

Insolvency practitioner regulation and oversight plan

This is version 1.0 of the 2020 regulation and oversight plan, published on 21 August 2020.

Background

The Insolvency Practitioners Regulation Act 2019 (the Act) introduced a co-regulatory scheme to promote quality, expertise, and integrity in the profession of insolvency practitioners. Prior to the passage of the Act, insolvency practitioners were not regulated as a specialist profession.¹

The Act has introduced 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 of Companies (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.

The Act has also prescribed new duties for insolvency practitioners. These include:

- the duty to report serious problems in insolvent bodies corporate, such as director offences, company mismanagement, and breach of directors' duties
- restrictions on insolvency practitioners from purchasing assets from an insolvent body corporate for which they are acting
- restrictions on related party transactions concerning insolvency practitioners and their close connections.

The insolvency practitioners legislative reforms also update the reporting requirements for liquidations, receiverships and voluntary administrations. Under the legislative regime prior to the Act, insolvency practitioners filed various reports about insolvency engagements (for example, liquidators filed initial, 6 month and final reports). The contents of these reports was only prescribed in general terms. The new reporting requirements specify in greater detail the content of insolvency reports. The new reporting requirements also introduce new requirements for summary insolvency reports.

Regulation and oversight plan

Section 38 of the Act requires the Registrar to publish a plan relating to insolvency practitioner regulation and oversight. The regulation and oversight plan must describe:

- the specific effects, outcomes, or objectives that the Registrar seeks to achieve or contribute to
- the ways in which the Registrar expects accredited bodies to contribute to those effects, outcomes, or objectives
- how the Registrar proposes to monitor accredited bodies under section 40.

The regulation and oversight plan must set out the Registrar's plan for up to the next 4 years. This plan must be updated at least every 4 years.

¹ A voluntary scheme for accreditation of insolvency practitioners is operated by Chartered Accountants Australia and New Zealand (CA ANZ) and the Restructuring and Insolvency Turnaround Association of New Zealand (RITANZ).

This document is the first plan under this section and sets out the regulation and oversight plan for the financial years from the commencement of the Act on 1 September 2020 to 30 June 2024. The Registrar may, however, review and update this plan at any time before then.

This plan will help accredited bodies, insolvency practitioners, creditors and other interested stakeholders to understand how the Registrar will approach insolvency practitioner regulation.

Effects, outcomes and objectives

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. This regulation and oversight plan adopts these section 24 principles as the effects, outcomes and objectives.

As this is the first plan, and a new regulatory regime, the Registrar intends to focus primary efforts on particular effects, outcomes and objectives over time:

Year 1	July 2020 -June 2021 Focus: promoting compliance with statutory duties of insolvency practitioners, and not imposing undue costs on insolvency practitioners	Between July and September 2020 the Registrar will work with professional bodies on accreditation. Once professional bodies are accredited, the Registrar will support them in implementing the regime, educating their members and the public, and deploying new information and reporting modules to the Companies Office website. From 1 September 2020, accredited bodies will be able to issue insolvency practitioner licences. Transitional provisions will apply to some insolvency practitioner members of voluntary schemes and existing insolvency engagements. ³ The Registrar’s focus in year 1 will be promoting awareness of the new regime, particularly: <ul style="list-style-type: none"> • practitioners in regulated areas of insolvency work requiring a licence • new insolvency practitioner duties • changes to the insolvency reporting requirements The Registrar will do this via: <ul style="list-style-type: none"> • the Companies Office websites • industry networks and contacts • working with accredited bodies
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² Section 3

³ For more information, [see the Companies Office website](#)

If the Registrar detects any non-compliance that is minor or inadvertent during year 1, the Registrar intends to primarily take a notification/warning approach. This would include notifying the person concerned, advising the person of the new requirements, and promoting compliance with the new requirements. The Registrar will not automatically treat all detected non-compliance as an enforcement matter. However, deliberate, repeated or reckless non-compliance may result in enforcement.

This will promote compliance with statutory duties of insolvency practitioners, while endeavouring to not impose undue costs on insolvency practitioners.

The Registrar will also collect and analyse insolvency data over the course of year 1, including:

- numbers of licensed insolvency practitioners
- complaints regarding insolvency practitioners
- accredited body annual confirmations and reports
- insolvency report data

The new summary reporting requirements by insolvency practitioners⁴ will be a key source of this data. The Registrar will provide structured forms for reporting to enable easier collation and analysis of data and trends. The Registrar intends to share this data with accredited bodies to support their regulatory and professional activities. The Registrar will also make this data available to the public further to New Zealand Government Open Access and Licensing framework (NZGOAL).

