

Attachment 1 to CP 276: Draft regulatory guide



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 000

Registered liquidators: Registration, disciplinary actions and insurance requirements

January 2017

About this guide

This guide is for individuals who are or wish to become registered liquidators under Sch 2 to the *Corporations Act 2001* (Corporations Act).

This guide explains how to apply for registration as a liquidator, including the requirements that must be met to become a registered liquidator.

This guide also explains the renewal of registration process, the disciplinary and other actions a registered liquidator may be subject to and our policy on adequate and appropriate insurance.

About ASIC regulatory documents

In administering legislation, ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This draft guide was issued in January 2017 and is based on legislation and regulations as at 1 March 2017.

This guide replaces:

- Superseded RG 186 *External administration: Liquidator registration*, issued Sept 2005 and rebadged as a regulatory guide 5 July 2007
- Superseded RG 194 *Insurance requirements for registered liquidators*, issued June 2008
- INFO 34 *How to apply for registration as a liquidator* (liquidator registration kit), issued Sept 2005
- INFO 59 *Registration of official liquidators*, issued as a webpage July 2002, issued as INFO 59 July 2007 and reissued May 2016

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act as amended by the *Insolvency Law Reform Act 2016*, the Insolvency Practice Rules (Corporations) 2016 and other applicable laws apply to you, as it is your responsibility to determine your obligations. Examples in this guide are purely for illustration; they are not exhaustive and not intended to impose or imply particular rules or requirements.

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A Overview

Key points

To become a registered liquidator, you must demonstrate to a committee that you meet the statutory requirements for registration: see RG 000.5–RG 000.8.

As a registered liquidator:

- your registration will cease unless you renew it (see RG 000.9 and Section C);
- you are required to lodge an annual liquidator return (see RG 000.10 and Section C);
- you may be subject to disciplinary or other actions (see RG 000.12 and Section D); and
- you must maintain adequate and appropriate professional indemnity and fidelity insurance (see RG 000.14 and Section E).

The role of registered liquidators

RG 000.1 Registered liquidators act in a fiduciary capacity; they often have total management control of the affairs, money and other property of an externally administered company; and, in some cases, they are officers of the court. They are required to maintain the utmost professionalism, independence, impartiality, honesty and ethics in the performance of their duties and functions.

RG 000.2 ASIC and the public must have confidence that individuals registered as liquidators under s20-30 of Sch 2 to the *Corporations Act 2001* (Corporations Act) are capable of undertaking the work that a registered liquidator is empowered to perform, and that they are fit and proper persons to undertake such work.

Note: Except where otherwise indicated, references in this guide to s20-30 (for example) are to a section of Sch 2 to the Corporations Act (in this example numbered 20-30).

Categories of registration

RG 000.3 An individual can be registered as a liquidator to practise in either of two capacities:

- (a) as an external administrator of companies, receiver and receiver and manager; or

- (b) as a receiver and receiver and manager.

Note: If a person is registered to practise only as a receiver and receiver and manager, that limitation will be a condition imposed on the individual's registration.

RG 000.4 The Corporations Act defines an 'external administrator' of a company as the:

- (a) administrator of the company;
 (b) administrator under a deed of company arrangement (DOCA) that has been entered into in relation to the company;
 (c) liquidator of the company; or
 (d) provisional liquidator of the company: s5-20.

Note: A person is not an external administrator of a company for the purposes of Sch 2 merely because the person has been appointed as a receiver, receiver and manager or controller in relation to the property of the company.

Becoming a registered liquidator

RG 000.5 An individual may apply to ASIC to be registered as a liquidator: s20-5. Section B describes the application process in detail.

Note: There is a fee for lodging an application for registration as a liquidator under s20-5 (see asic.gov.au/fees for the current fee).

RG 000.6 If the application is properly made, ASIC must refer the application to a committee for consideration. The committee will decide whether the applicant should be registered as a liquidator and, if so, whether the applicant's registration should be subject to any conditions.

RG 000.7 ASIC must register an applicant if the committee has decided the applicant should be registered and the applicant produces evidence in writing that they have taken out adequate and appropriate professional indemnity (PI) and fidelity insurance.

Note: There is a fee for the registration by ASIC of a person as a liquidator under s20-30 (see asic.gov.au/fees for the current fee).

RG 000.8 An applicant that is not satisfied with the committee's decision may apply to the Administrative Appeals Tribunal (AAT) for a review of the decision.

Renewal, lodgement of annual liquidator return and notification to ASIC

RG 000.9 A registered liquidator's registration is for three years. A registered liquidator may apply to ASIC to renew their registration. ASIC must renew the registration if the liquidator meets the criteria for renewal.

RG 000.10 If you are a registered liquidator during all or part of a liquidator return year, you must lodge an annual liquidator return for that return year. The annual liquidator return must be in the approved form.

RG 000.11 As a registered liquidator, you also have an ongoing obligation to notify ASIC of certain ‘significant events’ (e.g. if you become an insolvent under administration or are convicted of an offence involving fraud or dishonesty) and certain ‘other events’ (e.g. if you cease to practise as a registered liquidator or there is a change to your personal details).

Note: These requirements are discussed in Section C.

Disciplinary and other actions

- RG 000.12 As a registered liquidator, you may be subject to disciplinary and other actions. Those actions include:
- (a) an ASIC direction to:
 - (i) remedy a failure to lodge any document required to be lodged with us (s40-5(2));
 - (ii) complete or correct the information in a document lodged with us (s40-10(2)); or
 - (iii) not accept further appointments (s40-15(1));
 - (b) automatic cancellation of your registration as a liquidator in certain circumstances (s40-20);
 - (c) cancellation or suspension by ASIC of your registration as a liquidator in certain circumstances (s40-25, 40-30);
 - (d) the issue by ASIC of a show-cause notice under s40-40 on a range of grounds;
 - (e) referral to a disciplinary committee under s40-50 and subsequent action by the disciplinary committee under s40-55;
 - (f) notice by an industry body to ASIC under s 40-100 of possible grounds to suspend or cancel your registration; and
 - (g) court orders under s45-1.

RG 000.13 You may also initiate actions affecting your own registration such as applying to vary or remove a condition imposed on your registration, lift or shorten the period of a suspension, or voluntarily cancel or suspend your registration as a liquidator.

Note: These actions are discussed in Section D.

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Insurance requirements

RG 000.14 Section 25-1 requires a registered liquidator to maintain adequate and appropriate PI and fidelity insurance against the liabilities that the liquidator may incur working as a registered liquidator.

Note: These requirements are discussed in Section E.

RG 000.15 You should determine what is adequate and appropriate PI and fidelity insurance after reviewing your business operations, and work out your insurance needs each year having regard to your own particular risk profile.

Note: You commit an offence if you fail to maintain adequate and appropriate insurance: s25-1(3) and (4).

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B Becoming a registered liquidator

Key points

An individual may apply to ASIC for registration as a liquidator: see Table 1.

To become a registered liquidator, you must demonstrate to a committee that you meet the requirements for registration: see RG 000.16–RG 000.18, Table 2 and RG 000.60–RG 000.68.

ASIC must register you as a liquidator if a committee has decided you should be registered, and you produce evidence in writing that you have taken out adequate and appropriate PI and fidelity insurance: see RG 000.69–RG 000.73.

How to apply for registration

Table 1: Lodging your application for registration

Step 1	<p>You must apply using Form 903B <i>Application for registration as a liquidator</i>. To access this form:</p> <ul style="list-style-type: none"> • download a copy at asic.gov.au/forms; or • call ASIC on 1300 300 630. <p>Note: There is a fee for lodging an application to be registered as a liquidator (see asic.gov.au/fees for the current fee).</p>
Step 2	<p>Your application must:</p> <ul style="list-style-type: none"> • be in the approved form (i.e. Form 903B); and • include the information and documents referred to in the approved form. <p>Note 1: The Liquidator Registration Checklist referred to in Form 903B outlines the information and documents you should include in your application.</p> <p>Note 2: The information in your application should be up to date at the time you lodge your application. We may contact you if we consider your application contains out-of-date information. For most purposes, we consider information more than three months old to be out of date.</p>
Step 3	<p>You must:</p> <ul style="list-style-type: none"> • send a scanned copy of the signed application Form 903B and all supporting documents by email to: LiquidatorRegistrationProofs@asic.gov.au. <p>Note: The size limit of each email we can accept is 10 MB. If necessary, to meet size limits, please send multiple emails containing supporting documents. Make sure that you include the applicant name in the subject line of each email.</p>

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Step 4

We will send you the invoice for the application fee by email.

You should pay the application fee immediately on receipt of the invoice for the lodgement of Form 903B.

Note: We expect that the application fee will be paid before your application is referred for consideration by a committee convened under s20-10. ASIC may refuse to refer your application to a committee if the application fee is not paid: see s1355 of the Corporations Act.

Eligibility requirements

RG 000.16 A committee must decide that you should be registered as a liquidator if the committee is satisfied of the matters in Table 2: s20-20(4) and rule 20-1 of the Insolvency Practice Rules (Corporations) 2016 (the Rules).

Note 1: See RG 000.60–RG 000.68 for an explanation of the committee and its processes.

Note 2: References in this guide to rule 20-1 (for example) are to a section of the Insolvency Practice Rules (Corporations) 2016 (in this example numbered 20-1).

RG 000.17 If the committee is not satisfied of one of the following matters, the committee may still decide that you should be registered as a liquidator provided it is satisfied that you would be suitable to be registered if you complied with conditions it specifies. The matters are:

- (a) that you possess the prescribed qualifications, experience, knowledge and abilities;
- (b) that your registration either as a liquidator under the Corporations Act or as a trustee under the *Bankruptcy Act 1966* (Bankruptcy Act) has not been cancelled within 10 years before making your application (other than in response to a written request from you); or
- (c) that you are resident in Australia or in another prescribed country: s20-20(5).

RG 000.18 The committee may not decide that you should be registered as a liquidator if it is not satisfied of the other matters set out in Table 2.

