

Insolvency Practitioners Regulation Act (Prescribed Minimum Standards for Accreditation) Notice 2020

Pursuant to section 22 of the Insolvency Practitioners Regulation Act 2019, the Registrar of Companies gives the following notice.

Notice

1. Title and Commencement

(1) This notice is the Insolvency Practitioners Regulation Act (Prescribed Minimum Standards for Accreditation) Notice 2020.

(2) This notice comes into force on the day after its notification in the *New Zealand Gazette*.

2. Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Insolvency Practitioners Regulation Act 2019

appeals panel means any body, other than a New Zealand Court, to whom an appeal from a decision of the disciplinary body or another appeals panel can be made

applicant means a person applying to be an accredited body

committee means any board, committee, panel, advisory group or other similar body, whether comprised of members of the governing body, staff, external people or a combination of those people; and includes the disciplinary body and any appeals panel

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

conduct rules means the rules of the accredited body which regulate the conduct of members, or any class of members, of the accredited body, and includes any code of conduct or code of ethics with which members of the accredited body must comply

constitution means the constitution if the accredited body is a company, the society's rules if the accredited body is an incorporated society or, in any other case, a document which has equivalent status to the constitution of a company

disciplinary body has the meaning given to that term in the Act

governing body means the board of directors if the accredited body is a company or, in any other case, the group of persons occupying positions that are comparable with those of the directors of a company, acting individually or collectively.

(2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

3. Prescribed Minimum Standards

(1) An applicant for accreditation must meet, or demonstrate it will on becoming accredited meet, the following minimum standards:

Governance and Organisational Structures

(a) The applicant must have an adequate and effective organisational structure and governance arrangements, which will support the adequate and effective performance of the regulatory functions of an accredited body, including:

(i) having an adequate constitution that sets out the responsibilities and authority of the governing body, including providing the governing body with sufficient authority and powers to effectively govern the organisation in accordance with its mandate and objectives and to otherwise ensure the obligations of the organisation are appropriately discharged;

(ii) having a clearly defined organisational mandate and objectives, which are consistent with the purposes of the Act and provide a basis for the applicant to perform regulatory functions under the Act;

(iii) having a governing body that is responsible and accountable for ensuring the sound management of the entity, and which ensures the sound management of the entity, in accordance with its mandate and objectives, including ensuring regulatory systems are adequate and effective, and regulatory functions are appropriately and effectively carried out in accordance with those regulatory systems;

(iv) having adequate and effective requirements, policies and processes regarding the composition of, and appointments to, the governing body, including ensuring that the governing body includes an acceptable number or proportion of appropriate independent directors;

(v) having any committees which are necessary or desirable for the proper and effective governance of the

NEW ZEALAND GAZETTE

organisation or for the adequate and effective performance of regulatory functions under the Act, including ensuring the role, responsibilities, authority and membership of each of those committees is appropriate, and each committee is subject to appropriate reporting obligations and oversight by the governing body, or the applicant's management;

(vi) ensuring the role, responsibilities, authority, membership criteria, and reporting and oversight arrangements for all committees which have a role in the governance of the organisation or a role in relation to regulatory functions under the Act are set out in the constitution or terms of reference approved by the governing body in accordance with the constitution;

(vii) having an appropriate internal structure that ensures responsibility for work related to regulatory functions is clearly and appropriately assigned, the authority and powers of staff at each level are clearly defined and appropriate, and the reporting lines and systems for accountability are adequate and effective; and

(viii) where the applicant's functions or powers are delegated, having adequate and effective systems, policies and processes for granting and documenting the delegations, ensuring any delegations granted are appropriate, and overseeing the exercise of those delegations.

(b) The applicant must have adequate and effective systems, policies and processes for managing conflicts of interest, which cover members of the governing body, persons appointed to committees, and staff and contractors of the accredited body.

Personnel

(c) The applicant must have adequate and effective systems, policies and processes for ensuring that the members of its governing body, persons appointed to committees, and staff and contractors, with functions or responsibilities relating to the governance of the organisation or to the performance of regulatory functions:

(i) have the skills, knowledge and experience required of their position or role; and

(ii) are fit and proper persons to be involved in the regulation of insolvency practitioners.

(d) The applicant must have adequate and effective systems, policies and processes for ensuring that the members of each committee or team responsible for performing regulatory functions collectively have the skills, knowledge and experience required to adequately and effectively perform the functions of that committee or team in accordance with relevant regulatory systems.

Resources to Perform Regulatory Functions

(e) The applicant must be financially sustainable, including:

(i) having sufficient income to meet its expenses;

(ii) having sufficient financial resources to meet any necessary, planned or committed capital expenditure (including any costs associated with implementing systems, policies and processes, or creating or obtaining infrastructure, required for the purposes of the Act); and

(iii) having sufficient access to funds to accommodate reasonable but unforeseen expenditure demands.

(f) The applicant must allocate sufficient, appropriate resources (including financial, technological, and human resources) for the performance of its regulatory systems, such that its regulatory functions can be carried out adequately and effectively.