The Registrar expects that accredited bodies will share information and data with the Registrar to further support this function. The Registrar will enter into appropriate information sharing agreements with each accredited body to facilitate information sharing.

⁴ Companies (Reporting by Insolvency Practitioners) Regulations 2020.

Year 2	<p>July 2021 -June 2022</p> <p>Focus: promoting compliance with the statutory duties of insolvency practitioners, and promoting quality, expertise, and integrity in the profession of insolvency practitioners</p>	<p>By September 2021, the insolvency practitioners regulatory regime will be in full force. With only very minor exceptions,⁵ all active insolvency practitioners will have to be licensed by an accredited body.</p> <p>The Registrar’s primary focus in year 2 will be monitoring compliance of licensed insolvency practitioners with:</p> <ul style="list-style-type: none"> • insolvency practitioner duties • insolvency reporting requirements. <p>The Registrar will do this via:</p> <ul style="list-style-type: none"> • reviewing and analysing insolvency reports filed with the Companies Office • working with accredited bodies to monitor complaints, investigations and practice reviews. <p>Non-compliance may result in referrals to the licensed insolvency practitioner’s accredited body and other enforcement actions under the Act.</p> <p>The Registrar will work with accredited bodies to promote quality, expertise and integrity in the professional of insolvency practitioners. The Registrar anticipates that the nature of these activities will depend on the outcomes of licensing activities by accredited bodies, and the compliance monitoring by the Registrar. Activities may include:</p> <ul style="list-style-type: none"> • additional educational and training activities for insolvency practitioners • additional or revised Companies Office guidance • increased monitoring and/or enforcement activities. <p>As the regime will be in full force, the Registrar will conduct a review of the fees and levy to ensure they are set at the appropriate level given uptake of the scheme and resources required. This review will align with the overarching fees review of services under the Registrar’s accountabilities, with new fees to be in place by July 2022.</p>
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⁵ See Insolvency Practitioners Regulation Act 2019, schedule 1, clause 5.

Year 3

July 2022 -June 2023

Focus: ensuring that the regulatory regime is not unnecessarily restricting the licensing of insolvency practitioners, and not imposing undue costs on insolvency practitioners or on creditors

In year 3, the Registrar intends to continue the approach outlined in year 2. The focus of these activities will depend on:

- licensing data and statistics
- compliance monitoring data
- enforcement data
- any complaints about insolvency practitioners
- any relevant developments in insolvency practice, the New Zealand economic environment or other significant economic events
- accredited body and industry views

If necessary, the Registrar may update this regulation and oversight plan to better reflect these activities.

In addition, the Registrar proposes to conduct a post-implementation review of the insolvency practitioners regulatory regime. In particular, the Registrar will review:

- the prescribed minimum standards for licensing
- the prescribed minimum standards for accreditation
- insolvency disclosure requirements
- other statutory instruments made under the Act, such as the Registrar's policies
- this regulation and enforcement plan
- summary reporting by insolvency practitioners under the Companies (Reporting by Insolvency Practitioners) Regulations 2020 and the accompanying Companies Office forms

The objective of this review will be to ensure that the objectives of the Act are being met in practice, particularly the balance between promoting quality, expertise, and integrity in the profession of insolvency practitioners, and not unnecessarily restricting the licensing of insolvency practitioners or imposing undue compliance costs. For example, if the minimum standards for licensing make it too difficult or costly to obtain an insolvency practitioner licence, the Registrar may review those standards.

This will include a review of the disclosure requirements for insolvencies and insolvency practitioners. A key part of this monitoring and oversight plan is data collection and analysis. This review will consider the data collected, the method of data collection, and the uses of that data to ensure that appropriate data is being collected without undue compliance costs.

Statutory changes and the underlying policy of the Act are outside the Registrar's area of responsibility; however if the Registrar identifies any such issues, they will be referred on to the relevant policy team.

The Registrar will carry out this review in consultation with accredited bodies, licensed insolvency practitioners, creditors, and other interested stakeholders. The Registrar will also review and analyse data collected in previous years.

This will ensure that the regulatory regime is not unnecessarily restricting the licensing of insolvency practitioners, and not imposing undue costs on insolvency practitioners or on creditors.

