

Insolvency Practitioners Bill

Government Bill

As reported from the Economic Development, Science and Innovation
Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Insolvency Practitioners Bill (including Supplementary Order Paper No 45) and recommends that it be passed with the amendments shown.

Introduction

The bill aims to strengthen the regulation of insolvency practitioners by introducing a licensing system. The bill seeks to amend the Companies Act 1993 and the Receiverships Act 1993, and to create a new Act to be called the Insolvency Practitioners Regulation Act.

The bill's progress to date

The bill was first introduced on 27 April 2010. It proposed a negative licensing system which would give the Registrar of Companies power to restrict or prohibit individuals from providing corporate insolvency services. The bill aimed to make it easier to prohibit practitioners from practising if they were unfit, or to place them under supervision.

The Commerce Committee of the 50th Parliament recommended extensive amendments to the bill in their report presented on 9 May 2011. The committee considered that the negative licensing system proposed would not address the problems and risks associated with practitioners who are dishonest or lack independence. The amendments recommended by the Commerce Committee sought to introduce a register of insolvency practitioners and to establish offences and penalties for practitioners who failed to comply.

At the bill's second reading, the Commerce Committee's recommended amendments were adopted.

Amendments proposed in Supplementary Order Paper No 45

The Minister of Commerce and Consumer Affairs released Supplementary Order Paper No 45 on 28 June 2018. The SOP proposes substantial further changes to the bill to:

- create a co-regulatory licensing regime
- improve the list of automatic practitioner disqualifications
- provide the High Court with an effective means to disqualify practitioners.

SOP 45 would insert four new parts into the bill (Parts 3 to 6) to regulate insolvency practitioners and establish an independent oversight system.

Following the SOP's release, the bill (incorporating the amendments proposed by the Commerce Committee) was referred back to us for consideration. We have considered the amendments proposed in the SOP and recommend that most of them be incorporated into the bill, with some adjustments which we discuss below.

Proposed amendments

This commentary covers the main amendments we recommend to the bill, taking into account the proposals in SOP 45. We do not discuss minor or technical amendments.

Proposed amendments to the Companies Act

Part 1 of the bill would amend the Companies Act 1993. The proposed changes to this part are discussed below.

Reports and disclosures by insolvency practitioners

SOP 45 proposes that detailed disclosure and reporting requirements be included in the bill under clauses 4EA and 4HA (new sections 255A, 255C, and 257A of the Companies Act).

We are concerned that the approach proposed in the SOP would be too onerous, especially for solvent liquidations. We note that the proposed requirements for reporting are technically complex, involve listing minor details, and cover subject matter that may require updating as technology advances. We consider that it would be more appropriate to include these requirements in regulations.

We therefore recommend two changes.

First, we recommend that the detailed requirements contained in clauses 4EA and 4HA be removed from the bill.

Second, we recommend amending clause 10 (section 395 of the Companies Act) so that the reporting requirements proposed in the SOP would be able to be prescribed by regulations. Our proposal would allow for different regulations to apply in respect of different kinds or classes of persons or circumstances.

We recommend amending clause 4EA to incorporate some of the proposals from the SOP. Specifically, our amendment would reduce the burden of compliance in relation to interest statements by inserting section 255A in the Companies Act. An insolvency practitioner would only be required to include information that relates to circumstances, relationships, or other facts that the practitioner has become aware of during the period since they last prepared an interest statement.

Solvent liquidations and directors' declarations

We see a need to strengthen the SOP's proposals for directors' obligations regarding resolutions and certificates given in connection with solvent liquidations. Under the Companies Act, directors could declare that a liquidation was solvent and therefore appoint a liquidator that was not a licensed practitioner. They could do this, without having to provide proof or face consequences, if they do not reasonably consider that the company can pay its debts.

We recommend strengthening the existing requirements in relation to solvent liquidations by:

- requiring the company's board of directors to declare that the company is able to meet all of its obligations to creditors within 12 months
- adding an offence provision for making a declaration without reasonable grounds
- adding a provision so that a solvent liquidation would become an insolvent liquidation if the 12 month deadline was not met.

This would ensure that solvent liquidations are dealt with in an appropriate timeframe and would deter directors from making false declarations.

To make these changes, we recommend inserting new clause 4CA to insert new section 243A into the Companies Act. We also recommend the insertion of clause 4CB to replace section 244 in the Companies Act.

Duties in relation to company funds

Clause 4G would insert section 256A into the Companies Act regarding a liquidator's duties in handling company funds. SOP 45 proposes that the maximum penalty for failing to comply with the duty would be as set out in section 373(2) of the Companies Act.

To make this provision consistent with similar offences under the Companies Act, we recommend amending clause 4G so that the penalty is set out under section 373(3) of the Act instead. This would have the effect of increasing the maximum penalty from \$10,000 to \$50,000.

Prohibition orders

The Companies Act includes provisions for the High Court to make prohibition orders against administrators (under clause 4, section 239ADV) and liquidators (under clause 6, section 286). Currently, an order made in relation to one type of

insolvency activity would not prohibit a person from being involved in another type of insolvency activity.

We recommend amending clauses 4 and 6 so that a prohibition order would apply to all forms of insolvency activities covered by the licensing regime, not just the form of insolvency activity that generated the prohibition order.

Establishment of a regulation-making power

Clause 7A of the bill would insert new Part 16A into the Companies Act to establish a registration regime for insolvency practitioners.

We agree with SOP 45 that clause 7A should be removed and the content of Part 16A that remains relevant should be included instead in new Parts 3 to 6 of the bill. This change would move the provisions for regulation and independent oversight of insolvency practitioners from the Companies Act to the new Insolvency Practitioners Regulation Act.

Proposed amendments to the Receiverships Act

Part 2 of the bill would make various amendments to the Receiverships Act 1993.

Some changes that we recommend making to the Companies Act, in relation to administrators and liquidators, are also relevant to receivers.

We recommend amending clauses 13G and 13H to substitute new sections 24 and 24A in the Receiverships Act regarding the reporting requirements on receivers.

We also recommend amending clause 14 to make changes to section 37 of the Receiverships Act in relation to prohibition orders. This would be consistent with the recommendations we make in relation to prohibition orders against administrators and liquidators.

Proposed new regime for regulation and oversight of insolvency practitioners

SOP 45 proposes inserting Parts 3 to 6 into the bill with the purpose of regulating insolvency practitioners and establishing a licensing regime operated by accredited bodies and subject to independent oversight by the Registrar of Companies. We recommend inserting these four new parts into the bill with a few variations from the SOP.

Regulation of overseas practitioners

SOP 45 proposes that accredited bodies would be responsible for the regulation of overseas practitioners. It was suggested to us that this would be onerous for the accredited bodies as different jurisdictions have different rules around who can act as an insolvency practitioner.

We consider that accredited bodies should be responsible for regulating overseas practitioners, but propose two changes to make the rules more workable for them.

We recommend amending clause 18(1) so that the scope for licensing overseas practitioners is limited to those licensed to practise in Australia or another jurisdiction recognised by the Registrar of Companies, by notice in the *Gazette*.

This amendment would:

- satisfy New Zealand’s obligations under the Trans-Tasman Mutual Recognition Arrangement
- permit Australian licence holders to obtain a licence in New Zealand
- provide flexibility to recognise foreign regulatory regimes where warranted.

Amending this clause would limit the jurisdictions that the Registrar could recognise to those that have a comparable licensing regime. It would also require overseas practitioners to contract into an accredited body in New Zealand, which would ensure the same level of oversight for all practitioners.

We also recommend inserting clause 22A so that insolvency practitioners licensed in Australia or in a recognised jurisdiction would be able to accept an engagement in New Zealand without first being licensed here, provided they apply for a licence within 10 working days. We think that this amendment would allow for flexibility with very little risk because the practitioner will already have been licensed in a trusted overseas jurisdiction. This would better align the bill with trans-Tasman mutual recognition principles.

Duty to report serious problems

New Part 5 of the bill would impose duties and restrictions on licensed insolvency practitioners.

SOP 45 proposes that insolvency practitioners be required to report serious problems including whether the company, or a past or present director, officer, or shareholder, has committed an offence in relation to the company.

We consider that the wording proposed in the SOP needs clarification. We propose amending clause 71(1) to make it clear that insolvency practitioners must report on any offence they become aware of, even if not directly related to the company.

We recognise the concerns of those within the industry that the duty to report a serious problem, as set out in clause 71, was overly broad, and could result in costly extra work. Specifically, clause 71(2)(b)(ii) proposed that insolvency practitioners would have to report if they thought someone “may be guilty” of negligence, default, or breach of duty or trust in relation to the company. We recommend amending this to “is guilty”.

We are also recommending inserting subclause (6) which would make it clear that nothing in the section requires an insolvency practitioner to take any steps to investigate whether a serious problem has arisen.

These changes would narrow the scope of what needs to be reported, and confirm that insolvency practitioners are not subject to a positive duty to look for serious problems.

Who can act as a solvent company liquidator

New Part 6 of the bill contains provisions relating to solvent liquidations, the power for the Registrar to act as an accredited body, and an offence provision relating to false declarations and representations.

SOP 45 proposes new provisions so that members of a recognised professional body are able to undertake solvent liquidations without having to be a registered insolvency practitioner. Solvent liquidations are more straightforward than insolvent ones. Shareholders and directors have incentives to appoint competent persons, and there are reduced creditor interests to protect as, by definition, a solvent liquidation process will repay all of them.

Many submitters commented that limiting who is eligible to undertake a solvent liquidation would prevent competent people from undertaking the work. We agree that solvent liquidations should not have the same requirements as insolvent ones as they present less risk. We accept that the aim of this bill is to curb inappropriate behaviour with insolvencies, not to limit the number of competent people who can undertake liquidations.

We recommend that clause 80(1) as proposed in the SOP be amended to make it clear that lawyers and qualified statutory accountants are listed as people who can act as a solvent company liquidator.

We also recommend that clause 18(1) be amended to include definitions of “lawyer” and “qualified statutory accountant” in line with the above changes.

We also recommend inserting clause 5C(2A) which would insert new section 283(3A) in the Companies Act to provide for a situation where an apparently solvent liquidation is found to be insolvent. Our amendment would make it clear that, if the person undertaking the liquidation is not a licensed insolvency practitioner, they must resign and appoint a successor who is a licensed insolvency practitioner.

Other matters considered**Funding the Registrar’s operations**

We considered proposing changes to provide expressly for the recovery of the Registrar’s costs for performing the independent oversight role. We are not recommending this be done through an amendment to the bill as we understand that a future piece of legislation will resolve this issue. That legislation is expected to be enacted before the licensing regime under this bill comes into force.

Regulations review and disallowable instruments

The Regulations Review Committee wrote to us raising concerns about clause 48. Clause 48(4) provides that the rules relating to the investigation and disciplining of members of an accredited body are a disallowable instrument for the purposes of the Legislation Act 2012.

The Regulations Review Committee had two concerns with clause 48:

- The bill proposes delegating this law-making power to entities that are not yet in existence.
- Disallowable instruments are inconsistent with the rest of the bill, which delegates responsibilities to the Registrar of Companies.

We recommend that clause 48(4) be retained, for two reasons. First, it would be consistent with section 8 of the New Zealand Institute of Chartered Accountants Act 1996, which states that the rules of the New Zealand Institute of Chartered Accountants are subject to disallowance. Second, it would ensure consistent regulatory treatment between accredited bodies.

Appendix

Committee process

The Insolvency Practitioners Bill (including Supplementary Order Paper No 45) was referred to the committee on 28 June 2018. The closing date for submissions was 24 August 2018. We received and considered 16 submissions from interested groups and individuals. We heard oral evidence from seven submitters.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee wrote to the committee on the powers contained in clause 48.

Committee membership

Jonathan Young (Chairperson)

Tamati Coffey

Andrew Falloon

Hon Paul Goldsmith

Gareth Hughes

Melissa Lee

Jo Luxton

Clayton Mitchell

Poto Williams

Lawrence Yule

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kris Faafoi

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Insolvency Practitioners Act **2010**.

2 Commencement

~~This Act comes into force 9 months after the date on which it receives the Royal assent.~~ 5

(1) The following sections come into force on the day after the date of Royal assent:

(a) **section 10** (which enables the making of regulations relating to **Parts 1 and 2**): 10

(b) **sections 16 to 20** (which are preliminary provisions relating to **Parts 3 to 6**):

(c) **sections 34 to 38** (which enable the Registrar to prescribe licensing and other matters):

(d) **sections 46 and 47** (which relate to the accreditation of bodies): 15

(e) **sections 51 and 54 to 61** (which relate to policies, directions, and other matters relating to accredited bodies):

(f) **sections 68 to 70** (which provide an exemption from membership of an accredited body for certain members of recognised bodies and religious societies and orders): 20

(g) **sections 81 to 92** (which relate to miscellaneous matters).

(2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.

(3) Any provision that is not earlier brought into force under **subsection (2)** comes into force on the first anniversary of the date of Royal assent. 25

Part 1

Amendments to Companies Act 1993

3 Principal Act amended

This **Part** amends the Companies Act 1993. 30

Subpart 1—Amendments to principal Act

*Amendment to Part 1 (Preliminary)***3A Interpretation**

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

insolvency practitioner means any of the following:

- (a) an administrator or deed administrator (as defined in section 239B);
- (b) a liquidator (as defined in section 240(1));
- (c) a receiver (as defined in section 2(1) of the Receiverships Act 1993)

registered insolvency practitioner means an insolvency practitioner who is registered under **section 316H**

insolvency practitioner has the same meaning as in **section 18(1) of Parts 3 to 6 of the Insolvency Practitioners Act 2010**

licensed insolvency practitioner has the same meaning as in **section 18(1) of Parts 3 to 6 of the Insolvency Practitioners Act 2010**

prohibition order means an order made under section 239ADV(1) or 286(5) or under section 37(6) of the Receiverships Act 1993 that prohibits a person from acting as an insolvency practitioner

*Amendments to Part 15A (Voluntary administration)***3B New sections 239F and 239G substituted**

Sections 239F and 239G are repealed and the following sections substituted:

239F Who may be appointed as administrator

- (1) A person who is a registered insolvency practitioner, and who is not disqualified under **subsection (2)**, may be appointed as the administrator of a company.
- (1) A person may be appointed as an administrator of a company if the person—
 - (a) is a licensed insolvency practitioner who is permitted to act as an administrator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
 - (b) is not disqualified under **subsection (2)**.
- (2) Unless the court orders otherwise, a person is disqualified from appointment as an administrator of a company if the person would be disqualified from appointment as a liquidator of that company under **section 280(2)**.
- (3) For the purpose of **subsection (2)**,—

- (a) ~~the reference in **section 280(2)** to the commencement of the liquidation must be read as if it were a reference to the commencement of the administration; and~~
- (b) ~~references in **section 280(2) and (3)** to the company in liquidation must be read as if they were references to the company in administration; and~~ 5
- (a) in **section 280**,—
- (i) a reference to the commencement of the liquidation must be read as if it were a reference to the commencement of the administration; 10
- (ii) a reference to a company must be read as if it were a reference to the company in administration; and
- (c) **section 280(3)(c)** does not apply.
- (4) ~~A person who is appointed as the administrator of a company despite being disqualified under **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 373(2).~~ 15
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—
- (a) the person knows or ought reasonably to know that they are disqualified under **subsection (2)**; and 20
- (b) the person,—
- (i) with their consent, is appointed as an administrator; or
- (ii) acts as an administrator.
- (5) **See also section 21(2) of Parts 3 to 6 of the Insolvency Practitioners Act 2010.** 25
- 239G What administrator must do before appointment**
- (1) A person must not be appointed as the administrator of a company unless ~~that~~ the person has—
- (a) consented in writing and has not withdrawn the consent at the time of appointment; and 30
- (b) certified in writing that ~~he or she is not disqualified from appointment by **section 239F(2)**; the person—~~
- (i) is a licensed insolvency practitioner; and
- (ii) is permitted to act as an administrator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and 35
- (iii) is not disqualified from appointment under **section 239F(2)**.

- (2) A person who, with their consent, is appointed as an administrator despite failing to certify the matters set out in **subsection (1)(b)** commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (3) The acts of a person as an administrator are valid even if the person does not meet the requirements of **section 239F(1)** or fails to certify the matters set out in **subsection (1)(b)**. 5

3C Who may appoint administrator

- (1) Section 239H(2) is amended by inserting the following paragraph after paragraph (b):
- (ba) the Registrar, as a replacement administrator for an administrator whose registration as an insolvency practitioner has been cancelled; or 10
- (2) Section 239H(2)(c) is amended by omitting “disqualified” and substituting “disqualified from appointment by under **section 239F(2)**”.
- (3) Section 239H is amended by adding the following subsection:
- (3) The appointment of a replacement administrator by a company must be made by a resolution of the board of the company. 15

3D When office of administrator is vacant

- (1) Section 239P is amended by repealing paragraph (a) and substituting the following paragraph:
- (a) resigns ~~under~~ in accordance with section 239Q; or 20
- (2) Section 239P is amended by adding “; or” and also by adding the following paragraph:
- (e) has had his or her registration as an insolvency practitioner cancelled under **section 316M or 316N**.
- (e) ceases to be a licensed insolvency practitioner who is permitted to act as an administrator of the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**. 25

3E Removal of administrator

- (1) Section 239R(2)(a) is amended by omitting “another person who is not disqualified” and substituting “a registered-licensed insolvency practitioner who is permitted to act as an administrator of the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010** and not disqualified from appointment by under **section 239F(2)**”. 30
- (2) Section 239R(2) is amended by repealing paragraph (b) and substituting the following paragraph: 35
- (b) the person named in the resolution as the new administrator has, before the resolution is considered,—

- (i) ~~certified in writing that he or she is not disqualified from appointment by **section 239F(2)**; and~~
- (ii) ~~tabled at the meeting—~~
 - (A) ~~a signed, written consent to act as administrator; and~~
 - (B) ~~the certificate described in **subparagraph (i)**; and~~
 - (C) ~~an interests statement that complies with **section 316Y**.~~
- (b) the person named in the resolution as the new administrator has, before the resolution is considered, tabled at the meeting—
 - (i) the written consent and certificate required under **section 239G**; and
 - (ii) an interests statement that complies with **section 239APA**.
- (3) Section 239R is amended by adding the following subsection:
- (3) A person who, with the person's consent, is appointed as a replacement administrator under subsection (2) but who has not tabled an interests statement that complies with **section 316Y 239APA** commits an offence and is liable on conviction to the penalty set out in section 373(2).

3F Section 239S repealed

Section 239S is repealed.

3G New section 239TA inserted

The following section is inserted after section 239T:

239TA Provision of documents and property to administrator's successor information and assistance to replacement administrator

- (1) This section applies if ~~the office of administrator becomes vacant and a new a replacement administrator is appointed.~~
- (2) ~~The person who was acting as administrator immediately before the office of administrator became vacant must, where practicable, provide to his or her successor the information and assistance that the successor reasonably requires to take over the duties of administrator, including providing—~~
 - (a) ~~books, records, and documents of the company;~~
 - (b) ~~other property of the company;~~
 - (c) ~~all claims;~~
 - (d) ~~accounts and records of the administration.~~
- (2) The previous administrator must, where practicable, provide to the replacement administrator the information that the previous administrator has in their possession or under their control and that the replacement administrator reasonably requires to carry out the functions and duties of administrator.
- (2A) The information referred to in **subsection (2)** includes—

(a)	<u>the records and other documents of the company:</u>	
(b)	<u>any information necessary to provide the replacement administrator with control over the property of the company:</u>	
(c)	<u>any information relating to claims:</u>	
(d)	<u>accounting records and other documents of the administration.</u>	5
(2B)	<u>The previous administrator must, where practicable, provide to the replacement administrator any assistance that the replacement administrator reasonably requires to carry out the functions and duties of administrator.</u>	
(3)	A person who fails to comply with subsection (2) or (2B) commits an offence and is liable on conviction to the penalty set out in section 373(2).	10
3H	<u>Administrator must report misconduct</u>	
	Section 239AI is amended by adding the following subsection:	
(4)	A person who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to the penalty set out in section 373(2).	
3H	<u>Section 239AI repealed</u>	15
	Section 239AI is repealed.	
3HA	<u>Power of court where outcome of voting at creditors' meeting determined by related entity</u>	
(1)	<u>Section 239AM is amended by omitting the heading and substituting the following heading: "Related creditor's vote disregarded unless court orders otherwise".</u>	20
(2)	<u>Section 239AM is amended by repealing subsections (1) and (2) and substituting the following subsections:</u>	
(1)	<u>The administrator must disregard a related creditor's vote on a resolution at the creditors' meeting unless the court orders otherwise.</u>	25
(2)	<u>A related creditor may apply to the court for an order that its vote be taken into account.</u>	
(2A)	<u>A related creditor that intends to apply for an order must,—</u>	
(a)	<u>before a vote is taken on the resolution, give notice in writing to the administrator that the creditor—</u>	30
(i)	<u>is a related creditor; and</u>	
(ii)	<u>intends to apply to the court for an order that its vote be taken into account; and</u>	
(b)	<u>within 10 working days of the creditors' meeting, make an application to the court.</u>	35

(2B) The court may order that a related creditor’s vote be taken into account only if satisfied that ordering that the applicant’s vote (or the applicants’ votes) be taken into account—

- (a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and
- (b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors who voted against the resolution or for it, as the case may be, to an extent that is unreasonable having regard to—
 - (i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and
 - (ii) the nature of the relationship between the applicant (or the applicants) and the company, or between the related creditors and the company; and
 - (iii) any other relevant matter.

(3) Section 239AM(3) is amended by inserting “and **sections 239AMA to 239AMB**” after “this section”.

3HB New sections 239AMA to 239AMB inserted

The following sections are inserted after section 239AM:

239AMA Creditor’s vote disregarded if administrator considers creditor is related creditor

- (1) If the administrator considers that a creditor that votes on a resolution at a creditors’ meeting is a related creditor, and the creditor has not given notice under **section 239AM(2A)**, the administrator must (unless the court orders otherwise)—
 - (a) disregard the creditor’s vote; and
 - (b) give notice in writing to the creditor stating the reasons for the administrator’s view.
- (2) The court may, on the application of the creditor, order that the creditor’s vote be taken into account if satisfied that the creditor is not a related creditor.
- (3) The creditor must make any application under this section to the court within 10 working days of receiving the notice.

