

Insolvency Practitioner Regulation Competition,  
Trade and Investment Branch  
Ministry of Economic Development  
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Dear Sir

This submission is being made in my own personal capacity. I, John Whittfield, the managing partner for McDonald Vague, insolvency and business recovery specialists Auckland, I am immediate past chairman of Insol New Zealand and have previously made submissions to the Insolvency Law Reform Act. I now present my submission in relation to Insolvency Practitioner Regulation relative to the questions that have been presented in the information that was provided by the Ministry of Economic Development. It should be noted that I have been a liquidator or receiver of in excess of 375 different assignments of varying degrees in size from small SNE's through to the latest appointment as liquidator of Feltex Carpets Limited (in receivership and in liquidation). I will first address the questions raised by the submission paper in the order in which they have been tabulated.

*Question One: Do you think a competitive licensing system, in addition to the measures already contained within the insolvency law reform bill, will effectively manage the risk associated with corporate insolvency in relation to competence and professionalism of practitioners? If not, why not? What other factors should be considered?*

The question is twofold<sup>1</sup>; it is asked if a competitive licensing system would suit the New Zealand professionals that effectively operate as insolvency practitioners in New Zealand. Unfortunately because of the relatively small number of professional insolvency practitioners within New Zealand at present, any introduction of a competitive system would bring in regulation or licensing may allow that those with little or no experience gain recognition without having professional experience required to meet such a situation as an Administration. To overcome this problem it may be appropriate for recognition of only those who have undertaken more than ten appointments in the last two years. Any other person who does not qualify as to this criteria would and should be required to meet a criteria set out by the professional body before recognition can be obtained. This will include meeting specific training requirements to attain the status of registration. It is essential that any registration/licensing designation can only be attained after completing a prescribed training course and that would be an ongoing requisite for any person seeking to be recognised into the future. The significant problems at present are that there is no requirement for "core" insolvency knowledge to be taught at any learning institution at present in New Zealand. Insolvency had been removed from the Bachelor of Commerce degree as a core subject some years ago. It should be noted that because of New Zealand's very low number of

professionals and of interested parties seeking specific training, many learning institutions do not run courses that would be appropriate or on a regular basis.

On this basis a criteria needs to be set for initial entry and that as there is a requirement for ongoing professional development through a recognised body and that the time spent on professional development is actually registered and forwarded to the appropriate body who can track professional development times.

This is very similar to the CPD hours as required by the Institute of Chartered Accountants of New Zealand as part of the registration of continuing to be a CA. Any criteria set must be administered by a recognised professional body. A cost associated with this requirement would need to be identified. This may be dealt with in the first instance by funding from ICANZ/Insol in conjunction with a similar funding from the government regulatory body. i.e. our New Zealand Companies Office.

*Question Two: What impact (positive and negative) do you see might be associated with such a scheme?*

With the introduction of such a scheme and in conjunction with new clauses included in the insolvency reform act (i.e. reporting and debtor friendly practitioners) there would need to be an immediate need for all practitioners meeting the criteria for entry be named on a specific public register and therefore would be recognised for their professional status. A negative aspect would be that it would immediately create a barrier for new professionals wanting to follow this specialisation. That immediate barrier could be overcome by setting specific training courses as is done in Australia with the IPAA membership and the South Queensland University. This has been operational in Australia since the time of the introduction of regulation licensing that was introduced with the voluntary administration regime in Australia in 1993.

The impact may affect new entrants on the date of inception but would also be to their benefit that they would have to meet a prescribed criteria. It would be important to ensure that the appropriate training facilities are put in place prior or during a lead in period before licensing/regulation/registration is mandatory.

*Question Three: In terms of entry requirements what key features would you expect to see in the licensing system of approved professional bodies and why?*

To have a prescribed level of competency it would be essential that sufficient understanding of the legal requirements of such a profession are met and that there would be a need for considerable work to be done as to<sup>1</sup> identifying training needs to meet a standard and <sup>2</sup> levels of competency attained i.e. following the Australian example of a three level programme for one IEP Professional qualification, two IIP Introduction to Insolvency and three regional based CLE/CPE programmes. Refer to IPAA December 2006 edition.

