

Insolvency Practitioners Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Insolvency Practitioners Bill and recommends that it be passed with the amendments shown.

Introduction

One of the aims of the Insolvency Practitioners Bill is to restrict or prohibit certain individuals from providing corporate insolvency services. The bill as introduced would establish a negative licensing system, empowering the Registrar of Companies to restrict or prohibit certain individuals from providing corporate insolvency services. It also seeks to strengthen existing provisions relating to the automatic disqualification of insolvency practitioners.

Concerns were raised with us that the negative licensing system proposed in the bill would not address the problems and risks associated with practitioners who are dishonest, or lack independence.

In line with the aim of the bill to restrict or prohibit certain individuals from providing corporate insolvency services, we consider it would be preferable to prevent such practitioners from undertaking insolvency duties before damage has been done rather than, as proposed

by the bill, prohibiting or placing under supervision those who have demonstrated failure to comply with their duties.

We are mindful of the cost of such a scheme and of the need to strike a balance between reducing the incidence of poor practice, and limiting for small-scale businesses the extent of compliance costs involved in doing so.

Cost implications

We were advised that the cost of establishing and maintaining a register of those eligible to undertake insolvency work would not be significant, particularly when assessed in the light of the benefits expected from this form of regulation. We understand that registration would have a minimal cost impact on creditors who would be restricted in their choice of a practitioner to those listed on the register. Since initial policy decisions relating to this bill were taken in 2008, there has been a global financial crisis and the number of insolvencies has increased.

Given the changed environment and the review of costings, and following our consideration of the evidence we received on this bill, we recommend amendments that would require the registration of all practitioners rather than a negative licensing regime. The amendments discussed below set out the changes, including new offence and reporting provisions, which would flow from this change.

Our commentary covers the main issues we considered.

Commencement

Should a register of practitioners be established in line with our recommendation, sufficient time would be required to make the necessary arrangements to allow the system to be introduced smoothly. We therefore recommend an amendment to delay commencement for a further 6 months. The effect of the amendment would be to have the new legislation come into force 9 months after the Royal assent.

Appointment, removal, and duties of practitioners

The processes associated with insolvency require a practitioner to carry out skilled tasks with judgment and integrity. We consider it important that those who undertake these duties should be fit and proper

to do so, that their responsibilities to creditors are clearly understood and communicated, and that action could be taken in the event of problems with the performance of practitioners.

We therefore recommend changes to the bill that would make clear issues relating to both the appointment and the removal of insolvency practitioners, and that would make clear what is expected and required of them.

These changes would involve amendments to the Companies Act 1993 (the principal Act) in relation to the appointment and removal of administrators, deed administrators, and liquidators, and their responsibilities and duties. Similar amendments are recommended to the Receiverships Act 1993 in relation to the appointment and removal, and duties and responsibilities of receivers.

The changes we recommend would clearly specify eligibility to undertake insolvency work; enhance the duties of insolvency practitioners (for example, to disclose conflicts and to report to creditors); strengthen the criteria for disqualification from appointments; and specify an appropriate range of penalties for failure to comply with statutory obligations.

It is our view that a person who does not meet the criteria and is ineligible for registration should be able to apply for a court order to override that disqualification. Accordingly, we recommend an amendment that makes provision for a court to override any of the ineligibility criteria.

We also recommend an amendment to the definition of “failure to comply” so that a lower test would need to be met before remedies could be sought.

Informing creditors

We recommend amendments to the bill that would ensure that creditors were provided with information by insolvency practitioners at the earliest opportunity. That information would include an interests statement (for practitioners other than receivers), and information about the registration and regulation of practitioners, and would advise creditors that further information about the registration and regulation of insolvency practitioners would be available from the registrar.

In the interests of further closing the information gap, we also recommend that practitioners be required to include additional content in their reports to creditors, shareholders, and the registrar, with penalties provided for failure to do so.

Appointment of family members

We consider that clause 5 of the bill as introduced would not cover the issues that have been shown in recent cases to be relevant when considering eligibility for appointment and grounds for disqualification from appointment as a liquidator.

We recommend an amendment to the bill that would disqualify from appointment as liquidator “a relative” of a person who, within the 2 years immediately before the commencement of a liquidation, has been a shareholder, director, promoter, auditor, or receiver of the company or a related company. The term “relative” would cover family members as defined by section 2 of the principal Act (including in-laws and siblings). A similar amendment in the Receiverships Act would impose the same restriction on receivers.

Register of insolvency practitioners

The establishment of a compulsory register of those who are eligible to undertake insolvency duties would enable the public to access information about practitioners, and the Registrar of Companies to collect information from practitioners and more effectively regulate them.

We therefore recommend amending the bill to require the Registrar to develop and maintain a basic register, and all persons undertaking the duties of an insolvency practitioner in New Zealand would be required to be registered.

We see advantages in retaining a range of practitioners within the profession who could service a wide variety of insolvency proceedings, and therefore consider that eligibility requirements for registration should be minimal. While formal qualifications would not be required, the criteria would prevent registration of those who were not fit and proper to manage insolvency proceedings. We recommend an amendment to the bill to specify these criteria.