239AMAA Further powers where court orders creditor’s vote be taken into account

- (1) If the court orders, under section 239AM or **239AMA**, that a creditor’s vote be taken into account, the court may also—
 - (a) order that the resolution be set aside or treated as having passed;
 - (b) order that a new meeting be held to consider and vote on the resolution;

- (c) order that the creditor's vote on a resolution to vary or amend the resolution be taken into account;
- (d) make any other orders that the court thinks necessary.
- (2) Despite any application under section 239AM or **239AMA**, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise. 5
- 239AMB Power of court where outcome of voting at creditors' meeting determined by related creditor**
- (1) This section applies in relation to a resolution at a creditors' meeting if,—
- (a) after the meeting, the administrator becomes aware that a creditor that voted on the resolution is a related creditor; and 10
- (b) the administrator is satisfied that,—
- (i) in accordance with section 239AM or **239AMA**, the related creditor's vote should have been disregarded; and
- (ii) the resolution would not have been passed, defeated, or required to be decided by a casting vote (as the case may be) if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded. 15
- (2) Despite **sections 239AM(1) and 239AMA(1)**, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise under **subsection (4)**. 20
- (3) The administrator must, as soon as practicable after becoming aware that this section applies to the resolution, give notice of that fact to every known creditor.
- (4) The court may, on the application of the administrator or a creditor,—
- (a) order that the resolution be set aside or treated as having passed; 25
- (b) order that a new meeting be held to consider and vote on the resolution;
- (c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it;
- (d) make any other orders that the court thinks necessary.
- (5) An administrator who fails to comply with **subsection (3)** commits an offence and is liable on conviction to the penalty set out in section 373(2). 30

31 New ~~section~~ sections 239AP and 239APA substituted

Section 239AP is repealed and the following ~~section~~ sections are substituted:

239AP Administrator must table documents at first creditors' meeting

- (1) The administrator must table at the first creditors' meeting— 35
- (aa) the written consent and certificate required under **section 239G**; and
- (a) an interests statement that complies with ~~**section 316Y**~~ **239APA**; and

- (b) a notice stating that ~~insolvency practitioners administrators~~ are required to be registered, that the Registrar can cancel a person's registration on a number of grounds, licensed, and that more information about the regulation of insolvency practitioners is available from the Registrar.
- (2) A person who fails to comply with ~~subsection (1)(a)~~ **(1)(aa), (a), or (b)** commits an offence and is liable on conviction to the penalty set out in section 373(2). 5

239APA Requirements for interests statement

- (1) This section sets out the requirements for the interests statement referred to in **sections 239R(2)(b)(ii), 239AP(1)(a), 239AU(3)(aa), and 239ACZAA(1)**. 10
- (2) The interests statement must disclose—
- (a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as the administrator, including anything that would, but for a court order to the contrary, have disqualified the person— 15
- (i) from being appointed as or acting as the administrator (*see section 239F(2)*); or
- (ii) from being a licensed insolvency practitioner; and
- (b) the nature of any actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and 20
- (c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.
- (3) In preparing an interests statement for the purposes of **section 239R(2)(b)(ii) or 239AP(1)(a)**, the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete. 25
- (4) In preparing an interests statement for the purposes of **section 239AU(3)(aa) or 239ACZAA(1)**, the insolvency practitioner need include only the information required under **subsection (2)** that relates to circumstances, relationships, or other facts that the insolvency practitioner has become aware of during the period since they last prepared an interests statement. 30
- (5) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

31A Notice of watershed meeting

- (1) Section 239AU(1)(b) is amended by omitting “section 3(1)(b)” and substituting “section 3(1)(a)”. 35
- (2) Section 239AU(3) is amended by inserting the following paragraph before paragraph (a):
- (aa) an updated interests statement that complies with **section 239APA**; and

- (3) Section 239AU is amended by adding the following subsection:
- (4) The updated interests statement may be in the form of a statement to be read in conjunction with previous interests statements and updates.

3J Former administrator is default liquidator

~~Section 239ABY(b) is amended by omitting “is disqualified from acting as the liquidator” and substituting “does not meet the requirements of **section 280(4)**”.~~ 5

- (1) Section 239ABY is amended by repealing paragraph (b) and substituting the following paragraph:

- (b) the person nominated— 10
- (i) is disqualified from acting as a liquidator under **section 280(2)**;
 - or
 - (ii) has not satisfied the requirements of **section 282**; or
 - (iii) is not a licensed insolvency practitioner who is permitted to act as a liquidator of the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; or 15

- (2) Section 239ABY is amended by adding the following subsection as subsection (2):

- (2) However, the former administrator must appoint another person as the liquidator if the former administrator is disqualified from acting as a liquidator or is not a licensed insolvency practitioner who is permitted to act as a liquidator of the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**. 20

3K New section 239ABYA inserted

The following section is inserted after section 239ABY: 25

239ABYA Provision of documents and property information and assistance to liquidator

- (1) ~~A person who was acting as administrator immediately before the appointment of a liquidator to a company in administration must, where practicable, provide to the liquidator the information and assistance that the liquidator reasonably requires, including providing—~~ 30
- (a) ~~books, records, and documents of the company;~~
 - (b) ~~other property of the company;~~
 - (c) ~~all claims;~~
 - (d) ~~accounts and records of the administration.~~ 35
- (1) This section applies if a person was acting as an administrator of a company before the appointment of a liquidator to the company.

- (1A) The administrator must, where practicable, provide to the liquidator the information that the administrator has in their possession or under their control and that the liquidator reasonably requires to carry out the functions and duties of liquidator.
- (1B) The information referred to in **subsection (1A)** includes— 5
- (a) the records and other documents of the company;
 - (b) any information necessary to provide the liquidator with control over the property of the company;
 - (c) any information relating to claims;
 - (d) accounting records and other documents of the administration. 10
- (1C) The administrator must, where practicable, provide to the liquidator any assistance that the liquidator reasonably requires to carry out the functions and duties of liquidator.
- (2) A person who fails to comply with **subsection (1) (1A) or (1C)** commits an offence and is liable on conviction to the penalty set out in section 373(2). 15

3KA Voidable transactions

- (1) The heading to section 239ACB is amended by adding “**and voidable dispositions**”.
- (2) Section 239ACB(1) is amended by omitting “The voidable transaction provisions do not apply to a transaction by a company in administration if the transaction is” and substituting “The voidable transaction and voidable disposition provisions do not apply to a transaction or disposition by a company in administration if the transaction or disposition is”. 20
- (3) Section 239ACB is amended by repealing subsection (2) and substituting the following subsection: 25
- (2) In this section, **voidable transaction and voidable disposition provisions** means sections 292 to **296D**.

3L New sections 239ACD and 239ACE to 239ACEA substituted

Sections 239ACD and 239ACE are repealed and the following sections substituted: 30

239ACD Who may be appointed as deed administrator

- (1) ~~A person who is a registered insolvency practitioner, and who is not disqualified under **subsection (2)**, may be appointed as a deed administrator of a company.~~
- (1) A person may be appointed as a deed administrator of a company if the person— 35

- (a) is a licensed insolvency practitioner who is permitted to act as a deed administrator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
- (b) is not disqualified under **subsection (2)**.
- (2) Unless the court orders otherwise, a person is disqualified from appointment as a deed administrator of a company if the person would be disqualified from appointment as a liquidator of that company under **section 280(2)**. 5
- (3) For the purpose of **subsection (2)**,—
- (a) the reference in **section 280(2)** to the commencement of the liquidation must be read as if it were a reference to the execution of the deed of company arrangement; and 10
- (b) references in **section 280(2) and (3)** to the company in liquidation must be read as if they were references to the company under a deed of company arrangement; and
- (a) in **section 280**,— 15
- (i) a reference to the commencement of the liquidation must be read as if it were a reference to the execution of the deed of company arrangement;
- (ii) a reference to a company must be read as if it were a reference to the company under a deed of company arrangement; and 20
- (c) **section 280(3)(c)** does not apply.
- (4) A person who is appointed as a deed administrator despite being disqualified under **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if— 25
- (a) the person knows or ought reasonably to know that they are disqualified under **subsection (2)**; and
- (b) the person,— 30
- (i) with their consent, is appointed as a deed administrator; or
- (ii) acts as a deed administrator.
- (5) *See also **section 21(2) of Parts 3 to 6 of the Insolvency Practitioners Act 2010**.*
- 239ACE What deed administrator must do before appointment**
- (1) A person must not be appointed as a deed administrator unless that person has of a company unless the person has— 35
- (a) consented in writing and has not withdrawn the consent at the time when the deed of company arrangement is executed; and

- (b) ~~certified in writing that he or she is not disqualified from appointment by **section 239ACD(2)**; and the person—~~
- ~~(i) is a licensed insolvency practitioner; and~~
 - ~~(ii) is permitted to act as a deed administrator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and~~
 - ~~(iii) is not disqualified from appointment under **section 239ACD(2)**; and~~
- (c) ~~tabled at the watershed meeting (or, if section 239ACP applies, circulated to creditors with the draft deed under that section) an interests statement that complies with **section 316Y**—~~
- ~~(i) the written consent and certificate required under **paragraphs (a) and (b)**; and~~
 - ~~(ii) an interests statement that complies with **section 239ACEA**.~~
- (2) ~~A person who fails to comply with **subsection (1)(c)** commits an offence and is liable on conviction to the penalty set out in section 373(2).~~
- (2) ~~A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—~~
- ~~(a) the person, with their consent, is appointed as a deed administrator despite failing to certify the matters set out in **subsection (1)(b)**; or~~
 - ~~(b) the person fails to comply with **subsection (1)(c)**.~~
- (3) ~~The acts of a person as a deed administrator are valid even if the person does not meet the requirements of **section 239ACD(1)**, fails to certify the matters set out in **subsection (1)(b)**, or fails to comply with **subsection (1)(c)**.~~
- 239ACEA Requirements for interests statement**
- (1) ~~This section sets out the requirements for the interests statement referred to in **section 239ACE(1)(c)(ii)**.~~
- (2) ~~The interests statement must disclose—~~
- ~~(a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as a deed administrator, including anything that would, but for a court order to the contrary, have disqualified the person—~~
 - ~~(i) from being appointed as or acting as a deed administrator (*see **section 239ACD(2)***); or~~
 - ~~(ii) from being a licensed insolvency practitioner; and~~
 - ~~(b) the nature of any actual or perceived conflict of interest created by a circumstance, relationship, or other fact; and~~
 - ~~(c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.~~

- (3) In preparing the interests statement, the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.
- (4) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

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3M When office of deed administrator vacant

- (1) Section 239ACH is amended by repealing paragraph (a) and substituting the following paragraphs:

- (a) resigns under in accordance with section 239ACI; or
- (ab) dies; or

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- (2) Section 239ACH is amended by adding “; or” and also by adding the following paragraph:

- ~~(d) has had his or her registration as an insolvency practitioner cancelled under **section 316M or 316N.**~~

- (d) ceases to be a licensed insolvency practitioner who is permitted to act as a deed administrator of the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010.**

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3N New section 239ACJA inserted

The following section is inserted after section 239ACJ:

239ACJA ~~Provision of documents and property to deed administrator’s successor~~ information and assistance to replacement deed administrator

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- (1) ~~This section applies if the office of deed administrator becomes vacant and a new a replacement deed administrator is appointed.~~

- (2) ~~The person who was acting as deed administrator immediately before the office of deed administrator became vacant must, where practicable, provide to his or her successor the information and assistance that the successor reasonably requires to take over the duties of deed administrator, including providing—~~

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- (a) ~~books, accounts, records, and documents of the company;~~
- (b) ~~other property of the company;~~
- (c) ~~all claims.~~

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- (2) The previous deed administrator must, where practicable, provide to the replacement deed administrator the information that the previous deed administrator has in their possession or under their control and that the replacement deed administrator reasonably requires to carry out the functions and duties of deed administrator.

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- (2A) The information referred to in **subsection (2)** includes—

- (a) the records and other documents of the company;

- (b) any information necessary to provide the replacement deed administrator with control over the property of the company (to the extent permitted by the deed):
- (c) any information relating to claims:
- (d) accounting records and other documents of the administration of the deed of company arrangement. 5
- (2B) The previous deed administrator must, where practicable, provide to the replacement deed administrator any assistance that the replacement deed administrator reasonably requires to carry out the functions and duties of deed administrator. 10
- (3) A person who fails to comply with **subsection (2) or (2B)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

30 Heading to subpart 14 of Part 15A amended

The heading to subpart 14 of Part 15A is amended by adding “and summary reports”. 15

3P Administrator must file accounts

- (1) ~~Section 239ACZ(3)(a) is amended by omitting “payments” and substituting “payments, including payer and payee details”.~~
- (2) Section 239ACZ is amended by adding the following subsection:
- (4) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2). 20

3Q ~~New section 239ACZA~~ sections 239ACZAA and 239ACZA inserted

~~The following section is~~ sections are inserted after section 239ACZ:

239ACZAA Administrator must file updates to interests statement

- (1) An administrator must, within 20 working days after the end of each period of 6 months following the date on which the administrator was appointed, prepare and send to every known creditor an updated interests statement that complies with **section 239APA**. 25
- (2) The updated interests statement may be in the form of a statement to be read in conjunction with previous interests statements and updates. 30
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2).

239ACZA Administrator and deed administrator must file summary report

- (1) This section applies to—
 - (a) ~~a person who was~~ is the administrator at the end of an administration; 35
 - and

- (b) a person who ~~was~~ is the deed administrator on the termination of a deed of company arrangement.
- (2) As soon as practicable after completing his or her duties in relation to the administration or deed of company arrangement (as the case may be), the person must provide to the Registrar, in the manner specified by the Registrar, a summary report. 5
- (3) The summary report must contain the ~~information prescribed for the purpose of this section by regulations made under~~ **section 395(1)(cba)** prescribed information.
- (4) A person who fails to comply with ~~subsection (2)~~ this section commits an offence and is ~~subject~~ liable on conviction to the penalty set out in section 373(2). 10

3R Administrator may seek directions

~~Section 239ADR(1) is amended by omitting “the administrator’s” and substituting “his or her”.~~ 15

3R New section 239ADUA inserted

The following section is inserted after section 239ADU:

239ADUA Meaning of failure to comply

- (1) In section 239ADV, **failure to comply** means a person’s failure to comply with an enactment, a rule of law, or a court order to the extent that the enactment, rule, or order applies to the person in the person’s capacity as an administrator or a deed administrator. 20
- (2) In proceedings under section 239ADV,—
- (a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact: 25
- (b) a finding described in **paragraph (a)** may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

4 Prohibition order

- (1) Section 239ADV is amended by repealing subsection (3) and substituting the following subsection: 30

- (3) A person to whom a prohibition order applies must not —
- (a) ~~act as an administrator in a current or other administration; or~~
- (b) ~~act as a deed administrator of a current or other deed of company arrangement.~~ 35
- (3) A person to whom a prohibition order applies—

- (a) must not act (or continue to act) as an insolvency practitioner; and
- (b) must be treated as if they are not a licensed insolvency practitioner (*see section 21 of Parts 3 to 6 of the Insolvency Practitioners Act 2010.*)
- (2) Section 239ADV(4) is amended by omitting “or deed administrator of a company in administration” and substituting “of a company in administration, or a past or current deed administrator of a company under a deed of company arrangement,”. 5
- (3) Section 239ADV is amended by repealing ~~subsection (5) and substituting the following subsections (5) to (7) and substituting the following subsections:~~ 10
- (5) ~~In this section, **failure to comply** means a failure of a person to comply with an enactment, a rule of law, or a court order, to the extent that it applies to the person in the person’s capacity as an insolvency practitioner.~~
- (5) A copy of every order made under subsection (1) must be delivered by the applicant to the Registrar before the end of the working day after the day on which the order was made. 15
- (6) The Registrar must provide a copy of the order to each accredited body (within the meaning of **Parts 3 to 6 of the Insolvency Practitioners Act 2010**) before the end of the working day after the day on which the Registrar receives a copy of the order. 20
- (4) ~~Section 239ADV(6) is repealed.~~
- (5) ~~Section 239ADV(7) is amended by omitting “Official Assignee for New Zealand who must keep it on a file indexed by reference to the name of the administrator or deed administrator concerned” and substituting “Registrar”.~~ 25
- 4A Administrator must give notice of appointment**
- Section 239ADW(1) is amended by omitting “, or by the creditors under section 239R(2)(a)” and substituting “, by the creditors under section 239R(2)(a), or by the Registrar under **section 316P(2)**”.
- 4AB Administrator must give notice of appointment** 30
- Section 239ADW is amended by adding the following subsection:
- (3) A notice of appointment must identify who made the appointment and, if the administrator was appointed by the court, who applied to the court for the appointment.
- 4AC New section 239ADWA inserted** 35
- The following section is inserted after section 239ADW:

239ADWA Deed administrator must give notice of appointment

- (1) This section applies if the creditors at the watershed meeting, by resolution, appoint a person other than the administrator of the company to be the deed administrator.
- (2) The deed administrator must,—
 - (a) before the end of the next working day after appointment, lodge a notice of appointment with the Registrar; and
 - (b) not later than 5 working days after appointment, advertise the appointment in accordance with section 3(1)(a).
- (3) A notice of appointment must state that the appointment was made by the creditors at the watershed meeting.

*Amendments to Part 16 (Liquidations)***4B Interpretation**

- (1) Section 240(1) is amended by inserting the following definition in its appropriate alphabetical order:

liquidator means ~~the~~ a person who is appointed ~~the~~ as a liquidator of a company ~~in liquidation~~ (and includes a person who is appointed as an interim liquidator of a company under section 246)
- (2) Paragraph (a) of the definition of **creditor** in section 240(1) is amended by omitting “and 289” and substituting “**280**, and 289”.

4BA Liquidation of associations

Section 240B is amended by adding the following subsection as subsection (2):

- (2) **Parts 3 to 6 of the Insolvency Practitioners Act 2010** apply to an association put into liquidation under this Part as if the association were a company.

4BB New section 241AA substituted

Section 241AA is repealed and the following section substituted:

241AA Restriction on appointment of liquidator by shareholders or board after application for court appointment served on company

- (1) This section applies if an application for the appointment of a liquidator under section 241(2)(c) has been filed and served on the company.
- (2) A liquidator may be appointed under section 241(2)(a) or (b) only if—
 - (a) the liquidator is appointed within 10 working days after the application is served on the company; or
 - (b) if the application referred to in **subsection (1)** is made under section 241(2)(c)(iv), the creditor who filed the application consents to the appointment under section 241(2)(a) or (b).

- (3) This section ceases to apply from the time that the court disposes of the application referred to in **subsection (1)**.

4C Liquidator to summon meeting of creditors

- (1) Section 243(2)(a) is amended by omitting “report and notice” and substituting “report, interests statement, and notices”. 5
- (2) Section 243 is amended by omitting subsections (8) to (10) and substituting the following subsection:
- (8) Nothing in this section applies if **section 243A** applies to the company.

4CA New section 243A inserted

The following section is inserted after section 243: 10

243A Directors’ declaration that debts will be paid within 12 months

- (1) This section applies to a company if—
- (a) a liquidator is appointed under section 241(2)(a) or (b); and
 - (b) before the appointment of the liquidator, a copy of a declaration described in this section is made by a majority of the company’s directors and delivered to the Registrar for registration. 15
- (2) The declaration must—
- (a) be to the effect that the directors have made an inquiry into the affairs of the company and have formed the opinion, on reasonable grounds, that the company will be able to pay its debts in full within a period of not more than 12 months after the appointment of the liquidator; and 20
 - (b) be in writing; and
 - (c) be made within 20 working days before the appointment of the liquidator; and
 - (d) include a statement of the affairs of the company that contains the prescribed information and shows, as at the latest practicable date before the making of the declaration,— 25
 - (i) the property of the company, and the total amount expected to be realised from that property; and
 - (ii) the liabilities of the company; and 30
 - (iii) the estimated expenses of the liquidation.
- (3) A director who makes a declaration under this section without having reasonable grounds for their opinion that the company will be able to pay or otherwise provide for its debts within the period stated in the declaration commits an offence and is liable on conviction to the penalty set out in section 373(2). 35

- (4) If, at any time, the liquidator considers, or has reasonable grounds to consider, that the company will not be able to pay or otherwise provide for its debts in full within the period stated in the declaration,—
- (a) this section ceases to apply to the company; and
- (b) the liquidator must, as soon as practicable, notify the Registrar that this section no longer applies to the company. 5
- (5) A liquidator who fails to comply with **subsection (4)(b)** commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (6) The fact that this section ceases to apply to a company does not limit or affect **subsection (3)**. 10

4CB New section 244 substituted

Section 244 is repealed and the following section substituted:

244 Liquidator to summon meeting of creditors in other cases

- (1) Despite **section 243(8)**, the liquidator of a company to which **section 243A** applies must call a meeting of creditors for the purpose specified in section 243(1)(a) or (b) if— 15
- (a) the liquidator is satisfied that the directors who made the declaration described in **section 243A** did not have reasonable grounds to believe that the company would be able to pay or otherwise provide for its debts within the period stated in the declaration; or 20
- (b) **section 243A** ceases to apply to the company.
- (2) If, as a consequence of **section 243A** ceasing to apply, a new liquidator is appointed, the new liquidator must call the meeting of creditors.
- (3) The provisions of section 243 apply, with any necessary modifications, in relation to the meeting of creditors. 25
- (4) This section is subject to section 245.

4D Liquidator may dispense with meetings of creditors

Section 245(2) is amended by omitting “report and notice” and substituting “report, interests statement, and notices”.

4DA Power of court where outcome of voting at meeting of creditors determined by related entity 30

- (1) Section 245A is amended by omitting the heading and substituting the following heading: “**Related creditor’s vote at meeting of creditors to be disregarded unless court orders otherwise**”.
- (2) Section 245A is amended by repealing subsections (1) and (2) and substituting the following subsections: 35

- (1) The liquidator must disregard a related creditor's vote on a resolution at the meeting of creditors unless the court orders otherwise.
- (2) A related creditor may apply to the court for an order that its vote be taken into account.
- (2A) A related creditor that intends to apply for an order must,— 5
- (a) before a vote is taken on the resolution, give notice in writing to the liquidator that the creditor—
- (i) is a related creditor; and
- (ii) intends to apply to the court for an order that its vote be taken into account; and 10
- (b) within 10 working days of the meeting of creditors, make an application to the court.
- (2B) The court may make an order that a related creditor's vote be taken into account only if satisfied that ordering that the applicant's vote (or the applicants' votes) be taken into account— 15
- (a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and
- (b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors who voted against the resolution or for it, as the case may be, to an extent that is unreasonable having regard to— 20
- (i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and
- (ii) the nature of the relationship between the applicant (or the applicants) and the company, or between the related creditors and the company; and 25
- (iii) any other relevant matter.
- (3) Section 245A(3) is amended by inserting “and **sections 245B to 245C**” after “this section”.

4DB New sections 245B to 245C inserted 30

The following sections are inserted after section 245A:

245B Creditor's vote disregarded if liquidator considers creditor is related creditor

- (1) If the liquidator considers that a creditor that votes on a resolution at a meeting of creditors is a related creditor, and the creditor has not given notice under **section 245A(2A)**, the liquidator must (unless the court orders otherwise)— 35
- (a) disregard the creditor's vote; and

(b) <u>give notice in writing to the creditor stating the reasons for the liquidator's view.</u>	
(2) <u>The court may, on the application of the creditor, order that the creditor's vote be taken into account if satisfied that the creditor is not a related creditor.</u>	
(3) <u>The creditor must make any application under this section to the court within 10 working days of receiving the notice.</u>	5
245BA Further powers where court orders creditor's vote be taken into account	
(1) <u>If the court orders, under section 245A or 245B, that a creditor's vote be taken into account, the court may also—</u>	
(a) <u>order that the resolution be set aside or treated as having passed:</u>	10
(b) <u>order that a new meeting be held to consider and vote on the resolution:</u>	
(c) <u>order that the creditor's vote on a resolution to vary or amend the resolution be taken into account:</u>	
(d) <u>make any other orders that the court thinks necessary.</u>	
(2) <u>Despite any application under section 245A or 245B, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise.</u>	15
245C Power of court where outcome of voting at meeting of creditors determined by related creditor	
(1) <u>This section applies in relation to a resolution at a meeting of creditors if,—</u>	
(a) <u>after the meeting, the liquidator becomes aware that a creditor that voted on the resolution is a related creditor; and</u>	20
(b) <u>the liquidator is satisfied that,—</u>	
(i) <u>in accordance with section 245A or 245B, the related creditor's vote should have been disregarded; and</u>	
(ii) <u>the resolution would not have been passed, defeated, or required to be decided by a casting vote (as the case may be) if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.</u>	25
(2) <u>Despite sections 245A(1) and 245B(1), the outcome of the vote on the resolution is valid and effective unless the court orders otherwise under sub-section (4).</u>	30
(3) <u>The liquidator must, as soon as practicable after becoming aware that this section applies to the resolution, give notice of that fact to every known creditor.</u>	
(4) <u>The court may, on the application of the liquidator or a creditor,—</u>	
(a) <u>order that the resolution be set aside or treated as having passed:</u>	35
(b) <u>order that a new meeting be held to consider and vote on the resolution:</u>	
(c) <u>order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it:</u>	

(d) make any other orders that the court thinks necessary.

