policy of the Act will be satisfied with modified conditions.

[1] See section 34(4).

Time to process applications

There is no prescribed time period for applications to be reviewed and considered. We will discuss applicants' particular deadlines or timeframes, but typically applicants should allow up to 6 to 8 weeks for an application to be processed, from the time that all information is provided.

Status of applicant information

The Official Information Act 1982 applies to the information provided in relation to applications for accreditation. The Privacy Act 1993 may also apply to certain applicant information. If we receive a request for information that includes applicant information, we will treat that request in accordance with the Official Information Act and Privacy Act.

In submitting information, please indicate any information that is already publicly available, and any information that is or may be commercially sensitive, subject to obligations of confidence, or otherwise potentially subject to grounds for withholding under the Official Information Act and Privacy Act.

Please also provide reasons or background for why you consider such information to be subject to such grounds. We will consider this information under the Official Information Act and Privacy Act.

Purpose

The purpose of the Act 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.[2]

In addition, section 24 of the Act sets out guiding principles that apply to certain acts and decisions of the Registrar:

(a) promoting quality, expertise, and integrity in the profession of insolvency practitioners;
(b) promoting compliance with the statutory duties of insolvency practitioners;
(c) not unnecessarily restricting the licensing of insolvency practitioners; and
(d) not imposing undue costs on insolvency practitioners or on creditors.

Strictly, these principles apply only to prescribing certain matters under subpart 2 of part 2 of the Act (minimum standards). However, the Registrar considers these principles have wider application and has had regard to these principles in setting this policy, and will have regard to them in considering applications for accreditation.

Co-regulation

The Act provides for a co-regulatory scheme.

- Accredited bodies are 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.
- The Registrar is 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.

[2] Section 3.

The Registrar anticipates working closely with accredited bodies. Accredited bodies have a crucial role to play in the success of the insolvency practitioners regime, as the frontline regulators of the profession. Provided that accredited bodies meet the applicable criteria, the Registrar does not intend to dictate to accredited bodies the specifics of their policies and procedures. This would not be consistent with a co-regulatory model.

Adequate and effective

Section 34(3)(a) of the Act requires that the Registrar be satisfied that an applicant for accreditation will implement and maintain regulatory systems that are adequate and effective before granting accreditation.

Risk based assessment

The Registrar will take a risk-based approach when determining applications for accreditation, and whether an applicant will implement and maintain regulatory systems that are adequate and effective. The Registrar will assess the adequacy and effectiveness 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
- the potential impact if a matter is, or is not, done.

For example, the number of personnel required to discharge an accredited body's regulatory functions is likely to be proportionate to the number of licensed practitioners. An accredited body with only a few licensed insolvency practitioners may not require as many personnel as an accredited body with many licensed insolvency practitioners. Similarly, an accredited body that licenses insolvency practitioners to undertake only a limited range of simple insolvency engagements may not require as extensive systems as an accredited body that licenses insolvency practitioners to undertake all types of insolvency engagements.

Minimum standards

Other factors may be relevant when determining whether an applicant for accreditation will implement and maintain regulatory systems that are adequate and effective. This will usually include factors that are also addressed as minimum standards for accreditation.

The Registrar will consider these factors as part of the Registrar's assessment of whether the applicant meets the minimum standards (see below).The Registrar will not re-review such factors to assess whether an applicant satisfies the regulatory systems requirement of section 34(3)(a).

Other information

The Registrar will consider any other information applicants for accreditation may wish to provide to assist the Registrar's assessment of whether the applicant will implement and maintain adequate and effective regulatory systems. Such information could include matters such as:

- independent reviews, audits, assessments or certifications carried out by independent third parties
- a previous history or proven track record of regulatory or quasi-regulatory systems – for example, professional or occupational licensing of other professions, or voluntary professional membership schemes.

Minimum standards

Section 34(3)(b) of the Act requires that the Registrar be satisfied that the applicant will meet the minimum standards for accreditation. The minimum standards for accreditation are set out in the Insolvency Practitioners Regulation Act (Prescribed Minimum Standards for Accreditation) Notice 2020.

The official copy of the notice is available on the *Gazette* website.

Fit and proper

Section 34(3)(c) and (d) of the Act requires that the Registrar be satisfied that the applicant is (or, if applicable, joint applicants are) a fit and proper person to perform the required regulatory functions.

Fit and proper criteria

In assessing whether an applicant is fit and proper, the Registrar will consider the criteria set out below. Please note that the presence of any criterion will not automatically disqualify an applicant from becoming an accredited body. However, applicants must disclose such matters and the circumstances that led to the matter. Applicants should describe why, despite such matter, they are fit and proper to be accredited, and provide supporting information. The Registrar may also request additional information.

Who must be fit and proper

The Registrar will assess both whether the applicant body, and its key personnel, are fit and proper to perform regulatory functions.

Key personnel

The Registrar considers the following to be key personnel:

(1) members of the applicant's governing board (for example, board of directors)
(2) the applicant's senior executives with responsibility for or oversight of the regulatory functions of the applicant.

What is fit and proper – bodies corporate

The Registrar will take account of the following matters in assessing whether a body corporate is fit and proper:

(1) Whether the body corporate has been convicted of any crimes involving dishonesty. A crime involving dishonesty is defined in section 2 of the Crimes Act 1961 and (for bodies corporate) includes matters such as bribery and corruption.
(2) Whether the body corporate has been convicted of any crimes or disciplinary actions involving insolvency, corporate or financial markets legislation. This includes any convictions, sanctions, penalties, fines, declarations, orders, reprimands or undertakings for any offence under any financial markets legislation (as defined in the Financial Markets Authority Act 2011[3]), or any similar overseas legislation.
(3) Whether the body corporate has been subject to disciplinary action by any regulator, professional body or disciplinary tribunal, or court where those actions resulted in penalties, sanctions, fines, declarations, orders, reprimands or undertakings being imposed or censure.