We further recommend that penalty provisions, in line with similar provisions appearing elsewhere in the principal Act, should apply to

practising without registration; applying for registration (or renewal of registration) using false or misleading information, or omitting information when that omission could be false or misleading in a material particular; and failing to notify the Registrar of ineligibility for registration.

The requirement that practitioners be registered would move New Zealand towards meeting the requirements of the Trans-Tasman Mutual Recognition Act 1997, and would enhance the ability of New Zealand practitioners to be appointed in Australia.

We recommend also an amendment that would require the responsible Government department to review and report to the responsible Minister on the operation of the registration regime no later than 4 years after the legislation comes into force, and to recommend whether amendments to the regime would be necessary or desirable.

Cancellation of registration

We consider it important that the registration model we are proposing is flexible enough to enable action to be taken against an insolvency practitioner who has behaved inappropriately.

We therefore recommend that the Registrar be authorised to cancel a person's registration as an insolvency practitioner if satisfied that there has been failure on two separate occasions to comply with the requirements of the legislation, or if the person has failed on one occasion in a serious and significant way.

Registration would also be cancelled if the Registrar were satisfied that the registration was based on false or misleading information or omission; or if the person no longer met the registration eligibility criteria.

We further recommend amendments that would require the Registrar to appoint another person if the practitioner concerned was acting in a current administration or liquidation role immediately before deregistration, and that would require that each director, officer, creditor, and shareholder of the company in administration, or under a deed of company arrangement, or in liquidation be advised in writing of the situation.

Reporting requirement

There is limited information available about the amount of harm caused by allowing under-skilled individuals to administer insolvency proceedings. We therefore recommend amendments to the bill that would require an insolvency practitioner to provide the Registrar with a summary report containing statistical information that could be collected and used to review the efficacy of the registration model.

Offences and penalties

We recommend amendments to the bill that would facilitate enforcement action against practitioners who fail to comply with their legal obligations, would create additional offences, and would impose penalties for failure to comply that are aligned with penalties for similar offences covered in the principal Act. These penalties would include fines of up to \$10,000 in some cases, and fines of up to \$50,000 and terms of imprisonment of up to 2 years in other cases.

Appendix

Committee process

The Insolvency Practitioners Bill was referred to the committee on 24 August 2010. The closing date for submissions was 12 October 2010. We received and considered 11 submissions from interested groups and individuals. We heard one submission.

We received advice from the Ministry of Economic Development.

Committee membership

Hon Lianne Dalziel (Chairperson)

Hilary Calvert (from 27 October 2010)

David Clendon

Clare Curran

Te Ururoa Flavell (until 16 March 2011)

Melissa Lee

Peseta Sam Lotu-Iiga

Hon Nanaia Mahuta (until 9 February 2011)

Hon David Parker (from 9 February 2011)

Katrina Shanks

Jonathan Young

Insolvency Practitioners Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

Insolvency Practitioners Bill

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Schedule
Consequential amendments

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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 ~~3 months~~ 9 months after the date on which it receives the Royal assent.

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Part 1

Amendments to Companies Act 1993

3 Principal Act amended

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

Subpart 1—Amendments to principal Act

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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):

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“(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**”.

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3B New sections 239F and 239G substituted

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

“239F Who may be appointed 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.**

“(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**

“(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)**.**

“239G What administrator must do before appointment

A person must not be appointed the administrator of a company unless that person has—

“(a) consented in writing and has not withdrawn the consent at the time of appointment; and

“(b) certified in writing that he or she is not disqualified from appointment by **section 239F(2).”**

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”.

(2) Section 239H(2)(c) is amended by omitting “disqualified” and substituting “disqualified from appointment by **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.”

3D When office of administrator is vacant

- (1) Section 239P is amended by repealing paragraph (a) and substituting the following paragraph: 5
“(a) resigns under section 239Q; or”.
 (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.**” 10

3E Removal of administrator

- (1) Section 239R(2)(a) is amended by omitting “another person who is not disqualified” and substituting “a registered insolvency practitioner who is not disqualified from appointment by **section 239F(2)**”. 15
 (2) Section 239R(2) is amended by repealing paragraph (b) and substituting the following paragraph:
“(b) the person named in the resolution as the new administrator has, before the resolution is considered,— 20
“(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 25
“(B) the certificate described in **subparagraph (i)**; and
“(C) an interests statement that complies with **section 316Y.**”
 (3) Section 239R is amended by adding the following subsection: 30
 “(3) A person who is appointed as a replacement administrator under subsection (2) but who has not tabled an interests statement that complies with **section 316Y** commits an offence and is liable on conviction to the penalty set out in section 373(2).” 35

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 5

“(1) This section applies if the office of administrator becomes vacant and a new 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— 10

“(a) books, records, and documents of the company:

“(b) other property of the company: 15

“(c) all claims:

“(d) accounts and records of the administration.