(5) A liquidator who fails to comply with **subsection (3)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

4E Other duties of liquidator

(1AA) Section 255(2)(a)(i) is amended by inserting “, specifying who made the appointment (*see* section 241(2)) and, if the liquidator was appointed by the court, who applied to the court for the appointment” after “liquidator’s appointment”. 5

(1AB) Section 255(2) is amended by repealing paragraph (b) and substituting the following paragraph: 10

(b) before the end of the next working day after appointment, deliver to the Registrar for registration a notice of the liquidator’s appointment; and

(1AC) Section 255(2)(c) is amended by repealing subparagraph (i) and substituting the following subparagraph:

(i) prepare a list of every known creditor of the company and, if known, each creditor’s address for communications (which may be an electronic address); and 15

(1AD) Section 255(2)(c)(ii) is amended by repealing subsubparagraph (A) and substituting the following subsubparagraph:

(A) an initial report containing the prescribed information; and 20

(1) Section 255(2)(c)(ii) is amended by adding repealing subsubparagraph (C) and substituting the following subsubparagraphs:

(~~DC~~) an interests statement that complies with ~~section 316Y~~ **section 255A**; and

(~~ED~~) a notice stating that ~~insolvency practitioners liquidators of insolvent companies~~ are required to be registered, that the Registrar can cancel a person’s registration on a number of grounds, licensed insolvency practitioners, and that more information about the regulation of insolvency practitioners is available from the Registrar; and 25
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(1A) Section 255(2) is amended by repealing paragraph (d) and substituting the following paragraph:

(d) within 20 working days after the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and every shareholder, and to the Registrar for registration,— 35

(i) a report on the liquidation containing the prescribed information; and

(ii) an updated interests statement that complies with **section 255A**.

- (2) Section 255 is amended by inserting the following subsections after subsection (3):

(3A) ~~The report referred to in subsection (2)(d) must show, for each period, a statement of realisation and distribution that lists all amounts received and paid, including payer and payee details.~~

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(3B) ~~However, a liquidator may omit from the report referred to in subsection (2)(d) details of any amount received or paid if the liquidator considers that their inclusion would materially prejudice the exercise of his or her functions.~~

(3C) A person who fails to comply with subsection (2)(c) or **(d)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

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(3D) **Subsection (2)(c)(ii)(C) and (D)** does not apply to an Official Assignee.

- (3) Section 255(4) is amended by repealing paragraph (a) and substituting the following paragraph:

(a) exempt the liquidator from compliance with subsection (2)(c) or **(d)**; or

4EA New section 255A inserted

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The following section is inserted after section 255:

255A Requirements for interests statement

- (1) This section sets out the requirements for the interests statement referred to in **section 255(2)(c)(ii)(C) and (d)(ii)**.

- (2) The interests statement must disclose—

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(a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as the liquidator, including anything that would, but for a court order to the contrary, have disqualified the person—

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(i) from being appointed as or acting as the liquidator (*see* **section 280(2)**); or

(ii) from being a licensed insolvency practitioner; and

(b) the nature of any actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and

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(c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.

- (3) In preparing an interests statement for the purposes of **section 255(2)(c)(ii)(C)**, the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.

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- (4) In preparing an interests statement for the purposes of **section 255(2)(d)(ii)**, the insolvency practitioner need include only the information required under **subsection (2)** that relates to circumstances, relationships, or other facts that

the insolvency practitioner has become aware of during the period since they last prepared an interests statement.

- (5) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

4F Duties in relation to accounts

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Section 256 is amended by adding the following subsection:

- (3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(2).

4F New section 256 substituted

Section 256 is repealed and the following section substituted:

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256 Duties in relation to records

- (1) The liquidator of a company must—

- (a) keep accounting records and other documents of the liquidation and permit those records, and the records and other documents of the company, to be inspected by—

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- (i) any liquidation committee appointed under section 314, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and

- (ii) if the court so orders, a creditor or shareholder; and

- (b) keep the accounting records and other documents of the liquidation, and the records and other documents of the company, for not less than 6 years after completion of the liquidation (or any longer period specified in a notice referred to in **subsection (3)**).

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- (2) The Registrar may, before or after the completion of the liquidation, require any records and documents to be retained for longer than 6 years after the completion of the liquidation.

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- (3) The Registrar must give notice of a requirement under **subsection (2)** on an Internet site maintained by or on behalf of the Registrar.

- (4) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

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4G New section 256A inserted

The following section is inserted after section 256:

256A Duties in relation to company funds money

- (1) A liquidator must deposit the funds money of a company under his or her administration at a registered bank and in—

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- (a) a bank account to the credit of the company; or

- (b) a general or separate trust account.
- (2) However, the liquidator may invest, in financial products issued by a registered bank, or in Government securities or in a public security, or in any other securities—financial products as authorised by the court, any amount of the company's money that is— 5
- (a) ~~standing to the credit of the company~~ in the bank account or trust account; and
- (b) not required for the time being to meet claims made against the company.
- (3) All dividends, interest, and other profits from ~~the investments~~ an investment described in **subsection (2)** must, as soon as practicable after they are received, be paid into the bank account or trust account. 10
- (3A) Money that is deposited in a trust account under **subsection (1)(b)** must be held by the liquidator on trust for the benefit of the persons legally entitled to that money. 15
- (4) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in ~~section 373(2)~~ section 373(3).
- (5) In this section, **public security** has the same meaning as in section 2(1) of the Public Finance Act 1989.
- (6) This section does not limit section 260. 20

4H Duties in relation to final report and accounts

- (1) ~~Section 257(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph:~~
- (i) ~~the final report and statement of realisation and distribution, which must list all amounts received and paid in respect of the liquidation, including payer and payee details; and~~ 25
- (1) Section 257(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph:
- (i) a final report containing the prescribed information; and
- (2) Section 257(1) is amended by adding the following paragraph: 30
- (c) provide to the Registrar, in the manner specified by the Registrar, a summary report that contains the information prescribed for the purpose of this section by regulations made under **section 395(1)(cba)** prescribed information.
- (3) Section 257 is amended by adding the following subsection: 35
- (3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(2).

4HA Sections 258A and 258B repealed

Sections 258A and 258B are repealed.

4HB Restriction on enforcement of lien over documents

Section 263(1)(a) is repealed and the following paragraph substituted:

(a) **section 243A** applies to the company; and

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4I Heading above section 280 amended

The heading above section 280 is amended by omitting “*Qualifications*” and substituting “*Appointment*”.

5 New section 280 substituted

Section 280 is repealed and the following section substituted:

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280 Who may be appointed as liquidator

(1) ~~A person who is a registered insolvency practitioner, and who is not disqualified under **subsection (2)**, may be appointed as a liquidator of a company.~~

(1) A person may be appointed as a liquidator of a company if the person is—

(a) a licensed insolvency practitioner (or, if **section 243A** applies to the company, a licensed insolvency practitioner or any other person described in **section 80(1)** of **Parts 3 to 6 of the Insolvency Practitioners Act 2010**); and

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(b) permitted to act as a liquidator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and

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(c) not disqualified under **subsection (2)**.

(2) Unless the court orders otherwise, the following persons are disqualified from being appointed or acting as a liquidator of a company:

(a) a creditor of the company in liquidation;

(b) a person who has, within the 2 years immediately before the commencement of the liquidation, been a shareholder, director, promoter, an auditor, or a receiver of the company or of a related company;

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(ba) a person who has, within the 2 years immediately before the commencement of the liquidation, been a director of a creditor of the company;

(bb) a person who has, or who has had, within the 2 years immediately before the commencement of the liquidation,—

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(i) a direct interest in a share issued by the company; or

(ii) an interest, direct or indirect, in 5% or more of any class of shares issued by a creditor of the company (but only if the person is aware that they have the interest);

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(bc) a person who has—

- (i) a direct interest in a share issued by a related company of the company; or
 - (ii) an indirect interest in 5% or more of any class of shares issued by a related company of the company:
- (bd) if an instrument confers a power to appoint a receiver of any assets of the company, a person who is disqualified by the instrument from acting as the receiver of any assets of the company: 5
- (c) a person who is a relative of a person described in ~~paragraph (b)~~ any of **paragraphs (a) to (bd)**:
- (d) a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation,— 10
 - (i) provided professional services to the company; or
 - (ii) had a continuing business relationship with the company, its majority shareholder, or any of its directors.
 - (ii) had a continuing business relationship with the company, its majority shareholder, or any of its directors, or with any of the company's shareholders that (under its constitution or any other agreement) have a power to appoint or remove a director of the company: 15
- (e) a person to whom a prohibition order applies. 20
- (2A) For the purpose of **subsection (2)(ba)**, each of the following is a **director of a creditor of a company**:
 - (a) if the creditor is a company, a person occupying the position of a director of the company, by whatever name called:
 - (b) if the creditor is a limited partnership, a general partner (within the meaning of the Limited Partnerships Act 2008): 25
 - (c) if the creditor is a partnership other than a limited partnership, a partner:
 - (d) if the creditor is any other body corporate or unincorporated body, a person occupying a position in the body that is comparable with that of a director of a company. 30
- (3) A person is not disqualified under **subsection (2)(d)**—
 - (a) by reason only that the company, or a secured creditor of the company, has appointed the person, or the person's firm, to investigate, monitor, or advise on the affairs of the company; or
 - (a) if the professional services are provided, or the relationship arises, by reason only of the appointment of the person, or of the person's firm,— 35
 - (i) by, or at the instigation of, the company or a creditor or other party having an actual or potential financial interest in the company; and

- (ii) to investigate or to advise on the solvency of the company or to monitor the affairs of the company; or
- (b) if all the creditors consent to the appointment of the person in question; or
- (e) if, within 20 working days before the person's appointment as liquidator,— 5
- (i) the board of the company resolves that the company will, on the appointment of the liquidator, be able to pay its debts; and
- (ii) a copy of the resolution is delivered to the Registrar for registration. 10
- (c) if **section 243A** applies to the company.
- (3A) If **subsection (3)(a)** applies, **subsection (2)(a) or (ba)** does not disqualify a person merely because the person is (or was) a creditor, or a director of a creditor, of the company as a consequence of the appointment referred to in **subsection (3)(a).** 15
- (4) A person who is appointed as a liquidator despite being disqualified under **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if— 20
- (a) the person knows or ought reasonably to know that they are disqualified under **subsection (2)**; and
- (b) the person,—
- (i) with their consent, is appointed as a liquidator; or
- (ii) acts as a liquidator. 25
- (5) See also **section 21(2) of Parts 3 to 6 of the Insolvency Practitioners Act 2010.**
- (6) This section does not apply to an Official Assignee.

5A Validity of acts of liquidators

Section 281 is amended by omitting “is not qualified to act as a liquidator” and substituting “does not meet the requirements of **section 280(1)** or fails to certify the matters set out in **section 282(1)(b)**”. 30

5B New section 282 substituted

Section 282 is repealed and the following section substituted:

282 What liquidator must do before appointment

- (1) ~~The appointment of a person, other than an Official Assignee, as liquidator is of no effect. A person must not be appointed as a liquidator of a company unless the person has—~~
- (a) ~~consented in writing to the~~ and has not withdrawn that consent at the time of appointment; and
 - (b) ~~certified in writing that he or she is not disqualified from appointment by section 280(2); they—~~
 - (i) are a licensed insolvency practitioner (or, if **section 243A** applies to the company, a licensed insolvency practitioner or any other person described in **section 80(1)** of **Parts 3 to 6 of the Insolvency Practitioners Act 2010**); and
 - (ii) are permitted to act as a liquidator of the company under **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
 - (iii) are not disqualified from appointment under **section 280(2)**.
- (2) A person who, with their consent, is appointed as a liquidator despite failing to certify the matters set out in **subsection (1)(b)** commits an offence and is liable on conviction to the penalty set out in **section 373(2)**.
- (3) This section does not apply to an Official Assignee.

5C Vacancies in office of liquidator

- (1) Section 283 is amended by repealing subsection (1) and substituting the following subsection:
- (1) ~~The office of liquidator becomes vacant if the person holding office liquidator—~~
- (a) ~~resigns under subsection (2) or (3); or~~
 - (b) ~~dies; or~~
 - (c) ~~becomes disqualified under **section 280(2)**; or~~
 - (d) ~~has had his or her registration as an insolvency practitioner cancelled under **section 316M or 316N**.~~
 - (d) ceases to be a licensed insolvency practitioner (unless **section 243A** applies to the company) or otherwise ceases to be permitted to act as a liquidator of the company in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; or
 - (e) is not a licensed insolvency practitioner and **section 243A** ceases to apply to the company (see **section 243A(5)**).
- (2) Section 283(5) is amended by omitting “Official Assignee for New Zealand” and substituting “Registrar”.

- (2) Section 283(2) is amended by omitting “and sending or delivering notice in writing of the appointment of his or her successor to the Registrar for registration”.
- (2A) Section 283 is amended by inserting the following subsection after subsection (3): 5
- (3A) A liquidator of a company to which **section 243A** applies must, unless the liquidator is a licensed insolvency practitioner, resign without delay and appoint a successor if **section 243A** ceases to apply (*see section 243A(5)*).
- (2B) Section 283(4) is amended by omitting “any person who could be appointed as liquidator under paragraph (a) or paragraph (b) or paragraph (c), as the case may be, of subsection (2) of section 241 to be the liquidator of the company” and substituting “any person who is permitted to act as a liquidator of the company in accordance with **section 280**”. 10
- (3) Section 283 is amended by repealing ~~subsection (6)~~, subsections (5) and (6) and substituting the following subsections: 15
- (5) If a vacancy occurs in the office of liquidator, the person vacating office must, as soon as practicable, give written notice of the vacancy to the Registrar.
- (6) If, as the result of the vacation of office by a liquidator ~~other than an Official Assignee~~, no person is acting as liquidator, the Registrar may appoint a person to act as an Official Assignee or a licensed insolvency practitioner as liquidator. 20
- (4) Section 283(7) is amended by omitting “, or the Official Assignee for New Zealand, appoint any person who could be appointed as liquidator under paragraph (a) or paragraph (b) or paragraph (c), as the case may be, of subsection (2) of section 241” and substituting “appoint any person who is permitted to act as a liquidator of the company in accordance with **section 280**”. 25
- (4A) Section 283(8) is amended by omitting “within 10 working days of being appointed or being notified of his or her appointment” and substituting “before the end of the next working day after appointment”.
- (5) Section 283(9) is repealed.
- (5) Section 283 is amended by repealing subsection (9) and substituting the following subsection: 30
- (9) A person who fails to comply with **subsection (5)** or (8) commits an offence and is liable on conviction to the penalty set out in section 373(2).

5D New section 283A inserted

The following section is inserted after section 283:

283A Provision of documents and property to liquidator’s successor information and assistance to replacement liquidator

- (1) This section applies if the office of liquidator becomes vacant and a new replacement liquidator is appointed.

- (2) ~~The person who was acting as liquidator immediately before the office of liquidator became vacant must, where practicable, provide to his or her successor the information and assistance that the successor reasonably requires to take over the duties of liquidator, including providing—~~
- ~~(a) books, records, and documents of the company;~~
 - ~~(b) other property of the company;~~
 - ~~(c) all claims;~~
 - ~~(d) accounts and records of the liquidation.~~
- (2) The previous liquidator must, where practicable, provide to the replacement liquidator the information that the previous liquidator has in their possession or under their control and that the replacement liquidator reasonably requires to carry out the functions and duties of a liquidator.
- (2A) The information referred to in **subsection (2)** includes—
- (a) the records and other documents of the company;
 - (b) any information necessary to provide the replacement liquidator with control over the property of the company;
 - (c) any information relating to claims;
 - (d) accounting records and other documents of the liquidation.
- (2B) The previous liquidator must, where practicable, provide to the replacement liquidator any assistance that the replacement liquidator reasonably requires to carry out the functions and duties of a liquidator.
- (3) A person who fails to comply with **subsection (2) or (2B)** commits an offence and is liable on conviction to the penalty set out in section 373(2).

5E New section 285 substituted

Section 285 is repealed and the following section substituted:

285 Meaning of failure to comply

- (1) In section 286, **failure to comply** means a person's failure of a person to comply with an enactment, a rule of law, or a court order, to the extent that it the enactment, rule, or order applies to the person in the person's capacity as an insolvency practitioner a liquidator.
- (2) In proceedings under section 286,—
- (a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact;
 - (b) a finding described in **paragraph (a)** may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

6 Orders to enforce liquidator's duties

- (1) Section 286(1) is amended by adding the following paragraph:
- (i) the Registrar.
- (1A) ~~Section 286(4) is amended by omitting “section 280” in each place where it appears and substituting in each case “**section 280(2)**”.~~ 5
- (2) Section 286 is amended by repealing subsections (3) to (5) and substituting the following subsections:
- (3) If the court is satisfied that there is, or has been, a failure to comply, the court may—
- (a) relieve the liquidator of the duty to comply wholly or in part; or 10
 - (b) order the liquidator to comply to the extent specified in the order; or
 - (c) remove the liquidator from office; or
 - (d) make a prohibition order.
- (4) A court may, in relation to a person who is or becomes disqualified under **section 280(2)** from becoming or remaining a liquidator,— 15
- (a) remove the person from office; or
 - (b) order that the person may be appointed and act, or may continue to act, as a liquidator, despite **section 280(2)**.
- (5) If the court is satisfied that a person is unfit to act as a liquidator by reason of persistent failures to comply or the seriousness of a failure to comply, the court must make a prohibition order. 20
- (5A) The period of a prohibition order under this section is a matter for the discretion of the court, and the court may make a prohibition order permanent.
- (5B) However, the court may make a prohibition order permanent, or for a period longer than 10 years, only in the most serious of cases for which an order may be made. 25
- (3) Section 286 is amended by repealing subsection (6) and substituting the following subsection:
- (6) A person to whom a prohibition order applies—
- (a) must not act (or continue to act) as an insolvency practitioner; and 30
 - (b) must be treated as if they are not a licensed insolvency practitioner (*see **section 21 of Parts 3 to 6 of the Insolvency Practitioners Act 2010.***)
- (1B) ~~Section 286(9) is amended by omitting “Official Assignee for New Zealand who must keep it on a file indexed by reference to the name of the liquidator concerned” and substituting “Registrar”.~~ 35
- (4) Section 286 is amended by repealing subsection (9) and substituting the following subsections:

- (9) A copy of every order made under this section must be delivered by the applicant to the Registrar before the end of the working day after the day on which the order was made.
- (10) The Registrar must provide a copy of the order to each accredited body (within the meaning of **Parts 3 to 6 of the Insolvency Practitioners Act 2010**) before the end of the working day after the day on which the Registrar receives a copy of the order. 5

6A New heading and sections 296A to 296D inserted

The following heading and sections are inserted after section 296:

- Voidable dispositions* 10
- 296A Dispositions of property after application but before appointment of liquidator**
- (1) A disposition of a company's property is voidable if it is made during the specified period.
- (2) However, the disposition is not voidable if it was made— 15
- (a) in the ordinary course of business of the company; or
- (b) by an administrator, a deed administrator, or a receiver, on the company's behalf; or
- (c) under an order of the court.
- (3) In this section,— 20
- disposition** has the same meaning as in section 345 of the Property Law Act 2007
- property** has the same meaning as in section 345 of the Property Law Act 2007
- specified period** means the period beginning on the date on which an application is made to appoint a liquidator under section 241(2)(c) and ending at the time the liquidator is appointed (or the court otherwise disposes of the application). 25
- 296B Procedure for setting aside dispositions**
- (1) A liquidator who wishes to set aside a disposition that is voidable under **section 296A** must— 30
- (a) file a notice with the court; and
- (b) serve the notice as soon as practicable on—
- (i) the party to which the disposition was made; and
- (ii) any other party from whom the liquidator intends to recover. 35
- (2) The notice must—

- (a) be in writing; and
- (b) state the liquidator's postal, email, and street addresses; and
- (c) specify the disposition to be set aside; and
- (d) describe the property or state the amount that the liquidator wishes to recover; and 5
- (e) state that the person named in the notice may object to the disposition being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at an address stated in the liquidator's notice within 20 working days after the notice has been served on that person; and 10
- (f) state that the written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting; and
- (g) state that the disposition will be set aside as against the person named in the notice if that person does not object; and 15
- (h) state that if the person named in the notice does object, the liquidator may apply to the court for the disposition to be set aside.
- (3) The disposition is automatically set aside as against the person on whom the liquidator has served the notice unless that person has sent to the liquidator a written notice of objection that is received by the liquidator at an address stated in the liquidator's notice within 20 working days after the liquidator's notice has been served on that person. 20
- (4) The notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting. 25
- (5) A disposition that is not automatically set aside may still be set aside by the court on the liquidator's application.

296C Other orders

If a disposition is set aside under **section 296B**, the court may make 1 or more of the following orders: 30

- (a) an order that a person transfer to the company—
 - (i) property that the company disposed of:
 - (ii) any proceeds of property referred to in **subparagraph (i)**:
 - (iii) property that, in the court's opinion, fairly represents the application of proceeds referred to in **subparagraph (ii)**: 35
- (b) an order that a person pay to the company an amount that, in the court's opinion, fairly represents some or all of the benefits that the person has received because of the disposition:
- (c) an order releasing, in whole or in part, a charge given by the company:

- (d) an order requiring security to be given for the discharge of an order made under this section;
- (e) an order specifying the extent to which a person affected by the setting aside of a disposition by an order made under this section is entitled to claim as a creditor in the liquidation.

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296D Additional provisions relating to setting aside dispositions

- (1) The setting aside of a disposition or an order made under **section 296C** does not affect the title or interest of a person in property that the person has acquired—
 - (a) from a person other than the company; and
 - (b) for valuable consideration; and
 - (c) without knowing the circumstances in which the property was acquired from the company.
- (2) The setting aside of a charge or an order made under **section 296C** does not affect the title or interest of a person in property that the person has acquired—
 - (a) as the result of the exercise of a power of sale by the mortgagee of the charge; and
 - (b) for valuable consideration; and
 - (c) without knowing the circumstances relating to the giving of the charge.
- (3) A court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act, any other enactment, or in law or in equity, if the person from whom recovery is sought (A) proves that when A received the property—
 - (a) A acted in good faith; and
 - (b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds to suspect, that the company was, or would become, insolvent; and
 - (c) A gave value for the property or altered A's position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside.
- (4) Nothing in the Land Transfer Act 2017 restricts the operation of this section or **sections 296A to 296C.**

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7 Establishment of Liquidation Surplus Account

~~Section 316(4) is amended by adding “; or” and also by adding the following paragraph:~~

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- (e) ~~paid, subject to such conditions as the Official Assignee for New Zealand may impose, to the Registrar to meet or assist in meeting the reasonable costs and expenses incurred by the Registrar in exercising~~

powers, performing functions or duties, or providing services under this Act or the Receiverships Act 1993 in relation to insolvency practitioners.

