



**ASIC**

Australian Securities & Investments Commission

INFORMATION SHEET 34

# **How to apply for registration as a liquidator**

**Kit issued in September 2005**

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

# About this kit

## Before you start your application

**1** Take the time to thoroughly read our Policy Statement 186 *External administration: Liquidator registration* [PS 186].

**2** This policy statement outlines our approach to the registration of liquidators and official liquidators under Part 9.2 of the *Corporations Act 2001* (Act) including:

- our approach to the criteria you must meet to become a registered liquidator;
- our approach to what you must do to remain registered as a liquidator; and
- when we will register you under the categories of ‘official liquidator’ or ‘liquidator of a specified body corporate’.

## How to use this kit

**3** This kit provides guidance on:

- the application process for registration as a liquidator (**Section 1**); and
- what information you must submit with your application to help us make an informed assessment about whether to grant it (**Section 2**).

**4** This kit also includes relevant policy statements, pro formas and other attachments that should be used to prepare your application, in particular [PS 186].

**5** As we have noted above, please ensure that you read and understand [PS 186] *before* completing your application.

**6** Due to the small number of applications we receive in a year for registration as a liquidator, we do not accept electronic lodgement of applications at this stage.

# Contents

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<b>About this kit .....</b>	<b>2</b>
<b>Section 1: Information for applicants.....</b>	<b>4</b>
<b>Form of application.....</b>	<b>4</b>
<b>Supporting material.....</b>	<b>4</b>
<b>Where should you send your application? .....</b>	<b>5</b>
<b>How will we deal with your application? .....</b>	<b>5</b>
<b>Proposed grant of registration .....</b>	<b>5</b>
<b>Proposed refusal of registration.....</b>	<b>6</b>
<b>Refusal of registration.....</b>	<b>6</b>
<b>Certificate of registration.....</b>	<b>6</b>
<b>Section 2: Full details of supporting material .....</b>	<b>7</b>
<b>Qualifications: s1282(2)(a).....</b>	<b>7</b>
<b>Winding up experience: s1282(2)(b) .....</b>	<b>8</b>
<b>Capability: s1282(2)(c) .....</b>	<b>8</b>
<b>Fit and proper: s1282(2)(c)/Not a disqualified person:     s1282(4) .....</b>	<b>10</b>
<b>Resident in Australia: s1282(5) .....</b>	<b>11</b>
<b>Security: s1284 .....</b>	<b>11</b>
<b>Referee reports .....</b>	<b>12</b>
<b>Attachments.....</b>	<b>14</b>
<b>Liquidator registration checklist</b>	
<b>Personal capacities for registration as a liquidator—     Corporate insolvency experience</b>	
<b>Statement: Fit and proper person/Not a disqualified     person</b>	
<b>Liquidator registration—Guidance for referees</b>	
<b>Liquidator registration—Pro forma referee report</b>	
<b>Policy Statement 186 <i>External administration:     Liquidator registration</i></b>	
<b>Policy Statement 33 <i>Security deposits</i></b>	
<b>Pro Forma 14 <i>Performance bond liquidator</i></b>	
<b>Pro Forma 221 <i>Liquidator’s undertaking: Pro forma deed     for partners/sole proprietors</i></b>	
<b>Pro Forma 222 <i>Liquidator’s undertaking: Pro forma     deed for employees</i></b>	
<b>Form 903B <i>Application for registration as a liquidator</i></b>	

# Section 1: Information for applicants

Note: For details on how to apply for registration as an official liquidator, see Section C of [PS 186].

## Form of application

**1.1** Your application under s1279(1)(b) for registration as a liquidator must:

- (a) substantially comply with Form 903B;
- (b) include the documents referred to in Form 903B and other information and documents (see paragraph 1.2 and Section 2 of this kit) that we will need in order to decide whether you meet each of the criteria in [PS 186.6];
- (c) be dated not more than 3 months before the date the application is lodged; and

Note: This applies to each document included in the application.

- (d) be accompanied by the prescribed fee: see paragraph 1.3 'Where should you send your application?'.

## Supporting material

**1.2** You must give us information and documents that evidence each of the following matters:

- (a) your qualifications;
- (b) your experience in winding up bodies corporate;
- (c) your personal and practice capacities for performing the duties of a registered liquidator;
- (d) that you are a fit and proper person to be registered;
- (e) that you are not disqualified from managing corporations;
- (f) that you are resident in Australia; and
- (g) your arrangements for complying with security requirements under s1284 of the *Corporations Act 2001* (Act).

You must also provide independent verification by referees of your corporate insolvency experience, and your overall capability, fitness and propriety.

Note: Section 2 of this kit sets out full details of the supporting material you must provide and the preferred formats.