“(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).”** 20

3H **Administrator must report misconduct**

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).” 25

3I **New section 239AP substituted**

Section 239AP is repealed and the following section substituted:

“239AP Administrator must table documents at first creditors’ meeting 30

“(1) The administrator must table at the first creditors’ meeting—

“(a) an interests statement that complies with **section 316Y; and**

“(b) a notice stating that insolvency practitioners are required to be registered, that the Registrar can cancel a 35

person's registration on a number of grounds, 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)** commits an offence and is liable on conviction to the penalty set out in section 373(2).” 5

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(1)**”. 10

3K New section 239ABYA inserted

The following section is inserted after section 239ABY:

“239ABYA Provision of documents and property 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— 15

“(a) books, records, and documents of the company:

“(b) other property of the company: 20

“(c) all claims:

“(d) accounts and records of the administration.

“(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(2).” 25

3L New sections 239ACD and 239ACE substituted

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

“239ACD Who may be appointed 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. 30

“(2) Unless the court orders otherwise, a person is disqualified from appointment as a deed administrator of a company if the per-

son 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 execution of the deed of company arrangement; and 5

“(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 10

“(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). 15

“239ACE What deed administrator must do before appointment

“(1) A person must not be appointed as deed administrator unless that person has—

“(a) consented in writing and has not withdrawn the consent at the time when the deed of company arrangement is executed; and 20

“(b) certified in writing that he or she is not disqualified from appointment by **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**. 25

“(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).” 30

3M When office of deed administrator vacant

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

“(a) resigns under section 239ACI; or 35

“(ab) dies; or”.

(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.**”

3N New section 239ACJA inserted

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The following section is inserted after section 239ACJ:

“239ACJA Provision of documents and property to deed administrator’s successor

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

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“(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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“(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).”

3O Heading to subpart 14 of Part 15A amended

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

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3P Administrator must file accounts

(1) Section 239ACZ(3)(a) is amended by omitting “payments” and substituting “payments, including payer and payee details”.

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(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).”

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3Q New section 239ACZA inserted

The following section is inserted after section 239ACZ:

“239ACZA Administrator and deed administrator must file summary report

“(1) This section applies to—

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“(a) a person who was the administrator at the end of an administration; and

“(b) a person who was 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.

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“(3) The summary report must contain the information prescribed for the purpose of this section by regulations made under **section 395(1)(cba).**

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“(4) A person who fails to comply with **subsection (2) commits an offence and is subject to the penalty set out in section 373(2).”**

3R Administrator may seek directions

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

4 Prohibition order

Section 239ADV is amended by adding the following subsection:

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“(8) If the Court makes an order under subsection (1), the Registrar of the Court must notify the Registrar of Companies of the order.”

4 Prohibition order

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

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“(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.”
- (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 subsection:
- “(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.” 10
- (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”. 15
- 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)**”. 20
- 4B Interpretation**
Section 240(1) is amended by inserting the following definition in its appropriate alphabetical order:
“**liquidator** means the person who is appointed the liquidator of a company in liquidation”. 25
- 4C Liquidator to summon meeting of creditors**
Section 243(2)(a) is amended by omitting “report and notice” and substituting “report, interests statement, and notices”. 30
- 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”.

4E Other duties of liquidator

(1) Section 255(2)(c)(ii) is amended by adding the following subparagraphs:

“(D) an interests statement that complies with **section 316Y**; and

“(E) 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”.

(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.

“(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).”

4F Duties in relation to accounts

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).”

4G New section 256A inserted

The following section is inserted after section 256:

“256A Duties in relation to company funds

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

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

“(b) a trust account.

- “(2) However, the liquidator may invest, in a registered bank, or in Government securities or any other securities as authorised by the court, any amount that is—
- “(a) standing to the credit of the company in the bank account or trust account; and 5
- “(b) not required for the time being to meet claims made against the company.
- “(3) All dividends, interest, and other profits from the investments described in **subsection (2)** must, as soon as practicable after they are received, be paid into the bank account or trust account. 10
- “(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).”
- 4H Duties in relation to final report and accounts** 15
- (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” 20
- (2) Section 257(1) is amended by adding the following paragraph:
- “(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)**.” 25
- (3) Section 257 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).” 30
- 4I Heading above section 280 amended**
- The heading above section 280 is amended by omitting “Qualifications” and substituting “Appointment”.

5 Qualifications of liquidators

- (1) Section 280(1) is amended by inserting the following paragraph after paragraph (c):

“(caa) a person who is the spouse, civil union partner, de facto partner, child, or parent of a person specified in paragraph (c).”

- (2) Section 280(1)(cb) is amended by omitting “any of its directors, or any of its secured creditors” and substituting “or any of its directors”.

- (3) Section 280(1) is amended by adding the following paragraphs:

“(n) a person who is prohibited from acting as an insolvency practitioner by a notice given under **section 386G(1)(a)**:

“(o) a person who is restricted in any way from being concerned or taking part, whether directly or indirectly, in the insolvency of an overseas company under an order made, or by a notice given, under a law of a prescribed country, State, or territory outside New Zealand:

“(p) a person who is a debtor participating in the no asset procedure under subpart 4 of Part 5 of the Insolvency Act 2006:

“(q) a person who is subject to a summary instalment order made under section 343 of the Insolvency Act 2006:

“(r) a person who is a lawyer and whose name has been struck off the roll of barristers and solicitors under section 242(1)(c) of the Lawyers and Conveyancers Act 2006:

“(s) a person who is an accountant and whose membership of the Institute of Chartered Accountants of New Zealand has been revoked or suspended by that Institute’s Disciplinary Tribunal:

“(t) a person who has been convicted of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961).”

