



**ASIC**

Australian Securities & Investments Commission

## Guide for referees

You have been asked by an individual who has applied for registration as a liquidator under s20-30 of Sch 2 to the *Corporations Act 2001* (Corporations Act) to provide a referee report for that application. This document provides guidance for the referee.

Before you sign your referee report you should:

- read a copy of the application for registration and the supporting material; and
- read Section B of Regulatory Guide 258 *Registered liquidators: Registration, disciplinary actions and insurance requirements* (RG 258), which sets out the criteria that must be met to be registered as a liquidator.

In accordance with RG 258.44–RG 258.46, a referee should be:

- a person who directly supervised the applicant's work on external administrations and/or receiverships and receivership and management appointments and who is either a registered liquidator or an appropriately licensed corporate insolvency practitioner in a country where the corporate insolvency laws and practices are comparable to those in Australia; or
- a person who can otherwise attest to the applicant's:
  - knowledge of the powers, functions and duties of a registered liquidator;
  - skill, experience at a senior level, diligence and judgement in corporate insolvency work; and
  - honesty and integrity.

Referees must express opinions about the applicant's ability to perform the duties and functions of a registered liquidator based on the referee's personal knowledge of the applicant and direct observation of the applicant's conduct.

Your comments and opinions should relate to the applicant's current ability to perform the duties of a registered liquidator.

Your referee report will be provided to the committee convened under s20-10 of Sch 2 to the Corporations Act to consider the application, in order to help that committee decide whether the applicant meets the eligibility criteria to be registered as a liquidator.

### SECTION A: Referee's details

*Your report should contain the following details.*

- 1 Provide your full name, address, email address and telephone contact details.
- 2 What is your occupation?
- 3 What is your professional and/or personal relationship to the applicant?
- 4 How long have you known the applicant in each of these relationships?
- 5 Provide details of when, how long and to what extent you have directly supervised the applicant's work in:
  - (a) external administrations, receivership and receivership and management appointments; and
  - (b) other work areas that provide exposure to the external administration of companies and processes (including bankruptcy) under the *Bankruptcy Act 1966* (Bankruptcy Act).

## SECTION B: Applicant's relevant experience and competencies

*Referees who have directly supervised the applicant's work in external administration, receivership, and receivership and manager appointments (and, where relevant, exposure to processes under the Bankruptcy Act) are expected to provide detailed responses to the following questions. Other referees are expected to respond to the questions to the extent they are able, and to explain in their response any limitations on their ability to respond more fully.*

*When responding to the following competency-based questions, please use concrete examples to illustrate your responses. Where possible, the examples you give should relate to the relevant employment at a senior level that the applicant has identified in their application, including work involving complex matters.*

- 6 In the context of a 'trade-on', is the applicant able to:
  - (a) control cash flow and formulate realistic cash flow projections?
  - (b) quickly analyse available information and assess whether the business is a going concern?
  - (c) respond to unexpected events and carry out a progressive assessment of commercial risks?
  - (d) efficiently manage staff in their own practice and in the insolvent entity?
- 7 In the context of identifying and realising assets, is the applicant able to:
  - (a) secure and maintain assets?
  - (b) market an asset to achieve an optimal commercial outcome?
  - (c) negotiate the sale of an asset of substantial value?
- 8 In the context of conducting an investigation, is the applicant able to:
  - (a) apply a sceptical and critical approach to situations?
  - (b) appreciate legal responsibilities involved in insolvency work?
  - (c) instruct lawyers in complex matters and respond appropriately to legal advice?
- 9 In the context of managing large and complex matters, is the applicant able to:
  - (a) apply relevant law to practical problems?
  - (b) design solutions and strategies for complex problems and situations?
  - (c) manage large amounts of complex information, competing priorities and multiple administrations?
- 10 In the context of communicating with creditors, is the applicant able to:
  - (a) write reports that are informative and meaningful?
  - (b) clearly communicate complex information to an audience?
- 11 Is the applicant able to:
  - (a) recognise and assess circumstances that might give rise to a conflict of interest for the applicant?
  - (b) respond appropriately when faced with ethical dilemmas?

- 12 In relation to the applicant's examples in their application of complex matters they have been involved in, do you agree:
- (a) that they were complex matters?
  - (b) with the applicant's description of their role in those matters?
- 13 Do you agree with the other information stated in the applicant's application about their corporate insolvency experience?

### SECTION C: Concluding opinions

*Where possible, support your responses to the following questions with examples.*

- 14 In your opinion:
- (a) does the applicant have adequate knowledge, skill and experience, and the diligence and good judgement, to be capable of performing the duties of a registered liquidator?
  - (b) will the applicant have adequate practice resources to be capable of performing the duties of a registered liquidator?
  - (c) is the applicant:
    - (i) honest, and a person of integrity and good reputation?
    - (ii) in all other respects a fit and proper person to be registered as a liquidator?
- 15 Are there any matters or information about the applicant not already identified in your report that you think ASIC should be aware of when considering whether to register the applicant as a liquidator?

*(Please attach separate sheets if needed.)*

### SECTION D: Referee's declaration and signature

*Your report should contain the following acknowledgement and declaration.*

- 16 I acknowledge this report is to be provided to the committee convened under s20-10 of Sch 2 to the Corporations Act to consider the applicant's application.
- 17 I declare that:
- (a) before signing this report:
    - (i) the applicant gave me a copy of their application and the supporting material relating to their relevant employment at a senior level; and
    - (ii) I read Section B of ASIC's Regulatory Guide 258 *Registered liquidators: Registration, disciplinary actions and insurance requirements*; and
  - (b) my opinions in this report are based on my personal knowledge of the applicant and direct observation of the applicant's conduct and work.

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Signature of referee

Date