

Policy for recognition of licensing professional bodies

This is version 1.0 of this document, published on 21 August 2020.

This document sets out the Registrar of Companies' policy for recognising professional bodies for the purposes of section 57 to 59 of the Insolvency Practitioners Regulation Act 2019 (the Act). This policy does **not** apply to recognising professional bodies in relation to solvent liquidations (see section 69 of the Act).

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. 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*.

Applications for recognition

The Act does not prescribe criteria for recognition. The Registrar considers that there may be a range of scenarios in which a body may apply for recognition. The Registrar will therefore be flexible in considering applications for recognition.

Application form and checklist

There is no mandatory form or prescribed process for recognition. Applicants must provide background information about their name, status and intended role as recognised body. Applicants will typically need to provide the other information that is set out in this policy, and financial and membership information. The Companies Office has prepared a checklist to help applicants assemble information. However, we will discuss whether particular information is required in particular circumstances.

We may also request further information from applicants.

Application process

If you wish to apply for recognition, 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 recognition.

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 recognition. 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.¹

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 recognised body status.

Role of a recognised body

The Act requires that insolvency practitioner licences 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.

Applicants for recognition should describe the proposed relationship between the accredited body and the recognised body, including describing how the recognised body intends to interact with the accredited body in insolvency practitioner licencing. This may vary depending on circumstances. Applicants should support this description by including copies of any memoranda of understanding, cooperation agreements, or similar between the bodies.

Rules of a recognised body

Applicants should provide a copy of their applicable rules (if any) relating to insolvency practitioners and insolvency engagements.

In addition, if an applicant has rules applicable to any of the following matters, the applicant should describe how those rules interrelate with any equivalent rules of the accredited body:

- 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

¹ Section 3.

- eligibility to carry out insolvency engagements
- code of conduct

Written arrangements for members

Section 57 of the Act requires that the accredited body, and an insolvency practitioner that is a member of a recognised body, 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 should provide a copy of the template or standard arrangement that will be used for these purposes.

Fit and proper

Given the role of recognised bodies in issuing insolvency practitioner licences, the Registrar considers that it is appropriate to will consider whether an applicant for recognition is a fit and proper person.

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 a recognised 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 recognised, 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); and
- (2) the applicant's senior executives with responsibility for or oversight of any 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 2011²), 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.
 - (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 recognised 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 – 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), 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.

² 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.

- (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.
- (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.

Information checklist

Applicants for recognition should provide the following information (or an explanation as to why such information is not applicable in a particular case):

Background information

- the legal and trading names of the applicant for recognition
- the constitution, articles of association or similar governing statute of the applicant for recognition
- the applicant's NZBN (if applicable)

Role of recognised body

- an outline of the relationship between any accredited body and the applicant for recognition, including copies of any memoranda of understanding, cooperation agreements, or similar between the bodies

Rules of recognised body

- any rules, code of ethics or similar documents governing the conduct, ethics and actions of members of the applicant for recognition

Written arrangements for members

- the template or standard arrangement under sections 57 and 58 between the accredited body and members of the applicant for recognition that are licensed as insolvency practitioners (see policy)

Fit and proper

- the membership of the board or governing body of the applicant for recognition
- a statement and any supporting information regarding the applicant's fit and proper status (see policy)

Financial and membership information

- financial statements for the applicant for recognition (audited if available)
- membership data for the applicant for recognition, including the number of members that intend to, are qualified to, or are otherwise likely to apply for a licence as an insolvency practitioner.

Other information

The Registrar will consider any other information applicants for recognition 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.