5 New section 280 substituted

Section 280 is repealed and the following section substituted:

“280 Who may be appointed 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.

“(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, auditor, or receiver of the company or of a related company:

“(c) a person who is a relative of a person described in **paragraph (b)**:

“(d) a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation,—

“(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.

“(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

“(b) if all the creditors consent to the appointment of the person in question; or

“(c) if, within 20 working days before the person’s appointment as liquidator,—

“(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.

“(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).”

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)**”.

5B **New section 282 substituted**

5

Section 282 is repealed and the following section substituted:

“282 What liquidator must do before appointment

The appointment of a person, other than an Official Assignee, as liquidator is of no effect unless the person has—

“(a) consented in writing to the appointment; and

10

“(b) certified in writing that he or she is not disqualified from appointment by **section 280(2)**.”

5C **Vacancies in office of liquidator**

(1) Section 283 is amended by repealing subsection (1) and substituting the following subsection:

15

“(1) The office of liquidator becomes vacant if the person holding office—

“(a) resigns under subsection (2) or (3); or

“(b) dies; or

“(c) becomes disqualified under **section 280(2)**; or

20

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

(2) Section 283(5) is amended by omitting “Official Assignee for New Zealand” and substituting “Registrar”.

(3) Section 283 is amended by repealing subsection (6) and substituting the following subsection:

25

“(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 liquidator.”

(4) Section 283(7) is amended by omitting “, or the Official Assignee for New Zealand”.

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(5) Section 283(9) is repealed.

5D **New section 283A inserted**

The following section is inserted after section 283:

“283A Provision of documents and property to liquidator’s successor

“(1) This section applies if the office of liquidator becomes vacant and a new 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.

“(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).”**

5E New section 285 substituted

Section 285 is repealed and the following section substituted:

“285 Meaning of failure to comply

In section 286, **failure to comply means a failure of a person to comply with an enactment, rule of law, or court order, to the extent that it applies to the person in the person’s capacity as an insolvency practitioner.”**

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)**”.**

(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”.

(2) Section 286 is amended by adding the following subsection:

~~“(10) If the Court makes an order under subsection (5), the Registrar of the Court must notify the Registrar of Companies of the order.”~~

7 Establishment of Liquidation Surplus Account

Section 316(4) is amended by adding “; or” and also by adding the following paragraph: 5

“(c) 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 sections 386G to 386S~~ (which relate to persons prohibited or restricted from acting as insolvency practitioners) under this Act or the Receiverships Act 1993 in relation to insolvency practitioners.” 15

7A New Part 16A inserted

The following Part is inserted after section 316B:

“Part 16A

“Insolvency practitioners

“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.” 25

“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,—

“(a) review the operation of this Part since the commencement of this section; and

“(b) prepare a report on the review for the Minister.” 30

- “(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.
- “(3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives. 5
- “(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 10
“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 15

“Registration of insolvency practitioners

“316E Insolvency practitioners must be registered

- “(1) A person must not, unless the person is a registered insolvency practitioner,— 20
“(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). 25
- “(3) This section does not apply to an Official Assignee.

“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. 30
- “(2) However, unless the court orders otherwise, a person is not eligible to be a registered insolvency practitioner if the person—
“Specific prohibitions
“(a) is prohibited from acting as an administrator in a current or other administration, or a deed administrator of 35

- 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: 5
- “(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): 10
- “(ii) been convicted of an offence against **section 316G(5) or 316L(4)**:
- “*Expulsions from relevant professional bodies*
- “(d) is a lawyer whose membership of the New Zealand Law Society is revoked or suspended: 15
- “(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: 20
- “*Prohibitions from being director*
- “(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): 25
- “(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: 30
- “*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: 35
- “(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:

“Other

“(l) has been convicted of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961):

5

“(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.

“316G Application to be registered

“(1) A person who wishes to be a registered insolvency practitioner may apply to the Registrar in writing.

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“(2) The application must include the following:

“(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).

15

“(3) The application must be accompanied by the following:

“(a) the application fee (if any) prescribed by regulations for the purposes of this section:

20

“(b) certification by the person that he or she is eligible to be an insolvency practitioner.

“(4) The application must include or be accompanied by any other information or documents prescribed by regulations for the purposes of this section.

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“(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.

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“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—

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- “(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.

5

“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**.

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- “(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

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

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.

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

- “(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.

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- “(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.** 5
- “(2) The annual confirmation must—**
- “(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** 10
 - “(c) confirm that the person is still eligible under **section 316F** to be a registered insolvency practitioner; and**
 - “(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** 15
 - “(f) include, or be accompanied by, any other information or documents prescribed by regulations for the purposes of this section.**
- “(3) Despite **subsection (2)(a)**, a registered insolvency practitioner—** 20
- “(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**.** 25
- “(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.** 30

“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 require-** 35

ments set out in **section 316O**, if the Registrar is satisfied that the person is—

“(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

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“(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.

“(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**.

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“(3) As soon as practicable after cancelling a person’s registration, the Registrar must—

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“(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.

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“(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.

“**316N Person may request that Registrar cancel registration**

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“(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.