Year 4	<p>July 2023 - June 2024</p> <p>Focus: promoting quality, expertise, and integrity in the profession of insolvency practitioners, and promoting compliance with the statutory duties of insolvency practitioners</p>	<p>Subject to the results of the post-implementation review carried out in year 3, the Registrar’s focus in year 4 will be monitoring compliance of licensed insolvency practitioners with:</p> <ul style="list-style-type: none"> • insolvency practitioner duties • insolvency reporting requirements. <p>The Registrar will do this by:</p> <ul style="list-style-type: none"> • reviewing and analysing insolvency reports filed with the Companies Office • working with accredited bodies to monitor complaints, investigations and practice reviews. <p>Non-compliance may result in referrals to the licensed insolvency practitioner’s accredited body and other enforcement actions under the Act.</p> <p>This will promote quality, expertise, and integrity in the profession of insolvency practitioners, and promote compliance with the statutory duties of insolvency practitioners.</p>
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Accredited body contributions

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. The Registrar expects accredited bodies to contribute to the effects, outcomes and objectives as follows:

Effect, outcome or objective	Accredited body contribution
<p>Promoting quality, expertise, and integrity in the profession of insolvency practitioners</p>	<p>Promoting awareness</p> <p>Promote awareness of the new regime, particularly:</p> <ul style="list-style-type: none"> • practitioners in regulated areas of insolvency work requiring a licence • new insolvency practitioner duties • changes to the insolvency reporting requirements. <p>Licensing</p> <p>The Registrar has set expectations to promote licensing-related quality, expertise, and integrity in the prescribed minimum standards for licensing insolvency practitioners.⁶ The Registrar anticipates that the bulk of accredited body’s licensing work to be concentrated in year 1 of the regime (July 2020 to June 2021) as insolvency practitioners move from transitional to full licences.</p> <p>Continuing professional development (CPD)</p> <p>The Registrar expects accredited bodies to consider and set appropriate CPD requirements for their members.</p> <p>Detection, monitoring and enforcement</p> <p>The Registrar has set expectations to promote systemic detection, monitoring and enforcement-related minimum standards for accreditation.⁷ The Registrar expects accredited bodies to have systems and processes to detect any compliance issues and take appropriate disciplinary action when warranted.</p>
<p>Promoting compliance with the statutory duties of insolvency practitioners</p>	<p>Promoting awareness</p> <p>See above.</p> <p>Detection, monitoring and enforcement</p> <p>The Registrar has set expectations to promote systemic detection, monitoring and enforcement-related minimum standards for accreditation.⁸ The Registrar expects accredited bodies to have systems and processes to detect any compliance issues and take appropriate disciplinary action when warranted. Serious non-compliance with statutory duties will also be referred to the Registrar.</p>

⁶ Insolvency Practitioners Regulation Act (Prescribed Minimum Standards, Conditions, and Requirements for Ongoing Competence, for Licensed Insolvency Practitioners) Notice 2020.

⁷ Insolvency Practitioners Regulation Act (Prescribed Minimum Standards for Accreditation) Notice 2020, clause 3(1), paragraphs (s) to (z).

⁸ Insolvency Practitioners Regulation Act (Prescribed Minimum Standards for Accreditation) Notice 2020, clause 3(1), paragraphs (s) to (z).

Effect, outcome or objective	Accredited body contribution
<p>Not unnecessarily restricting the licensing of insolvency practitioners</p>	<p>Licensing</p> <p>The Registrar has set expectations regarding licensing in the minimum standards for licensing,⁹ and has reviewed accredited bodies rules and systems and processes for licensing as part of the accreditation process. The Registrar has made clear his view that accredited bodies must not unnecessarily restrict the licensing of insolvency practitioners, and expects accredited bodies to act accordingly in issuing licenses.</p>
<p>Not imposing undue costs on insolvency practitioners or on creditors</p>	<p>Licensing</p> <p>The Registrar has endeavoured to implement a regulatory regime that does not impose undue costs on insolvency practitioners. The Registrar expects accredited bodies to support this by not imposing undue application or licensing fees for licensing.</p>
<p>Information and data sharing</p>	<p>Applicable to all the above effects, outcomes and objectives, the Registrar expects accredited bodies to:</p> <ul style="list-style-type: none"> • notify the Registrar if an accredited body becomes aware of any issues with the regulatory regime • notify the Registrar of significant issues of non-compliance • provide information and data to support the Registrar’s monitoring and oversight of the regulatory regime and the insolvency profession.

⁹ Insolvency Practitioners Regulation Act (Prescribed Minimum Standards, Conditions, and Requirements for Ongoing Competence, for Licensed Insolvency Practitioners) Notice 2020.

Monitoring accredited bodies

The Registrar has directed accredited bodies to provide regular reports to the Registrar.¹⁰ This must include information regarding:

- membership and licensing
- monitoring and general oversight
- education and training
- complaints, enquiries, investigations and discipline
- confirmation of legal obligations

In addition, the Registrar anticipates working closely with accredited bodies, and expects them to provide proactive notification of emerging issues. The Registrar may also seek information from accredited bodies outside the annual reporting cycle if required. This could include information in response to specific issues that are referred to the Registrar.

¹⁰ See [Direction for Annual Confirmation and Report \[PDF\]](#)