*Question Four: Should ongoing professional development or ongoing competency testing be mandatory feature of an approved body system and processes? If so, do you have any views on the form this requirement should take?*

This is essential for profession to maintain its standards and this is a requirement that would also be essential in meeting the ongoing requirements to meet the registration/licensing scheme.

This ongoing requirement should/could be met by ICANZ and the special interest group INSOL as part of the ongoing membership to that body. Cost could become a factor and would be a negative for a standalone New Zealand body.

It should be noted that within the last two years the Institute of Directors of New Zealand introduced an accreditation standard and that it needs to be renewed every two years at a cost to the individual to maintain their status. I would propose that any registration standards that are adopted for insolvency practitioners that they are to be kept current and a similar requirement to this put in place i.e. renewable every two years.

To overcome some of these problems an affiliation with the IPAA could be an alternative that would overcome the negative aspects of a standalone New Zealand body. It would also be unacceptable for ICANZ or any other professional body to underwrite ongoing costs. For such a small number of professionals.

*Question Five: Do you have any other views on variations to the proposal that could be used to manage risks effectively?*

1. All qualified professionals should be placed on a register that is open to the public as a group meeting requirements of the profession.
2. With the introduction of VA to New Zealand there needs to be an expected level of expertise and this should and can be a recognised that those who meet the criteria are accessible to any person or organisation who needs their services for such a regime to operate.
3. Renewal of registration could overcome some of the risks or perceived risks re qualification to meet the standards required.
4. There would need to be a disciplinary procedure put in place as to deal with complaints. This problem has been identified that any practitioner who is not a member of ICANZ or the Law Society of New Zealand cannot be disciplined under the present status of the law with the exception that the aggrieved party can seek orders from the court to rectify failures of an insolvency practitioner. Unfortunately the costs associated with this method of redress is at the cost of the complainant who has lost a significant amount of money. There are also time delays for this procedure which may be unacceptable to the complainant.

Any disciplinary procedures must be clearly determined and that failure to meet requirements as the proper standards and procedures will result in deregistration of the member. Again we should look to Australia as to the process and procedures if such a situation arises. Any deregistration of a practitioner should be notified to the Companies Office and any appointment of such a practitioner should not be accepted if they have been struck off. Deregistration should only occur after a time to rectify the complaint and also the member should be subject to a practice review on the receipt of a complaint and a further practise

review within six months to monitor improvements/further education and procedures also required by the standards authority who administer the register.

*Question Six: What would be appropriate lead in time that would ensure a smooth transition to a new regime?*

An appropriate lead in time would be six months for those that would qualify at the inception of a registrar. As stated previously this would be open to those who have undertaken more than ten appointments in the last two years. Any party that does not meet that criteria would be in the position to take a prescribed educational training. This training's availability would need to be available at the time of inception, i.e. the start of the six month period. At present I know of only one professional firm that could meet this level of training.

If it is seen that this firm's introduction programme to insolvency would be acceptable by the industry and further that it would be acceptable and meet criteria of the NZQA standards and approval it could form the basis of a prescribed level of training.

*Question Seven: Are there any factors that you consider to be relevant to the transitional arrangements as stated previously in the discussion paper any person prosecuted for a criminal offence would automatically not receive recognition.*

It should be understood that funds are collected as a result of any specific type of appointment held in trust for the beneficiaries of that appointment after fair and reasonable costs of meeting with the requirements of the assignment are charged. Surplus funds would be available to creditors as a whole and are distributed according to statute. It should be noted that the requirement of the liquidator, receiver and administrator all require different skill sets and that registration must recognise this. It would also be necessary that the practitioners carry a sufficient level of professional indemnity insurance.

There is a need for the preparation of documents that set out best practice standards before and during the introduction of the six month transitional period. It is important that these standards are in place at the end of the transition period of six months.

This has been identified by INSOL New Zealand and at present a draft is being prepared.

Registration would require a subscription cost to the individual to be a member of the professional group. This should be set at a level that recognised the level of professionalism that is required to meet the level of competency required. We should refer again to the Australian system for guidance in relation to this matter.

I would endorse and strongly support that any person who had been prosecuted of a criminal offence would automatically not receive recognition especially if the criminal offence be of a nature related to the theft or fraud.

No court should be able to appoint a person who had been prosecuted of a criminal offence.

Yours faithfully

John Whittfield  
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