“(2) As soon as practicable after receiving the request, or on a future date requested by the person, the Registrar must—

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“(a) cancel the person’s registration; and

“(b) remove the person’s details from the register; and

“(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)**.**

“(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.** 5

“(3) The Registrar must—

“(a) give the person at least 20 working days’ written notice (the **notice period) of the following matters:** 10

“(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

“(b) give the person the opportunity to object, in writing, during the notice period; and 15

“(c) consider any objections made by the person.

“316P Effect of cancelled registration on current administrations and liquidations

“(1) This section applies if— 20

“(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. 25

“(2) The Registrar must appoint another person (person B**) to act as the administrator, deed administrator, or liquidator (as the case may be).** 30

“(3) The Registrar must not appoint a person under **subsection (2) who is not eligible to be appointed—**

“(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** 35

“(c) under **section 280, if the person is to act as a liquidator.**

“(4) Person B must, as soon as practicable after being appointed,—

“(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): 5

“(ii) that person A is no longer eligible to act as an insolvency practitioner because the Registrar has cancelled that person’s registration: 10

“(iii) the grounds on which the Registrar cancelled person A’s registration; and

“(b) if appointed as an administrator, comply with section 239T.

“Subpart 2—Register of insolvency practitioners 15

“316Q Register of insolvency practitioners

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

“316R Operation of and access to register 20

“(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.

“(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. 25

“316S Purposes of register

The purposes of the register are—

“(a) to enable members of the public to— 30

“(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. 5

“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); 10
“(c) the name and contact details of any relevant profes-
sional bodies of which the person is a member (for ex-
ample, the New Zealand Institute of Chartered Account-
ants or the New Zealand Law Society);
“(d) any other information or documents prescribed by regu-
lations for the purpose of this section. 15

**“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— 20

- “(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: 25

- “(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; 30
“(b) by a person for a purpose specified in **section 316S(a)**;
“(c) 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

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. 5

“316X Crown and Registrar not liable for act or omission

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. 10

“Subpart 3—Miscellaneous

“316Y Interests statement

“(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: 20

“(c) **section 255(2)(c)(ii)(D)**, in the case of a liquidator.

“(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,— 25

“(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 30

“(c) in the case of a liquidator, the company in liquidation or any of its officers, shareholders, or creditors.

“(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, any benefit beyond the remuneration to which he or she is entitled as administrator, deed administrator, liquidator, or receiver, as the case may be. 5

“(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. 10

“(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). 15

“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:

“(ii) a member of a creditors’ committee: 20

“(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,— 25

“(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. 30

“(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). 35

“(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.

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“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.

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“(2) However, **subsection (1)** does not apply to transactions that are an integral part of a continuing business relationship between,—

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“(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

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“(c) in the case of an entity in receivership, that entity and person A.

“(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).

25

“(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)**.”

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8 Penalty for failure to comply with Act

Section 373(2) is amended by adding the following paragraph:

“(v) **section 386G(4)** (which relates to acting as an insolvency practitioner while prohibited by, or in breach of restrictions imposed by, the Registrar).”

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8 Penalty for failure to comply with Act

(1) Section 373(2) is amended by inserting the following paragraphs after paragraph (l):

“(la) **section 239F(4)** (which relates to being appointed as an administrator when disqualified): 5

“(lb) **section 239R(3)** (which relates to replacement administrators tabling an interests statement):

“(lc) **section 239TA(3)** (which relates to administrators providing information and assistance to their successor on vacating office): 10

“(ld) **section 239AI(4)** (which relates to administrators reporting misconduct):

“(le) **section 239AP(2)** (which relates to administrators tabling an interests statement):

“(lf) **section 239ABYA(2)** (which relates to administrators providing information and assistance to liquidators): 15

“(lg) **section 239ACD(4)** (which relates to being appointed as a deed administrator when disqualified):

“(lh) **section 239ACE(2)** (which relates to deed administrators tabling an interests statement): 20

“(li) **section 239ACJA(3)** (which relates to deed administrators providing information and assistance to their successor on vacating office):

“(lj) **section 239ACZ(4)** (which relates to administrators filing accounts): 25

“(lk) **section 239ACZA(4)** (which relates to administrators and deed administrators submitting summary reports):”.

(2) Section 373(2) is amended by inserting the following paragraphs after paragraph (m):

“(maa) **section 255(3C)** (which relates to liquidators sending an interests statement and interim reports): 30

“(mab) **section 256(3)** (which relates to liquidators keeping accounts and records):

“(mac) **section 256A(4)** (which relates to liquidators’ duties in relation to company funds): 35

“(mad) **section 257(3)** (which relates to liquidators submitting final reports and summary reports):”.