7A New Part 16A inserted

The following Part is inserted after section 316B:

Part 16A **Insolvency practitioners**

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316C Purpose of Part

The purpose of this Part is to establish a compulsory register of insolvency practitioners to enable—

- (a) the public to access certain information about insolvency practitioners; and
- (b) the Registrar to more effectively regulate insolvency practitioners.

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316D Ministry must review and report on operation of this Part

- (1) The Ministry must, no later than 4 years after the commencement of this Part,—

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- (a) review the operation of this Part since the commencement of this section; and
- (b) prepare a report on the review for the Minister.

- (2) The report on the review must include recommendations to the Minister on whether any amendments to the law regulating insolvency practitioners are necessary or desirable.

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- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

- (4) In this section,—

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

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Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

Subpart 1—Registration of insolvency practitioners

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Registration of insolvency practitioners

316E Insolvency practitioners must be registered

- (1) A person must not, unless the person is a registered insolvency practitioner,—
 - (a) be appointed or act as an insolvency practitioner; or

(b)	hold out that he or she is eligible to be appointed or act as an insolvency practitioner.	
(2)	A person who fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(3).	
(3)	This section does not apply to an Official Assignee.	5
316F Eligibility for registration		
(1)	A person is eligible to be a registered insolvency practitioner if the person is a natural person of at least 18 years of age.	
(2)	However, unless the court orders otherwise, a person is not eligible to be a registered insolvency practitioner if the person—	10
	<i>Specific prohibitions</i>	
(a)	is prohibited from acting as an administrator in a current or other administration, or a deed administrator of a current or other deed of company arrangement, by an order made under section 239ADV(1):	
(b)	is prohibited from acting as a liquidator in a current or other liquidation, or a receiver in a current or other receivership, by an order made under section 286(5) of this Act or section 37(6) of the Receiverships Act 1993:	15
(c)	has, within the preceding 5 years,—	
(i)	had his or her registration as an insolvency practitioner cancelled under section 316M(1)(a) (unless the person is a person specified in paragraph (a) or (b) of this subsection):	20
(ii)	been convicted of an offence against section 316G(5) or 316L(4) :	
	<i>Expulsions from relevant professional bodies</i>	25
(d)	is a lawyer whose membership of the New Zealand Law Society is revoked or suspended:	
(e)	is an accountant whose membership of the New Zealand Institute of Chartered Accountants is revoked or suspended:	
(f)	is a member of a prescribed professional body whose membership of that body is revoked or suspended:	30
	<i>Prohibitions from being director</i>	
(g)	has, at any time within the preceding 5 years, been a person described in section 151(2)(b) to (f) (certain disqualifications from being appointed or holding office as a director of a company):	35
(h)	is prohibited under section 299(1)(a) to (c) of the Insolvency Act 2006 from entering into, carrying on, or taking part in the management or control of a business or class of business, being a director of a company, or	

directly or indirectly being concerned, or taking part, in the management of a company:

Personally insolvent

- (i) has made a proposal to creditors for the payment or satisfaction of debts under section 326 of the Insolvency Act 2006, and those debts remain outstanding: 5
- (j) is subject to a summary instalment order made under subpart 3 of Part 5 of the Insolvency Act 2006:
- (k) is a debtor participating in the no asset procedure under subpart 4 of Part 5 of the Insolvency Act 2006: 10

Other

- (l) has been convicted of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961):
- (m) is, or is deemed to be, subject to a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992. 15

316G Application to be registered

- (1) A person who wishes to be a registered insolvency practitioner may apply to the Registrar in writing.
- (2) The application must include the following: 20
 - (a) the person's full name:
 - (b) the person's business address (physical and postal):
 - (c) the name and contact details of any relevant professional body of which the person is a member (for example, the New Zealand Institute of Chartered Accountants or the New Zealand Law Society). 25
- (3) The application must be accompanied by the following:
 - (a) the application fee (if any) prescribed by regulations for the purposes of this section:
 - (b) certification by the person that he or she is eligible to be an insolvency practitioner. 30
- (4) The application must include or be accompanied by any other information or documents prescribed by regulations for the purposes of this section.
- (5) A person commits an offence, and is liable on conviction to the penalty set out in section 373(3), who, in applying for registration as an insolvency practitioner, makes a representation or an omission knowing that the representation or omission makes the application false or misleading in a material particular. 35

316H Registration of insolvency practitioners

If the Registrar accepts that a person is eligible under **section 316F** and has applied in accordance with **section 316G**, the Registrar must—

- (a) register the person as an insolvency practitioner by recording the person's details on the register; and
- (b) notify the person of the month in which the person's annual confirmation under **section 316L** is due each year.

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316I Rejection of application for registration

- (1) The Registrar must reject a person's application for registration if—
 - (a) the person is not eligible under **section 316F**; or
 - (b) the person has not applied in accordance with **section 316G**.
- (2) As soon as practicable after rejecting a person's application for registration, the Registrar must give the person written notice of the following matters:
 - (a) that the person's application has been rejected;
 - (b) the reasons for rejecting the application;
 - (c) that there is a right to appeal against the Registrar's decisions under section 370.

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Duties of insolvency practitioners relating to registration

316J Insolvency practitioners must notify Registrar of changes in registration details

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A registered insolvency practitioner must, as soon as practicable after a change in any of the details recorded on the register in relation to that practitioner, notify the Registrar of the change.

316K Insolvency practitioners must notify Registrar if no longer eligible for registration

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- (1) A registered insolvency practitioner must, as soon as practicable after he or she becomes ineligible under **section 316F(2)** to be a registered insolvency practitioner, notify the Registrar of that fact.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(3).

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316L Insolvency practitioners must file annual confirmation of registration details

- (1) A registered insolvency practitioner must file with the Registrar an annual confirmation of the registration details relating to that insolvency practitioner.
- (2) The annual confirmation must—

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- (a) be filed each year no later than the end of the month in which it is due (as notified by the Registrar under **section 316H**); and
 - (b) be in the form (if any) required by the Registrar; and
 - (c) confirm that the person is still eligible under **section 316F** to be a registered insolvency practitioner; and 5
 - (d) confirm that the person's registration details are correct; and
 - (e) be accompanied by the fee prescribed by regulations (if any) for the purposes of this section; and
 - (f) include, or be accompanied by, any other information or documents prescribed by regulations for the purposes of this section. 10
- (3) Despite **subsection (2)(a)**, a registered insolvency practitioner—
- (a) is not required to file an annual confirmation earlier than 1 year after becoming registered; and
 - (b) may, with the written approval of the Registrar, file the annual confirmation in a different month from that notified by the Registrar under **section 316H**. 15
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(3), who, in an annual confirmation, makes a representation or an omission knowing that the representation or omission makes the application false or misleading in a material particular. 20

Cancellation of registration of insolvency practitioners

316M Cancellation of registration

- (1) The Registrar must cancel a person's registration as an insolvency practitioner, after complying with the notice requirements set out in **section 316O**, if the Registrar is satisfied that the person is— 25
 - (a) unfit to act as an insolvency practitioner by reason of 2 or more failures to comply or the seriousness of a failure to comply; or
 - (b) registered as an insolvency practitioner because of a false or misleading representation or omission; or
 - (c) no longer eligible to be a registered insolvency practitioner. 30
- (2) The Registrar may cancel a person's registration as an insolvency practitioner, after the notice period described in **section 316O**, if the Registrar is satisfied that the person has failed to file an annual confirmation in accordance with **section 316L**.
- (3) As soon as practicable after cancelling a person's registration, the Registrar must— 35
 - (a) remove the person's details from the register; and
 - (b) give the person written notice of the following matters:

	(i) that the person's registration has been cancelled;	
	(ii) the reasons for cancelling the registration;	
	(iii) that there is a right to appeal against the Registrar's decisions under section 370.	
(4)	In subsection (1)(a) , failure to comply means a failure to comply as defined in section 239ADV(5) or 285 of this Act or section 36 of the Receiverships Act 1993.	5
316N	Person may request that Registrar cancel registration	
(1)	A registered insolvency practitioner who is not currently appointed as, or acting as, an insolvency practitioner may request in writing that the Registrar cancel the person's registration.	10
(2)	As soon as practicable after receiving the request, or on a future date requested by the person, the Registrar must—	
	(a) cancel the person's registration; and	
	(b) remove the person's details from the register; and	15
	(c) give the person written notice that the person's registration has been cancelled.	
316O	Notice of intention to cancel registration	
(1)	Before cancelling a person's registration under section 316M , the Registrar must comply with subsection (3) .	20
(2)	However, the Registrar need not comply with subsection (3) if the person has notified the Registrar under section 316K that he or she is no longer eligible to be a registered insolvency practitioner.	
(3)	The Registrar must—	
	(a) give the person at least 20 working days' written notice (the notice period) of the following matters:	25
	(i) that the Registrar may cancel the person's registration under section 316M ; and	
	(ii) the reasons why the Registrar is considering cancelling the person's registration; and	30
	(b) give the person the opportunity to object, in writing, during the notice period; and	
	(c) consider any objections made by the person.	
316P	Effect of cancelled registration on current administrations and liquidations	35
(1)	This section applies if—	

- (a) the Registrar cancels a person's registration as an insolvency practitioner (**person A**); and
- (b) person A was, immediately before the registration was cancelled, acting as the administrator of a company in administration, deed administrator of a company under a deed of company arrangement, or liquidator of a company in liquidation. 5
- (2) The Registrar must appoint another person (**person B**) to act as the administrator, deed administrator, or liquidator (as the case may be).
- (3) The Registrar must not appoint a person under **subsection (2)** who is not eligible to be appointed— 10
 - (a) under **section 239F**, if the person is to act as an administrator; or
 - (b) under **section 239ACD**, if the person is to act as a deed administrator; or
 - (c) under **section 280**, if the person is to act as a liquidator.
- (4) Person B must, as soon as practicable after being appointed,— 15
 - (a) give each director, officer, creditor, and shareholder of the company in administration or liquidation written notice of the following matters:
 - (i) that person B has been appointed by the Registrar to act as the administrator, deed administrator, or liquidator (as the case may be); 20
 - (ii) that person A is no longer eligible to act as an insolvency practitioner because the Registrar has cancelled that person's registration;
 - (iii) the grounds on which the Registrar cancelled person A's registration; and 25
 - (b) if appointed as an administrator, comply with section 239T.

Subpart 2—Register of insolvency practitioners

316Q Register of insolvency practitioners

The Registrar must establish and maintain a register of insolvency practitioners. 30

316R Operation of and access to register

- (1) The register may be kept as an electronic register or in any other manner that the Registrar thinks fit.
- (2) Subject to **subsection (3)**, the register must be available for access and searching by members of the public at all times. 35

- (3) ~~The Registrar may refuse access to the register or suspend its operation, in whole or in part, if the Registrar considers that it is not practical to provide access to the register.~~

316S Purposes of register

The purposes of the register are—

- (a) ~~to enable members of the public to—~~
 - (i) ~~determine whether a person is a registered insolvency practitioner; and~~
 - (ii) ~~choose an insolvency practitioner from a list of registered insolvency practitioners; and~~
 - (iii) ~~know how to contact an insolvency practitioner; and~~
- (b) ~~to assist any person in the exercise of the person's powers, or the performance of the person's functions, under this Act or any other enactment.~~

316T Contents of register

~~The register must contain the following information about each registered insolvency practitioner:~~

- (a) ~~the person's full name;~~
- (b) ~~the person's business address (physical and postal);~~
- (c) ~~the name and contact details of any relevant professional bodies of which the person is a member (for example, the New Zealand Institute of Chartered Accountants or the New Zealand Law Society);~~
- (d) ~~any other information or documents prescribed by regulations for the purpose of this section.~~

316U Registrar may amend, omit, remove, or restrict access to information in register

~~The Registrar may make any amendments to the register that are necessary to—~~

- (a) ~~reflect any changes in the information that is contained in the register; or~~
- (b) ~~correct a mistake caused by any error or omission on the part of the Registrar.~~

316V Searches of register

The register may be searched for the following purposes:

- (a) ~~by an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual in accordance with the Privacy Act 1993;~~
- (b) ~~by a person for a purpose specified in **section 316S(a)**;~~

- (e) by a person exercising powers or performing functions under this Act or any other enactment, for a purpose specified in **section 316S(b)**;
- (d) by a person for the purpose of advising another person in connection with any of the purposes referred to in this section.

316W When search breaches information privacy principle

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A person who searches the register for personal information for a purpose that is not a purpose set out in **section 316S** must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act.

316X Crown and Registrar not liable for act or omission

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The Crown and the Registrar cannot be sued for any act or omission in relation to the maintenance of the register done or omitted to be done in good faith and with reasonable care.

Subpart 3—Miscellaneous

316Y Interests statement

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- (1) This section sets out the requirements for the interests statement referred to in —

- (a) **sections 239R(2)(b)(ii)(C) and 239AP(1)(a)**, in the case of an administrator;
- (b) **section 239ACE(1)(c)**, in the case of a deed administrator;
- (c) **section 255(2)(c)(ii)(D)**, in the case of a liquidator.

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- (2) The interests statement must disclose whether the insolvency practitioner, or a firm of which the insolvency practitioner is a partner, has a relationship (whether professional, business, or personal) with,—

- (a) in the case of an administrator, the company in administration or any of its officers, shareholders, or creditors; or
- (b) in the case of a deed administrator, the company under the deed of company arrangement or any of its officers, shareholders, or creditors; or
- (c) in the case of a liquidator, the company in liquidation or any of its officers, shareholders, or creditors.

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- (3) The insolvency practitioner must, in preparing the interests statement, make the inquiries that are reasonably necessary for ensuring that the interests statement is complete.

316Z Restrictions relating to remuneration

- (1) An insolvency practitioner must not, unless authorised by this Act or the Receiverships Act 1993, make any arrangement for, or accept from any person,

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any benefit beyond the remuneration to which he or she is entitled as administrator, deed administrator, liquidator, or receiver, as the case may be.

- (2) ~~An insolvency practitioner must not make any arrangement for giving up, whether in whole or in part, his or her remuneration to any person.~~
- (3) ~~A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2).~~ 5

316ZA Restriction on purchase of assets

- (1) This section applies to the following persons:
- (a) in the case of a company in administration,—
 - (i) the administrator: 10
 - (ii) a member of a creditors' committee:
 - (b) in the case of a company under a deed of company arrangement,—
 - (i) the deed administrator:
 - (ii) a member of a creditors' committee:
 - (c) in the case of a company in liquidation,— 15
 - (i) the liquidator:
 - (ii) a member of a liquidation committee:
 - (d) in the case of a company or other entity in receivership, the receiver.
- (2) ~~A person to whom this section applies must not purchase any part of the assets of the company or entity (as the case may be) without the leave of the court.~~ 20
- (3) ~~A person who fails to comply with **subsection (2)** commits an offence and is liable on conviction to the penalty set out in section 373(2).~~
- (4) ~~The court may give leave for the purpose of **subsection (2)** on the terms and conditions that it thinks fit.~~
- (5) ~~The court may set aside a purchase that does not comply with **subsection (2)** and grant the consequential relief that it thinks fit.~~ 25

316ZB Restriction on purchase of goods or services from person connected with insolvency practitioner

- (1) ~~An insolvency practitioner must not, without the leave of the court, in that person's capacity as an administrator, deed administrator, liquidator, or receiver, purchase goods or services from a person (**person A**) whose connection with the insolvency practitioner would result in the insolvency practitioner directly or indirectly obtaining a portion of the benefit (if any) arising out of the transaction.~~ 30
- (2) ~~However, **subsection (1)** does not apply to transactions that are an integral part of a continuing business relationship between,—~~ 35

- (a) ~~in the case of a company in administration, that company and person A; and~~
- (b) ~~in the case of a company under a deed of company arrangement, that company and person A; and~~
- (c) ~~in the case of an entity in receivership, that entity and person A.~~ 5
- (3) ~~A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(2).~~
- (4) ~~The court may give leave for the purpose of **subsection (1)** on the terms and conditions that it thinks fit.~~
- (5) ~~The court may disallow or recover any benefit made contrary to **subsection (1)**.~~ 10

Amendments to Part 20 (Registrar of Companies)

7A Registrar and Deputy Registrars of Companies

- (1) Section 357(1)(b) is amended by inserting “, **Parts 3 to 6 of the Insolvency Practitioners Act 2010**,” after “purposes of this Act”. 15
- (2) Section 357(2) is amended by inserting “**Parts 3 to 6 of the Insolvency Practitioners Act 2010**,” after “under this Act,”.

Amendments to Part 21 (Offences and penalties)

8 Penalty for failure to comply with Act

- (1) Section 373(2) is amended by inserting the following paragraphs after paragraph (l): 20
 - (la) **section 239F(4)** (which relates to being appointed as an administrator when disqualified):
 - (laa) **section 239G(2)** (which relates to the duty of administrators to certify certain matters before appointment): 25
 - (lb) **section 239R(3)** (which relates to the duty of replacement administrators ~~tabling to table~~ an interests statement):
 - (lc) **section 239TA(3)** (which relates to the duty of administrators ~~providing to provide~~ information and assistance to their successor ~~on vacating~~ office): 30
 - (ld) ~~**section 239AI(4)** (which relates to administrators reporting misconduct):~~
 - (ld) **section 239AMB(5)** (which relates to the duty of administrators to give notice to creditors in certain circumstances):
 - (le) **section 239AP(2)** (which relates to the duty of administrators ~~tabling an interests statement to table~~ certain documents): 35

- (lf) **section 239ABYA(2)** (which relates to the duty of administrators providing to provide information and assistance to liquidators):
- (lg) **section 239ACD(4)** (which relates to being appointed as a deed administrator when disqualified):
- (lh) **section 239ACE(2)** (which relates to the duty of deed administrators tabling an interests statement to certify certain matters and table certain documents before appointment): 5
- (li) **section 239ACJA(3)** (which relates to the duty of deed administrators providing to provide information and assistance to their successor ~~on vacating office~~): 10
- (lj) **section 239ACZ(4)** (which relates to the duty of administrators filing to file accounts):
- (lja) **section 239ACZAA(3)** (which relates to the duty of administrators to file updates to interests statements):
- (lk) **section 239ACZA(4)** (which relates to the duty of administrators and deed administrators submitting to file summary reports): 15
- (ll) **section 243A(3)** (which relates to declarations made by directors about a company's ability to pay its debts):
- (lm) **section 245C(5)** (which relates to the duty of liquidators to give notice to creditors in certain circumstances): 20
- (2) Section 373(2) is amended by ~~inserting the following paragraphs after paragraph (m) repealing paragraph (ma) and substituting the following paragraphs:~~
- (~~ma~~ma) **section 255(3C)** (which relates to the duty of liquidators sending to send an interests statement and interim initial and 6-monthly reports):
- (~~mabmb~~) **section ~~256(3)~~ 256(4)** (which relates to the duty of liquidators keeping accounts and records to keep records and documents): 25
- (~~mae~~) **section 256A(4)** (which relates to liquidators' duties in relation to company funds):
- (~~madmc~~) **section 257(3)** (which relates to the duty of liquidators submitting to submit final reports and summary reports): 30
- (3) Section 373(2) is amended by repealing paragraph (n) and substituting the following paragraphs:
- (n) **section 280(4)** (which relates to being appointed as a liquidator when disqualified):
- (naa) **section 282(2)** (which relates to the duty of liquidators to certify certain matters before appointment): 35
- (nab) **section 283(9)** (which relates to the duty of liquidators to notify the Registrar of certain matters):

- (na) **section 283A(3)** (which relates to the duty of liquidators providing to provide information and assistance to their successor on vacating office):
- (nb) **section 316Z(3)** (which relates to remuneration of insolvency practitioners):
- (ne) **section 316ZA(3)** (which relates to insolvency practitioners purchasing assets of a company in administration or liquidation, a company under a deed of company arrangement, or an entity in receivership): 5
- (nd) **section 316ZB(3)** (which relates to insolvency practitioners purchasing goods or services from a connected person):
- (4) Section 373(3) is amended by adding the following paragraphs: inserting the following paragraph before paragraph (a): 10
- (aa) **section 256A(4)** (which relates to the duty of liquidators to hold the money of a company on trust):
- (d) **section 316E(2)** (which relates to being appointed or acting as an insolvency practitioner when not registered): 15
- (e) **section 316G(5)** (which relates to a false or misleading representation or omission in an application to be registered as an insolvency practitioner):
- (f) **section 316K(2)** (which relates to insolvency practitioners notifying the Register after becoming ineligible for registration): 20
- (g) **section 316L(4)** (which relates to a false or misleading representation or omission in an insolvency practitioner's annual confirmation of registration details):

Amendment to Part 22 (Miscellaneous)

10 Regulations 25

- (1) Section 395(1) is amended by inserting the following paragraphs paragraph after paragraph (cb):
- (cba) prescribing information that must be contained in a summary report a report or statement for the purpose of—
- (i) **section 239ACZA(3)**, in the case of an administrator or deed administrator; or
- (ii) **section 257(1)(c)**, in the case of a liquidator; or
- (i) **section 239ACZA(3), 243A(2), 255(2)(c)(ii), 255(2)(d), 257(1)(a), or 257(1)(c)**; or
- (iii) **section 24(3) or 24A(2)** of the Receiverships Act 1993, in the case of a receiver in relation to a receivership under that Act: 35
- (ebb) prescribing professional bodies for the purpose of **section 316F(2)(f)** (which makes a person ineligible for registration as an insolvency practi-

- tioner if the person's membership of that body has been revoked or suspended):
- (ebe) prescribing information or documents that must be included in or with an application for registration as an insolvency practitioner for the purpose of **section 316G(4)**: 5
- (ebd) prescribing information or documents that must be included in or with an annual confirmation for the purpose of **section 316L(2)(f)**:
- (ebe) prescribing information that must be contained in the register of insolvency practitioners for the purpose of **section 316T(d)**:
- (2) Section 395 is amended by adding the following subsection: 10
- (3) Regulations made under this section may provide for different regulations to apply in respect of different kinds or classes of persons or circumstances.