## Where should you send your application?

**1.3** Please send your application together with the prescribed fee of \$377 to:

Liquidator Registration Team,  
Australian Securities & Investments Commission,  
GPO Box 9827, Adelaide SA 5001.

## How will we deal with your application?

**1.4** We will return your application without processing if it does not meet all the criteria listed under 'Form of application': see paragraph 1.1.

**1.5** We will verify at our discretion the information you provide in your application. We may contact the police, relevant professional and industry bodies, Australian Financial Security Authority (AFSA) (formerly ITSA) and your referees to verify the information you provide. We may contact both domestic and overseas authorities as appropriate.

**1.6** If your application is accepted for lodgement, we will publish a statement on the Australian Securities and Investments Commission's (ASIC) website that we have received an application from you for registration as a liquidator, and ask for any comments or objections to your registration to be made to us within 14 days.

**1.7** We will take into account any objections we receive when we decide whether to grant your application. If, as a result of objections we receive, we change our preliminary view and propose to refuse your application, we will take the same steps as if our preliminary view had been that we should refuse your application: see paragraph 1.9

**1.8** We aim to form a preliminary view about whether to grant or refuse your application within 6 weeks of receiving all the information and documents required. However, this time will be affected by:

- (a) whether we are waiting for further information from you about any aspect of the application; and
- (b) how quickly we receive from third parties any confirmation that we may have requested about information in your application.

## Proposed refusal of registration

**1.9** If our preliminary view is that we should refuse your application for registration, we must give you an opportunity to appear at a hearing, make submissions and give evidence on the matter: s1282(10). We will send you a letter:

- (a) stating that we propose to refuse your application;
- (b) identifying the basis for our proposed refusal; and

- (c) asking you to notify us within 7 days whether you wish to appear at a hearing and make submissions and give evidence.

## **Refusal of registration**

**1.10** We may refuse your application if you choose not to appear at the hearing or after holding the hearing. If we refuse it, we must notify you in writing of the refusal and give our reasons: s1282(11). A person whose application for registration has been refused may seek a review of our decision by the AAT: see s1317B.

## **Certificate of registration**

**1.11** If your application is successful, we aim to register you and issue your certificate of registration within 5 business days of being satisfied that you have complied with our policy on the security required under s1284: see s1282(6)(b).

# Section 2: Full details of supporting material

## Qualifications: s1282(2)(a)

### Membership of accounting body: s1282(2)(a)(i)

#### 2.1 You must provide:

- (a) a certified copy of a membership certificate for the relevant body, indicating on its face that the membership is current; or
- (b) a letter from an authorised person in the relevant body confirming that your membership is current.

Note: Alternatively, this evidence may be provided in the document you provide under 'Fit and proper/:1282(2)(c)/ Not a disqualified person: s1282(4)'.

### Australian qualifications: s1282(2)(a)(ii)

#### 2.2 You must provide:

- (a) a certified copy of your statement of academic record from each institution that has given you a qualification on which you rely, which identifies the subjects you have undertaken for that qualification;
- (b) if the statement of academic record in paragraph (a) does not state the name of your qualification, a certified copy of your qualification; and
- (c) if we do not have a standing certification from the institution where you obtained the relevant qualification, a letter from an authorised person at the institution certifying that the subjects shown on your academic record (that you have passed) comprise a 3-year course of study in accountancy and a 2-year course of study in commercial law (including company law).

### 'Equivalent' qualifications and experience: s1282(2)(a)(iii)

#### 2.3 You must provide:

- (a) a statement setting out the qualifications and experience you rely on for your knowledge of accountancy and commercial law (including company law) and the reasons we should treat those qualifications and experience as equivalent to a qualification under s1282(2)(a)(i) or (ii);
- (b) if you are relying on an overseas accounting qualification, an assessment letter from a National Office of Overseas Skills Recognition (NOOSR) authorised assessing authority of the

comparability between your qualifications and an Australian undergraduate degree in accounting;

- (c) a certified copy of your statement of academic record from each institution that has given you a qualification on which you rely, which identifies the subjects you have undertaken for that qualification;
- (d) if the statement of academic record in paragraph (c) does not state the name of your qualification, a certified copy of your qualification; and
- (e) a referee report from the person or people who supervised the experience set out in your statement under paragraph (a) which verifies that experience.

## **Winding up experience: s1282(2)(b)**

2.4 You must include specific information about your experience in winding up bodies corporate in the details you provide under ‘Capability: s1282(2)(c)’.

## **Capability: s1282(2)(c)**

### **Personal capacities**

2.5 To substantiate your personal capacities, you must provide as a minimum:

- (a) a summary of your employment history for the last 10 years (including names of employers, positions held and dates);
- (b) full details of your relevant corporate insolvency experience (see below);
- (c) (if applicable) a certified copy of your certificate of completion of an Australian specialist corporate insolvency course; and
- (d) (if applicable) details of any non-insolvency corporate management experience you have.