Table 2: Summary of eligibility requirements for registration

Eligibility requirements	What you need to have	Explanation in this guide
Qualifications, experience, knowledge and abilities	The prescribed base-level qualifications: s20-20(4)(a) and rule 20-1(2)(a) and (b).	RG 000.19–RG 000.21, Table 3
	The prescribed experience: s20-20(4)(a) and rule 20-1(2)(c) and (d).	RG 000.22–RG 000.25, Table 4

Eligibility requirements	What you need to have	Explanation in this guide
Capacity	Have demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator and is able to satisfy any conditions of registration: s20-20(4)(a) and rules 20-1(2)(e) and (f).	RG 000.26–RG 000.27
Insurance	Will take out adequate and appropriate PI and fidelity insurance: s20-20(4)(b).	Section E
Fit and proper	Have not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty: s20-20(4)(c).	RG 000.29–RG 000.34, Table 5
	Are not, and have not been within 10 years before making the application, an insolvent under administration: s20-20(4)(d).	RG 000.35–RG 000.36, Table 5
	Have not had your registration as a liquidator cancelled within 10 years before making the application, other than in response to a written request by you: s20-20(4)(e).	RG 000.37, Table 5
	Have not had your registration as a trustee under the Bankruptcy Act cancelled within 10 years before making the application, other than in response to a written request by you: s20-20(4)(f).	RG 000.38, Table 5
	Are not disqualified from managing corporations under Pt 2D.6 of the Corporations Act or under another law: s20-20(4)(g).	RG 000.39–RG 000.40, Table 5
	Are otherwise a fit and proper person: s20-20(4)(h).	RG 000.41–RG 000.54, Table 5
Residency	Are resident in Australia or another prescribed country: s20-20(4)(i).	RG 000.55–RG 000.56

Qualifications

RG 000.19 The prescribed base-level qualifications for an applicant for registration are summarised in Table 3.

Note: The committee may determine that an applicant should be registered, even if the committee is not satisfied about this matter: see RG 000.17.

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Table 3: Summary of qualifications requirements

Eligibility requirements	What you need to have	What you should include in your application
Tertiary qualifications: s20-20(4)(a) and rule 20-1(2)(a)	A tertiary qualification that includes at least three years full-time study (or its equivalent) in commercial law and accounting.	<p>A copy of your statement of academic record certified by the institution that issued the qualification, which identifies the subjects you completed for that qualification and explains your results.</p> <p>AND</p> <p>A copy of your degree, diploma or certificate from the institution that issued the qualification.</p> <p>AND</p> <p>If you are relying on an overseas qualification—certification from CPA Australia (CPAA) or Chartered Accountants Australia and New Zealand (CA ANZ) or from Australian Education International (phone 1300 615 262) about the comparability between your qualification and an Australian undergraduate degree in commercial law and accounting.</p>
Specialist insolvency qualifications: s20-20(4)(a) and rule 20-1(2)(b)	At least two course units accredited under the Australian Qualifications Framework Level 8 (or equivalent study) in the practice of external administrators of companies, receivers, receivers and managers, and trustees under the Bankruptcy Act.	<p>A copy of your degree, diploma or certificate from the institution that issued the qualification.</p> <p>AND</p> <p>A certification letter from the institution that issued the qualification confirming that you have passed subjects that include at least two course units accredited under the Australian Qualifications Framework (or equivalent study) in the practice of external administrators of companies, receivers, receivers and managers, and trustees under the Bankruptcy Act.</p>

Tertiary qualifications

- RG 000.20 The committee may consider whether your tertiary qualification includes subjects (by whatever name) dealing with:
- (a) for *accounting*—Australian accounting and auditing standards, Australian financial and corporate accounting, cost and management accounting and corporate finance; and
 - (b) for *commercial law*—contract law, torts, trust law, Australian business law, Australian corporations law and Australian taxation law (each at least at an introductory level).

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Specialist insolvency qualifications

RG 000.21 The committee may consider whether your specialist insolvency qualification includes subjects (by whatever name) dealing with:

- (a) the duties, functions, powers and responsibilities of external administrators, receivers and receivers and managers;
- (b) preserving, recovering and realising assets;
- (c) conducting investigations and examinations;
- (d) conducting creditors' meetings;
- (e) adjudicating proofs of debt and distributing dividends;
- (f) reporting to creditors and to ASIC; and
- (g) professional ethics.

Note: At 1 March 2017, the available course that meets these criteria is the Advanced Certification course delivered by the Australian Restructuring Insolvency & Turnaround Association (ARITA) in partnership with the University of Technology, Sydney. Further information on relevant courses that satisfy this requirement will be updated periodically on our website (asic.gov.au).

Experience

RG 000.22 The prescribed experience for an applicant for registration is summarised in Table 4.

Note: The committee may determine that an applicant should be registered, even if the committee is not satisfied about this matter: see RG 000.17.

Table 4: Summary of experience requirements

Eligibility requirements	What you need to have	What you should include in your application
To be registered to practise as an external administrator of companies, receiver and receiver and manager: s20-20(4)(a) and rule 20-1(2)(c)	During the five years immediately preceding the day on which the application is made—have engaged in at least 4,000 hours of relevant employment at a senior level in the external administration of companies, receivership or receivership and management.	<p>A summary of your employment history for the last five years (including names of employers, positions held and dates).</p> <p>AND</p> <p>Full details of your relevant insolvency experience at a senior level for the five years immediately preceding the day on which you make this application.</p> <p>Note: Use the template <i>Liquidator registration: Senior level employment history</i> available at asic.gov.au to provide this information.</p>

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Eligibility requirements	What you need to have	What you should include in your application
To be registered to practise only as a receiver and receiver and manager: s20-20(4)(a) and rule 20-1(2)(d)	During the five years immediately preceding the day on which the application is made—have engaged in at least 4,000 hours of relevant employment at a senior level in receivership and receivership and management.	<p>A summary of your employment history for the last five years (including names of employers, positions held and dates).</p> <p>AND</p> <p>Full details of your relevant insolvency experience at a senior level for the five years immediately preceding the day on which you make this application.</p> <p>Note: Use the template <i>Liquidator registration: Senior level employment history</i> to provide this information.</p>

Relevant employment

All types of insolvency

- RG 000.23 If you apply for registration to practise as an external administrator of companies, receiver and receiver and manager, ‘relevant employment’ means employment that:
- involves assisting a registered liquidator in the performance of his or her duties as external administrator of companies, receiver or receiver and manager;
 - involves providing advice in relation to the external administration of companies, receivership or receivership and management; and
 - provides exposure to processes (including bankruptcy) under the Bankruptcy Act: rule 20-1(2)(c) and (3).

Receiverships only

- RG 000.24 If you apply for registration to practise only as a receiver and receiver and manager, ‘relevant employment’ means employment that:
- involves assisting a registered liquidator in the performance of his or her duties as receiver or receiver and manager;
 - involves providing advice in relation to receivership or receivership and management; and
 - provides exposure to the external administration of companies and processes (including bankruptcy) under the Bankruptcy Act: rule 20-1(2)(d) and (4).

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At a senior level

- RG 000.25 Matters that the committee may consider in deciding whether your employment was at a senior level include:
- (a) whether your experience was gained when you were a principal in the firm or at a level immediately below that of principal;
 - (b) whether you reported directly to the external administrator, or to the receiver or receiver and manager (the appointee); and
 - (c) whether you:
 - (i) formed opinions and made recommendations to the appointee about strategic and tactical matters, and the financial and potential legal position of the company;
 - (ii) were directly involved in planning and managing the conduct of the external administration, receivership or receivership and management (including conducting appropriate investigations of the company's business, property, affairs and financial dealings) on behalf of the appointee;
 - (iii) prepared draft reports to creditors on behalf of the appointee;
 - (iv) instructed solicitors and evaluated legal advice as directed by the appointee; and
 - (v) supervised staff who reported through you to the appointee, and had responsibility for allocating these resources.

Note: The committee may determine that an applicant should be registered, even if the committee is not satisfied about this matter: see RG 000.17.

Capacity

- RG 000.26 The committee will consider whether the applicant has the capacity to perform satisfactorily the function and duties of a registered liquidator.

Note 1: The committee may determine that an applicant should be registered, even if the committee is not satisfied about this matter: see RG 000.17.

Note 2: Use the template *Liquidator registration: Practice capacities* available at asic.gov.au to provide this information.

- RG 000.27 In considering this matter, the committee may consider a range of factors—including the:
- (a) adequacy of human and technological resources available to you and the appropriateness of processes for monitoring and assessing the continuing adequacy of those resources;
 - (b) appropriateness of systems and processes available to you for the ongoing supervision of staff and the conduct of corporate insolvency

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- appointments (including operational procedures, manuals and checklists);
- (c) adequacy of systems for recording and handling complaints about the performance of duties by you and your staff; and
 - (d) adequacy of systems for managing risks to your own practice and for each corporate insolvency appointment.

Fit and proper

RG 000.28 You must satisfy the committee that you are a fit and proper person to be registered as a liquidator. These requirements are summarised in Table 5.

Table 5: Summary of fit and proper requirements

Eligibility requirement	Relevant time frame	What you should include in your application
Not convicted of an offence involving fraud or dishonesty: s20-20(4)(c)	Within 10 years before making the application for registration.	<p>A criminal history check that covers the relevant time frame, dated not more than three months old.</p> <p>AND</p> <p>If you have lived overseas for one year or more during the past 10 years—a criminal history check from the country or countries in which you resided.</p> <p>AND</p> <p>If you have been convicted within the past 10 years of an offence involving fraud or dishonesty—details of the conviction.</p> <p>Note: This requirement is subject to Pt VIIC of the <i>Crimes Act 1914</i>.</p>
Not insolvent under administration: s20-20(4)(d)	Currently or within 10 years before making the application for registration.	<p>If you are or have been an insolvent under administration within the relevant time frame—details of the insolvency.</p> <p>AND</p> <p>A bankruptcy check from the Australian Financial Security Authority (AFSA) including a National Personal Insolvency Index (NPII) extract containing information on proceedings and administrations under the Bankruptcy Act for the relevant time frame.</p>
Registration as a liquidator has not been cancelled, other than in response to a written request: s20-20(4)(e)	Within 10 years before making the application for registration.	If your registration as a liquidator has been cancelled within the past 10 years other than in response to a written request by you—details of the cancellation.

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Eligibility requirement	Relevant time frame	What you should include in your application
Registration as a trustee has not been cancelled, other than in response to a written request: s20-20(4)(f)	Within 10 years before making the application for registration.	If your registration as a trustee under the Bankruptcy Act has been cancelled within the past 10 years other than in response to a written request by you—a letter from AFSA providing details of the cancellation.
Not disqualified from managing corporations: s20-20(4)(g)	At the time of making the application. Note: A committee cannot decide to register an applicant who is disqualified.	A statutory declaration stating that at the date of your application, you are not disqualified from managing corporations under Pt 2.6D of the Corporations Act, or under a law of an external territory or foreign country.