Subpart 2—Consequential amendments and transitional provisions

Consequential amendments

- 10A New Part 2 added to Schedule 1AA** 15
- Schedule 1AA is amended by adding the **Part 2** set out in **Schedule 1** of this Act.
- 11 Consequential amendments**
- The enactments listed in the ~~**Schedule**~~ The enactments specified in **Schedule 2** are amended in the manner indicated in that schedule. 20

Transitional provisions

- 11A Delayed application of section 316E**
- Section 316E** of the principal Act, as inserted by **section 7A** of this Act, does not apply to a person until the earlier of the following:
- (a) the day on which the person is first registered as an insolvency practitioner under **section 316H** of the principal Act as inserted by **section 7A** of this Act: 25
- (b) 3 months after the day on which **section 316E** comes into force.
- 11B Existing court orders relating to appointments**
- (1) This section applies to a court order that— 30
- (a) is made under section 239F(2), 239ACD(2), or 280(2) of the principal Act, or section 5(1) of the Receiverships Act 1993, as in force immediately before the day on which this Act comes into force; and
- (b) permits a person to be appointed—

- (i) ~~as administrator, deed administrator, or liquidator (as the case may be) despite being a person described in section 280(1)(d) to (m) of the principal Act as in force immediately before the day on which this Act comes into force; or~~
- (ii) ~~as receiver despite being a person described in section 5(2)(e) to (l) of the Receiverships Act 1993 as in force immediately before the day on which this Act comes into force; and~~ 5
- (e) is in force on the day on which this Act comes into force.
- (2) Until the order ceases to be in force, the order must be treated as if it—
 - (a) were made under **section 316F(2)** of the principal Act (as inserted by **section 7A** of this Act); and 10
 - (b) provides that the person is eligible to be a registered insolvency practitioner despite the person being ineligible under **section 316F(2)**.
- (3) However, a person is not eligible to be a registered insolvency practitioner if the person is ineligible under **section 316F(2)** for a reason that is not covered by the court order. 15

Part 2

Amendments to Receiverships Act 1993

12 Principal Act amended

This **Part** amends the Receiverships Act 1993. 20

12A Interpretation

- (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

~~insolvency practitioner~~ means any of the following:

- (a) ~~an administrator or deed administrator (as defined in section 239B of the Companies Act 1993);~~ 25
- (b) ~~a liquidator (as defined in section 240(1) of the Companies Act 1993);~~
- (c) ~~a receiver~~

~~registered insolvency practitioner~~ means an insolvency practitioner who is registered under **section 316H** of the Companies Act 1993 30

~~insolvency practitioner~~ has the same meaning as in **section 18(1) of Parts 3 to 6 of the Insolvency Practitioners Act 2010**

~~licensed insolvency practitioner~~ has the same meaning as in **section 18(1) of Parts 3 to 6 of the Insolvency Practitioners Act 2010**

~~prohibition order~~ means an order made under section 37(6) or under section 239ADV(1) or 286(5) of the Companies Act 1993 that prohibits a person from acting as an insolvency practitioner 35

related company has the same meaning as in section 2(1) of the Companies Act 1993

- (2) Section 2 is amended by adding the following subsection:
- (3) A requirement in this Act for a person to provide a notice or other document may be satisfied by the person providing the notice or other document by electronic means in accordance with Part 4 of the Contract and Commercial Law Act 2017. 5

12B New sections 3A and 3B inserted

The following sections are inserted after section 3:

- 3A Transitional, savings, and related provisions** 10
- The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 3B Act binds the Crown**
- This Act binds the Crown.

13 New section 5 substituted 15

Section 5 is repealed and the following section substituted:

- 5 Who may be appointed as receiver**
- (1) ~~A person who is a registered insolvency practitioner, and who is not disqualified under **subsection (2)**, may be appointed as a receiver.~~
- (1) A person may be appointed as a receiver if the person— 20
- (a) is a licensed insolvency practitioner who is permitted to act as a receiver in accordance with **Parts 3 to 6 of the Insolvency Practitioners Act 2010**; and
- (b) is not disqualified under **subsection (2)**.
- (2) Unless the court orders otherwise, the following persons are disqualified from being appointed or acting as a receiver: 25
- (a) a mortgagee of the property in receivership:
- (b) a person who is, or who has, within the ~~period of 2 years immediately preceding 2 years immediately before~~ the commencement of the receivership, been,— 30
- (i) a director or an auditor of the grantor or of a related company of the grantor; or
- (ii) a director of the mortgagee of the property in receivership:
- (c) a person who has, or who has had, within the ~~period of 2 years preceding 2 years immediately before~~ the commencement of the receivership, ~~an~~ 35
- ~~interest, whether direct or indirect, in—~~

	(i) <u>a direct interest in a share issued by the grantor; or</u>	
	(ii) <u>an indirect interest in 5% or more of any class of shares issued by the mortgagee of the property in receivership grantor:</u>	
(ca)	<u>if the grantor is a company, a person who has—</u>	
	(i) <u>a direct interest in a share issued by a related company of the grantor; or</u>	5
	(ii) <u>an indirect interest in 5% or more of any class of shares issued by a related company of the grantor:</u>	
(d)	a person who is a relative (as defined in section 2(1) of the Companies Act 1993) of a person specified in paragraph (b) or (c) any of paragraphs (b) to (ca):	10
(e)	a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver:	
(f)	<u>a person to whom a prohibition order applies:</u>	
(g)	<u>if the property in receivership includes a company, a person who is, or who has been, in the 2 years immediately before the commencement of the receivership, an administrator, a deed administrator, or a liquidator of the company.</u>	15
(3)	A person who is appointed or acts as a receiver despite being disqualified under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.	20
(3)	<u>A person commits an offence if—</u>	
	(a) <u>the person knows or ought reasonably to know that they are disqualified under subsection (2); and</u>	
	(b) <u>the person,—</u>	25
	(i) <u>with their consent, is appointed as a receiver; or</u>	
	(ii) <u>acts as a receiver.</u>	
(4)	<u>A person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding \$75,000.</u>	
(5)	<u>See also section 21(2) of Parts 3 to 6 of the Insolvency Practitioners Act 2010.</u>	30

13A New section 6A inserted

The following section is inserted after section 6:

6A What receiver must do before appointment

- | | | |
|-----|--|----|
| (1) | A person must not be appointed as a receiver unless that person has certified in writing to the appointor of the receiver that he or she is not disqualified from appointment by section 5(2) <u>the person has—</u> | 35 |
|-----|--|----|

- (a) consented in writing to the appointment and has not withdrawn the consent at the time of the appointment; and
- (b) certified in writing that the person is a licensed insolvency practitioner who is not disqualified from appointment under **section 5(2)**; and
- (c) provided to the mortgagee the written consent and certificate required under **paragraphs (a) and (b)**. 5
- (2) A person commits an offence if—
 - (a) the person, with their consent, is appointed as a receiver despite failing to certify the matters set out in **subsection (1)(b)**; or
 - (b) the person fails to comply with **subsection (1)(c)**. 10
- (3) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$10,000.

13B Notice of appointment

- (1) Section 8(1) is amended by repealing paragraph (a) and substituting the following paragraph: 15
 - (a) give to the grantor—
 - (i) written notice of his or her appointment; and
 - (ii) a notice stating that insolvency practitioners are required to be registered, that the Registrar can cancel a person's registration on a number of grounds, and that more information about the regulation of insolvency practitioners is available from the Registrar; and 20
- (2) Section 8(1)(b) is amended by adding the following subparagraph:
 - (v) the notice referred to in **paragraph (a)(ii)**.

13B Notice of appointment 25

- (1) Section 8 is amended by repealing subsection (1) and substituting the following subsection:
- (1) A receiver must, before the end of the next working day after the receiver's appointment,—
 - (a) give to the grantor written notice of the appointment; and 30
 - (b) give to the Registrar written notice of the appointment, including—
 - (i) the receiver's full name;
 - (ii) the date of the appointment;
 - (iii) the receiver's business address;
 - (iv) a brief description of the property in receivership; 35

	(v) <u>the name of the person who appointed the receiver or, if the receiver was appointed by the court, the name of the person who applied for the receiver to be appointed:</u> (vi) <u>a description of the deed, agreement, or instrument by or under which the receiver was appointed:</u> (vii) <u>a copy of the notice referred to in paragraph (a).</u>	5
(1A)	Section 8 is amended by inserting the following subsection after subsection (1):	
(1A)	<u>Within 5 working days after the receiver's appointment, the receiver must give notice of the appointment, including the matters described in subsection (1)(b)(i) to (vi), in accordance with section 3(1)(a).</u>	10
(2)	Section 8 is amended by repealing subsection (3) and substituting the following subsection:	
(3)	<u>A notice given under this section must include a statement that receivers are required to be licensed insolvency practitioners, and that more information about the regulation of insolvency practitioners is available from the Registrar.</u>	15
13C Vacancy in office of receiver		
(1)	Section 11 is amended by repealing subsection (1) and substituting the following subsection:	
(1)	The office of receiver becomes vacant if the person holding office— (a) resigns under <u>in accordance with</u> subsection (2); or (b) dies; or (c) becomes disqualified under section 5(2); or (d) has had his or her registration as an insolvency practitioner cancelled under section 316M or 316N of the Companies Act 1993. (d) <u>ceases to be a licensed insolvency practitioner who is permitted to act as a receiver for the property in receivership in accordance with Parts 3 to 6 of the Insolvency Practitioners Act 2010.</u>	20
(2)	Section 11 is amended by repealing subsections (3) and (4) and substituting the following subsections <u>subsection</u> :	
(3)	If a vacancy occurs in the office of receiver, the person vacating office or, if that person is unable to act, his or her personal representative must,	30
(a)	as soon as practicable,— (i) give public notice of the vacancy; and (ii) give written notice of the vacancy to the person by whom the receiver was appointed <u>who appointed the receiver (unless the vacancy arose under subsection (1)(a)</u>; and (b) if the receiver held office in relation to the property of a company, give written notice of the vacancy, within 7 days of the vacancy occurring, to	35

the Registrar for registration in the register of charges before the end of the next working day after the vacancy arose, to the Registrar (unless the vacancy arose under **subsection (1)(d)**).

- (4) However,—
- (a) a person who vacates office under **subsection (1)(a)** need not comply with **subsection (3)(a)(ii)**; and
 - (b) a person who vacates office under **subsection (1)(d)** need not comply with **subsection (3)(b)**.
- (3) Section 11(6) is repealed.
- (3A) Section 11(8) is amended by omitting “or subsection (4)”.
- (4) Section 11(8) is amended by omitting “\$5,000” and substituting “\$10,000”.

13D New section 11A inserted

The following section is inserted after section 11:

- 11A Provision of documents and property to receiver’s successor information and assistance to replacement receiver**
- (1) This section applies if the office of receiver becomes vacant and a new replacement receiver is appointed.
- (2) The person who was acting as receiver immediately before the office of receiver became vacant must, where practicable, provide to his or her successor the information and assistance that the successor reasonably requires to take over the duties of receiver, including providing any accounts and records of the receivership.
- (2) The previous receiver must, where practicable, provide to the replacement receiver the information that the previous receiver has in their possession or under their control and that the replacement receiver reasonably requires to carry out the functions and duties of receiver, including any accounting records and other documents relating to the property in receivership.
- (2A) The previous receiver must, where practicable, provide to the replacement receiver any assistance that the replacement receiver reasonably requires to carry out the functions and duties of receiver.
- (3) A person who fails to comply with **subsection (2) or (2A)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

13E Duty in relation to money

Section 21 is amended by adding the following subsection as subsection (2):

- (2) A person who fails to comply with **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 \$75,000.

13F Accounting records

Section 22 is amended by adding the following subsection:

- (3) A person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

13G Further reports by receiver

5

- (1) Section 24 is amended by repealing subsection (1) and substituting the following subsection:

- (1) A receiver must, no later than 2 months after the end of each period of 6 months after his or her appointment as receiver, unless the receivership has ended, prepare a further report summarising—

10

- (a) the conduct of the receivership, including all amounts received and paid, during the period; and
(b) the state of affairs with respect to the property in receivership as at the end of the period.

- (2) Section 24(2) is amended by adding “; and” and also by adding the following paragraphs:

15

- (e) the receiver’s receipts and payments since the date of any previous report, including payer and payee details; and
(f) the aggregates of the receiver’s receipts and payments since the day on which the receiver was appointed.

20

- (3) Section 24(3) is amended by omitting “required to be prepared in accordance with **subsection (1)(a)**”.

13H New section 24A inserted sections 24 and 24A substituted

The following section is inserted after section 24Section 24 is repealed and the following sections are substituted:

25

24 Further reports by receiver

- (1) The receiver must, not later than 2 months after the end of each period of 6 months after the receiver’s appointment, prepare a further report on the receivership.

- (2) A person who was a receiver at the end of the receivership must, not later than 2 months after the end of the receivership, prepare a further report on the receivership.

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- (3) Each report prepared under this section must contain the information prescribed for the purpose of this section by regulations made under **section 395(1)(cba)** of the Companies Act 1993.

35

- (4) A receiver preparing a report under **subsection (1)** may exclude from the report details of any proposals for disposal of property in receivership if the

	<u>receiver considers that their inclusion would materially prejudice the exercise of the receiver's functions.</u>	
(5)	<u>A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.</u>	
24A	Summary report by receiver	5
(1)	The person who was a receiver at the end of a receivership must, as soon as practicable after completing his or her <u>the person's</u> duties in relation to the receivership, provide to the Registrar, in the manner specified by the Registrar, a summary report on the receivership.	
(2)	The summary report must contain the information prescribed for the purpose of this section by regulations made under section 395(1)(cba) of the Companies Act 1993.	10
(3)	A person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.	
13HA	Persons entitled to receive reports	15
	<u>Section 26(4) is amended by omitting "that is a body corporate".</u>	
13HB	Section 28 repealed	
	<u>Section 28 is repealed.</u>	
13HC	Notice of end of receivership	
	<u>Section 29(1) is amended by omitting "the receivership of a grantor that is a body corporate" and substituting "a receivership".</u>	20
13I	New section 36 substituted	
	Section 36 is repealed and the following section substituted:	
36	Meaning of failure to comply	
(1)	In section 37, failure to comply means a <u>person's</u> failure of a person to comply with any of the following, to the extent that they apply to the person in the person's capacity as an insolvency practitioner <u>a receiver</u> :	25
(a)	the deed, agreement, or order of the court by or under which the receiver was appointed:	
(b)	an enactment:	30
(c)	a rule of law:	
(d)	a court order.	
(2)	<u>In proceedings under section 37,—</u>	
(a)	<u>a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact:</u>	35

- (b) a finding described in **paragraph (a)** may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

14 Orders to enforce receiver's duties

- (1AA) Section 37(5) is amended by omitting “section 5” in each place where it appears and substituting in each case “**section 5(2)**”. 5
- (1) Section 37 is amended by repealing subsection (6) and substituting the following subsection: 10
- (6) If the court is satisfied that a person is unfit to act as a receiver because of persistent failures to comply or the seriousness of a failure to comply,—
- (a) the court must make a prohibition order; and
- (b) the period of the order is a matter for the discretion of the court, and the court may make a prohibition order for an indefinite period.
- (1) Section 37 is amended by repealing subsections (4) to (6) and substituting the following subsections: 15
- (4) If the court is satisfied that there is, or has been, a failure to comply, the court may—
- (a) relieve the receiver of the duty to comply wholly or in part; or
- (b) order the receiver to comply to the extent specified in the order; or
- (c) remove the receiver from office; or 20
- (d) make a prohibition order.
- (5) The court may, in respect of a person who is or becomes disqualified under **section 5(2)** from becoming or remaining a receiver,—
- (a) remove the person from office; or
- (b) order that the person may be appointed and act or may continue to act as a receiver, despite **section 5(2)**. 25
- (6) If the court is satisfied that a person is unfit to act as a receiver because of persistent failures to comply or the seriousness of a failure to comply, the court must make a prohibition order.
- (6A) The period of a prohibition order under this section is a matter for the discretion of the court, and the court may make a prohibition order permanent. 30
- (6B) However, the court may make a prohibition order permanent, or for a period longer than 10 years, only in the most serious of cases for which an order may be made.
- (2) Section 37(9) is amended by omitting “Official Assignee for New Zealand who must keep it on a public file indexed by reference to the name of the receiver concerned” and substituting “Registrar”. 35

(2) Section 37 is amended by repealing subsection (7) and substituting the following subsection:

(7) A person to whom a prohibition order applies—
 (a) must not act (or continue to act) as an insolvency practitioner; and
 (b) must be treated as if they are not a licensed insolvency practitioner (*see* **section 21 of Parts 3 to 6 of the Insolvency Practitioners Act 2010.**)

5

(3) Section 37 is amended by repealing subsection (9) and substituting the following subsections:

(9) A copy of every order made under this section must be delivered by the applicant to the Registrar before the end of the working day after the day on which the order was made.

10

(10) The Registrar must provide a copy of the order to each accredited body (within the meaning of **Parts 3 to 6 of the Insolvency Practitioners Act 2010**) before the end of the working day after the day on which the Registrar receives a copy of the order.

15

14A Powers and duties of receivers

Section 40C(2) is amended by omitting “the Schedule” and substituting “**Schedule 1**”.

14B New Schedule 1AA inserted

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The **Schedule 1AA** set out in **Schedule 3** of this Act is inserted as the first schedule to appear after the last section of the principal Act.

15 Schedule amended

(1) The heading to the Schedule is amended by omitting “**Schedule**” and substituting “**Schedule 1**”.

25

(2) Clause 6 of the Schedule is repealed and the following clause substituted:

6 Persons disqualified from appointment

(1) In addition to the persons specified in **section 5(2)**, a person disqualified by section 3 of the Local Authorities (Members’ Interests) Act 1968 or clause 1 of Schedule 7 of the Local Government Act 2002 from holding office as a member of the local authority is disqualified from being appointed as, or acting as, a receiver, unless the court orders otherwise.

30

(2) The reference in **section 5(3)** to being disqualified under **section 5(2)** must be read as if it included a reference to being disqualified under **subclause (1)**.

Part 3

Preliminary provisions

16 Purpose

The purpose of **Parts 3 to 6** is to regulate insolvency practitioners and to establish an independent oversight system in order to promote—

5

- (a) quality, expertise, and integrity in the profession of insolvency practitioners; and
- (b) compliance with the statutory duties of insolvency practitioners.

Compare: 2011 No 21 s 3

17 Overview

10

(1) In Parts 3 to 6,—

- (a) this Part contains preliminary provisions, including purpose and interpretation provisions:

- (b) **Part 4** relates to the licensing of insolvency practitioners as follows:

- (i) **subpart 1** requires a person who acts as an insolvency practitioner to hold a licence, and contains provisions relating to licences:

15

- (ii) **subpart 2** relates to the Registrar prescribing licensing and other matters:

- (iii) **subpart 3** relates to the register of licensed insolvency practitioners:

20

- (iv) **subpart 4** relates to accredited bodies:

- (v) **subpart 5** relates to investigations by the Registrar:

- (vi) **subpart 6** relates to overseas practitioners, members of recognised bodies, and members of religious societies and orders:

25

- (c) **Part 5** imposes duties and restrictions on licensed insolvency practitioners:

- (d) **Part 6** contains the following provisions:

- (i) **subpart 1** relates to solvent company liquidators, and requires a person who acts as a solvent company liquidator to be a licensed insolvency practitioner, a lawyer, a chartered accountant, or a member of a recognised professional body:

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- (ii) **subpart 2** contains miscellaneous provisions, including a power for the Registrar to act as an accredited body and an offence provision related to false declarations and representations:

35

- (iii) **subpart 3** contains regulation-making powers.

- (2) This section is intended only as a guide to the general scheme and effect of **Parts 3 to 6**.

18 Interpretation

- (1) In **Parts 3 to 6**, unless the context otherwise requires,—

accredited body means a person that is, or 2 or more persons acting jointly together that are, granted accreditation under **subpart 4 of Part 4** 5

company has the meaning given to it by section 240(1A) of the Companies Act 1993

court means the High Court

disciplinary body means, in relation to an accredited body, the tribunal, committee, or other body that has been— 10

(a) set up to take disciplinary action in respect of the members of the accredited body; and

(b) approved by the Registrar to act as the disciplinary body

firm, in relation to an insolvency practitioner, means a partnership or body corporate— 15

(a) of which the insolvency practitioner is a partner, a director, or an employee; and

(b) that carries on the business of providing insolvency services (whether or not it provides other services) 20

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): 25

(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

insolvent company liquidator— 30

(a) means a liquidator acting in respect of a company; but

(b) does not include a liquidator acting in respect of a solvent company

lawyer has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

licence means a licence issued by an accredited body under **subpart 1 of Part 4** 35

licensed insolvency practitioner means a person who holds a licence (and includes a person to whom **section 22A(1)** applies)

member, in relation to an accredited body, includes a person to whom **section 68** applies

overseas insolvency practitioner means a person who is entitled to carry out insolvency work in— 5

(a) Australia; or

(b) a recognised jurisdiction

prescribed minimum standards means the minimum standards for the issue of a licence prescribed under **subpart 2 of Part 4** 10

qualified statutory accountant has the meaning given to it by section 5(1) of the Financial Reporting Act 2013

recognised jurisdiction means a jurisdiction that is recognised, by notice in the *Gazette*, by the Registrar in accordance with **subsection (3)** for the purposes of **Parts 3 to 6** 15

register means the register kept under **subpart 3 of Part 4**

Registrar means the Registrar of Companies appointed in accordance with section 357(1) of the Companies Act 1993

regulations means any regulations made under **Parts 3 to 6**

regulatory function includes any of the following functions that are performed by an accredited body or a disciplinary body of an accredited body (to the extent that those functions relate to, or are in connection with, persons who apply for, hold, or have held a licence): 20

(a) considering applications for licences, issuing licences, and setting conditions of licences: 25

(b) adopting, implementing, and monitoring codes of conduct or ethics:

(c) monitoring compliance with any relevant standards relating to insolvency engagements:

(d) promoting, monitoring, and reviewing the ongoing competence of members: 30

(e) inquiring into the conduct of members:

(f) investigating complaints against members and former members:

(g) hearing complaints about, and taking disciplinary action against, members and former members:

(h) dealing with appeals against decisions of the disciplinary body 35

regulatory systems means, in relation to an accredited body or a disciplinary body of an accredited body, the relevant body's systems and processes for performing its regulatory functions

- relevant authority** has the meaning given to it by **section 28(1)**
- solvent company** means a company to which **section 243A** of the Companies Act 1993 applies
- solvent company liquidator** means a liquidator appointed in respect of a solvent company. 5
- (2) In **Parts 3 to 6**, unless the context otherwise requires, regulatory systems are **adequate and effective** if they are designed and operate in a manner that promotes—
- (a) quality, expertise, and integrity in the profession of insolvency practitioners; and 10
- (b) compliance with the statutory duties of insolvency practitioners.
- (3) The Registrar may recognise a jurisdiction for the purposes of **Parts 3 to 6** only if the Registrar is satisfied that the law or other regulatory requirements of the jurisdiction for the regulation of persons carrying out insolvency work are substantially the same as the requirements set out in **Parts 3 to 6** or sufficiently equivalent to the requirements set out in **Parts 3 to 6**. 15
- 19 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 4** have effect according to their terms.
- 20 Parts 3 to 6 bind the Crown** 20
- Parts 3 to 6** bind the Crown.