Note: For the preferred format for this information, see the ‘Attachments’ to this kit.

### **Corporate insolvency experience**

2.6 You must provide information about your corporate insolvency experience that is sufficiently detailed to enable us to assess whether you satisfy our requirements in [PS 186.19].

Note: For calculating the full-time equivalence of your experience, we will accept as a full-time workload either:

- (a) the usual average annual hours worked by a full-time professional employee in the firm/s where you gained your experience; or
- (b) 1610 hours (being 46 weeks x 35 hours).

**2.7** As a minimum, you will need to:

- (a) identify the years during the immediate past 10 years when you gained the corporate insolvency experience on which you rely, specifying:
  - (i) the name and location of each firm you worked at;
  - (ii) each position you held at the firm and your level of responsibility in that position;
  - (iii) sufficient information about your duties in the more senior positions to demonstrate that your experience has been at a very senior level for at least the equivalent of 3 years full-time over the immediate past 5 years (see [PS 186.54]);
  - (iv) the name of the external administrators you worked for at each firm;
  - (v) the total number of years of corporate insolvency experience (calculated on a full-time basis) that you believe you have; and
  - (vi) the estimated percentage of time over those 10 years spent working directly on external administrations; and
- (b) identify external administrations you worked on at a very senior level, the period you worked on those administrations and the aspects of your work on those administrations that best demonstrate your skill, diligence and judgment. This must include some external administrations you worked on in the immediate past 3 years. You should specifically identify:
  - (i) complex matters that you were directly involved in, how you were involved, and why those matters were complex (see [PS 186.55]); and
  - (ii) how your experience in those particular external administrations demonstrates that you have the specific competencies your referees will report on (see the 'Attachments' to this kit).

Note: For paragraph (b), you do not need to list every single external administration if you have worked at a senior level on many external administrations. Select those that best demonstrate your skill, diligence and judgment, particularly in complex matters.

**Practice capacities**

**2.8** You must provide information that is sufficiently detailed to enable us to assess whether you satisfy our requirements in [PS 186.20]: see also [PS 186.60]–[PS 186.66].

**2.9** To substantiate your practice capacities, provide as a minimum:

- (a) a description of your practice's resources that are or will be available to you for conducting insolvency administrations, including:
  - (i) the number and seniority of specific insolvency staff;
  - (ii) the corporate insolvency experience of those staff;
  - (iii) the internal processes for monitoring and ensuring the continuing adequacy of human and technological resources, ongoing staff supervision and training;
  - (iv) the general business processes, procedures and manuals for the practice, including complaints-handling procedures and risk management systems; and
  - (v) whether you propose to accept appointments to entities located a long way from your principal or other places of practice (e.g. interstate or in remote areas). If so, provide details;
- (b) if you are an employee or consultant, a letter signed by an authorised person in the practice confirming that the practice's resources will be made available to you for external administrations if you are registered as a liquidator;
- (c) if you will be relying at all on staff and/or resources from another practice:
  - (i) details of the extent of that reliance; and
  - (ii) an unconditional written consent signed by an authorised person in the other practice that the relevant staff or other resources of that practice will be made available to you as and when required;
- (d) (if applicable) a copy of your certificate of registration as a trustee under the Bankruptcy Act.

**Fit and proper: s1282(2)(c)/Not a disqualified person: s1282(4)**

**2.10** If you are, or have been at any time in the last 10 years, a member of a relevant professional body, you must provide a letter from an authorised person in each such body specifying:

- (a) whether your membership is current;
- (b) when your membership began;
- (c) if applicable, when and why your membership ceased;

- (d) particulars of any disciplinary action taken against you by the body; and
- (e) particulars of any complaints received by the body about your personal or professional conduct, and whether or not the body took disciplinary action as a result.

**2.11** You must also provide a signed statement as to whether:

- (a) any of the matters in [PS 186.23]–[PS 186.24] apply to you, and, if so, give full particulars. If there are any legal or disciplinary proceedings pending against you, give full particulars; and
- (b) you are, or have been at any time in the last 10 years, disqualified from managing corporations under Part 2D.6, and, if so, give full particulars.

Note: For the preferred format for this information, see samples provided in the ‘Attachments’ to this kit.

## **Resident in Australia: s1282(5)**

**2.12** You must provide particulars of your current address and each address you have lived at during the last 10 years, indicating the approximate dates between which you lived at those addresses.

**2.13** If your addresses show that you have not lived continuously in Australia for the last 3 years, we may require additional evidence that you are residing in Australia on a long-term basis.

