

Attachment 2 to CP 376: Guide to personal and resource capacities



ASIC
Australian Securities &
Investments Commission

Guide to personal and resource capacities

You should read this document together with Attachment 1 to *CP 376: Draft update to Regulatory Guide 258 Registered liquidators: Registration, disciplinary actions and insurance requirements* (RG 258), particularly RG 258.39–RG 258.42.

This document contains guidance about the type of information ASIC believes a committee may request – or require you to demonstrate – to consider your capacity to perform satisfactorily the functions and duties of a registered liquidator. Capacity in this context refers to resource capacity, and personal capacity or competencies.

You are not required to provide separate additional documentation (other than as the form requires) evidencing capacity as part of your application form for registration as a liquidator. However, if you are an employee, your application must include a letter from your employer about arrangements between you and your employer, to satisfy the committee that:

- these arrangements will enable you to have independence in the way you work; and
- you will have access to and control over staff and other resources to adequately and properly perform your duties and discharge your functions as a registered liquidator.

You should also be prepared to demonstrate to a committee in an interview, a high degree of personal capacity and competencies in the activities commonly undertaken by a registered liquidator.

Note: Tables 1–4 below are not exhaustive lists and only indicate the items a committee may consider.

Table 1: Personal capacity other than for restructuring practitioners or receivers and managers

Area of capacity	Relevant considerations
External administration options	Understanding of external administration options Ability to determine the most appropriate external administration option Considering the effect of different business structures on the proposed external administration
Realisation of company assets and property and trade-on	Identifying, protecting, collecting and selling company assets and property Trading on a business Implementing a program to sell an ongoing business
Management of funds	Understanding of funds handling obligations Paying dividends to creditors and distributions to members Managing the allocation of sale proceeds

Area of capacity	Relevant considerations
Investigations	<p>Obtaining books, records and other information</p> <p>Investigating the causes of the failure of a company's business</p> <p>Investigating whether company officers have committed offences</p> <p>Ascertaining the existence of voidable transactions and other claims</p> <p>Conducting public examinations⁴</p>
Dealings with creditors	<p>Reporting to creditors</p> <p>Managing requests by creditors for information</p> <p>Conducting or managing meetings of creditors</p>
Interactions with ASIC	<p>Reporting offences by company officers to ASIC</p> <p>Preparing funding requests from the Assetless Administration Fund</p> <p>Seeking assistance from ASIC to obtain company records</p> <p>Attending to statutory lodgements</p>
The duties and obligations of registered liquidators.	<p>Understanding of the duties and functions of a registered liquidator</p> <p>Understanding of the ethical and professional obligations of a registered liquidator</p> <p>Awareness and understanding of relevant ASIC policy and guidance and generally accepted professional standards, practices and principles</p>
Interpersonal skills	<p>Stakeholder communication skills</p> <p>Leadership skills</p>

Table 2: Personal capacity for restructuring practitioners only

Area of personal capacity	Relevant competencies may include
External administration options	<p>Understanding of external administration options</p> <p>Ability to determine the most appropriate external administration option</p> <p>Considering the effect of different business structures on the proposed external administration</p>
Realisation of company assets	<p>Understanding of different sale methods to obtain best value</p>
Management of funds	<p>Understanding of funds handing obligations</p> <p>Distributing funds to creditors in accordance with a plan</p>
Understanding a company's affairs	<p>Identifying company assets and property</p> <p>Obtaining information to understand the company's affairs</p> <p>Preparing and reviewing budgets and other forecasts</p> <p>Understanding of formal and management accounts and statements</p> <p>Inquiring into the causes of a company's current financial circumstances</p>