Part 4

Licences, accreditation, and role of Registrar

Subpart 1—Licences

Requirement to hold licence 25

- 21 Insolvency practitioner must hold licence**
- (1) A person who acts as an insolvency practitioner must be a licensed insolvency practitioner whose licence—
- (a) authorises the person to act as an insolvency practitioner in respect of the insolvency engagement being carried out; and 30
- (b) is recorded in the register.
- (2) A person who acts as an insolvency practitioner in breach of this section commits an offence and is liable on conviction to a fine not exceeding \$75,000.
- (3) This section does not apply to an Official Assignee.
- Compare: 2011 No 21 s 8 35

*Issue of licence***22 Issue of licence**

- (1) A natural person may apply to an accredited body to be issued with a licence in the manner that is specified by the Registrar.
- (2) The accredited body must issue a licence to the person if— 5
- (a) the accredited body is satisfied that the person—
- (i) meets the prescribed minimum standards; and
- (ii) is otherwise a fit and proper person to hold a licence; and
- (b) the application is accompanied by payment of the prescribed registration fee; and 10
- (c) either—
- (i) the person is a member of the accredited body; or
- (ii) **section 68** applies in respect of the person.
- (3) The accredited body must,—
- (a) if the licence is issued, send the prescribed registration fee to the Registrar; or 15
- (b) if the licence is not issued, refund the prescribed registration fee to the applicant.
- (4) The accredited body may require the applicant to pay the accredited body's reasonable costs in processing the application and, if it does,— 20
- (a) the issue of the licence is not subject to payment of the accredited body's costs; and
- (b) if the licence is not issued, the accredited body's costs are not refundable merely because the licence is not issued. 25

Compare: 2011 No 21 s 11

25

22A Overseas practitioners deemed to have licence for 10 days from appointment

- (1) Despite **sections 21(1) and 22(2)**, a person who is an overseas insolvency practitioner may be appointed to act in respect of an insolvency engagement as if they were a licensed insolvency practitioner who, under **Parts 3 to 6**, is authorised to undertake the type of insolvency engagements that corresponds with the type of insolvency work that the person is entitled to undertake in the person's home jurisdiction. 30
- (2) **Parts 3 to 6**, and any other enactment that relates to the carrying out of insolvency engagements, applies to the person— 35
- (a) as if the person were a licensed insolvency practitioner—
- (i) whose licence is recorded in the register; and

- (ii) who is authorised to act in respect of the type of insolvency engagements that correspond to the type of insolvency work that the person is entitled to carry out the person's home jurisdiction; and
 - (b) as if the person were, from the date and time when they were appointed to act, a member of the accredited body to which the person applies for a licence; and 5
 - (c) with any other necessary modifications.
 - (3) **Subsections (1) and (2)** cease to apply if, 10 days after the person is appointed, the person has not applied for a licence under **section 22**. 10
 - (4) If, when **subsections (1) and (2)** cease to apply, the person has not applied for a licence under **section 22** (or if the person's application is declined), the person must—
 - (a) resign from the insolvency engagement without delay; and
 - (b) appoint a licensed insolvency practitioner who is permitted to act in respect of the insolvency engagement. 15
 - (5) An accredited body that receives an application from an overseas insolvency practitioner must, as soon as practicable after receiving the application, send to the Registrar notification of the application together with—
 - (a) the relevant information described in **section 42**; and 20
 - (b) any other prescribed information.
 - (6) In this section, **home jurisdiction**, in relation to an overseas insolvency practitioner, means the jurisdiction in which the practitioner is entitled to carry out insolvency work.
- Compare: 2011 No 21 s 12 25

Licence details to be sent to Registrar

23 Accredited body must send licence details to Registrar

An accredited body must send to the Registrar notification of the issue of a licence, within 5 working days after issuing the licence, together with—

- (a) the relevant information described in **section 42**; and 30
- (b) any other prescribed information.

Compare: 2011 No 21 s 14

Conditions

24 Licence subject to conditions

- (1) A licence issued to a person by an accredited body— 35
 - (a) is subject to any conditions of the kinds prescribed under **section 34(1)(b)(i)**; and

- (b) may be subject to any conditions of the kinds prescribed under **section 34(1)(b)(ii)** that the accredited body thinks fit; and
- (c) must specify a condition relating to the types of insolvency engagements in respect of which the person is authorised to act under the licence.
- (2) The condition under **subsection (1)(c)** may specify that the person is authorised to act in respect of all types of insolvency engagements. 5
- (3) The accredited body or the Registrar may, at any time after the licence is issued,—
 - (a) add to any conditions of the licence:
 - (b) vary, remove, or substitute any conditions of the licence (other than the conditions referred to in **subsection (1)(a)**). 10
- (4) The accredited body or the Registrar may exercise a power under **subsection (3)** only if—
 - (a) the accredited body or the Registrar gives the person at least 10 working days' written notice of the following matters before exercising the power: 15
 - (i) that the accredited body or the Registrar may exercise a power under **subsection (3)**; and
 - (ii) the reasons why the accredited body or the Registrar is considering exercising that power; and 20
 - (b) the accredited body or the Registrar gives the person or the person's representative an opportunity to make written submissions on the matter within that notice period.

Compare: 2011 No 21 s 15

Duration of licence 25

25 Duration of licence

- (1) A licence must specify an issue date and an expiry date.
- (2) The expiry date must not be later than 5 years after the issue date.
- (3) A licence continues in force until the close of the expiry date unless sooner suspended or cancelled under **Parts 3 to 6**. 30
- (4) If a licensed insolvency practitioner applies for a new licence before the expiry date of an existing licence that the new licence is intended to replace, and the application is not resolved before the expiry date, the existing licence continues in force until the application is resolved.

Compare: 2011 No 21 s 17

35

*Ongoing competence requirements***26 Ongoing competence requirements**

- (1) An accredited body must, in accordance with any requirements prescribed under **section 34(1)(c)**,—
- (a) require its members who are licensed insolvency practitioners to complete competence programmes to maintain their ongoing competence; and 5
 - (b) otherwise promote, monitor, and review the ongoing competence of its members who are licensed insolvency practitioners.
- (2) A member who is a licensed insolvency practitioner must comply with the requirements under **subsection (1)(a)**. 10
- (3) A competence programme may require a member who is a licensed insolvency practitioner to do 1 or more of the following, within the period, or at the intervals, prescribed in the programme:
- (a) pass an examination or assessment (or both): 15
 - (b) complete a period of practical training:
 - (c) complete a period of practical experience:
 - (d) undertake a course of studies:
 - (e) anything else that the accredited body considers appropriate.
- Compare: 2011 No 21 s 18 20

27 Unsatisfactory results of competence programme

- (1) If a member who is required to complete a competence programme does not satisfy the requirements of the programme, the accredited body may—
- (a) vary, remove, add to, or substitute any conditions of the member's licence under **section 24**; or 25
 - (b) cancel the member's licence under **section 29**; or
 - (c) suspend the member's licence under **section 30**.
- (2) This section does not limit **sections 24, 29, 30, and 31**.
- Compare: 2011 No 21 s 19

Cancellation and suspension of licences 30**28 Meaning of relevant authority**

- (1) In **sections 29 to 32**, relevant authority means either or both of the following:
- (a) the accredited body that issued the licence:
 - (b) a disciplinary body in accordance with **subsection (2)**. 35

- (2) The rules of an accredited body may authorise a disciplinary body to act under **sections 29 to 32** and provide for any other reasonable matters, not inconsistent with **Parts 3 to 6**, in respect of the exercise of that power to act.

29 Cancellation of licences

- (1) A relevant authority may cancel a licence issued to a person— 5
- (a) if the person, by written notice, requests that the relevant authority do so; or
 - (b) if the relevant authority is satisfied on reasonable grounds that—
 - (i) the person has died; or
 - (ii) the person obtained the licence by making a false or misleading representation or declaration (whether oral or written); or 10
 - (iii) the person does not satisfy, or no longer satisfies, the prescribed minimum standards; or
 - (iv) the person has failed to comply with a condition of the licence; or
 - (v) the person is otherwise not a fit and proper person to hold a licence; or 15
 - (c) if the relevant authority is satisfied on reasonable grounds that 1 or more insolvency engagements carried out by the person are not being, or have not been, carried out—
 - (i) in accordance with **Parts 3 to 6** or any other enactment that relates to the carrying out of insolvency engagements; or 20
 - (ii) in accordance with any relevant standards relating to insolvency engagements; or
 - (iii) with reasonable care, diligence, and skill.
- (2) A licence may also be— 25
- (a) treated as cancelled under **section 59**; or
 - (b) cancelled by the Registrar under **subpart 5**.

Compare: 2011 No 21 s 20

30 Suspension of licences

- (1) A relevant authority may suspend a licence issued to a person if the relevant authority is satisfied on reasonable grounds— 30
- (a) that the person—
 - (i) has failed to comply with a condition of the licence; or
 - (ii) has not satisfied the requirements of a competence programme that the person is required to complete; or 35
 - (b) that 1 or more insolvency engagements carried out by the person are not being, or have not been, carried out—

- (i) in accordance with **Parts 3 to 6** or any other enactment that relates to the carrying out of insolvency engagements; or
 - (ii) in accordance with any relevant standards relating to insolvency engagements; or
 - (iii) with reasonable care, diligence, and skill. 5
- (2) A suspension is for the period that the relevant authority thinks fit or until the person satisfies any requirements specified by the relevant authority.
- (3) A licence may also be—
 - (a) treated as suspended under **section 59**; or
 - (b) suspended by the Registrar under **subpart 5**. 10

Compare: 2011 No 21 s 21

31 Effect of suspension

- (1) If a person's licence is suspended, the person is not a licensed insolvency practitioner during the period for which the licence is suspended (but this does not prevent the Registrar from including information in the register in relation to the person). 15
- (2) However, the relevant authority may, on the conditions that the relevant authority thinks fit, permit a person whose licence is suspended under this section to continue with 1 or more specified insolvency engagements despite the suspension and, in relation to the specified insolvency engagement or engagements only, the person's licence is treated as not suspended. 20
- (3) At the end of the period of suspension, the person's licence is immediately restored (unless there is some other ground on which to suspend or cancel the licence).

32 Procedure relating to exercise of cancellation or suspension powers 25

- (1) A relevant authority may cancel a licence under **section 29** or suspend a licence under **section 30** only if—
 - (a) the relevant authority gives the licensed insolvency practitioner at least 10 working days' written notice of the following matters before it exercises the power: 30
 - (i) that the relevant authority may cancel or suspend the licence;
 - (ii) the reasons why it is considering exercising that power; and
 - (b) the relevant authority gives the licensed insolvency practitioner or the licensed insolvency practitioner's representative an opportunity to make written submissions and to be heard on the matter within that notice period. 35
- (2) The relevant authority must, within 5 working days after the cancellation or suspension, give notice of the cancellation or suspension to the licensed insolvency practitioner and the Registrar.

- (3) The notice given to the licensed insolvency practitioner must include a statement of the grounds for the cancellation or suspension.
- (4) A relevant authority that fails to comply with **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$30,000.

Compare: 2011 No 21 s 22

5

Appeals in respect of licensing and related matters

33 Appeals in respect of licensing and related matters

- (1) A person may appeal to the court against any decision of an accredited body or the Registrar to—
- (a) decline to issue a licence to the person; or 10
- (b) include conditions under **section 24(1)(b) or (c)** on the person's licence or proposed licence (or to act under **section 24(3)**); or
- (c) suspend or cancel the person's licence; or
- (d) make any other order under **subpart 5** in respect of the person.
- (2) A person may appeal to the court against any decision of a disciplinary body to cancel or suspend the person's licence unless the rules of the accredited body provide for an appeal against the decision to a body established to hear appeals against the disciplinary body's decisions. 15
- (3) An appeal to the court under this section must be brought—
- (a) in accordance with the rules of court; and 20
- (b) within 20 working days after notice of the decision is communicated to the appellant, or within any further time the court allows on application made before or after the period expires.

Compare: 2011 No 21 s 24

Subpart 2—Registrar may prescribe licensing and other matters 25

34 Registrar may prescribe licensing and other matters

- (1) The Registrar may, by notice in the *Gazette*, prescribe—
- (a) 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; and 30
- (b) conditions, or the kinds of conditions, to which licences—
- (i) must be subject; and
- (ii) may be subject if the accredited body thinks fit; and
- (c) requirements for ongoing competence that must be complied with by persons who are issued with a licence; and 35

- (d) the minimum standards for accreditation (including standards relating to the adequacy and effectiveness of regulatory systems) that an applicant must meet in order to be granted accreditation by the Registrar; and
- (e) the procedure that accredited bodies and disciplinary bodies of accredited bodies must follow when performing regulatory functions; and 5
- (f) transitional requirements for the purposes of transitional licences under **Schedule 4** (including requirements relating to required competence, qualifications, and experience).
- (2) Matters prescribed may— 10
 - (a) have general or specific application; and
 - (b) differ according to differences in time or circumstance.
- (3) Conditions prescribed under **subsection (1)(b)(ii)** may relate to a licensed insolvency practitioner carrying out solvent company liquidations.
- Compare: 2011 No 21 s 32 15

35 Minimum standards for licence

A notice under **section 34(1)(a)** may prescribe minimum standards for licensing in any way that the Registrar thinks fit, including in 1 or more of the following ways:

- (a) by requiring a degree or diploma or certificate of a stated kind recognised by the Registrar: 20
- (b) by requiring the successful completion of a degree, course of studies, or programme recognised by the Registrar:
- (c) by requiring a pass in a specified examination or any other assessment:
- (d) by reference to registration with, a licence issued by, or other authorisation from an overseas organisation: 25
- (e) by requiring experience in the provision of services of a particular kind:
- (f) by requiring a certain level of competence:
- (g) by requiring compliance with conditions related to insurance:
- (h) by requiring compliance with any relevant standard relating to insolvency engagements: 30
- (i) by requiring compliance with any relevant code of conduct or ethics.

Compare: 2011 No 21 s 33

36 Principles guiding prescribing of licensing and other matters

In prescribing matters under this subpart, the Registrar must be guided by the following principles: 35

- (a) the matters must be necessary or desirable to—

- (i) promote quality, expertise, and integrity in the profession of insolvency practitioners; or
- (ii) promote compliance with the statutory duties of insolvency practitioners; or
- (iii) carry out, give effect to, or provide for a matter that is incidental to, or consequential on, the matters relating to **subparagraph (i) or (ii)**; and 5
- (b) the matters should not unnecessarily restrict the licensing of insolvency practitioners; and
- (c) the matters should not impose undue costs on insolvency practitioners or on creditors. 10

Compare: 2011 No 21 s 35

37 Registrar must consult before publishing notices

- (1) The Registrar must, before publishing a notice in the *Gazette* under **section 34**, consult— 15
 - (a) persons who the Registrar considers are able to represent the views of insolvency practitioners; and
 - (b) organisations—
 - (i) that the Registrar considers will be substantially affected by the proposal; or 20
 - (ii) whose members the Registrar considers will be substantially affected by the proposal.
- (2) A failure to comply with **subsection (1)** does not affect the validity of any notice under **section 34**.

Compare: 2011 No 21 s 36

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38 Other provisions relating to notices under section 34

- (1) The Registrar must ensure that an up-to-date version of each notice under **section 34** is available at all reasonable times on an Internet site maintained by or on behalf of the Registrar.
- (2) A notice under **section 34** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 30

Compare: 2011 No 21 s 37

Subpart 3—Register of licensed insolvency practitioners

39 Register of licensed insolvency practitioners

The Registrar must establish and maintain a register of licensed insolvency practitioners.

Compare: 2011 No 21 s 38

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40 Operation of and access to register

(1) The Registrar must ensure that an up-to-date version of the register is available at all reasonable times—

(a) on an Internet site maintained by or on behalf of the Registrar; and

(b) for access and searching by members of the public.

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(2) However, the Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practicable to provide access to the register.

Compare: 2011 No 21 s 39

41 Purposes of register

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The purposes of the register are—

(a) to enable any person to—

(i) determine whether a person is a licensed insolvency practitioner and, if so, the status and relevant history of the person's licence;

(ii) choose a suitable person to carry out an insolvency engagement;

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(iii) know which licensed insolvency practitioners have been disciplined within the preceding 7 years;

(b) to assist any person in the exercise of the person's powers or the performance of the person's functions under **Parts 3 to 6** or any other enactment.

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Compare: 2011 No 21 s 40

42 Contents of register

(1) The register must contain the following information about each licensed insolvency practitioner (to the extent that the information is relevant):

(a) the full name and business address of the insolvency practitioner;

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(b) the name of the accredited body that has issued a licence to the insolvency practitioner;

(c) the date of each licence that has been issued to the insolvency practitioner;

(d) the date on which each licence was recorded in the register;

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- (e) the expiry date of each licence that is currently in force (and whether the licence continues in force under **section 25(4)**):
- (f) the types of insolvency engagements in respect of which the insolvency practitioner is authorised to act under each licence:
- (g) the conditions placed on each licence that is currently in force: 5
- (h) details of any suspension or cancellation of a licence that has been issued to the insolvency practitioner or any other action that has been taken on a disciplinary matter against the insolvency practitioner under **Parts 3 to 6** by an accredited body, a disciplinary body, or the Registrar in the preceding 7 years: 10
- (i) details of any prohibition order made in relation to the insolvency practitioner under section 239ADV or 286 of the Companies Act 1993 or section 37 of the Receiverships Act 1993:
- (j) the insolvency practitioner's firm (if any):
- (k) any other prescribed information. 15
- (2) The register may also contain—
 - (a) information about former licensed insolvency practitioners; and
 - (b) information about licences that have been cancelled or suspended or have otherwise expired in the last 7 years; and
 - (c) any other information or documentation that the Registrar considers necessary or desirable for the purposes of the register. 20
- (3) The Registrar must remove from the register information about a former licensed insolvency practitioner contained in the register under **subsection (2)(a)** if the last licence held by the person was cancelled or expired more than 7 years ago. 25
- (4) The Registrar may, despite **subsection (1)**, omit or remove any information about an insolvency practitioner from the publicly available register if—
 - (a) the person requests the Registrar to do so on the basis that the information is personal information; and
 - (b) the Registrar considers that the disclosure of the information on the publicly available register would be likely to prejudice the privacy or personal safety of any person. 30

Compare: 2011 No 21 s 41

43 Obligation to notify Registrar of prescribed changes

- (1) An accredited body must give written notice to the Registrar of any prescribed changes within 10 working days after the accredited body first becomes aware of the changes. 35

(2) In **subsection (1)**, **prescribed changes** means changes to the information included in the register that are of a kind that is prescribed for the purposes of this section.

(3) An accredited body that fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$30,000.

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Compare: 2011 No 21 s 42

44 Registrar must amend register in certain circumstances

The Registrar must amend the register if—

(a) an accredited body informs the Registrar of information that is different from the information entered on the register; or

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(b) an annual confirmation contains information that is different from the information entered on the register; or

(c) the Registrar is satisfied at any time that the register contains a typographical error or a mistake, or omits information supplied to the Registrar; or

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(d) regulations otherwise require the register to be amended.

Compare: 2011 No 21 s 44

45 Search of register

(1) A person may search the register in accordance with **Parts 3 to 6** or regulations.

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(2) The register may be searched only by reference to the following criteria:

(a) the name, or any part of the name, of a person:

(b) the business address of a person:

(c) the name of a firm:

(d) the name of an accredited body:

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(e) any other prescribed criteria:

(f) any combination of the criteria in **paragraphs (a) to (e)**.

(3) The register may be searched by—

(a) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual in accordance with the Privacy Act 1993; or

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(b) a person for a purpose referred to in **section 41**.

(4) A person who searches the register for personal information in breach of this section must be treated, for the purposes of Part 8 of the Privacy Act 1993, as having breached an information privacy principle under section 66(1)(a)(i) of that Act.

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Compare: 2011 No 21 s 46

Subpart 4—Accreditation

46 Registrar may grant accreditation

- (1) The following may apply to the Registrar to become an accredited body:
 - (a) a person:
 - (b) 2 or more persons acting jointly together. 5
- (2) An application must be made in the manner that is specified by the Registrar and be accompanied by payment of the prescribed fee for the application (if any).
- (3) The Registrar must grant accreditation to the applicant if the Registrar is satisfied that— 10
 - (a) the applicant will implement and maintain regulatory systems that are adequate and effective; and
 - (b) the applicant meets the minimum standards prescribed under **section 34(1)(d)**; and
 - (c) if the applicant is a person, the person is a fit and proper person to perform regulatory functions for the purposes of **Parts 3 to 6**; and 15
 - (d) if the applicant is 2 or more persons acting jointly together, each person is a fit and proper person to perform regulatory functions for the purposes of **Parts 3 to 6**.
- (4) An applicant must provide to the Registrar any information that is required by the Registrar to assist the Registrar in determining the application. 20

Compare: 2011 No 21 s 48

47 Accreditation subject to conditions

- (1) The following may be accredited as an accredited body subject to any conditions that the Registrar thinks fit: 25
 - (a) a person:
 - (b) 2 or more persons acting jointly together.
- (2) The conditions may include—
 - (a) conditions relating to the procedure that an accredited body must follow when performing regulatory functions: 30
 - (b) conditions to ensure that the accredited body's regulatory systems are adequate and effective:
 - (c) conditions requiring the accredited body to seek consent from the Registrar before making any material changes to the rules of the body in relation to the licensing of insolvency practitioners: 35
 - (d) any other prescribed conditions, or conditions that relate to prescribed matters.

- (3) If 2 or more persons acting jointly together are accredited as an accredited body,—
- (a) each of the persons is liable for ensuring compliance with every obligation of the accredited body imposed by or under **Parts 3 to 6**:
 - (b) if a court is satisfied that one of the persons has contravened a provision of, or committed an offence under, this Act, each of the other persons must be treated as having contravened the provision or committed the offence (regardless of each of the other persons' conduct or state of mind): 5
 - (c) a suspension or cancellation of the accreditation under **section 57** applies in relation to all of the persons: 10
 - (d) the provisions of **Parts 3 to 6** apply with all necessary modifications.
- (4) The Registrar may, at any time after accreditation is granted or treated as having been granted, by written notice to any accredited body, vary, remove, add to, or substitute any conditions of accreditation. 15

Compare: 2011 No 21 s 49

48 Rules of accredited bodies

- (1) An accredited body must have rules that provide for—
- (a) the investigation of complaints against a member or former member of the accredited body: 20
 - (b) the hearing of complaints and other matters by a disciplinary body:
 - (c) appeals against decisions of a disciplinary body:
 - (d) the kinds of conduct for which a member or former member of the accredited body may be disciplined:
 - (e) the actions that may be taken in respect of, and the penalties that may be imposed on, a member or former member of the accredited body for such conduct: 25
 - (f) eligibility to carry out insolvency engagements:
 - (g) the code of conduct or ethics that governs the professional conduct of the members of the accredited body. 30
- (2) The rules may contain any other provisions that are not inconsistent with **Parts 3 to 6** or any other Act or any rule of law.
- (3) The accredited body must, not later than 5 working days after amending or replacing its rules, provide a copy of the new or amended rules to the Registrar for registration. 35
- (4) The rules of an accredited body that relate to the matters referred to in **subsection (1)** are a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

(5) If the New Zealand Institute of Chartered Accountants is accredited as an accredited body,—

(a) **subsections (1) to (4)** do not apply in relation to the rules or the code of ethics described in section 8 of the New Zealand Institute of Chartered Accountants Act 1996; and

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(b) in relation to the Institute, a reference in **Parts 3 to 6** to the rules or to a code of ethics must be read as a reference to the rules or to the code of ethics described in section 8 of the New Zealand Institute of Chartered Accountants Act 1996.

49 Accredited bodies must supply report and annual confirmation to Registrar

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(1) An accredited body must supply a report and an annual confirmation to the Registrar as specified by the Registrar in a direction under **subsection (4)**.

(2) The report must—

(a) be supplied in the manner and form specified by the Registrar in a direction under **subsection (4)**; and

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(b) contain—

(i) information relating to the accredited body's performance in carrying out regulatory functions for the purposes of **Parts 3 to 6**; and

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(ii) information relating to any material changes to the accredited body's regulatory systems that it has implemented, is in the process of implementing, or proposes to implement (including stating what it has done in response to any direction issued under **section 54**); and

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(iii) any other prescribed information.