Eligibility requirement	Relevant time frame	What you should include in your application
Otherwise fit and proper: s20-20(4)(h)	Various	<p>Two referee reports dated no more than three months before the date you lodge your application covering your experience during the five years immediately preceding the date you lodged your application.</p> <p>Note: Use the pro forma <i>Liquidator registration: Pro forma referee report</i> available at asic.gov.au to provide this information.</p> <p>AND</p> <p>Details about membership of relevant professional/industry bodies over the past 10 years, including a letter from the professional/industry body specifying:</p> <ul style="list-style-type: none"> • whether your membership is current; • when your membership began; • if applicable—when and why your membership ceased. <p>Note: Professional/industry body includes those bodies prescribed in rule 40-1.</p> <p>AND</p> <p>If a professional/industry body refused to accept your application for membership in the past 10 years—details of that refusal.</p> <p>AND</p> <p>Details of any legal or disciplinary action taken against you by a professional/industry body in the past 10 years. You should include any such action regardless of the outcome and penalties imposed. You should provide the dates of the legal or disciplinary action and the details and outcomes of such action.</p> <p>AND</p> <p>If you are an employee—a letter from your employer including information about the arrangements between you and your employer to satisfy the committee that:</p> <ul style="list-style-type: none"> • these arrangements will enable you to have independence in the manner in which 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.

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Not convicted of an offence

Criminal history

- RG 000.29 You will need to provide a National Police Check from the Australian Federal Police (AFP) or from a broker organisation accredited by the Australian Criminal Intelligence Commission. The National Police Check must not be more than three months old and should cover the period of 10 years before making the application.
- RG 000.30 A National Police Check can take up to six weeks or more to obtain, so it is prudent to apply for one early. You may provide us with a copy of the National Police Check results and retain the original.

Applying for a National Police Check through the AFP

- RG 000.31 You can obtain the request form from the AFP or download it from the AFP website (afp.gov.au). The form will ask you to identify the purpose of the National Police Check. You should insert 'Code 30' in the 'Purpose of NPC' field on the form.

Overseas criminal history checks

- RG 000.32 If you have resided in a foreign country for one year or more in the past five years, you will need to provide a criminal history check, not more than three months old, from each of the countries in which you resided in the last five years. If you have never resided in Australia, or you arrived in Australia within six months before lodging your application, you will not need an Australian criminal history check in addition to the overseas criminal history check(s).
- RG 000.33 You must obtain the criminal history check from a national government authority in the relevant country. If this is not possible, you must provide a criminal history check issued by a state or provincial authority for each state or province in which you resided in the last five years.
- RG 000.34 If authorities in the relevant country do not provide criminal history checks, you must provide a statutory declaration declaring that you have no criminal history and detailing the attempts you have made to obtain a criminal history check from the relevant authorities. A solicitor, justice of the peace, notary or other equivalently qualified person must witness the signed statutory declaration.

Note: The Statutory Declarations Regulations 1993 provide a form of statutory declaration suitable for this purpose and specify the persons before whom a statutory declaration may be made.

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Not insolvent under administration

- RG 000.35 Section 9 of the Corporations Act defines ‘insolvent under administration’ as:
- (a) a person who under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
 - (b) a person who under the law of an external Territory or the law of a foreign country, has the status of an undischarged bankrupt; or
 - (c) a person any of whose property is subject to control under:
 - (i) s50 or Div 2 of Pt X of the *Bankruptcy Act 1966*; or
 - (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or
 - (d) a person who has executed a personal insolvency agreement under:
 - (i) Pt X of the *Bankruptcy Act 1966*; or
 - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country;
 where the terms of the agreement have not been fully complied with; or
 - (e) a person who is a party (as a debtor) to a debt agreement under:
 - (i) Pt IX of the *Bankruptcy Act 1966*; or
 - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.
- RG 000.36 You should provide a bankruptcy check from AFSA, including an NPII extract containing information on any proceedings and administrations under the Bankruptcy Act involving you. The check and extract should be dated not more than two weeks before the date of your application for registration.

Previous registration as liquidator cancelled

- RG 000.37 If your registration as a liquidator has been cancelled within 10 years other than in response to a written request by you, you must provide details of that cancellation.

Registration as bankruptcy trustee cancelled

- RG 000.38 If your registration as a trustee has been cancelled within 10 years other than in response to a written request by you, you should obtain a letter from AFSA providing details of that cancellation.

Not disqualified from managing corporations

- RG 000.39 To meet this requirement, you must not be disqualified from managing corporations under Pt 2D.6 of the Corporations Act or under a law of an external territory or foreign country: s20-20(4)(g).

RG 000.40 Section 206B of the Corporations Act sets out the reasons for disqualification potentially most relevant to applicants for registration as a liquidator. Under that section, a person is automatically disqualified from managing a corporation if they have been convicted of certain types of offences or if they are personally insolvent under Australian or foreign law.

Otherwise a fit and proper person

RG 000.41 You must satisfy the committee that you are ‘otherwise’ a fit and proper person: s20-20(4)(h).

Note: The committee may have regard to decided cases relating to liquidator conduct.

RG 000.42 The committee may also have regard to whether you can demonstrate the attributes of good character, diligence, honesty, integrity and judgement.

Note: The criteria for determining whether a person is a fit and proper person are consistent with the criteria set out for responsible persons of approved deposit-taking institutions (ADIs) in Australian Prudential Standard APS 520 *Fit and proper*.

Referee reports

RG 000.43 To assist the committee to consider your application you must provide two referee reports. These should be dated no earlier than three months before the date you lodge your application.

RG 000.44 Where possible, at least one referee should be a person who directly supervised your work on external administrations and/or receiverships and receivership and management appointments. This referee should be 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.

RG 000.45 The other referee should be a person who can attest to:

- (a) your knowledge of the powers, duties and functions of a registered liquidator;
- (b) your skill, experience at a senior level, diligence and judgment in corporate insolvency work; and
- (c) your honesty and integrity.

RG 000.46 Where possible, the second referee should be a former employer who supervised your work on external administrations and/or receiverships and receivership and management appointments or a solicitor who can comment on your involvement in legal issues related to external administrations and/or receiverships and receivership and management appointments.

RG 000.47 Referees must be able to express opinions about you based on their personal knowledge of you and direct observation of your conduct.

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- RG 000.48 The *Liquidator registration – Pro forma referee report* provides guidance for referees and a pro forma referee report. 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.
- RG 000.49 The pro forma referee report includes specific competency-based questions. We expect referees who have directly supervised your work to provide detailed responses to these questions. We expect other referees to respond to the competency-based questions to the extent they can.

Refused membership of professional/industry body

- RG 000.50 To assist the committee to consider whether you are a fit and proper person, you must provide details of any instances where a professional/industry body has refused to accept your application for membership in the past 10 years.

Note: Professional/industry body includes those bodies prescribed in rule 40-1.

- RG 000.51 You should provide the dates of your application and the dates and reasons provided by the relevant professional/industry body for refusing your membership.

Legal or disciplinary action by professional/industry body

- RG 000.52 To assist the committee to consider whether you are a fit and proper person, you must provide details of any legal or disciplinary action taken against you by a professional/industry body in the past 10 years.
- RG 000.53 You should include any such action, regardless of the outcome and penalties imposed.
- RG 000.54 You should provide the dates of the legal or disciplinary action and the details and outcomes of such action.

Resident in Australia or another prescribed country

- RG 000.55 The committee will consider whether you are resident in Australia or in another prescribed country: s20-20(4)(i).

Note 1: The committee may determine that an applicant should be registered, even if the committee is not satisfied about this matter: see RG 000.17.

Note 2: At 1 March 2017 no countries have been prescribed.

- RG 000.56 You must provide, with your application, details of your current and past residential addresses over the past five years, indicating the approximate dates between which you lived at those addresses.

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Processing your application

- RG 000.57 An application is properly made when the application is lodged with ASIC in the approved form: s20-5. This means the application must:
- (i) be made in the form approved by ASIC (i.e. Form 903B);
 - (ii) include the information, statements, explanations and other matters required by that form; and
 - (iii) be accompanied by any other material required by that form: s100-6.
- RG 000.58 If your application does not appear complete, we will not accept the document for lodgement and will return it to you.

Referral to committee

- RG 000.59 ASIC must, within two months after receiving a properly made application, refer the application to a committee for consideration: s20-15.

Note: There is a fee for making an application for registration (see asic.gov.au/fees for the current fee). ASIC may refuse to refer an application to a committee until the fee is paid: see s1355 of the Corporations Act.

Committee process overview

- RG 000.60 The committee convened to consider your application must consist of:
- (a) ASIC;
 - (b) a registered liquidator chosen by a prescribed body; and
 - (c) a person appointed by the Minister: s20-10(2).

Note: Rule 50-10 prescribes bodies for the purposes of s20-10(2). At 1 March 2017, ARITA is the prescribed body for the purposes of those provisions.

- RG 000.61 To consider the application, the committee:
- (a) must interview you (refer to rule 50-80 for the interview procedures); and
 - (b) may require you to sit for an exam: s20-20(2).

- RG 000.62 The prescribed body and the Minister must be satisfied that each person they appoint to the committee has certain knowledge and experience: s50-5 and 50-10.

- RG 000.63 The interview questions are likely to cover a range of technical and ethical issues to assess your knowledge and abilities and your suitability to be registered as a liquidator. The interview will be recorded.

- RG 000.64 You will need to demonstrate to the committee that you meet the eligibility requirements to be registered as a liquidator.

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RG 000.65 The committee may require that you undertake a written exam.

Committee decision

RG 000.66 The committee must decide within 45 business days after interviewing you whether or not you should be registered as a liquidator: s20-20(3).

RG 000.67 The committee may also decide that your registration should be subject to conditions it specifies: s20-20(6).

Note: In addition to any conditions the committee imposes on your registration, the Rules can impose conditions on all registered liquidators, or registered liquidators of a specified class: s20-35. See RG 000.140 for further information on industry-wide conditions.

RG 000.68 Following its decision, the committee must give you and ASIC a report setting out:

- (a) its decision on your application for registration as a liquidator;
- (b) its reasons for that decision; and
- (c) if it decides that you should be registered subject to a condition—details of that condition and the committee’s reasons for imposing it: s20-25.