(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):
- “(na) **section 283A(3)** (which relates to liquidators providing information and assistance to their successor on vacating office): 5
- “(nb) **section 316Z(3)** (which relates to remuneration of insolvency practitioners):
- “(nc) **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): 10
- “(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: 15
- “(d) **section 316E(2)** (which relates to being appointed or acting as an insolvency practitioner when not registered):
- “(e) **section 316G(5)** (which relates to a false or misleading representation or omission in an application to be registered as an insolvency practitioner): 20
- “(f) **section 316K(2)** (which relates to insolvency practitioners notifying the Register after becoming ineligible for registration): 25
- “(g) **section 316L(4)** (which relates to a false or misleading representation or omission in an insolvency practitioner’s annual confirmation of registration details).”
- 9 New headings and sections 386G to 386S inserted**
- The following headings and sections are inserted after section 386F: 30
- “Registrar may prohibit or restrict persons from acting as insolvency practitioner*
- “386G Registrar may prohibit or restrict persons from acting as insolvency practitioners** 35
- “(1) If the Registrar is satisfied that a person is unfit to act as an administrator, a deed administrator, a liquidator, or a receiver

because of persistent failures to comply or the seriousness of a failure to comply, the Registrar may, by notice in writing given to the person,—

- “(a) prohibit that person from acting as an insolvency practitioner and from being concerned or taking part, whether directly or indirectly, in a current or other administration, liquidation, or receivership; or 5
- “(b) restrict that person to acting as an insolvency practitioner and to being concerned or taking part, whether directly or indirectly, in a current or other administration, liquidation, or receivership only under the supervision of a person, specified by the Registrar, who is currently eligible to be appointed as an insolvency practitioner. 10

“(2) The notice must—

- “(a) state the period of the prohibition or supervision, which must not exceed 5 years; and 15
- “(b) in the case of a notice given under **subsection (1)(b)**, state the name of the supervisor and the terms and conditions of the supervision; and
- “(c) be published in the *Gazette*. 20

“(3) When considering whether to give a notice under **subsection (1)**, the Registrar—

- “(a) may take into account a failure to comply that occurred before the commencement of this section; but
- “(b) must not take into account a failure to comply that occurred more than 5 years before the date the notice is given. 25

“(4) A person who acts in contravention of a notice given under this section commits an offence and is liable on conviction to the penalty set out in section 373(2). 30

“(5) In this section,—

“**failure to comply**,—

- “(a) in relation to an administrator or a deed administrator, has the same meaning as in section 239ADV(5); and
- “(b) in relation to a liquidator, has the same meaning as in section 285; and 35
- “(c) in relation to a receiver, has the same meaning as in section 36 of the Receiverships Act 1993

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

- ~~“(a) an administrator;~~
- ~~“(b) a deed administrator;~~
- ~~“(c) a liquidator;~~
- ~~“(d) a receiver.~~

5

~~“386H Registrar must notify person before giving notice under section 386G~~

~~Before giving a notice to a person under **section 386G(1)**, the Registrar must—~~

- ~~“(a) give the person at least 20 working days² written notice of the Registrar’s intention to give a notice, the nature and terms of the proposed notice, and the reasons for it; and~~ 10
- ~~“(b) advise the person of the right to appeal from the Registrar’s decision under section 370; and~~ 15
- ~~“(c) invite the person to make representations within 20 working days of receiving the notice; and~~
- ~~“(d) consider any representations made by the person.~~

~~“386I Registrar may vary or revoke notice given under section 386G~~

20

~~“(1) The Registrar may, by notice in writing given to a person who is subject to a prohibition or supervision notice given under **section 386G(1)**,—~~

- ~~“(a) vary the notice; or~~
- ~~“(b) revoke the notice.~~

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~~“(2) The Registrar must comply with **section 386H** before giving a variation notice under **subsection (1)(a)** unless the person to whom the notice is given waives that requirement by giving written notice to the Registrar to that effect.~~

~~“(3) A notice given under **subsection (1)** must be published in the *Gazette*.~~

30

~~“386J Person subject to supervision notice liable to supervisor for costs of supervision~~

~~“(1) A person who is subject to a supervision notice given under **section 386G(1)(b)** is liable to pay to the supervisor the fees~~

35

and expenses associated with the provision of supervision, which must be reasonable in the circumstances.

- “(2) Any fee or expense payable to the supervisor under this section is recoverable by the supervisor as a debt in any court of competent jurisdiction.

5

“Register of persons prohibited or restricted from acting as insolvency practitioners

“386K Registrar to establish and maintain register

- “(1) The Registrar must establish and maintain a register of persons who are prohibited or restricted from acting as an insolvency practitioner by—

10

“(a) a prohibition or supervision notice given by the Registrar under **section 386G(1)**; or

“(b) a prohibition order made by the Court, after the commencement of this section, under section 239ADV or 286(5) of this Act or section 37(6) of the Receiverships Act 1993.

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- “(2) The Registrar may, but need not, include on the register a person who is prohibited or restricted from acting as an insolvency practitioner by an order described in **subsection (1)(b)** that was made before the commencement of this section.

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“386L 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.

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- “(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.

“Compare: 2008 No 97 s 25

30

“386M Purposes of register

The purposes of the register are—

- “(a) to help members of the public to—

- “(i) find out whether a person is prohibited or restricted from acting as an insolvency practitioner; and
- “(ii) access information about a prohibition or restriction applying to a person; and 5
- “(b) to facilitate the administrative, disciplinary, and other functions of the Registrar under this Act.