(3) The annual confirmation must—

(a) be supplied in the form (if any) specified by the Registrar in a direction under **subsection (4)** and be accompanied by the prescribed fee (if any); and

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(b) either—

(i) confirm that, as at the date of the confirmation, the information supplied to the Registrar in respect of the licences issued by the accredited body is correct to the best of the accredited body's knowledge; or

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(ii) contain updated information to ensure that, as at the date of the confirmation, the information referred to in **subparagraph (i)** is correct to the best of the accredited body's knowledge; and

- (c) contain, or be accompanied by, any other prescribed information or documents.
- (4) The Registrar must—
- (a) prepare a direction that specifies the following:
- (i) when reports and annual confirmations must be supplied: 5
- (ii) the manner and form in which reports must be supplied:
- (iii) the form (if any) in which annual confirmations must be supplied; and
- (b) send a copy of the direction to each accredited body; and
- (c) publish the direction on an Internet site maintained by or on behalf of the Registrar. 10
- (5) The direction must provide for each report (other than the first report supplied by an accredited body) to be supplied not more than 4 years after the last report was supplied (but may provide for reports to be supplied more frequently).
- (6) An accredited body that fails to supply a report and an annual confirmation in accordance with this section commits an offence and is liable on conviction to a fine not exceeding \$50,000. 15
- Compare: 2011 No 21 ss 43, 51
- 50 Registrar must publish plan relating to insolvency practitioner regulation and oversight** 20
- (1) The Registrar must, at intervals of not more than 4 years, publish on an Internet site maintained by or on behalf of the Registrar a plan relating to its intentions in relation to insolvency practitioner regulation and oversight under **Parts 3 to 6**.
- (2) The plan must relate to the next financial year and 3 or more further financial years. 25
- (3) The plan must describe, in relation to insolvency practitioner regulation and oversight,—
- (a) the specific effects, outcomes, or objectives that the Registrar seeks to achieve or contribute to; and 30
- (b) the ways in which the Registrar expects accredited bodies to contribute to those effects, outcomes, or objectives; and
- (c) how the Registrar proposes to monitor accredited bodies under **section 52**.
- (4) In this section and **section 53**, **financial year** means a period of 12 months starting on 1 July and ending on the close of 30 June. 35
- Compare: 2011 No 21 s 52

51 Publication of policies

The Registrar must publish, on an Internet site maintained by or on behalf of the Registrar, policies in relation to how the Registrar acts, or proposes to act,—

- (a) in determining applications for accreditation; and
- (b) in imposing, varying, removing, or adding to conditions of accreditation.

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Compare: 2011 No 21 s 53

52 Registrar must monitor regulatory systems

- (1) The Registrar must monitor the regulatory systems of each accredited body in order to determine the extent to which those systems are adequate and effective.

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- (2) An accredited body must give all reasonable assistance to the Registrar to enable the Registrar to act under **subsection (1)**.

- (3) An accredited body commits an offence if the accredited body—

- (a) fails to comply with **subsection (2)**; or
- (b) otherwise hinders, obstructs, or delays the Registrar in acting under **subsection (1)**.

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- (4) An accredited body that commits an offence under **subsection (3)** is liable on conviction to a fine not exceeding \$30,000.

Compare: 2011 No 21 s 54

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53 Registrar must report on regulatory systems of each accredited body

- (1) The Registrar must, at intervals of not more than 4 years, prepare a report on the extent to which the regulatory systems of each accredited body are adequate and effective.

- (2) However, the Registrar does not need to prepare a report in respect of an accredited body if the Registrar has, in the preceding financial year, been monitoring the accredited body under **section 52** for less than 6 months.

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- (3) If, in the period since the latest report under **subsection (1)** was published, the Registrar has issued a notice or direction to an accredited body under **Parts 3 to 6**, the report under **subsection (1)** must describe the extent to which the accredited body has complied with the notice or direction.

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- (4) The Registrar must, not later than 1 month after preparing a report, publish a notice in the *Gazette* that—

- (a) states that the Registrar has published a report on the adequacy and effectiveness of the regulatory systems of 1 or more accredited bodies; and

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- (b) names the accredited bodies covered by the report; and

- (c) summarises any directions given under **section 54** in the preceding financial year (but not the reasons); and
- (d) specifies where a copy of the report may be inspected or obtained.
- (5) The Registrar must, after publishing a notice in the *Gazette*, publish a copy of the report on an Internet site maintained by or on behalf of the Registrar. 5
- (6) This section does not prevent the Registrar from preparing and publishing at any time any other reports about the extent to which the regulatory systems of an accredited body are adequate and effective.
- Compare: 2011 No 21 s 55
- 54 Registrar may give directions** 10
- (1) The Registrar may give a direction under this section to an accredited body if the Registrar is satisfied on reasonable grounds that—
- (a) the body’s regulatory systems are not adequate and effective; or
- (b) the adequacy or effectiveness of its regulatory systems can be improved in order to better meet the purposes of **Parts 3 to 6**; or 15
- (c) its regulatory systems are inconsistent in a material respect with the Registrar’s plan under **section 50**.
- (2) The direction may require the accredited body, within the time and in the manner specified by the Registrar in the direction, to amend its regulatory systems to effectively address the matters that caused the Registrar to give the directions. 20
- Compare: 2011 No 21 s 56
- 55 Requirements relating to directions**
- A direction given under **section 54** must be in writing and state the grounds on which it is given. 25
- Compare: 2011 No 21 s 57
- 56 Offence to contravene directions**
- An accredited body that fails to comply with a direction under **section 54** commits an offence and is liable on conviction to a fine not exceeding \$50,000.
- Compare: 2011 No 21 s 58 30
- 57 Registrar may suspend or cancel accreditation or censure accredited body in certain circumstances**
- (1) **Subsections (2) and (3)** apply if the Registrar is satisfied on reasonable grounds that—
- (a) an accredited body has failed to— 35
- (i) comply with a condition of its accreditation; or

- (ii) supply a report or an annual confirmation in accordance with **section 49**; or
 - (iii) comply with a direction under **section 54**; or
 - (iv) comply with **section 23, 26, 43, 52(2), or 65**; or
- (b) the regulatory systems of an accredited body are not adequate and effective. 5
- (2) The Registrar may make an order that does 1 or more of the following:
 - (a) suspends the accreditation of the accredited body—
 - (i) for any period that the Registrar thinks fit; or
 - (ii) until the body does the things specified by the Registrar in order to demonstrate that accreditation should be reinstated: 10
 - (b) cancels, with effect from a specified date, the accreditation of the accredited body:
 - (c) provides that a body whose accreditation has been cancelled may not apply to be re-accredited before the expiry of a specified period: 15
 - (d) censures the accredited body:
 - (e) requires the accredited body to pay to the Registrar any sum that the Registrar considers just and reasonable towards the costs and expenses of, and incidental to, the Registrar's consideration of whether to take any action under this section: 20
 - (f) does anything that can be done by an order under **section 59**.
- (3) However, the Registrar may suspend or cancel the accreditation of an accredited body only if the Registrar is satisfied on reasonable grounds that,—
 - (a) in the case of **subsection (1)(a)**, the failure or failures (as the case may be) are serious or persistent; or 25
 - (b) in the case of **subsection (1)(b)**, the regulatory systems of the accredited body are seriously inadequate or ineffective.
- (4) The Registrar must cancel the accreditation of an accredited body if the accredited body surrenders its accreditation. 30

Compare: 2011 No 21 s 59

58 Requirements relating to orders

An order made under **section 57** must be in writing and state the grounds on which it is made.

Compare: 2011 No 21 s 60

59 Effect of suspension or cancellation on licences issued by accredited body or former accredited body 35

- (1) If the accreditation of an accredited body (B) is—

- (a) suspended under **section 57**, each licence issued by B is treated as suspended during the period in which B's accreditation is suspended:
- (b) cancelled under **section 57**, each licence issued by B is treated as cancelled.
- (2) The Registrar may order, on the conditions that the Registrar thinks fit, that **subsection (1)** does not apply to 1 or more licences, 1 or more classes of licence, or all licences issued by B. 5
- (3) An order under **subsection (2)** may, in relation to a licence, a class of licences, or all licences issued by B, be made in respect of 1 or more insolvency engagements, 1 or more classes of insolvency engagement, or all insolvency engagements. 10
- (4) If any licences issued by B continue in force as a result of an order under **subsection (2)**, the Registrar may order, on the conditions that the Registrar thinks fit, that another accredited body may perform regulatory functions in respect of those licences as if the other accredited body issued those licences (and that other accredited body may be the Registrar acting under **section 84**). 15

Compare: 2011 No 21 s 61

60 Registrar must give opportunity to make submissions

The Registrar may exercise a power referred to in **section 47(4), 54, or 57** only if— 20

- (a) the Registrar gives the accredited body at least 10 working days' written notice of the following matters before exercising the power:
 - (i) that the Registrar may exercise a power under **section 47(4), 54, or 57** (as the case may be); and 25
 - (ii) the reasons why the Registrar is considering exercising that power; and
- (b) the Registrar gives the accredited body or its representative an opportunity to make written submissions and to be heard on the matter within that notice period. 30

Compare: 2011 No 21 s 62

61 Appeals

- (1) A person may appeal to the court against any decision of the Registrar—
 - (a) to decline to grant accreditation to the person under this subpart; or
 - (b) to include conditions under **section 47** on the person's accreditation or proposed accreditation; or 35
 - (c) to give a direction under **section 54** in respect of the person's accreditation; or

- (d) to make an order under **section 57** in respect of the person's accreditation; or
- (e) to decline to make an order under **section 59(2)** in respect of the person's licence.
- (2) An appeal must be brought— 5
- (a) in accordance with the rules of court; and
- (b) within 20 working days after notice of the decision is communicated to the appellant, or within any further time the court allows on an application made before or after the period expires.
- (3) The court may make an order, or otherwise exercise a power, on an appeal under **subsection (1)(e)** only in respect of 1 or more of the parties to the proceedings. 10
- (4) In **subsection (1)(a) to (d)**, references to a **person** may include 2 or more persons acting jointly together that have applied to become an accredited body. 15
- Compare: 2011 No 21 s 63
- 62 Provisions relating to disciplinary proceedings conducted by accredited bodies**
- (1) Sections 9 to 13 and 16 of the New Zealand Institute of Chartered Accountants Act 1996 apply (with any necessary modifications) to an accredited body in relation to persons to whom it has issued a licence as if references to— 20
- (a) the Professional Conduct Committee were references to the committee or other authority of the accredited body that has the function of investigating complaints against members and former members of the accredited body; and
- (b) a disciplinary body were references to a disciplinary body of the accredited body; and 25
- (c) the Institute were references to the accredited body; and
- (d) the rules were references to the rules of the accredited body published under **section 48**.
- (2) **Subsection (1)** does not apply if the accredited body is the New Zealand Institute of Chartered Accountants. 30
- Compare: 2011 No 21 s 64

Subpart 5—Investigations by Registrar

- 63 Registrar may start or take over investigation or investigate in conjunction with accredited body** 35
- (1) The Registrar may, if satisfied on reasonable grounds that it is in the public interest to do so,—
- (a) start an investigation; or

- (b) take over an investigation started by an accredited body; or
- (c) conduct an investigation in conjunction with an accredited body.
- (2) However, the Registrar must not investigate, under this subpart, the conduct of a member of an accredited body in respect of an insolvency engagement unless— 5
 - (a) the Registrar is satisfied on reasonable grounds that—
 - (i) the accredited body has decided not to investigate the matter; or
 - (ii) the matter is not being investigated promptly or otherwise in a reasonable manner by, or on behalf of, the accredited body; or
 - (b) the accredited body has asked the Registrar to act under this subpart in respect of the matter. 10
- (3) In this subpart, an **investigation** is an investigation into the conduct of a licensed insolvency practitioner in respect of 1 or more insolvency engagements.
- (4) This subpart does not limit any other powers of the Registrar, under any other enactment, to investigate or inquire into any matter. 15

Compare: 2011 No 21 s 75

64 Relationship between Registrar’s investigation and other investigations or proceedings

- (1) If the Registrar starts, or takes over, an investigation under this subpart in respect of a member of an accredited body, the accredited body may do the following only with the Registrar’s written approval: 20
 - (a) start or continue another investigation into the same matter;
 - (b) take any disciplinary or other action against the licensed insolvency practitioner in respect of the same matter. 25
- (2) However, the Registrar may not act under this subpart in respect of the conduct of a licensed insolvency practitioner if the conduct is, or has been, the subject of proceedings before a disciplinary body.

Compare: 2011 No 21 s 76

65 Accredited body must give reasonable assistance

- (1) An accredited body must give all reasonable assistance to the Registrar to enable an investigation by the Registrar involving a member of the accredited body to be carried out. 30
- (2) Without limiting **subsection (1)**, the Registrar may, by written notice, require an accredited body to do 1 or more of the following: 35
 - (a) supply to the Registrar, within the time and in the manner specified in the notice, any information or class of information specified in the notice:

- (b) produce to the Registrar, or to a person specified in the notice acting on the Registrar's behalf in accordance with the notice, any document or class of documents specified in the notice (within the time and in the manner specified in the notice):
- (c) reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice): 5
- (d) appear before the Registrar, at a time and place specified in the notice, to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice. 10
- (3) If a document is produced in response to a notice under **subsection (2)**, the Registrar, or the person to whom the document is produced, may—
 - (a) inspect and make records of that document; and
 - (b) take copies of the document or extracts from the document.
- (4) An accredited body commits an offence if the accredited body— 15
 - (a) fails to comply with **subsection (1)** or a notice under **subsection (2)**; or
 - (b) otherwise hinders, obstructs, or delays the Registrar in carrying out an investigation.
- (5) An accredited body that commits an offence under **subsection (4)** is liable on conviction to a fine not exceeding \$30,000. 20

Compare: 2011 No 21 s 77

65A Accredited bodies required to provide information have privileges of witnesses in court

Every person required to provide information and documents to the Registrar under **section 65** has the same privileges as witnesses in proceedings before a court. 25

66 Disciplinary powers of Registrar

- (1) The Registrar may, after acting under **section 63**, make 1 or more of the orders specified in **subsection (2)** if satisfied on reasonable grounds that 1 or more insolvency engagements carried out by a licensed insolvency practitioner (P) are not being, or have not been, carried out— 30
 - (a) in accordance with—
 - (i) the requirements imposed by or under **Parts 3 to 6** or any other enactments that relate to the carrying out of insolvency engagements; or 35
 - (ii) any relevant standards relating to insolvency engagements; or
 - (b) with reasonable care, diligence, and skill.

- (2) The orders are—
- (a) an order that P’s licence be cancelled:
 - (b) an order that P may not apply to be relicensed, whether with the same or a different accredited body, before the expiry of a specified period:
 - (c) an order that P’s licence be suspended for the period that the Registrar thinks fit: 5
 - (d) an order prohibiting P from acting in respect of a specified insolvency engagement or a specified class or specified classes of insolvency engagement, or as a solvent company liquidator,—
 - (i) permanently; or 10
 - (ii) for any period that the Registrar thinks fit:
 - (e) an order that P pay to the Registrar any sum that the Registrar considers just and reasonable towards the costs and expenses of, and incidental to, the Registrar’s investigation and the proceedings:
 - (f) an order that P complete a specified competence programme, and **section 26(3)** applies, with any necessary modifications, in relation to a competence programme: 15
 - (g) an order prohibiting P from acting in respect of a specified insolvency engagement or a specified class or specified classes of insolvency engagement, or as a solvent company liquidator, except under the supervision of another licensed insolvency practitioner: 20
 - (h) an order that P comply with any specified requirement that the Registrar considers appropriate in connection with the grounds referred to in **subsection (1)**.
- (3) The Registrar may exercise a power referred to in this section in relation to P only if— 25
- (a) the Registrar gives P at least 10 working days’ written notice of the following matters before exercising the power:
 - (i) that the Registrar may exercise a power under this section; and
 - (ii) the reasons why the Registrar is considering exercising that power; and 30
 - (b) the Registrar gives P or P’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- (4) An order under this section may take effect immediately or at a later date specified in the order. 35

Compare: 2011 No 21 s 78

67 Miscellaneous matters relating to orders

- (1) An order made under **section 66** must be in writing and state the grounds on which it is made.

- (2) The Registrar must give a copy of the order to—
- (a) the licensed insolvency practitioner against whom the order is made; and
 - (b) the accredited body that issued the licence to that licensed insolvency practitioner.

Compare: 2011 No 21 s 79

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Subpart 6—Overseas practitioners, members of recognised bodies, and members of religious societies and orders

68 Exemption from membership requirement for certain overseas practitioners, members of recognised bodies, and members of religious societies and orders

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- (1) This section applies in respect of a person (P) if—
- (a) the accredited body is satisfied that P is,—
 - (i) an overseas insolvency practitioner; or
 - (ii) a member of a recognised body; or
 - (iii) a practising member of a religious society or order whose doctrines or beliefs preclude membership of any organisation or body other than the religious society or order of which P is a member; and
 - (b) the accredited body has entered into a written arrangement with P that complies with **section 69**; and
 - (c) the accredited body is satisfied that P—
 - (i) has satisfactory competence, qualifications, and experience to act as an insolvency practitioner; and
 - (ii) is otherwise a fit and proper person to be an insolvency practitioner.
- (2) In this section, a **recognised body** is a person (for example, an incorporated professional body or industry group) that is recognised, by notice in the *Gazette*, by the Registrar for the purposes of this section.

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Compare: 2013 No 101 ss 36R, 36S

69 Requirements for arrangement

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- (1) For the purposes of **section 68**, the arrangement must—
- (a) state that the arrangement is entered into for the purposes of this section; and
 - (b) include a binding agreement by P to be subject to the rules of the accredited body that are described in **section 48(1)**.
- (2) The arrangement may provide for any other matters that the accredited body thinks fit, including matters relating to—

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- (a) ongoing competence requirements:
 - (b) reports and access to information:
 - (c) the promotion of compliance with the requirements imposed by or under any enactment that relate to the carrying out of insolvency engagements:
 - (d) the promotion of compliance with any relevant standards relating to insolvency engagements: 5
 - (e) the promotion of reasonable care, diligence, and skill in the carrying out of insolvency engagements:
 - (f) the payment of fees:
 - (g) the term of the arrangement. 10
- (3) Without limiting the means of enforcing the arrangement, the arrangement is binding on P as if P were a member of the accredited body.
- Compare: 2013 No 101 s 36T

70 End of exemption from membership requirement

Section 68 ceases to apply in respect of a person (**P**) and the accredited body must revoke any licence issued to P in reliance on **section 68** if— 15

- (a) the accredited body ceases to be satisfied as referred to in **section 68(1)(a)** and gives written notice of that fact to P; or
- (b) the written arrangement is terminated or otherwise comes to an end (unless a subsequent arrangement that complies with **section 69** is entered into); or 20
- (c) the accredited body is satisfied that P failed to comply with the written arrangement in any material respect.

Compare: 2013 No 101 s 36R(2)

Part 5

25

Provisions relating to insolvency practitioners

Subpart 1—Duty to report serious problems

71 Duty of insolvency practitioners to report serious problems

- (1) A person must take the steps set out in **subsections (3) and (4)** if the person has reasonable grounds to believe that a serious problem has arisen in relation to a company in respect of which the person acts as an insolvency practitioner. 30
- (2) A **serious problem** means any of the following circumstances:
 - (a) the company, or a past or present director, officer, or shareholder of the company, has committed an offence:
 - (b) a person who has taken part in the formation, administration, management, liquidation, or receivership of the company— 35

-
- (i) has misapplied or retained or become liable or accountable for the company's money or property (whether in New Zealand or elsewhere); or
- (ii) is guilty of negligence, default, or breach of duty or trust in relation to the company: 5
- (c) a past or present director of the company has breached a director's duty in a material respect:
- (d) the company has been managed in a way that has materially contributed to the company being a company described in section 385(1) of the Companies Act 1993. 10
- (3) As soon as practicable after identifying the serious problem, the person must report it to—
- (a) the Registrar; and
- (b) if the company is a licensed insurer (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010), the Reserve Bank of New Zealand; and 15
- (c) if the serious problem concerns the possible commission of an offence, one or both of the following:
- (i) the New Zealand Police:
- (ii) the body responsible for investigating or prosecuting the offence. 20
- (4) The report must identify each person to whom the report is provided.
- (5) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (6) Nothing in this section requires an insolvency practitioner to take any steps to investigate whether a serious problem has arisen. 25
- 72 Insolvency practitioner must provide further assistance after providing report**
- (1) If a person makes a report under **section 71**, the person must give the persons to whom the report was provided any assistance that they may reasonably require by way of— 30
- (a) information; and
- (b) access to documents; and
- (c) facilities for inspecting and copying documents.
- (2) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 35
- 73 Confidentiality of information and documents**
- (1) This section applies to the following information and documents:

- (a) information and documents supplied or disclosed to, or obtained by, the Registrar under **section 71 or 72**:
- (b) information derived from information and documents referred to in **paragraph (a)**.
- (2) The Registrar must not publish or disclose any information or document to which this section applies unless— 5
- (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
- (b) the information is in a statistical or summary form; or
- (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the Registrar by this Act or any other enactment; or 10
- (d) the publication or disclosure of the information or document is made to a law enforcement or regulatory agency for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the law enforcement or regulatory agency by any enactment; or 15
- (e) the publication or disclosure of the information or document is to a person who the Registrar is satisfied has a proper interest in receiving the information or document; or 20
- (f) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential.
- (3) In relation to personal information, this section applies subject to the Privacy Act 1993. 25

Compare: 2011 No 5 s 59

74 Conditions relating to publication or disclosure of information or documents

- (1) The Registrar may, by written notice to a person to whom any information or document is published or disclosed under **section 73(2)(c) to (f)**, impose any conditions in relation to the publication, disclosure, or use of the information or document by the person. 30
- (2) The Registrar must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of an individual. 35
- (3) Conditions imposed under **subsection (1)** may include, without limitation, conditions relating to—

- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
- (b) the storing of, the use of, or access to anything provided:
- (c) the copying, returning, or disposing of copies of documents provided. 5
- (4) A person who refuses or fails, without reasonable excuse, to comply with a condition commits an offence and is liable on conviction to a fine not exceeding \$75,000.
- Compare: 2011 No 5 s 60
- 75 Protection of persons who report serious problems** 10
- (1) Civil, criminal, or disciplinary proceedings must not be brought against a person because the person made a protected disclosure.
- (2) A person must not terminate the appointment of another person because the other person made a protected disclosure.
- (3) A tribunal, a body, or an authority that has jurisdiction in respect of the professional conduct of a person must not make an order against, or do any act in relation to, the person because that person made a protected disclosure. 15
- (4) In this section, **protected disclosure** means a disclosure of information made in accordance with **section 71 or 72**.
- Subpart 2—Restrictions on insolvency practitioners 20
- 77 Meaning of arm's-length terms**
- A purchase or transaction described in **section 78 or 79** is on **arm's-length terms** if it is on terms that—
- (a) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or 25
- (b) are less favourable than the terms referred to in **paragraph (a)** for—
- (i) a person described in **section 78(1)**, in the case of **section 78**;
- or
- (ii) a person defined as P, in the case of **section 79**. 30
- 78 Restriction on purchase of assets**
- (1) This section applies—
- (a) to a person acting as the insolvency practitioner in respect of a company in administration or under a deed of company arrangement, or a company in liquidation, or in respect of the receivership of any property of a company: 35

- (b) if the insolvency practitioner described in **paragraph (a)** is a director, an officer, or an employee of a body corporate,—
- (i) to the body corporate:
- (ii) to any other director, officer, or employee of the body corporate:
- (c) if the insolvency practitioner described in **paragraph (a)** is a partner, an officer, or an employee of a partnership or limited partnership,— 5
- (i) to the partnership or limited partnership:
- (ii) to any other partner, officer, or employee of the partnership or limited partnership:
- (d) to a member of the creditors' committee of a company in administration or under a deed of company arrangement: 10
- (e) to a member of the liquidation committee of a company in liquidation:
- (f) if a person described in any of **paragraphs (a) to (e)** is a beneficiary or settlor of a trust, to any trustee of the trust.
- (2) A person to whom this section applies must not, without the leave of the court, purchase any part of the assets of the company unless the purchase is on arm's-length terms. 15
- (3) A person who fails to comply with **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$75,000.
- (4) The court may give leave for the purpose of **subsection (2)** on the terms and conditions that it thinks fit. 20
- (5) The court may set aside a purchase that does not comply with **subsection (2)** and grant the consequential relief that it thinks fit.
- 79 Restriction on purchase of goods or services from person connected with insolvency practitioner** 25
- (1) This section applies to an insolvency practitioner who is acting as an administrator, a deed administrator, a liquidator, or a receiver of a company.
- (2) An insolvency practitioner must not purchase for the company any goods or services from a person (P) if the insolvency practitioner knows, or ought to know, that the insolvency practitioner's connection with P would result in the insolvency practitioner directly or indirectly obtaining a portion of any benefit arising out of the transaction. 30
- (3) However, **subsection (2)** does not apply to—
- (a) a transaction that is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between,— 35
- (i) in the case of a company in administration, in liquidation, or under a deed of company arrangement, the company and P; and

- (ii) in the case of the receivership of property of a company, the company and P; or
- (b) a transaction that is conducted on arm's-length terms; or
- (c) a transaction that is conducted with the leave of the court.
- (4) A person who fails to comply with **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$75,000. 5
- (5) The court may give leave for the purpose of **subsection (2)** on the terms and conditions that it thinks fit.
- (6) The court may disallow or order the recovery of any benefit made contrary to **subsection (2)**. 10

Part 6

Solvent company liquidators, miscellaneous matters, and regulations

Subpart 1—Solvent company liquidators

80 Solvent company liquidators

- (1) A person who acts as a solvent company liquidator must be one of the following: 15
 - (a) a licensed insolvency practitioner:
 - (b) a lawyer:
 - (c) a qualified statutory accountant:
 - (d) a member of a professional body recognised under **section 81**. 20
- (2) A person who acts as a solvent company liquidator in breach of this section commits an offence and is liable on conviction to a fine not exceeding \$75,000.