Committee accepts your application

RG 000.69 If the committee decides that you should be registered as a liquidator, and you produce evidence in writing to ASIC that you have adequate and appropriate PI and fidelity insurance, ASIC must register you. We will contact you and request that you provide written evidence that you have taken out the required insurance when we have received a committee’s report setting out the committee’s decision on your application.

Note: The insurance requirements are set out in Section E.

Register updated

RG 000.70 Once you provide written evidence of the required insurance, ASIC will register you by entering your details into the Register of Liquidators: s20-30(2).

RG 000.71 Your registration as a liquidator has effect for three years from the date of initial registration: s20-30(6).

RG 000.72 Before the expiration of three years from the date of initial registration, you will need to apply to ASIC to renew your registration. If you not apply before the anniversary date of your registration, your registration ceases to have effect and you cannot then practise as a registered liquidator.

Note: The requirement to renew your registration is discussed in Section C.

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Certificate of registration

- RG 000.73 After we register you as a liquidator, we will issue you with a certificate of registration: 20-30(4). We may provide this certificate to you electronically: s20-30(5).

Rights of appeal

- RG 000.74 If you are dissatisfied with the committee's decision, you may seek a review of the committee's decision by the Administrative Appeals Tribunal (AAT).
- RG 000.75 An application to the AAT for a review of the decision must be made in writing, set out the reasons for seeking the review and be made within 28 days of receiving the committee's report.

Note: Further information about applications to the AAT can be obtained at the AAT website (aat.gov.au).

C Renewal, lodgement of annual liquidator return and notification to ASIC

Key points

A registered liquidator's registration is for three years, and may be renewed. There are transitional arrangements specifying a one-year registration period for liquidators who are registered immediately before 1 March 2017: see RG 000.76–RG 000.84.

You must lodge an annual liquidator return with ASIC within one month after the end of each liquidator return year: RG 000.93–RG 000.101.

You are required to maintain the currency of your personal and professional details, by notifying ASIC of any significant events and of other events, including changes in personal details: RG 000.102–RG 000.112.

Renew your registration

RG 000.76 Your registration as a liquidator has effect for three years.

Note: If you are registered as a liquidator and your registration commenced before 1 March 2017, see RG 000.85–RG 000.89 to understand how the transitional arrangements associated with the commencement of the *Insolvency Law Reform Act 2016* (Insolvency Law Reform Act) will affect your current registration as a liquidator.

Applying for renewal

RG 000.77 You may apply to ASIC to renew your registration as a liquidator.

Note: You should lodge your application to renew your registration as a liquidator at least five business days before the current registration expires, to allow time for ASIC to assess it and renew your registration.

RG 000.78 The renewal application must be lodged with ASIC in the approved form (Form RL05 *Application for renewal of registration as a liquidator*):

- (a) before your current registration as a liquidator ceases to have effect (s20-70(2)); or
- (b) if the court makes an order under s20-70(3) extending the time within which you may lodge your renewal application—on or before the time specified in the court order.

Note 1: Your registration may cease to have effect even though you obtain an extension of time to lodge your renewal. You may need to take steps to obtain Court orders in relation to actions taken by you after your registration ceases to have effect.

Note 2: Form RL05 will be published on 1 March 2017.

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Renewal process

- RG 000.79 ASIC must renew your registration as a liquidator if:
- (a) you properly make the application within time by using the approved form (Form RL05);
 - (b) you produce evidence in writing to ASIC that you maintain adequate and appropriate PI and fidelity insurance against the liabilities you may incur working as a registered liquidator; and

Note: ASIC will accept as evidence of insurance a copy of the current certificate of currency for your insurances.

- (c) you complied with any condition imposed on your registration during the current period of registration dealing with continuing professional education (CPE): s20-75(1).

RG 000.80 ASIC has very limited discretion to renew your registration if these requirements in s20-75(1)(b) and (c) are not met.

RG 000.81 Your renewed registration is subject to the current conditions imposed on you: s20-75(3). Your renewed registration has effect for three years beginning on the day after your immediately preceding registration ceased to have effect: s20-75(6).

RG 000.82 After you renew your registration, ASIC must give you a new certificate of registration: s20-75(4).

Note: There is a fee for ASIC to issue a certificate following the renewal of a person's registration as a liquidator (see asic.gov.au/fees for the current fee).

Consequences of not renewing registration

RG 000.83 If you do not apply to renew your registration, or if your current registration is not renewed before it expires, your registration as a liquidator ceases to have effect.

RG 000.84 If you are conducting an external administration of a company at the time your current registration ceases to have effect, ASIC may, in writing, appoint another registered liquidator to conduct the external administration of the company: s40-111(2).

Note: For court-appointed liquidators, see s473A of the Corporations Act. For a winding-up ordered by ASIC, see s489EA of the Act. For a members' voluntary winding-up, see s495 of the Act.

Transitional arrangements: Insolvency Law Reform Act

RG 000.85 If you were a registered liquidator immediately before 1 March 2017, on 1 March 2017 you will be taken to be registered as a liquidator under the

new provisions contained in Subdiv B of Div 20 of Sch 2 to the Corporations Act: s1553(1) of the Corporations Act.

Note: A person who was registered as a liquidator immediately before 1 March 2017 will not be taken to be registered as a liquidator under the new provisions contained in Subdiv B of Div 20 of Sch 2 to the Corporations Act if they were an insolvent under administration at the beginning of 1 March 2017.

RG 000.86 The Corporations Act refers to such a person as an ‘old Act registrant’: s1553(4) of the Corporations Act.

Period of registration for old Act registrant

RG 000.87 Your registration as an old Act registrant is for the period ending on the first anniversary date of your existing registration that occurs on or after 1 March 2017: s1555(1) of the Corporations Act.

Note: For example, if you were registered as a liquidator on 17 July 2001, the date of your first anniversary after 1 March 2017, and hence the date your transitional registration expires, is 17 July 2017. You will need to renew your registration before this date if you wish to continue practising as a liquidator and accept new appointments.

Old Act registrant chooses not to renew

RG 000.88 If you, as an old Act registrant, do not apply to renew your liquidator registration on or before the first anniversary date of your existing registration that occurs on or after 1 March 2017, you will continue to be registered as a liquidator subject to a condition imposed on your registration that you must not accept any further appointments as external administrator of a company: s1560(2) of the Corporations Act.

RG 000.89 Your registration as a liquidator under this transitional provision will end on the day immediately after all of the external administrations of companies that you are entitled to carry out in accordance with any current conditions ends. In addition:

- (a) you will be taken to have lodged a request to cancel your registration as a liquidator; and
- (b) ASIC will be taken to have cancelled your registration: s1560(4) of the Corporations Act.

Registration as an official liquidator

RG 000.90 The designation of ‘official liquidator’ ceases on 1 March 2017.

RG 000.91 ASIC will maintain the designation of official liquidator in its systems for an individual registered as an official liquidator under the old Act until the finalisation of all the individual’s existing official liquidator appointments.

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- RG 000.92 Once all such court appointments are finalised, your designation in our systems as official liquidator will cease. Your registration will not otherwise be affected by the cessation of your court appointments as official liquidator.

Lodge an annual liquidator return

- RG 000.93 If you are a registered liquidator during all or part of a liquidator return year, you must lodge an annual liquidator return within one month after the end of that return year: s30-1(1).

Note: A 'liquidator return year' for a person is defined as the period of 12 months beginning on the day on which the person's registration first began or each subsequent period of 12 months: s30-1(2).

- RG 000.94 You commit an offence of strict liability if you do not lodge your annual liquidator return within the specified periods: s30-1(5).

Note: There is no fee for lodging the annual liquidator return. However, there is a fee for the late lodgement of a document (see asic.gov.au/fees for the current fee).

How to lodge your return

- RG 000.95 You should lodge your annual liquidator return with us electronically via the Registered Liquidator Portal at asic.gov.au. For the required content of the return, see Form 908 *Annual statement by a liquidator*. You can download a copy of this form at asic.gov.au/forms under 'Form 908'.

- RG 000.96 You must provide evidence that, during the period you were registered as a liquidator during the return year, you maintained adequate and appropriate PI and fidelity insurance against the liabilities that you may incur working as a registered liquidator: s30-1(3).

Extensions of time

- RG 000.97 Before the lodgement due date (one month after the end of the liquidator return year), you may apply to ASIC for an extension of time to lodge the annual liquidator return: s30-1(4).

- RG 000.98 We will generally only extend the time for lodging an annual liquidator return if we are satisfied that exceptional circumstances beyond your control prevent you from lodging it within the prescribed time.

Transitional arrangements

- RG 000.99 Section 1561(1) of the Corporations Act provides that the requirement to lodge annual liquidator returns under s30-1 applies in relation to liquidator return years that begin on or after 1 March 2017. However, s1288 of the old

Act will continue to apply to liquidator return years beginning before that date: s1561(3) of the Corporations Act.

- RG 000.100 Therefore, if you are an old Act registrant, your first return on or after 1 March 2017 will be the Form 908 that was in use before 1 March 2017. This old Act form is available from ASIC at asic.gov.au/forms.

Note: There is no fee for lodging the Form 908 that falls due for lodgement on or after 1 March 2017. However, there is a fee for the late lodgement of a document (see asic.gov.au/fees for the current fee).

- RG 000.101 You will lodge subsequent returns (for full or partial years) under s30-1 using an annual liquidator return approved by ASIC in a new format. This form will also be available on the ASIC website at asic.gov.au/forms.

Notify ASIC of changes

- RG 000.102 As a registered liquidator, you are required to provide information to ASIC to allow ASIC to maintain the currency of your personal and professional details on the Register of Liquidators.
- RG 000.103 The Corporations Act requires you to notify ASIC of specified events, including changes in personal details.

Significant events

- RG 000.104 You must notify ASIC if any of the following events ('significant events') occur:
- (a) you become an insolvent under administration;
 - (b) a bankruptcy notice is issued under the Bankruptcy Act in relation to you as debtor, or a corresponding notice is issued in relation to you as debtor under a law of an external territory or foreign country;
 - (c) you are convicted of an offence involving fraud or dishonesty;
 - (d) you become disqualified from managing corporations under Pt 2D.6 of the Corporations Act, or under a law of an external territory or foreign country;
 - (e) you cease to have adequate and appropriate PI or fidelity insurance against the liabilities that you may incur working as a registered liquidator;
 - (f) you are issued with a notice under s40-40 of Sch 2 to the Bankruptcy Act (a show-cause notice) in relation to your registration as a trustee under that Act;
 - (g) your registration as a trustee under the Bankruptcy Act is suspended or cancelled;

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- (h) any other event prescribed in the Rules: s35-1(1).