~~386N~~ Contents of register

The register must contain the following information about each person on the register (to the extent that the information is relevant): 10

- “(a) the person’s full name and business address:
- “(b) details of the prohibition or restriction to which the person is subject, including—
 - “(i) whether the prohibition or restriction was imposed by the Registrar or the Court: 15
 - “(ii) the Act and section under which the prohibition or restriction was imposed:
 - “(iii) the date on which the prohibition or restriction took effect: 20
 - “(iv) the period of prohibition or restriction:
 - “(v) the date on which the prohibition or restriction expires:
 - “(vi) in the case of a prohibition imposed by the Court, any terms or conditions attached to the prohibition: 25
 - “(vii) in the case of a supervision notice given under **section 386G(1)(b)**, the name of the supervisor and the terms and conditions of the supervision:

~~386O~~ Registrar may amend, omit, remove, or restrict access to information in register 30

- “(1) 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 35
 - “(b) correct a mistake caused by any error or omission on the part of the Registrar or any person to whom the

Registrar has delegated his or her functions, duties, or powers:

- “(2) The Registrar may omit, remove, or restrict access to information about a person contained in the register at his or her discretion if he or she is satisfied that disclosure of the information via the register would be prejudicial to the safety of the person or the person’s family. 5

“386P Searches of register

- “(1) A person may search the register in accordance with this Act.
- “(2) Except as provided in **subsection (3)**, the register may be searched only by reference to the following criteria: 10
- “(a) the full name of a person;
- “(b) any part of the name of a person.
- “(3) The Registrar may search the register by reference to any of the criteria specified in **section 386N**. 15

“386Q Search purposes

- “(1) The register may be searched by a person other than the Registrar 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; 20
- “(b) by a person for a purpose specified in **section 386M(a)**;
- “(c) by a person for the purpose of advising another person in connection with any of the purposes referred to in this section. 25
- “(2) The Registrar may search the register for a purpose specified in **section 386M(b)**.
- “Compare: 2008 No 97 s 32

“386R When search breaches information privacy principle 30

A person who searches the register for personal information for a purpose that is not a purpose set out in **section 386Q** 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.

^{“Compare: 2008 No 97 s 33}

“386S Crown and Registrar not liable for act or omission

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.

^{“Compare: 2006 No 55 s 457”.}

10 Regulations

Section 395(1) is amended by inserting the following paragraph after paragraph (cd):

^{“(ce) prescribing countries, States, or territories outside New Zealand for the purposes of **section 280(1)(o)**.”.}

10 Regulations

Section 395(1) is amended by inserting the following paragraphs after paragraph (cb):

^{“(cba) prescribing information that must be contained in a summary report 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}

^{“(iii) **section 24A(2)** of the Receiverships Act 1993, in the case of a receiver:}

^{“(cbb) prescribing professional bodies for the purpose of **section 316F(2)(f)** (which makes a person ineligible for registration as an insolvency practitioner if the person’s membership of that body has been revoked or suspended):}

^{“(cbc) 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)**:}

^{“(cbd) prescribing information or documents that must be included in or with an annual confirmation for the purpose of **section 316L(2)(f)**:}

“(cbe) prescribing information that must be contained in the register of insolvency practitioners for the purpose of **section 316T(d)**.”.

Subpart 2—Consequential amendments and transitional provisions 5

Consequential amendments

11 Consequential amendments

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

Transitional provisions 10

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: 15
- (b) 3 months after the day on which **section 316E** comes into force.

11B Existing court orders relating to appointments 20

(1) This section applies to a court order that—

- (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 25
- (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 30
 - (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
- (c) 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— 5
- (a) were made under **section 316F(2)** of the principal Act (as inserted by **section 7A** of this Act); and
- (b) provides that the person is eligible to be a registered insolvency practitioner despite the person being ineligible under **section 316F(2)**. 10
- (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.

Part 2

Amendments to Receiverships Act 1993 15

12 Principal Act amended

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

12A Interpretation

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order: 20

“insolvency practitioner means any of the following:

“(a) an administrator or deed administrator (as defined in section 239B of the Companies Act 1993):

“(b) a liquidator (as defined in section 240(1) of the Companies Act 1993): 25

“(c) a receiver

“registered insolvency practitioner means an insolvency practitioner who is registered under **section 316H** of the Companies Act 1993”.

~~13~~ **Qualifications of receivers** 30

- (1) Section 5(1) is amended by inserting the following paragraph after paragraph (d):

- “(da) a person who is the spouse, civil union partner, de facto partner, child, or parent of a person specified in paragraph (b), (c), or (d).”.
- (2) Section 5(1) is amended by adding the following paragraphs:
- “(n) a person who is prohibited from acting as an insolvency practitioner by a notice given under **section 386G(1)(a)** of the Companies Act 1993:
- “(o) a person who is restricted in any way, from being concerned or taking part, whether directly or indirectly, in the insolvency of an overseas company under an order made, or by a notice given, under a law of a prescribed country, State, or territory outside New Zealand:
- “(p) a person who is a debtor participating in the no asset procedure under subpart 4 of Part 5 of the Insolvency Act 2006:
- “(q) a person who is subject to a summary instalment order made under section 343 of the Insolvency Act 2006:
- “(r) a person who is a lawyer and whose name has been struck off the roll of barristers and solicitors under section 242(1)(c) of the Lawyers and Conveyancers Act 2006:
- “(s) a person who is an accountant and whose membership of the Institute of Chartered Accountants of New Zealand has been revoked or suspended by that Institute’s Disciplinary Tribunal:
- “(t) a person who has been convicted of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961).”.
- (3) Section 5(3) is amended by omitting “A” and substituting “Except as provided for in **subsection (4)**, a”.
- (4) Section 5 is amended by adding the following subsections:
- “(4) A person who contravenes **subsection (1)(n)** commits an offence and is liable on summary conviction to the penalty set out in section 373(2) of the Companies Act 1993 (being a fine not exceeding \$10,000).
- “(5) In **subsection (1)(o)**, **prescribed country, State, or territory outside New Zealand** means a country, State, or territory outside New Zealand that is prescribed, for the purposes