## **Security: s1284**

**2.14** You must provide information and documents demonstrating that, if you are registered, you will have in place immediately upon registration:

- (a) a performance bond that complies with Policy Statement 33 *Security deposits* [PS 33]; or
- (b) alternative compensation arrangements that comply with our policy in [PS 33.9A]–[PS 33.9C].

### **Performance bond**

**2.15** If you are relying on this option, you must lodge a security in the amount of \$250,000 in the form of a bond prepared in accordance with Pro Forma 14 *Performance bond liquidator* [PF 14] and [PS 33]: see the ‘Attachments’ to this kit.

**2.16** The bond must be assessed for stamp duty (if necessary) before it is lodged with ASIC, and must be either on the issuer’s letterhead or stamped/sealed by the issuer.

## Alternative compensation arrangements

**2.17** In accordance with [PS 33] we will not take enforcement action against you for failing to lodge and maintain a security if you:

- (a) hold and maintain a public practice certificate from The Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants; and
- (b) have and maintain professional indemnity insurance cover in accordance with the requirements of the relevant body that also meets our requirements.

Note: The minimum acceptable terms of the professional indemnity insurance cover are set out in [PS 33].

**2.18** If you are relying on this option, you must lodge the following documents:

- (a) a deed of undertaking (see Pro Forma 221 *Liquidator's undertaking: Pro forma deed for partners/sole proprietors* [PF 221] and Pro Forma 222 *Liquidator's undertaking: Pro forma deed for employees* [PF 222]);

Note 1: [PF 221] is for partners/sole proprietors and [PF222] is for employees. Please follow the wording of the most relevant pro forma for your circumstances in preparing the deed for lodgement.

Note 2: If you are a consultant to a firm, rather than an employee, please amend clause 1.5 of [PF 222] by substituting the words 'consultant to' for 'employee of'.

- (b) a certificate of currency for the professional indemnity insurance policy under which you are covered, clearly showing the insurer, the level of cover, *whether there is any aggregate limit on the policy* and the expiry date of the cover; and
- (c) a copy of your public practice certificate from a relevant accounting body that is no more than 3 months old. Alternatively, provide a letter from an authorised person in the relevant accounting body confirming that you currently hold the certificate.

**2.19** If your application for registration is successful, we may at any time after you are registered call for proof that you hold a current public practice certificate and/or professional indemnity insurance cover. We also have the right to reimpose the security requirement at any time.

## Referee reports

**2.20** You must name at least two referees in Form 903B and provide us with referee reports by them. These reports will help us decide if you:

- (a) have the personal capacities (particularly adequate corporate insolvency experience) to perform the duties of a registered liquidator; and

(b) are otherwise a fit and proper person to be a registered liquidator.

**2.21** We will also use referee reports to verify information you provide in your application about your experience.

**2.22** Where possible, at least one referee report should be from a registered liquidator (or an appropriately licensed corporate insolvency practitioner in a country referred to in paragraph (b)(ii) of [PS 186.19]) who has directly supervised your work on external administrations for at least the equivalent of 3 years full-time over the last 5 years. If the nature of your experience means that you do not have a referee who meets those requirements, you should contact our Liquidator Registration Team.

**2.23** The other referee should be a person who is able to verify your professional knowledge, skill, experience, diligence and judgment in corporate insolvency work, as well as attest to your honesty, integrity and reputation.

**2.24** We have included guidance for referees and a pro forma referee report in the 'Attachments' to this kit to improve the reliability, comparability and usefulness to us of referee reports. You should give your referees a copy of your application and the supporting material about your corporate insolvency experience, so that the referees can attest to and comment on that experience.

**2.25** The pro forma referee report includes specific competency-based questions. Referees who have directly supervised your work are expected to provide detailed responses to these competency-based questions. Other referees are expected to respond to the competency-based questions to the extent they can.

# Attachments

The following attachments are part of this kit and should be used to prepare your application:

- (a) a checklist to ensure that you have included all the relevant material;
- (b) preferred formats for providing supporting information on:
  - (i) your personal capacities; and
  - (ii) why you are a fit and proper person/not a disqualified person;
- (c) guidance for referees providing a report in support of your application (including a pro forma referee report);
- (d) relevant policy statements:
  - (i) Policy Statement 186 *External administration: Liquidator registration* [PS 186]; and
  - (ii) Policy Statement 33 *Security deposits* [PS 33];
- (f) relevant pro formas:
  - (i) Pro Forma 14 *Performance bond liquidator* [PF 14];
  - (ii) Pro Forma 221 *Liquidator's undertaking: Pro forma deed for partners/sole proprietors* [PF 221]; and
  - (iii) Pro Forma 222 *Liquidator's undertaking: Pro forma deed for employees* [PF 222]; and
- (g) Form 903B *Application for registration as a liquidator*.