Note: As at 1 March 2017, the Rules have not prescribed any other ‘significant events’ for the purposes of s35-1(1). It is your responsibility to maintain the currency of your knowledge about prescribed significant events.

RG 000.105 You must lodge a notice in the approved form advising of any of the above significant events within five business days after you could reasonably be expected to be aware that the event has occurred.

RG 000.106 The requirement to lodge notice of significant events is independent of the requirement to make appropriate disclosure when you lodge your annual liquidator return, even though both forms include similar questions.

RG 000.107 It is an offence if you intentionally or recklessly fail to comply with the requirement to notify ASIC of any significant event: s35-1(2).

Note: There is no fee for lodging the notice of significant events. However, there is a fee for the late lodgement of a document (see asic.gov.au/fees for the current fee).

Other events

RG 000.108 You must notify ASIC if any of the following events (‘other events’) occur:

- (a) information included in any annual liquidator return, annual administration return or end of administration return prepared by you or on your behalf is, or becomes, inaccurate in a material particular;
- (b) any other event prescribed in the Rules: s35-5(1).

RG 000.109 As at 1 March 2017, the Rules have prescribed the following additional ‘other events’:

- (a) you cease to practise as a registered liquidator;
- (b) you change your name;
- (c) if you practise as a member of a firm, or under a name or style other than your own name—the name of the firm, other name or style changes;
- (d) the address of any place where you practise as a registered liquidator changes: rule 35-5.

Note: It is your responsibility to maintain the currency of your knowledge about prescribed other events.

RG 000.110 You can comply with the requirement to notify us of changes to your family name, firm name, other name or style of practice, residential and firm addresses and email addresses by lodging a Form 905A *Notification of change to details of a liquidator* through the Registered Liquidator Portal.

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RG 000.111 You must lodge a notice advising us of any of the above other events within 10 business days after you could reasonably be expected to be aware that the event has occurred.

RG 000.112 It is an offence if you intentionally or recklessly fail to comply with the requirement to notify ASIC of any such event: s35-5(2).

Note: There is no fee for lodging the notice of other events. However, there is a fee for the late lodgement of a document (see asic.gov.au/fees for the current fee).

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D Disciplinary and other actions

Key points

ASIC may direct a registered liquidator to comply with a lodgement requirement or to give information or documents. If the direction is not complied with, ASIC may give a further direction not to accept further appointments or may apply to a court for orders directing compliance: see RG 000.115–RG 000.122.

Registration may be cancelled or suspended by ASIC in certain circumstances. If a registered liquidator becomes an insolvent under administration registration is automatically cancelled: see RG 000.125–RG 000.128.

ASIC may give a registered liquidator a show-cause notice asking for a written explanation why the liquidator should continue to be registered. The notice may be given if ASIC believes any of the matters specified in s40-40(1) have occurred: see RG 000.129–RG 000.160.

If a registered liquidator's response to a show-cause notice does not satisfy us, we may convene a committee to make a decision about ongoing registration: see RG 000.161–RG 000.174.

An industry body may lodge a notice with ASIC if the body suspects there are grounds to suspend or cancel a liquidator's registration or if there are grounds for ASIC to issue a show-cause notice to a liquidator: see RG 000.175–RG 000.177.

A court may make orders regarding a registered liquidator: see RG 000.178–RG 000.182.

You may initiate other actions affecting your registration: see RG 000.183–RG 000.202.

Our approach to assessing compliance

- RG 000.113 We monitor your compliance in your performance of your functions and duties as a registered liquidator. When assessing your compliance, we will take into account whether you:
- (a) contravene, or caused a company of which you are an external administrator, receiver or receiver and manager to contravene, a provision of the Corporations Act, or any other legal or equitable obligation;
 - (b) comply with ASIC policy or other guidance on the adequate and proper performance of your duties and functions;
 - (c) comply with professional standards, practices and principles, including codes of conduct or statements of best practice of a relevant professional/industry body of which you are a member; and
 - (d) maintain adequate practice capacities and otherwise remain a fit and proper person to remain registered as a liquidator.

- RG 000.114 You may be subject to disciplinary or other actions where you have not complied with your obligations or other events occur which may impact on your ability to comply with your obligations.

ASIC direction to comply

- RG 000.115 To assist with its regulatory functions, ASIC may give you written directions if you fail to lodge documents or give information or documents as required by the Corporations Act. If you do not comply with a direction given to you by us, we may give a further direction that you do not accept further appointments, or we may apply to the court for orders.

Remedy failure to lodge documents

- RG 000.116 The Corporations Act requires you as a registered liquidator to lodge documents with, and to give information or documents to, ASIC.
- RG 000.117 If you fail to comply with a requirement to lodge any document, or give any information or document, that you are required to lodge with or give to ASIC under the Corporations Act, we may direct you, in writing, to comply within 10 business days after the direction is given: s40-5(1)–(2).

Note: You may apply for an extension of time within which to comply with the direction, provided you apply to ASIC before the end of the period for compliance with the direction s40-5(3).

- RG 000.118 If you do not comply with the direction, ASIC may:
- (a) give you a direction not to accept further appointments; and/or
 - (b) apply to the court seeking orders directing you to comply with the requirement within such time as the court orders: s40-5(4).

Correct inaccuracies in information

- RG 000.119 If we reasonably suspect that any information you are required to give us under the Corporations Act (whether in a document lodged or given to ASIC or otherwise) is incomplete or incorrect in any particular, we may, in writing, direct you within 10 business days after the direction is given to:
- (a) confirm that the information is complete and correct;
 - (b) complete or correct the information (as the case requires); and/or
 - (c) notify any person specified in the direction of the addition or correction: s40-10(2).

Note: You may apply for an extension of time within which to comply with the direction, provided you apply to ASIC before the end of the period for compliance with the direction: s40-10(3).

- RG 000.120 If you don't comply with ASIC's direction, ASIC may:
- (a) direct you not to accept further appointments; and/or
 - (b) apply to the court seeking orders directing you to comply with the requirement within such time as the court orders: s40-10(4).

Direction not to accept further appointments

- RG 000.121 ASIC may, in writing, direct that you not accept any further appointments under Ch 5 of the Corporations Act (external administrations) if:
- (a) you fail to comply with a direction to remedy a failure to lodge documents or give information or documents under s40-5;
 - (b) you fail to comply with a direction to correct inaccuracies under s40-10; or
 - (c) a committee decides that ASIC should give a direction not to accept further appointments under s40-55(1)(d).

Note: From 1 September 2017, ASIC may also give you a direction under s40-15(1) if you fail to comply with a direction from ASIC to give relevant material under s70-70 or you fail to comply with a direction from ASIC under s75-20(1) or (2) or s80-27(1) to convene a meeting of creditors or comply with requirements included in the direction about notifying creditors and in conducting the meeting s40-15(1)(d) and (e).

- RG 000.122 It is a condition imposed on your registration that you comply with a direction not to accept appointments: s40-15(2). Our publicly available Register of Liquidators would reflect this condition.

Cancellation or suspension of registration

- RG 000.123 Your registration as a liquidator may be cancelled automatically or suspended or cancelled by ASIC.

Automatic cancellation

- RG 000.124 Your registration as a liquidator is automatically cancelled if you become an insolvent under administration: s40-20(1).

Cancellation or suspension by ASIC

- RG 000.125 ASIC may cancel or suspend your registration as a liquidator if any of the following events occur:
- (a) you are disqualified from managing corporations under Pt 2D.6 of the Corporations Act or another law;
 - (b) you cease to have adequate and appropriate PI or fidelity insurance against the liabilities you may incur working as a registered liquidator;

- (c) your registration as a trustee under the Bankruptcy Act is cancelled other than by your written request;
- (d) you fail to repay remuneration as ordered by the court under s90-15(3)(f);
- (e) you are convicted of an offence involving fraud or dishonesty; or
- (f) you lodge a request with ASIC in the approved form to cancel or suspend your registration: s40-25 or 40-30.

RG 000.126 Other than in response to a written request from you, in deciding whether to cancel or suspend your registration, we will consider:

- (a) the circumstances of the event;
- (b) any remedial or other action taken by you, and its timeliness;
- (c) the impact on creditors and other claimants;
- (d) any factual circumstances that may explain or mitigate the event; and
- (e) any other matters we consider relevant.

Note: See RG 000.198–RG 000.202 for our policy on voluntary cancellation or suspension.

RG 000.127 If ASIC decides under s40-25 or s40-30 to cancel or suspend your registration as a liquidator, we must provide you, within 10 business days of making the decision, a written notice setting out our decision and the reasons for that decision: s40-35(2).

RG 000.128 The decision comes into effect the day after ASIC gives the notice to you s40-35(3).

Note: A failure by ASIC to give the notice within 10 days does not affect the validity of the decision: s40-35(4).

Show-cause notice

RG 000.129 ASIC may give you a notice in writing asking you to explain in writing why you should continue to be registered as a liquidator, if we believe that you:

- (a) no longer have the qualifications, experience, knowledge and abilities prescribed by s20-20(4)(a) (see RG 000.131 and Table 6);

Note: Rule 20-1 contains detail about the prescribed qualifications, experience knowledge and abilities for registration.

- (b) have committed an act of bankruptcy within the meaning of the Bankruptcy Act or a corresponding law of an external territory or foreign country;
- (c) are disqualified from managing corporations under Pt 2D.6 of the Corporations Act or a law of an external territory or foreign country;

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- (d) have ceased to have adequate and appropriate PI and fidelity insurance against the liabilities you may incur working as a registered liquidator (see RG 000.132–RG 000.136 and Section E);
- (e) have breached a current condition imposed on your registration (see RG 000.137–RG 000.140);
- (f) have contravened a provision of the Corporations Act;
- (g) have failed to properly exercise the powers or perform the duties of a reviewing liquidator;
- (h) have had your registration as a trustee under the Bankruptcy Act cancelled or suspended other than in response to a written request from you;
- (i) have failed to repay remuneration as ordered by the court under s90-15(3)(f);
- (j) have been convicted of an offence involving fraud or dishonesty;
- (k) are permanently or temporarily unable to perform the functions and duties of a liquidator because of physical or mental incapacity;
- (l) have failed to carry out adequately and properly:
 - (i) the duties of a liquidator; or
 - (ii) any other duties or functions that a law of the Commonwealth or of a state or territory or the general law requires a registered liquidator to carry out (see RG 000.141–RG 000.151);
- (m) are not a fit and proper person (see RG 000.152–RG 000.154); or
- (n) are not resident in Australia or in another prescribed country (see RG 000.155–RG 000.157): s40-40(1).