[3] This includes the Companies Act 1993, Financial Reporting Act 2013, Financial Markets Conduct Act 2013, and Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

(4) Whether the body corporate has been subject to an adverse court ruling raising significant concerns about the quality of its regulatory work or judgements. This would include adverse court rulings in respect of appeals from the accredited body's decisions that relate to the quality of its regulatory work or judgments.
(5) Whether the body corporate has ever been placed into statutory management.
(6) Whether the body corporate has, in the last ten years, been placed into liquidation, administration, receivership, restructuring to avoid insolvent liquidation, or winding up application.
(7) Whether the body corporate is currently or potentially subject to proceedings that, if any adverse finding is reached, will result in one or more of the matters set out in the paragraphs above applying to the body corporate.
(8) Any other matter that might affect the Registrar's assessment of whether the body corporate is a fit and proper person to perform regulatory functions for the purposes of the Act.

What is fit and proper – key personnel

The Registrar will take account of the following matters in assessing whether a person is fit and proper:

(1) Whether the person has been convicted of any crimes involving dishonesty. A crime involving dishonesty is defined in section 2 of the Crimes Act 1961 and includes matters such as theft, deceit, blackmail, forgery, bribery and corruption.
(2) Whether the person has been convicted of any crimes or disciplinary actions involving insolvency, corporate or financial markets legislation. This includes any convictions, sanctions, penalties, fines, declarations, orders, reprimands or undertakings for any offence under any financial markets legislation (as defined in the Financial Markets Authority Act 2011[4]), or any similar overseas legislation. This includes being subject to a director prohibition order.
(3) Whether the person has been subject to disciplinary action by any regulator, professional body or disciplinary tribunal, or court where those actions resulted in penalties, sanctions, fines, declarations, orders, reprimands or undertakings being imposed or censure.
(4) Whether the person has been subject to an adverse court ruling in respect of a civil case relating to the quality of the person's professional work or professional judgement.
(5) Whether the person has ever been declined membership of any professional body, or had their membership suspended or cancelled.
(6) Whether the person 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.
(7) Whether the person has been dismissed, or asked to resign, from a position of trust, fiduciary appointment or similar position.
(8) Whether the person has been placed into statutory management, or has been a director of a company which has been placed into statutory management.
(9) Whether the person has been convicted of an offence the Tax Administration Act 1994.

[4] This includes the Companies Act 1993, Financial Reporting Act 2013, Financial Markets Conduct Act 2013, and Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

(10) In the last 10 years, whether the person has 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.

(11) In the last 10 years, whether the person has been a director or manager of an entity, or other incorporated or unincorporated entity, which has:

(a) been placed into insolvent liquidation, administration or receivership (or any overseas equivalent status); or

(b) entered into any compromise agreement, moratorium or other restructuring to avoid insolvent liquidation, administration or receivership.

(12) Whether the person is currently or potentially subject to proceedings that, 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.

(13) Any other matter that might affect the Registrar's assessment of whether the body corporate is a fit and proper person to perform regulatory functions for the purposes of the Act.

The above lists are not exhaustive. The Registrar may have regard to other matters in assessing whether a person is fit and proper. Applicants may wish to discuss any matters of potential concern in advance.

Rules

Section 36(1) of the Act provides that accredited bodies must have rules for:

- investigation of complaints
- hearing of complaints and other matters by disciplinary body
- appeals against decisions of disciplinary body
- kinds of conduct for which members may be disciplined
- disciplinary actions and penalties
- eligibility to carry out insolvency engagements
- code of conduct

Applicants should provide a copy of their rules. Please provide references to the applicable rule numbers regarding each of the following matters. Applicants may also wish to summarise or describe how the relevant rule meets the statutory criteria.

To avoid doubt, the rules of a professional body may include other provisions that are not inconsistent with the Act.

If applicants intend to change their rules as part of the accreditation process, applicants should provide both their existing and proposed updated rules.

Recognised bodies

Sections 57 to 59 of the Act provide a mechanism for accredited bodies to licence insolvency practitioners that are not members of that accredited body in certain circumstances, including where the licensed insolvency practitioner is a member of a "recognised body".

The recognised body mechanism is intended to allow for some flexibility in the regulatory regime so that practitioners who cannot, or do not want to, belong to an accountancy professional body can still become licensed insolvency practitioners. The Registrar may recognise any person (such as an incorporated professional body or industry group) by notice in the *Gazette*.

Licences may only be issued where the accredited body is satisfied that the insolvency practitioner is qualified and competent, and is a fit and proper person to be an insolvency practitioner. In addition, the accredited body and the insolvency practitioner must enter into an arrangement that:

- is in writing
- states that it is entered into for the purposes of section 58 of the Act
- includes a binding commitment for the applicant to abide by the rules of the accredited body.

Applicants for accreditation that propose working with one or more recognised bodies should:

- describe the proposed relationship between the accredited body and the recognised body, including copies of any Memoranda of Understanding, Cooperation Agreements, or similar between the bodies
- provide a copy of the template or standard arrangement under sections 57 and 58 between the accredited body and members of the recognised body that are/will be licensed as insolvency practitioners.

Applicants for recognition should consult the policy for recognition of licensing professional bodies [PDF].