Area of personal capacity	Relevant competencies may include
	<ul style="list-style-type: none"> Assessing the viability of a business Ascertaining the existence of voidable transactions and other claims
Reporting to and interactions with creditors	<ul style="list-style-type: none"> Reporting to creditors Determining the validity of creditor claims Managing requests by creditors for information
Interactions with ASIC	<ul style="list-style-type: none"> Attending to statutory lodgements
The duties and obligations of registered liquidators	<ul style="list-style-type: none"> Understanding of the duties and functions of a registered liquidator acting as restructuring practitioner Understanding of the ethical and professional obligations of a registered liquidator acting as restructuring practitioner Awareness and understanding of relevant ASIC policy and guidance and generally accepted professional standards, practices and principles
Interpersonal skills	<ul style="list-style-type: none"> Stakeholder communication skills Leadership skills

Table 3: Personal capacity for receivers and managers only

Area of personal capacity	Relevant competencies may include
External administration options	<ul style="list-style-type: none"> Understanding of external administration options Ability to determine the most appropriate external administration option Considering the effect of different business structures on the proposed external administration
Realisation of company assets and property and trade-on	<ul style="list-style-type: none"> Identifying, protecting, collecting and selling company assets and property Considering and using different strategies to realise assets Implementing a program to sell an ongoing business Determining whether a company's business should continue to trade Trading on a business Differentiating between realising assets subject to encumbrances and those that are unencumbered Differentiating between assets subject to circulating and subject to non-circulating security interests Considering the impact on the ability to deal with company assets and property of different business structures
Management of funds	<ul style="list-style-type: none"> Understanding of funds handing obligations Managing the allocation of sale proceeds

Area of personal capacity	Relevant competencies may include
Understanding a company's affairs	Inquiring into the causes of the failure of a company's business Investigating whether company officers have committed offences
Reporting to and interactions with creditors	Reporting to secured creditors Managing requests by creditors for information
Interactions with ASIC	Reporting offences by company officers to ASIC Seeking assistance from ASIC to obtain company records Attending to statutory lodgements
The duties and obligations of liquidators	Understanding of the duties and functions of a registered liquidator acting as receiver and manager Understanding of the ethical and professional obligations of a registered liquidator acting as receiver and manager Awareness and understanding of relevant ASIC policy and guidance and generally accepted professional standards, practices and principles
Interpersonal skills	Stakeholder communication skills Leadership skills

Table 4: Resource capacity for all registered liquidators

Area of resource capacity	Relevant considerations may include
Human resources	The number and the level of insolvency staff and their corporate insolvency experience and the number of corporate insolvency appointments being administered.
Technological resources	Technological resources, including the software systems used to manage workflows and record the conduct of corporate insolvency appointments.
Processes for monitoring and assessing the adequacy of human and technological resources	How you monitor and assess whether you have adequate human and technological resources on an ongoing basis.
Systems and processes for staff supervision and training	How staff are supervised on a day-to-day basis and how you ensure that staff are adequately trained.
Systems and processes for conducting external administrations	The systems and processes, including operational procedures, manuals and checklists, in use, and how these are maintained and kept current.
Procedures for recording and handling complaints	How complaints are recorded and handled.

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Area of resource capacity	Relevant considerations may include
Systems for managing risks	<p>The processes in place for:</p> <ul style="list-style-type: none"> • monitoring and minimising your exposure to personal liability • monitoring and minimising the potential for conflicts of interest or breaches of other legal obligations, and • ensuring business continuity in the event of technological failure or other business interruption. <p>The processes in place to manage each of these risks and any others that apply.</p> <p style="padding-left: 40px;">Note: You may need to address this in the context of both the risks for you and the risks relating to the entities that are in external administration.</p>
Other considerations	<p>Whether you intend to accept corporate insolvency appointments outside the state or territory where you practise and, if so:</p> <ul style="list-style-type: none"> • arrangements you have in place for accessing appropriately qualified insolvency staff as and when required for those interstate appointments, and • how you ensure that the work is undertaken without unreasonably increasing the overall costs of the administration. <p>The extent to which (if at all) you will rely on insolvency staff and/or resources from another firm in the day-to-day conduct of your corporate insolvency appointments.</p>

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