RG 000.130 You are required to give us your written explanation as to why you should continue to be registered, within 20 business days after the show-cause notice is given. If you do not give your explanation within 20 business days, or we are not satisfied with your explanation, we may convene a committee to make a decision about your registration.

Note: See RG 000.161–RG 000.172 for a description of the committee process.

Qualifications, experience, knowledge and ability not current

RG 000.131 We may give you a show-cause notice if you do not maintain the currency of your experience, knowledge and ability as a registered liquidator, including the capacity to perform satisfactorily the functions and duties of a registered liquidator. Table 6 sets out our expectations in this area.

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Table 6: Maintain currency of experience, knowledge, abilities and capacity

Area	What we look for	How we evaluate it
Corporate insolvency appointments	<p>We will take into account the number and type of external administration, receiver and receiver and manager appointments you have taken (i.e. other than as liquidator in a members' voluntary winding-up).</p> <p>Taking these appointments is the most effective way of maintaining the experience, knowledge and abilities that a registered liquidator needs to satisfactorily perform their duties and functions.</p>	<p>We will generally consider that you do not have sufficiently current Australian corporate insolvency knowledge, skills and experience if you have not taken any of these appointments for <i>three consecutive years</i>.</p> <p>Generally, a three-year period adequately allows for the cyclical nature of corporate insolvencies.</p>
Other external administrations or corporate insolvency work	<p>We will take into account the nature and extent of your involvement in:</p> <ul style="list-style-type: none"> • external administration, receivership and receivership and management appointments where you were not the appointee; • foreign corporate external administrations; and • other corporate insolvency work, in Australia or overseas, that in ASIC's opinion is sufficiently connected to the knowledge, skills and experience required to perform the duties and functions of a registered liquidator. <p>The types of other corporate insolvency work that we will generally consider to be 'sufficiently connected' are:</p> <ul style="list-style-type: none"> • insolvency advisory work for corporate reconstructions or informal workouts; • secondment to or engagement by a lending institution in a debt management or advisory role focusing specifically on insolvent or potentially insolvent corporate borrowers; • technical or training roles in a corporate insolvency practice; and • technical roles in an insolvency professional organisation. 	<p>We will generally consider that you do not have sufficiently current Australian corporate insolvency experience, knowledge and abilities if you have not been engaged in external administration, receivership or receivership and management appointments or corporate insolvency work for <i>a consecutive period of more than 12 months</i>.</p> <p>We will not usually consider the following work to be 'sufficiently connected':</p> <ul style="list-style-type: none"> • work in a practice management or risk management role in an insolvency practice; or • other work that does not substantially involve the application of specific insolvency knowledge and skills.

Area	What we look for	How we evaluate it
Practice capacities	<p>We expect you to continuously monitor your resources and the demands of your current and anticipated workload to ensure that your practice capacities allow you to perform satisfactorily your functions and duties.</p> <p>Adequate practice capacities require reliable access to (as and when required):</p> <ul style="list-style-type: none"> adequate human and technological resources to enable you to accept appointments as an external administrator, receiver or receiver and manager from the time of registration and on a continuing basis; appropriate processes for monitoring and ensuring the continuing adequacy of the human and technological resources available to you; appropriate processes for ongoing supervision and training of staff; appropriate operational procedures and manuals for conducting external administration, receivership or receivership and management appointments, including internal procedures for recording and handling complaints about the performance of duties by you or staff who perform duties on your behalf; and adequate systems for managing risks to your own practice and each entity to which you may be appointed. 	<p>It is particularly important for registered liquidators whose practice undergoes changes, or who move to a different practice, to ensure that their practice capacities continue to allow the satisfactory performance of functions and duties.</p> <p>We will consider the resources available to you for conducting corporate insolvency administrations, including:</p> <ul style="list-style-type: none"> the number and seniority of specific insolvency staff; the corporate insolvency experience of those staff; the technological resources available to you; the internal processes for monitoring and ensuring the continuing adequacy of human and technological resources; the internal processes for ongoing staff supervision and training; the practice's operational procedures and manuals for conducting external administration, receivership or receivership and management appointments, including complaints handling procedures; and the risk management systems in place for managing risks to the practice and to each entity to which you may be appointed.

Adequate and appropriate insurance not held

- RG 000.132 We may give you a show-cause notice if you cease to have adequate and appropriate PI and fidelity insurance.
- RG 000.133 You are required to maintain adequate and appropriate PI and fidelity insurance against the liabilities you may incur working as a registered liquidator: s25-1.
- RG 000.134 You should determine what is adequate and appropriate insurance against the liabilities you may incur working as a registered liquidator, and obtain such cover.
- RG 000.135 You should review your business operations or intended operations and work out your insurance needs having regard to your own risk profile.
- RG 000.136 In Section E of this guide we provide guidance about what are adequate and appropriate insurance arrangements. However, we will not approve your level of cover.

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Conditions on your registration breached

RG 000.137 We may give you a show-cause notice if we believe you have breached a current condition imposed on your registration.

Note: Section 5-10 defines 'current condition'.

RG 000.138 Current conditions are conditions imposed:

- (a) by a committee convened under s20-10 to decide whether you should be registered as a liquidator (s20-20(5) and (6));
- (b) by a committee convened under s40-45 to consider disciplinary action against you (s40-55(1)(f)) or another registered liquidator (s40-55(1)(g));
- (c) by order of the court under s45-1;
- (d) as a consequence of a direction by ASIC under s40-15(1) not to accept any further appointments (s40-15(2)); or
- (e) by operation of the transitional provisions associated with the commencement of the Insolvency Law Reform Act.

Note: You may apply to have conditions on your registration varied or removed: see RG 000.184–RG 000.191.

RG 000.139 In addition, current conditions include conditions imposed on all registered liquidators, or on registered liquidators of a specified class, under the Rules: s20-35.

RG 000.140 As at 1 March 2017, the Rules provide for the following industry-wide conditions:

- (a) you must undertake at least 40 hours of CPE (10 hours of which must be capable of being objectively verified by a competent source) during each year of your registration (rule 20-5(2) and (3)); and
- (b) if a committee or ASIC suspends your registration—you must, during the period of suspension, maintain adequate and appropriate PI and fidelity insurance against the liabilities that you may incur as a result of work carried out as a registered liquidator before the suspension took effect: rule 20-5(4).

Duties and functions not performed adequately and properly

RG 000.141 We may give you a show-cause notice if we believe you have failed to carry out adequately and properly (whether in Australia or in an external territory or foreign country) the duties of a liquidator, or any other duties or functions that you are required to carry out under a law of the Commonwealth or of a state or territory or the general law.

RG 000.142 The obligation to perform adequately and properly your duties and functions as a registered liquidator means that you must comply with duties and obligations that apply to you in your capacity as a registered liquidator, including as an appointee in a particular external administration and when appointed as a receiver, receiver and manager or other controller in relation to property of a company. These include statutory duties and obligations under the Corporations Act and other domestic legislation, and general law duties.

RG 000.143 In the performance of these duties and functions, we expect that you will have regard to:

- (a) ASIC published regulatory guidance;
- (b) guidance published by professional accounting bodies and relevant professional bodies (as defined) from time to time; and
- (c) generally accepted industry standards.

Duties and functions under the general law

RG 000.144 As a registered liquidator, you occupy a fiduciary position in relation to the company under liquidation or administration, to its creditors and to its contributories. As a fiduciary, you must meet a very high standard of honesty, impartiality and probity. A number of fiduciary duties apply to you, including a duty:

- (a) to act in good faith and exercise powers for a proper purpose;
- (b) of independence—you must be, and be perceived to be, independent of the company, its directors and shareholders and its creditors;
- (c) of impartiality—you must act, and be perceived to act, impartially between all the individuals or corporations involved in the administration in the discharge of your duties and responsibilities;
- (d) to avoid possible conflict between your personal interests and your duty to creditors and members—this includes the duty not to profit from your role other than to the extent expressly permitted by law.

RG 000.145 You also have a duty to exercise care (including diligence) and skill to an extent that is reasonable in all the circumstances.

Duties and functions under other Australian law

RG 000.146 In addition to the duties prescribed by the Corporations Act, you must comply with other relevant Australian law when exercising your powers and performing your duties as a registered liquidator.

Observance of ASIC published guidance

RG 000.147 Our regulatory guides:

- (a) explain when and how we will exercise specific powers primarily under the Corporations Act;

- (b) explain how we interpret the law;
- (c) describe principles underlying our approach; and
- (d) provide practical guidance.

RG 000.148 We expect registered liquidators would have regard to ASIC published guidance when performing their duties and functions.

Observance of guidance published by relevant professional/industry bodies

RG 000.149 Professional accounting bodies and other relevant professional/industry bodies issue professional standards and codes of conduct for their members to follow.

RG 000.150 Courts and other disciplinary bodies may have regard to published guidance and industry standards when determining whether a registered liquidator has adequately and properly performed their duties and functions.

RG 000.151 We expect that registered liquidators will comply with the standards set by the professional/industry bodies of which they are members.

Not fit and proper

RG 000.152 We may give you a show-cause notice if we believe you are not a fit and proper person.

RG 000.153 We interpret the expression 'fit and proper' as referring to the attributes of good character, diligence, honesty, integrity and judgement.

Note: The criteria for determining whether someone is a fit and proper person are consistent with the criteria set out for responsible persons of ADIs in APS 520.

RG 000.154 When we assess whether you are fit and proper we take into account:

- (a) your relationship with a relevant professional/industry body of which you are or have been a member since your registration as a liquidator;

Note: This includes whether you ceased to be a member of the body and, if so, the reasons why.

- (b) the number and seriousness of any complaints we receive about you or your staff; and
- (c) any other relevant factors.

Not resident in Australia or another prescribed country

RG 000.155 We may give you a show-cause notice if we believe you are not resident in Australia or another prescribed country.

Note: At 1 March 2017, no countries have been prescribed.

RG 000.156 We interpret ‘resident in Australia’ as requiring you to be living in Australia on a permanent or long-term basis. This does not require a continuous physical presence in Australia.

Note: We will generally consider that you are not resident in Australia at a particular time if you have been living outside Australia for a period of more than 12 months at that time.

RG 000.157 If you are not resident in Australia, before issuing a show-cause notice ASIC will consider:

- (a) the length of your absence from Australia; and
- (b) when you anticipate returning to Australia.