of **section 280(1)(o)** of the Companies Act 1993, by regulations made under **section 395(1)(ce)** of that Act.”

13 New section 5 substituted

Section 5 is repealed and the following section substituted:

“5 Who may be appointed receiver

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

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

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“(a) a mortgagee of the property in receivership:

“(b) a person who is, or who has within the period of 2 years immediately preceding the commencement of the receivership been,—

“(i) a director of the grantor; or

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“(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 the commencement of the receivership, an interest, whether direct or indirect, in—

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“(i) a share issued by the grantor; or

“(ii) 5% or more of any class of shares issued by the mortgagee of the property in receivership:

“(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):**

25

“(e) a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver.

“(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.”**

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13A New section 6A inserted

The following section is inserted after section 6:

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“6A What receiver must do before appointment

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)**.”

13B Notice of appointment

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- (1) Section 8(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(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”.

15

- (2) Section 8(1)(b) is amended by adding the following subparagraph:

“(v) the notice referred to in **paragraph (a)(ii)**.”

13C Vacancy in office of receiver

- (1) Section 11 is amended by repealing subsection (1) and substituting the following subsection:

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“(1) The office of receiver becomes vacant if the person holding office—

“(a) resigns under subsection (2); or

“(b) dies; or

25

“(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.”

- (2) Section 11 is amended by repealing subsections (3) and (4) and substituting the following subsections:

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“(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,—

“(a) as soon as practicable,—

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“(i) give public notice of the vacancy; and

- “(ii) give written notice of the vacancy to the person by whom the receiver was appointed; 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 the Registrar for registration in the register of charges. 5
- “(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)**.” 10
- (3) Section 11(6) is repealed.
- (4) Section 11(8) is amended by omitting “\$5,000” and substituting “\$10,000”.
- 13D New section 11A inserted** 15
- The following section is inserted after section 11:
- “11A Provision of documents and property to receiver’s successor**
- “(1) This section applies if the office of receiver becomes vacant and a new receiver is appointed. 20
- “(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. 25
- “(3) A person who fails to comply with **subsection (2)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.”
- 13E Duty in relation to money** 30
- 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.” 35

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.”

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13G Further reports by receiver

- (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—

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“(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.”

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

“(e) the receiver’s receipts and payments since the date of any previous report, including payer and payee details; and

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“(f) the aggregates of the receiver’s receipts and payments since the day on which the receiver was appointed.”

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

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13H New section 24A inserted

The following section is inserted after section 24:

“24A Summary report by receiver

- “(1) The person who was a receiver at the end of a receivership must, as soon as practicable after completing his or her duties in relation to the receivership, provide to the Registrar, in the manner specified by the Registrar, a summary report on the receivership.

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- “(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.

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“(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.”

13I New section 36 substituted

Section 36 is repealed and the following section substituted: 5

“36 Meaning of failure to comply

In section 37, **failure to comply** means a 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:

“(a) the deed, agreement, or order of the court by or under which the receiver was appointed:

“(b) an enactment:

“(c) a rule of law:

“(d) a court order.”

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15

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)**”.

(1) Section 37 is amended by repealing subsection (6) and substituting the following subsection: 20

“(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 25

“(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.”

(2) Section 37 is amended by adding the following subsection:

“(10) If the Court makes an order under **subsection (6)**, the Registrar of the Court must notify the Registrar of Companies (appointed in accordance with section 357(1) of the Companies Act 1993) of the order.” 30

(2) Section 37(9) is amended by omitting “Official Assignee for New Zealand who must keep it on a public file indexed by ref- 35

erence to the name of the receiver concerned” and substituting
“Registrar”.

15 Schedule amended

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

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“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.

10

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

15

Schedule**s 11****Consequential amendments****Privacy Act 1993 (1993 No 28)**

Item relating to the Companies Act 1993 in Part 1 of Schedule 2: omit “and 360” and substitute “360, and **386K**”

5

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

Schedule 1: insert the following item in its appropriate alphabetical order:

Companies Act 1993

Section 386K

Part 1

10

Amendment to Act**Privacy Act 1993 (1993 No 28)**

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

Part 2

15

Amendments to regulations**Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)**

Regulation 29: revoke.

Regulations 31 and 32: revoke.

20

Regulation 34: revoke.

Regulations 37 and 38: revoke.

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

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

25

Insolvency Practitioners Bill

Legislative history

27 April 2010
24 August 2010

Introduction (Bill 141–1)
First reading and referral to Commerce Committee