(g) The applicant's resourcing arrangements must provide sufficient flexibility to allow for changes to the organisation's regulatory systems which are necessary or desirable as a result of changes to external circumstances or where potential improvements are identified.

(h) The applicant must have a physical presence in New Zealand and must identify which of its regulatory functions will be:

(i) performed in New Zealand;

(ii) partially performed in New Zealand, but carried out with support from overseas; or

(iii) performed from outside New Zealand.

(i) The New Zealand-based branch or office must be adequately resourced for the functions carried out at that branch or office.

(j) Where any regulatory function is performed, or supported, from outside New Zealand, the applicant must ensure that the regulatory function will be performed to at least the same standard as if it were performed wholly in New Zealand, including that regulatory systems relating to that function are adequate and effective.

(k) Where the performance of a regulatory function relies, in whole or in part, on resources or support from outside New Zealand, the applicant must demonstrate that the resources or support will continue to be available for as long as they are required for the adequate and effective performance of that regulatory function.

Internal Compliance Procedures

NEW ZEALAND GAZETTE

(l) The applicant must have adequate and effective systems, policies, and processes for ensuring it complies with, and for monitoring its compliance with, its obligations as an accredited body, including:

- (i) having adequate and effective governance of the organisation;
- (ii) having adequate and effective regulatory systems; and
- (iii) complying with its conditions of accreditation and its obligations under the Act; and for rectifying any detected non-compliance with its obligations as an accredited body, or its systems, policies and procedures for meeting its obligations as an accredited body.

(m) The applicant must have adequate and effective systems, policies and processes for reviewing and, as appropriate, improving its systems, policies and processes relating to its performance of regulatory functions and its other functions and obligations as an accredited body.

(n) The applicant must have an adequate and effective process for setting or amending systems, policies and processes relating to its performance of regulatory functions and its other functions and obligations as an accredited body, including policies and processes which ensure appropriate consultation is undertaken.

Standing With Other Regulators

(o) Where an applicant has a regulatory role in relation to other professional services in New Zealand or overseas, the applicant must be in good standing with the relevant regulators.

Policies

(p) The applicant must have adequate documented policies regarding the exercise of all key judgements and discretions relating to its regulatory functions under the Act, which reflect the organisation's delegation framework and facilitate effective performance of its regulatory functions and must have processes for reporting on the application of those policies.

Regulatory Systems - Membership, Licensing and Registrations

(q) The applicant must have membership criteria, processes for granting membership, and conduct rules which are appropriate and effective in terms of the role of an accredited body and the purposes of the Act.

(r) The applicant must have appropriate documented policies in relation to how it acts, or proposes to act, in imposing, varying, removing or adding conditions to insolvency practitioner licences, and must have processes for reporting on the application of those policies.

Regulatory Systems - Monitoring and General Oversight

(s) The applicant must have adequate and effective systems, policies and processes for:

- (i) monitoring licensed insolvency practitioners' compliance with conditions of license;
- (ii) monitoring continued compliance with the minimum standards for licensed insolvency practitioners;
- (iii) monitoring compliance with other requirements applying to licensed insolvency practitioners under the Act and any other enactment that relates to the conduct of insolvency engagements;
- (iv) monitoring compliance with the applicant's conduct rules by licensed insolvency practitioners; and
- (v) identifying and monitoring other current or emerging issues in the insolvency profession.

(t) The applicant must have adequate and effective processes for developing and implementing strategies to address, or mitigate, issues of non-compliance or other matters of concern, including those identified through complaints and monitoring.

Regulatory Systems - Complaints, Enquiries, Investigations and Discipline

(u) The applicant's systems, policies and processes must ensure that principles of natural justice are applied at all times in relation to handling complaints, conducting enquiries and investigations, and conducting disciplinary proceedings (including appeals in relation to disciplinary proceedings).

(v) The applicant's systems, policies and processes must ensure accountability and transparency in relation to handling complaints, conducting enquiries and investigations, and conducting disciplinary proceedings (including appeals in relation to disciplinary proceedings).

(w) The applicant's systems, policies and processes relating to disciplinary proceedings, including decisions whether to commence disciplinary proceedings, must ensure a principled, fair and consistent approach to addressing misconduct.

(x) The applicant must have a sufficiently independent disciplinary body for the purposes of section 16(2) of the Act.

(y) Any appeals panels must be sufficiently independent, including of the disciplinary body and any other appeals panels who have previously considered matter before it.

(z) The range of penalties which may be imposed by the disciplinary body and any appeals panels must include penalties which are sufficiently stringent to address the most serious breaches, and must include a scale of penalties which ensures a proportionate penalty can be imposed in relation to all breaches.

NEW ZEALAND GAZETTE

General Obligations

(za) The applicant must have adequate and effective systems, policies and procedures which will enable it to comply with its conditions of accreditation, and to otherwise perform its functions and meet its obligations under the Act.

Dated at Wellington this 23rd day of March 2020.

ROB RENDLE, Deputy Registrar of Companies.

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