Permanently or temporarily unable to perform the functions and duties of a liquidator

RG 000.158 We may give you a show-cause notice if we believe you are permanently or temporarily unable to carry out your functions and duties because of physical or mental incapacity.

RG 000.159 We expect a registered liquidator who is permanently or temporarily unable to perform the functions and duties of a liquidator because of physical or mental incapacity to promptly notify ASIC and to take steps to have another individual appointed to any existing appointments.

RG 000.160 We think that taking those steps voluntarily is an aspect of the proper performance of a registered liquidator’s duties.

Referral to a committee

RG 000.161 If we do not receive a written explanation within 20 business days after ASIC gives the show-cause notice to you or we are not satisfied by the written explanation you provide, we may refer you to a committee convened to make a decision about taking certain kinds of action in relation to you as a registered liquidator: s40-50.

RG 000.162 The committee must consist of:

- (a) ASIC;
- (b) a registered liquidator chosen by a prescribed body; and
- (c) a person appointed by the Minister: s40-45(2).

Note: Rule 50-10 prescribes bodies for the purposes of s40-45(2)(b). At 1 March 2017, ARITA is the prescribed body for the purposes of those provisions.

RG 000.163 The ASIC delegate on the committee will have had no prior involvement in the matter.

Note: Generally, an ASIC hearing delegate will be the ASIC representative on the committee.

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Committee process

- RG 000.164 The committee may make inquiries of any person for the purposes of making a decision. The inquiries must be inquiries that are reasonable for the purpose of making an informed decision or that the chairperson of the committee believes are appropriate in order for the committee to have sufficient information to make a decision: rule 50-75.
- RG 000.165 The committee is not bound by rules of evidence but may inform itself on any matter as it sees fit. The committee must observe natural justice: rule 50-55.
- RG 000.166 If the committee is proposing to decide that your registration should be cancelled, a time and place will be fixed for the committee to interview you. You will be notified of the date, time and manner of the interview: rule 50-85(2).
- RG 000.167 The interview will be held as soon as practicable and both you and any member of the committee may participate in the interview by electronic means: rule 50-85(3).
- RG 000.168 At the interview, the committee may ask you any question it reasonably believes to be related to any matter that is relevant to the committee's decision to cancel your registration: rule 50-85(4). You may choose to have legal representation.

Committee's decision

- RG 000.169 The committee must use its best endeavours to make a decision within 60 days after the matter is referred to it: rule 50-90.
- RG 000.170 The committee must decide one or more of the following:
- (a) that you should continue to be registered;
 - (b) that your registration should be suspended for a period of time or until the occurrence of an event specified in the decision;
 - (c) that your registration should be cancelled;
 - (d) that ASIC should direct you not to accept any further appointments as a liquidator or not accept any further appointments as liquidator during a period specified in the decision;
 - (e) that you should be publicly admonished or reprimanded;
 - (f) that a condition specified in the decision should be imposed on your registration;
 - (g) that a condition should be imposed on all other registered liquidators that they must not allow you to carry out any of the functions or duties, or exercise any of the powers, of a registered liquidator on their behalf

- (whether as employee, agent, consultant or otherwise) for a period specified in the decision of no more than 10 years; or
- (h) that ASIC should publish specified information regarding the committee's decision and the reasons for that decision: s40-55(1).

Committee's report

- RG 000.171 The committee must prepare and give to you and ASIC a written report of its decision setting out:
- (a) the committee's decision;
 - (b) the reasons for that decision;
 - (c) if the committee decides that you should be registered subject to a condition:
 - (i) the condition; and
 - (ii) its reasons for imposing the condition; and
 - (d) if the committee decides that a condition should be imposed on all other registered liquidators in relation to the liquidator:
 - (i) the condition; and
 - (ii) its reasons for imposing the condition: s40-60.
- RG 000.172 The report must include a statement of the reasons of any minority in the decision and be signed by each member of the committee: rule 50-95.

Rights of appeal

- RG 000.173 If you are dissatisfied with the committee's decision, you may seek a review of the committee's decision by the AAT.
- RG 000.174 An application to the AAT for a review of the decision must:
- (a) be in writing;
 - (b) set out the reasons for seeking the review; and
 - (c) be made within 28 days of receiving the committee's report.

Note: Further information about applications to the AAT can be obtained from the AAT website (aat.gov.au).

Industry body notification

- RG 000.175 An industry body may lodge with ASIC a notice ('industry notice') relating to possible grounds for disciplinary action.

Note: Industry bodies for this purpose include ARITA, the professional accounting bodies and relevant legal professional bodies in each state and territory: rule 40-1.

- RG 000.176 An industry notice must:
- (a) state that the industry body reasonably suspects that there are grounds for ASIC to:
 - (i) suspend your registration;
 - (ii) cancel your registration;
 - (iii) issue you with a show-cause notice; or
 - (iv) impose a condition on your registration;
 - (b) identify you; and
 - (c) include the information and copies of any documents upon which the industry body has based its suspicion: s40-100(1).

- RG 000.177 We will consider the industry notice and decide whether to take any action. We must notify the industry body within 45 business days if we decide to take no action.

Note: We will assess the industry notice using the principles set out in [Information Sheet 153](#) *How ASIC deals with reports of misconduct* (INFO 153).

Court supervision

- RG 000.178 The court may make such orders as it thinks fit in relation to a registered liquidator: s45-1(1).
- RG 000.179 The court may make these orders on its own initiative, during proceedings before the court or on an application from you or ASIC: s45-1(2)–(3).

Orders involving registered liquidators

- RG 000.180 When making an order, the court may take into account:
- (a) whether you have faithfully performed, or are faithfully performing, your duties as a registered liquidator;
 - (b) whether an action or failure to act by you is in compliance with the Corporations Act and the Rules;
 - (c) whether an action or failure to act by you is in compliance with an order of the court;
 - (d) whether any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by you; and
 - (e) the seriousness of the consequences of any action or failure to act by you, including the effect on public confidence in registered liquidators as a group: s45-1(4).

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Orders about costs

- RG 000.181 The court may also make orders regarding the costs of a matter considered by the court: s45-5(1).
- RG 000.182 Such orders may provide that you are:
- (a) personally liable for some or all of the associated costs; and
 - (b) not entitled to be reimbursed by a company or its creditors for some or all of those costs: s45-5(2).

Liquidator initiated actions

- RG 000.183 You may initiate the following actions affecting your registration as a liquidator:
- (a) apply to vary or remove a condition imposed on your registration;
 - (b) apply to lift or shorten the period of a suspension; or
 - (c) apply to voluntarily cancel or suspend your registration as a liquidator.

Vary or remove a condition

- RG 000.184 If a registration or disciplinary committee imposes a condition on your registration, you may apply to ASIC to vary or remove the condition: s20-40(1).
- RG 000.185 You cannot, however, apply to vary or remove a condition imposed by the committee:
- (a) if your registration as a liquidator is suspended;
 - (b) if the condition is of a kind prescribed in the Rules; or
 - (c) in circumstances prescribed in the Rules: s20-40(2).

Note: At 1 March 2017, there were no conditions or circumstances prescribed. Further information on any prescribed conditions or circumstances will be updated periodically on our website (asic.gov.au). It is your responsibility to maintain the currency of your knowledge about prescribed conditions or circumstances.

- RG 000.186 Your application to vary or remove a condition must be in the approved form: s20-40(3). Your application will need to set out why you believe the condition should be varied or removed and include all relevant supporting documents.

Note: One application may deal with more than one condition: s20-40(5).

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RG 000.187 Within two months after receiving a properly made application, ASIC must refer the application to a committee for consideration: s20-50. The application is properly made if:

- (a) it can be made; and
- (b) it is in the approved form: s20-40(4).

RG 000.188 The committee must consist of:

- (a) ASIC;
- (b) a registered liquidator chosen by a prescribed body; and
- (c) a person appointed by the Minister: s20-45(2).

Note: Rule 50-10 prescribes bodies for the purposes of s20-45(2)(b). At 1 March 2017, ARITA is the prescribed body for the purposes of those provisions.

RG 000.189 The committee must interview you, unless you otherwise agree, and within 20 business days after interviewing you or obtaining your agreement not to be interviewed:

- (a) decide whether the condition should be varied or removed; and
- (b) if a condition is to be varied—specify the way in which it is to be varied: s20-55(3).

RG 000.190 Following its decision, the committee must give you and ASIC a report setting out:

- (a) its decision on the application to vary or remove a condition;
- (b) its reasons for that decision; and
- (c) if it decides that a condition should be varied—the variation that is to be made: s20-60.

RG 000.191 If a committee decides that a condition imposed is to be varied or removed, the condition is varied or removed in accordance with that decision: s20-65.

Lifting or shortening suspension

RG 000.192 If your registration as a liquidator has been suspended, you may apply to ASIC in the approved form for the suspension to be lifted or for the period of suspension to be shortened: s40-70(1)–(4).

RG 000.193 Within two months after receiving an application in the approved form, ASIC must refer the application to a committee for consideration. Your application will need to set out why you believe the suspension should be lifted or shortened and include all relevant supporting documents.

RG 000.194 The committee must consist of:

- (a) ASIC;

- (b) a registered liquidator chosen by a prescribed body; and
- (c) a person appointed by the Minister: s40-75(2).

Note: Rule 50-10 prescribes bodies for the purposes of s40-75(2)(b). At 1 March 2017, ARITA is the prescribed body for the purposes of those provisions.

- RG 000.195 The committee must interview you, unless you otherwise agree, and within 10 business days after interviewing you or obtaining your agreement not to be interviewed:
- (a) decide whether to lift the suspension or shorten the period of suspension; and
 - (b) if the period of suspension is to be shortened—specify when the suspension is to end: s40-85(3).
- RG 000.196 The committee must give you and ASIC a report setting out:
- (a) the committee's decision;
 - (b) the reasons for that decision; and
 - (c) if the committee decides the period of suspension should be shortened—when the suspension is to end: s40-90.
- RG 000.197 The suspension is lifted or shortened in accordance with the decision: s40-95.