81 Power of Registrar to recognise professional body

- (1) The Registrar may, after receiving an application or at the Registrar's discretion, recognise a professional body for the purposes of **section 80(1)(d)** if, after taking into account the prescribed matters (if any), the Registrar is satisfied that— 25
 - (a) the body satisfies the requirements that are prescribed for the purposes of this section; and
 - (b) the members or a class of members of the body have the required skills to carry out solvent company liquidations; and 30
 - (c) the body's rules contain effective disciplinary processes and systems, including in relation to failures by members to comply with their ethical obligations.
- (2) The Registrar may, by written notice,— 35
 - (a) revoke or suspend recognition of a body if—

- (i) the Registrar ceases to be satisfied of the matters in **subsection (1)**; or
 - (ii) any conditions referred to in **paragraph (b) or (c)** are not met; or
- (b) impose any conditions that the Registrar thinks fit on the recognition of that body; or 5
- (c) vary, revoke, add to, or substitute the conditions referred to in **paragraph (b)**.
- (3) If the Registrar revokes or suspends recognition of a recognised body (B), every member of B ceases to be a person who is permitted to act as a liquidator of a solvent company. 10
- (4) The Registrar may order, on the conditions that the Registrar thinks fit, that **subsection (3)** does not apply to 1 or more members of B or in respect of 1 or more solvent liquidations, 1 or more classes of solvent liquidation, or all solvent liquidations. 15

Subpart 2—Other miscellaneous matters

82 Registrar's functions

The Registrar has the following functions under **Parts 3 to 6**:

- (a) to prescribe licensing and other matters under **subpart 2 of Part 4**:
- (b) to establish and maintain a register of licensed insolvency practitioners under **subpart 3 of Part 4**: 20
- (c) to grant accreditation under **subpart 4 of Part 4**:
- (d) to monitor the regulatory systems of accredited bodies, report on the adequacy and effectiveness of those systems, and take action in respect of those systems that are inadequate or ineffective: 25
- (e) to conduct investigations under **subpart 5 of Part 4**:
- (f) to perform or exercise any other functions, powers, and duties conferred or imposed on the Registrar by or under **Parts 3 to 6**.

Compare: 2011 No 21 s 5

83 Registrar's power of inspection

- (1) The Registrar may exercise a power described in **subsection (2)**— 30
 - (a) if, in the Registrar's opinion, it is in the public interest to do so; and
 - (b) for any of the following purposes:
 - (i) ascertaining whether information provided to the Registrar is correct: 35

- (ii) ascertaining whether a licensed insolvency practitioner, or any other person acting in connection with an insolvency engagement, is complying, or has complied, with **Parts 3 to 6**:
 - (iii) ascertaining whether the Registrar should exercise any of the Registrar's rights or powers under **Parts 3 to 6**: 5
 - (iv) detecting offences against **Parts 3 to 6**, the Companies Act 1993, and the Receiverships Act 1993.
- (2) The Registrar may—
 - (a) require a person, in relation to information provided to the Registrar, to— 10
 - (i) confirm that the information is correct; or
 - (ii) correct the information; or
 - (b) require a person to produce for inspection relevant documents within the person's possession or control; or
 - (c) inspect and take copies of relevant documents; or 15
 - (d) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; or
 - (e) retain relevant documents for a period that is, in all the circumstances, reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence. 20
- (3) When exercising the powers described in **subsection (2)(a) or (b)**, the Registrar may specify—
 - (a) a particular form in which the confirmation or correction must be provided; and 25
 - (b) a date by which the confirmation or correction must be provided; and
 - (c) whether the confirmation or correction must be verified by the production of original documents or certified copies of original documents or by a statutory declaration.
- (4) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power conferred by **subsection (2)**. 30
- (5) Any person who fails to comply with a requirement under **subsection (2)(a) or (b)** or who acts in contravention of **subsection (4)** commits an offence and is liable on conviction to a fine not exceeding \$30,000.
- (6) In this section, **relevant document**, in relation to a company, means a document that contains information relating to— 35
 - (a) the company; or
 - (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the company; or

(c) the insolvency engagement.

Compare: 1993 No 105 s 365

84 Registrar may act as accredited body

- (1) The Registrar may act as an accredited body if the Registrar—
- (a) suspends or cancels the accreditation of a body under **section 57**; and 5
 - (b) considers that it is in the public interest for the Registrar to act as an accredited body having regard to the purpose of **Parts 3 to 6**.
- (2) If the Registrar decides to act under **subsection (1)**, the Registrar must be treated as being an accredited body (except for the purposes of **subpart 4 of Part 4**). 10

Compare: 2011 No 21 s 91

85 Protection from liability for accredited bodies and others

- (1) An accredited body is not liable for anything it may do or fail to do in the course of the performance or exercise, or intended performance or exercise, of its functions, powers, or duties under **Parts 3 to 6**, unless it is shown that it acted in bad faith or without reasonable care. 15
- (2) An officer, an employee, or a person (an **agent**) acting on behalf of an accredited body is not liable for anything the agent does or says, or fails to do or say, in the course of the performance or exercise, or intended performance or exercise, of the accredited body's functions, powers, or duties under **Parts 3 to 6**, unless it is shown that the agent acted in bad faith. 20
- (3) Despite **subsections (1) and (2)**, this section does not affect or limit any person's liability for an offence under **Parts 3 to 6** or any other enactment.

Compare: 2011 No 21 s 93

86 Sharing of information and documents between accredited bodies and Registrar 25

- (1) An accredited body may provide to the Registrar any information, or a copy of any document, that the accredited body—
- (a) holds in relation to the performance or exercise of the accredited body's functions, powers, or duties under the rules of the accredited body or under any enactment; and 30
 - (b) considers may assist the Registrar in the performance or exercise of the Registrar's functions, powers, or duties under **Parts 3 to 6** or any other enactment.
- (2) An accredited body may, subject to any conditions imposed by the Registrar, use any information, or a copy of any document, provided to it by the Registrar under any enactment in the accredited body's performance or exercise of its functions, powers, or duties under the rules of the accredited body or under any enactment. 35

- (3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.

Compare: 2011 No 21 s 94

87 Notice and service of documents

- (1) Unless **Parts 3 to 6** provides otherwise, if a provision of **Parts 3 to 6** requires or authorises any notice or other document, or any notification, to be given or provided to a person, the notice, document, or notification must be given in writing to the person— 5
- (a) by delivering it personally or by an agent (such as a courier) to the person; or 10
- (b) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or
- (c) by sending it by email to the person at an email address that is used by the person; or
- (d) in any other manner that the court directs. 15
- (2) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with **subsection (1)(b)** must be treated as having been given or provided to the person when it would have been delivered in the ordinary course of the post, and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted. 20
- (3) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with **subsection (1)(c)** must be treated as having been given or provided to the person on the next working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that it was properly addressed and sent to the email address. 25
- (4) If a person has died, the notice, document, or notification may be given, in accordance with **subsection (1)**, to the person's personal representative.

Compare: 2011 No 21 s 95

88 False declarations and representations

- (1) A person commits an offence if the person, for the purpose of obtaining any licence or accreditation under **Parts 3 to 6** or for any other purpose relating to **Parts 3 to 6**, either on the person's own behalf or on behalf of any other person,— 30
- (a) either orally or in writing, makes any declaration or representation to a specified body that, to the person's knowledge, is false or misleading in any material particular; or 35
- (b) provides to a specified body any document knowing that the document—

- (i) contains any declaration or representation that is false or misleading in any material particular; or
 - (ii) is not genuine; or
- (c) makes use of any document knowing that the document—
 - (i) contains any declaration or representation that is false or misleading in any material particular; or 5
 - (ii) is not genuine.
- (2) In **subsection (1)**, **specified body** means an accredited body or the Registrar.
- (3) A person who is convicted of an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$50,000. 10
Compare: 2011 No 21 s 96
- 89 Registrar may refuse to take step before fee, charge, or cost paid**
The Registrar may refuse to perform a function or exercise a power under **Parts 3 to 6** in respect of which a fee, charge, or cost is payable unless the fee, charge, or cost is first paid in accordance with **Parts 3 to 6**. 15
- 90 Registrar may refuse to accept document**
The Registrar may refuse to accept a document under **Parts 3 to 6** if that document—
 - (a) is not in the required form (if any); or
 - (b) does not comply with prescribed requirements (if any). 20Compare: 2011 No 21 s 45
- 91 Power of Registrar to delegate**
 - (1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar's functions, duties, and powers under **Parts 3 to 6** except the power of delegation. 25
 - (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and
 - (c) may be revoked, in writing, at any time; and 30
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
 - (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by **Parts 3 to 6** and not by delegation. 35

- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Compare: 2011 No 21 s 47

Subpart 3—Regulations

92 Regulations

5

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing changes for the purposes of **section 43**:
- (b) prescribing information or documents for the purposes of **sections 23 and 49**: 10
- (c) prescribing conditions or matters that conditions may relate to for the purposes of **section 47(2)(d)**:
- (d) prescribing, or authorising the Registrar to specify,—
 - (i) information to be supplied or made available for the purposes of **Parts 3 to 6**: 15
 - (ii) the format and medium for supplying information or making information available for the purposes of **Parts 3 to 6**:
 - (iii) requirements with which information supplied or made available for the purposes of **Parts 3 to 6** must comply (for example, that a document be signed by a specified person): 20
 - (iv) requirements with which information or documents sent or delivered for registration must comply:
- (e) authorising the Registrar to require payment of any costs incurred by the Registrar:
- (f) prescribing procedures, requirements, and other matters, not inconsistent with **Parts 3 to 6**, for the register, including matters that relate to— 25
 - (i) the operation of the register:
 - (ii) the form of the register:
 - (iii) the information to be contained in the register:
 - (iv) access to the register: 30
 - (v) the location of, and hours of access to, the register:
 - (vi) search criteria for the register:
- (g) prescribing fees and charges that the Registrar may require to be paid to the Registrar (or the rate at which, or the method by which, fees and charges are to be calculated) in connection with the exercise or performance by the Registrar of any function, power, or duty conferred by or under **Parts 3 to 6**: 35

- (h) providing for any other matters contemplated by **Parts 3 to 6**, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under **subsection (1)(f) or (h)** may—
- (a) prescribe the method of payment of a fee, charge, or cost; and
- (b) authorise the Registrar to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee, charge, or cost in relation to any person or class of persons. 5
- (3) Any fee, charge, cost, or other amount payable to the Registrar by or under **Parts 3 to 6** is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Registrar. 10

Compare: 2011 No 21 s 84

93 Consequential amendments

The enactments specified in **Schedule 5** are amended in the manner indicated in that schedule.

Schedule 1
New Part 2 of Schedule 1AA added

s 10A

Part 2

Provisions relating to Part 1 of Insolvency Practitioners Act 2010

5 Interpretation

In this Part,—

amendment Act means **Part 1 of the Insolvency Practitioners Act 2010**

commencement date, in relation to a provision of this Act, means the date on which the provision is amended, replaced, or inserted by the amendment Act

company, in relation to a liquidation under Part 16, has the meaning given to it in section 240(1A)

new, in relation to a provision of this Act, means the provision as amended, replaced, or inserted by the amendment Act

old, in relation to a provision of this Act, means the provision as in force immediately before its amendment or repeal by the amendment Act.

6 Application of new provisions to insolvency engagements already under way

The new provisions do not apply (and the old provisions continue to apply) in relation to—

- (a) the administration of a company under Part 15A for which an administrator was appointed before the commencement date; or
- (b) a company under a deed of company arrangement under Part 15A for which the deed of company arrangement was executed before the commencement date; or
- (c) the liquidation of a company under Part 16 for which a liquidator was appointed before the commencement date.

7 Existing court orders relating to appointments continue to have effect

(1) This clause applies to each court order that—

- (a) is made under old section 239F(2), 239ACD(2), or 280(1) and permits a person to be appointed as an administrator, a deed administrator, or a liquidator despite being a person described in old section 280(1)(d) to (m); and
- (b) is in force on the commencement date.

-
- (2) Until the court order ceases to be in force, the order must be treated as if it were made under the new provision that replaces the old provision under which the court order is made.
- (3) However, a person is not eligible to be appointed as an administrator, a deed administrator, or a liquidator (as the case may be) if the person is ineligible under any new provision of this Act for a reason that is not covered by the court order.

5

Schedule 2

Consequential amendments

s 11

Part 1

Amendments to Acts

5

Privacy Act 1993 (1993 No 28)

Item relating to the Companies Act 1993 in Part 1 of Schedule 2: insert “**316Q**,” after “189.”

Companies Act 1993 (1993 No 105)

Section 239Q(2)(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”. 10

Section 239T(3)(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”. 10

Section 239AO(1)(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”. 10

Section 239ADF(2)(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”. 10

Section 239ADY(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”. 10

Section 239ADZ(a): omit “section 3(1)(b)” and substitute “section 3(1)(a)”. 15

Section 239AEA(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”. 15

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

Section 158(1): omit “239AI.”

Section 158(1): omit “257(1)(a)(i) or (ii)” and substitute “257(1)(a)(i) and (ii) and **(c)**”. 20

Part 2

Amendments to regulations

Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)

Regulation 29: revoke.

Regulations 31 and 32: revoke. 25

Regulation 34: revoke.

Regulations 37 and 38: revoke.

Form 1 in the Schedule: after “Telephone No: [area code and number]”, insert:

Address for electronic communications: [email address]

Form 1 in the Schedule: after “Full particulars of the claim are set out, and any supporting documents that substantiate the claim are identified, on the reverse of this form.”, insert: 30

Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)—continued

The abovenamed creditor [is/is not[†]] a related entity of the company in liquidation. (See section 245A(3) of the Companies Act 1993.)

[†]Select one.

The abovenamed creditor [consents/does not consent[†]] to receive documents by electronic means at the address for communications specified above.

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[†]Select one.

Form 2 in the Schedule: after “Telephone No: [area code and number]”, insert:

Address for electronic communications: [email address]

Form 2 in the Schedule: after “Full particulars of the valuation, claim, and charge are set out, and any supporting documents that substantiate the claim and the charge, are identified on the reverse of this form.”, insert:

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The abovenamed creditor [is/is not[†]] a related entity of the company in liquidation. (See section 245A(3) of the Companies Act 1993.)

[†]Select one.

The abovenamed creditor [consents/does not consent[†]] to receive documents by electronic means at the address for communications specified above.

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[†]Select one.

~~Domestic Violence (Public Registers) Regulations 1998 (SR 1998/342)~~

~~Item relating to the Companies Act 1993 in Schedule 1: insert “**316Q**,” after “189.”~~

Schedule 3
New Schedule 1AA inserted

s 14B

Schedule 1AA
Transitional, savings, and related provisions

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s 3A

Part 1
Provisions relating to Part 2 of Insolvency Practitioners Act 2010

1 Interpretation

In this Part,—

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amendment Act means **Part 2 of the Insolvency Practitioners Act 2010****commencement date**, in relation to a provision of this Act, means the date on which the provision is amended, replaced, or inserted by the amendment Act**new**, in relation to a provision of this Act, means the provision as amended, replaced, or inserted by the amendment Act

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old, in relation to a provision of this Act, means the provision as in force immediately before its amendment or repeal by the amendment Act.**2 Application of new provisions to insolvency engagements already under way**

The new provisions do not apply (and the old provisions continue to apply) in relation to a receivership under this Act for which a receiver was appointed before the commencement date.

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3 Existing court orders relating to appointments continue to have effect

(1) This clause applies to each court order that—

(a) is made under old section 5(1) or old clause 6 of **Schedule 1** and permits a person to be appointed as a receiver despite being a person described in old section 5(1)(e) to (l) or old clause 6(b) of **Schedule 1**; and

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(b) is in force on the commencement date.

(2) Until the court order ceases to be in force, the order must be treated as if it were made under the new provision that replaces the old provision under which the court order is made.

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(3) However, the person is not eligible to be appointed as a receiver if the person is ineligible under any new provision for a reason that is not covered by the court order.

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Schedule 4 Transitional, savings, and related provisions

s 19

Part 1 Provisions relating to Parts 3 to 6 as enacted

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1 Interpretation

In this Part,—

4-month date means the day that immediately follows the expiry of the 4-month period that starts on the commencement date

accredited insolvency practitioner means a person who, on the commencement date,— 10

(a) is accredited by an accredited body to undertake insolvency engagements; and

(b) is either—

(i) a member of the accredited body; or 15

(ii) a person to whom **section 68** applies

commencement date, in relation to a provision of **Parts 3 to 6**, means the date on which the provision comes into force

first anniversary means the day that immediately follows the expiry of the 12-month period that starts on the commencement date 20

transitional licence means a licence that an accredited insolvency practitioner is treated as holding under **clause 2(1)**

transitional requirements means requirements prescribed under **section 34(1)(f)** for the purpose of this schedule.

2 Accredited insolvency practitioner to be treated as licensed insolvency practitioner on commencement 25

(1) A person who is an accredited insolvency practitioner and who satisfies the transitional requirements (if any) must be treated, on and from the commencement date, as a licensed insolvency practitioner who holds a licence under **sub-part 1 of Part 4** that— 30

(a) authorises the person to undertake the types of insolvency engagements for which the person is accredited; and

(b) is recorded in the register.

(2) The provisions of **Part 3 to 6** (except for **sections 22, 23, and 25**) apply in relation to a transitional licence. 35

3 When transitional licence expires

Clause 2(1) ceases to apply to an accredited insolvency practitioner, and the practitioner is no longer to be treated as holding a licence under **subpart 1 of Part 4**,—

- (a) if the Registrar (acting under **section 57**) suspends or cancels the accreditation of the accredited body that accredited the practitioner, from the date on which the Registrar suspends or cancels the accreditation: 5
- (b) in relation to a practitioner to whom **section 68** applies, from the date on which **section 68** ceases to apply in respect of the practitioner:
- (c) if the transitional licence is suspended or cancelled under **subpart 1 of Part 4**, from the date on which the licence is suspended or cancelled: 10
- (d) if the practitioner fails to apply for a licence before the end of the 4-month date, from the end of that day:
- (e) if the practitioner does apply for a licence before the end of the 4-month date and— 15
 - (i) the accredited body decides not to issue the licence, from the end of the day that is 20 working days after notice of the decision is communicated to the practitioner:
 - (ii) the licence is issued, from the issue date of the licence:
 - (iii) the accredited body has not made a decision on the application before the end of the first anniversary, from the end of the first anniversary. 20

4 Transitional provisions relating to register

- (1) This clause applies in relation to an accredited insolvency practitioner who holds a transitional licence. 25
- (2) Not later than 3 working days after the commencement date, each accredited body must notify the Registrar of the following information:
 - (a) the full name and address of the practitioner:
 - (b) the date on which the insolvency practitioner received accreditation:
 - (c) the types of insolvency engagements for which the practitioner is accredited to act. 30
- (3) The Registrar must ensure that the register maintained under **subpart 3 of Part 4** contains the information that is described in **subclause (2)** for each accredited insolvency practitioner who holds a transitional licence.
- (4) This clause applies in place of **sections 42(1) and 43**. 35

5 Application to insolvency engagements already underway

- (1) **Parts 3 to 6** do not apply to—

-
- (a) the liquidation of a company under Part 16 of the Companies Act 1993 for which a liquidator was appointed before the commencement date; or
- (b) the administration of a company under Part 15A of the Companies Act 1993 for which an administrator was appointed before the commencement date; or 5
- (c) a receivership under the Receiverships Act 1993 for which a receiver was appointed before the commencement date; or
- (d) a proposal under subpart 2 of Part 5 of the Insolvency Act 2006 for which a trustee or provisional trustee was appointed before the commencement date. 10
- (2) Despite **subclause (1)(a)**, a person who, on the commencement date, is the liquidator of a company and who, on the first anniversary, is not a licensed insolvency practitioner must resign on the first anniversary, and section 283 of the Companies Act 1993 applies accordingly.
- (3) However, **subclause (2)** does not apply if— 15
- (a) the board of the company passed a resolution described in section 243(8) of the Companies Act 1993 within 20 working days of the appointment of a liquidator under section 241(2)(a) or (b) of the Companies Act 1993; and
- (b) section 244 of the Companies Act 1993 does not apply in relation to the company. 20
- (4) If **subclause (2)** applies to the liquidation of a company, **Parts 3 to 6** apply to the liquidation on and from the first anniversary.
- 6 First plan published under section 50**
- (1) For the purpose of the first plan published under **section 50**, this clause applies in place of **section 50(1) and (2)**. 25
- (2) The Registrar must publish the first plan—
- (a) as soon as is reasonably practicable after **section 50** comes into force; but
- (b) not later than 6 months after **section 50** comes into force. 30
- (3) The first plan must relate to the following:
- (a) the remaining part of the financial year in which it is published;
- (b) 3 or more further financial years.
- 7 Description of compliance with notices or directions in first report published under section 53** 35
- (1) For the purpose of the first report published under **section 53**, this clause applies in place of **section 53(3)**.

- (2) If, in the period since the commencement of **section 53**, the Registrar has issued a notice or direction to an accredited body under **Parts 3 to 6**, the first report must describe the extent to which the accredited body has complied with the notice or direction.

Schedule 5

Consequential amendments

s 93

Part 1

Amendment to Act

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Privacy Act 1993 (1993 No 28)

Schedule 2: insert after the item relating to the Insolvency Act 2006:

<u>Parts 3 to 6 of the Insolvency Practitioners Act 2010</u>	<u>Section 39</u>
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Part 2

Amendment to regulations

Domestic Violence (Public Registers) Regulations 1998 (SR 1998/342)

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Schedule 1: insert after the item relating to the Insolvency Act 2006:

<u>Parts 3 to 6 of the Insolvency Practitioners Act 2010</u>	<u>Section 39</u>
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Legislative history

27 April 2010
 24 August 2010
 9 May 2011
 7 November 2013
 28 June 2018

Introduction (Bill 141–1)
 First reading and referral to Commerce Committee
 Reported from Commerce Committee (Bill 141–2)
 Second reading
 Discharge of order of the day for committee of the whole House
 stage and referral to Economic Development, Science and
 Innovation Committee