Voluntary cancellation or suspension

- RG 000.198 At any time, you may lodge a request with ASIC in the approved form to cancel or suspend your registration as a liquidator: s40-25(1)(f) or s40-30(1)(f).
- RG 000.199 We have discretion whether to grant your request for cancellation or suspension and will not automatically grant it. We will generally only cancel or suspend your registration if:
- (a) we are satisfied that you have made adequate arrangements for transferring your books, resigning from all your appointments and, if relevant, replacing yourself as appointee; and
 - (b) there is no legal action pending against you, or that otherwise involves you, in your capacity as an external administrator, receiver or receiver and manager.
- RG 000.200 We may also take into account whether there are any ongoing disciplinary or other actions, including any outstanding applications to a disciplinary committee regarding your previous conduct.
- RG 000.201 You have an ongoing obligation to notify ASIC if a prescribed significant event occurs and, in the following circumstances, we would generally expect you to request cancellation or suspension of your registration:
- (a) you become disqualified from managing corporations under Pt 2D.6 of the Corporations Act or other law;

- (b) you cease to have adequate and appropriate PI or fidelity insurance against the liabilities you may incur working as a registered liquidator;
- (c) your registration as a trustee under the Bankruptcy Act is cancelled other than by your written request;
- (d) you fail to repay remuneration as ordered by the court under s90-15(3)(f); or
- (e) a court convicts you of an offence involving fraud or dishonesty.

We expect you to request cancellation or suspension of your registration in these situations even though there may be no express obligation under the Corporations Act to do so. If you do not request cancellation or suspension of your registration in these situations, we will consider whether to do so.

Note: See RG 000.125–RG 000.126.

RG 000.202 We also expect you to request cancellation of your registration if:

- (a) you cease to practise as a registered liquidator;
- (b) you leave Australia permanently, or you live outside Australia for 12 months and you do not intend to return immediately; or
- (c) you cease to be fit and proper to remain registered for any other reason.

We expect you to request cancellation of your registration in these situations even though there may be no express obligation under the Corporations Act to do so. If you do not request cancellation of your registration in these situations, we will consider whether to do so.

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E Insurance requirements

Key points

This section sets out how we administer the insurance requirements for registered liquidators under s25-1.

It covers:

- an introduction to the insurance requirements, including their content, limitations and the policy objective underlying them (see RG 000.205–RG 000.214);
- our approach to administering the insurance requirements, including five key policy principles which guide us (see RG 000.215–RG 000.217 and Table 8–Table 9);
- how adequate and appropriate insurance should be assessed and obtained, including the registered liquidator’s responsibility (see RG 000.218–RG 000.228 and Table 10);
- the issues that need to be addressed in determining whether PI insurance is adequate and appropriate (see RG 000.235–RG 000.254);
- the scope, form and structure of fidelity insurance and the issues that need to be addressed in determining whether fidelity insurance is adequate and appropriate (see RG 000.255–RG 000.276 and Table 11); and
- key issues affecting both PI and fidelity insurance, including previous business and run-off cover (see RG 000.277–RG 000.284).

Overview of our policy

RG 000.203 This section sets out how we administer the insurance requirements for registered liquidators under the Corporations Act.

RG 000.204 Table 7 summarises the key features of our policy regarding the insurance requirements. While ASIC may, by legislative instrument, determine what constitutes adequate and appropriate PI and fidelity insurance, no such determination is in effect at 1 March 2017.

Note: Legislative instruments are registered on the Federal Register of Legislation at legislation.gov.au.

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Table 7: Summary of key features of our policy

Key features	Summary
Introduction to the insurance requirements	<p>If you are a registered liquidator, you must maintain adequate and appropriate PI and fidelity insurance: s25-1.</p> <p>The purpose of the insurance requirements is to ensure, as far as possible, that funds are available to compensate claimants (e.g. creditors of an externally administered company) for loss suffered because of the inadequate or improper performance of duties or other legal obligations by a registered liquidator or their staff: see RG 000.208–RG 000.209.</p> <p>The insurance requirements are not designed to cover all losses for which claims might be made against a registered liquidator: see RG 000.210–RG 000.214.</p>
Our approach to administering the insurance requirements	<p>We will apply our view of what constitutes adequate and appropriate PI and fidelity insurance in the following situations:</p> <ul style="list-style-type: none"> • we are determining whether an applicant for registration has produced evidence of such insurance; • we are determining whether an applicant for <i>renewal</i> of registration has produced evidence of such insurance; • we are assessing your annual liquidator return; • we are deciding what action to take after you notify us that you cease to have adequate insurance; • we are deciding whether to act on a notice by an industry body of possible grounds for disciplinary action; • we are deciding whether to suspend or cancel your registration on grounds relating to inadequate insurance; and • we decide to issue a show-cause notice on grounds relating to inadequate insurance: see Table 8. <p>We have identified five guiding principles for how we will administer the insurance requirements: see Table 9.</p>
Assessing and obtaining insurance	<p>Registered liquidators are primarily responsible for assessing what is adequate and appropriate PI and fidelity insurance for their circumstances.</p> <p>Applicants for registration as a liquidator need to have adequate and appropriate PI and fidelity insurance in place before we will register them and issue a certificate of registration: see RG 000.225.</p> <p>We explain:</p> <ul style="list-style-type: none"> • the initial assessment process for registered liquidators and applicants for registration as a liquidator (see RG 000.222–RG 000.224); • our expectations regarding ongoing compliance (see RG 000.226–RG 000.232); and • from whom registered liquidators can obtain PI and fidelity insurance (see RG 000.233–RG 000.234).

Key features	Summary
Adequate and appropriate PI insurance	<p>Whether a PI insurance policy is adequate and appropriate depends on:</p> <ul style="list-style-type: none"> • the amount of the cover (see RG 000.236–RG 000.238); • the level of excesses or deductibles (see RG 000.239–RG 000.240); • the provision of reinstatements (see RG 000.241–RG 000.242); • the scope of the cover (see RG 000.244); • the persons covered by the policy (see RG 000.245); • any exclusions contained in the policy (see RG 000.246); • the treatment of defence costs (see RG 000.247–RG 000.248); and • the provision of retroactive cover (see RG 000.249–RG 000.254).
Fidelity insurance	<p>Fidelity insurance varies in scope and structure: see RG 000.256–RG 000.259.</p> <p>It is the ‘third party’ indemnity aspect of fidelity insurance that is most important for fulfilling the policy objective: see RG 000.260–RG 000.262.</p> <p>Whether fidelity insurance is adequate and appropriate depends on:</p> <ul style="list-style-type: none"> • the scope of cover (see RG 000.263–RG 000.266); • the effect of particular exclusions and other terms and conditions (see RG 000.267–RG 000.273); and • the level of cover (see RG 000.274–RG 000.276 and Table 11).
Previous business, former principals and run-off cover in PI and fidelity insurance	<p>In achieving the policy objective of the insurance requirements, it is important that:</p> <ul style="list-style-type: none"> • if your firm is a new firm formed by merger with, or acquisition of, another firm(s), there is cover for work performed in the predecessor firm; • if you leave a firm, you remain covered for claims arising from your conduct during your time at that firm; • if you are retiring or ceasing to practice as a sole practitioner, you obtain run-off cover unless claims for previous work will be covered by a firm that acquires your business; and • your cover does not terminate on the insolvency or external administration of you or your firm.

Introduction to the insurance requirements

The professional indemnity (PI) and fidelity insurance requirements

RG 000.205 Section 25-1 requires a registered liquidator to maintain adequate and appropriate PI and fidelity insurance against the liabilities that the liquidator may incur working as a registered liquidator.

Note: In Section E, we refer to this as the ‘insurance requirements’.

RG 000.206 If you fail to maintain insurance, you commit an offence: s25-1(3) and (4).

RG 000.207 It is also a condition on the registration of any person whose registration as a liquidator has been suspended that the person must, during the period of

suspension, maintain adequate and appropriate PI and fidelity insurance against the liabilities that the person may incur as a result of work carried out as a registered liquidator before the suspension takes effect: rule 20-5(4).

Objective of the insurance requirements

RG 000.208 The underlying policy objective of the insurance requirements is to ensure, as far as possible, that funds are available to you to compensate creditors and other claimants for loss suffered as a result of the inadequate or improper performance of your duties or other legal obligations by you or your staff in connection with working as a registered liquidator.

Note: In Section E, we refer to this as the 'policy objective'.

RG 000.209 We will interpret and apply the insurance requirements in a way that maximises their potential to achieve this policy objective while having regard to practical considerations including the availability and cost of insurance.

Limitations of PI and fidelity insurance

RG 000.210 The ability of PI and fidelity insurance to protect creditors and other claimants against financial loss is subject to inherent practical limitations. The insurance requirements are not a mechanism for providing compensation *directly* to creditors or other claimants. Rather, they are a means of reducing the risk that you cannot meet claims arising from work performed as a registered liquidator because of insufficient available financial resources.

No cover for fraud by registered liquidator practising alone

RG 000.211 Annual PI and fidelity insurance policies do not indemnify you for losses caused by your own dishonest conduct or fraud. If you operate as a sole practitioner, you will have to meet such losses from other available financial resources. However, if you are insured as part of a firm, creditors can generally claim against the firm and, as an innocent insured party, the firm can be indemnified under the fidelity insurance policy.

Insurance does not cover all creditor losses

RG 000.212 The insurance requirements are not intended to:

- (a) remove all risk of creditor losses relating to work that a registered liquidator undertakes; or
- (b) guarantee the recovery of funds to creditors of insolvent companies.

RG 000.213 Further, the insurance requirements are not intended to cover claims for loss:

- (a) solely as a result of the business failure (e.g. through insolvency) of you or your firm; or

- (b) because the financial return from the external administration of a company or the appointment of a receiver, receiver and manager or other controller does not meet a creditor's expectations.

RG 000.214 The insurance requirements are generally intended to cover losses that result from:

- (a) services falling below acceptable professional standards (i.e. negligence);
- (b) breaches of professional, statutory or fiduciary duties or other obligations (e.g. non-compliance with the Corporations Act); and
- (c) dishonest conduct by your staff (e.g. fraud).

Our approach to administering the insurance requirements

ASIC's role

RG 000.215 We need to form a view of what constitutes 'adequate and appropriate' PI and fidelity insurance in the following situations: see Table 8.

Table 8: Situations in which we apply our view of adequate and appropriate insurance

1. Registering a liquidator	We must assess whether an applicant complies with the requirements of s20-30 before registering them as a liquidator.
2. Renewing liquidator registration	We must assess whether a registered liquidator has adequate and appropriate insurance before renewing their registration under s20-75.
3. Lodging an annual liquidator return	We must assess whether you continue to maintain adequate and appropriate insurance when you lodge your annual liquidator return under s30-1.
4. Responding to notice of a significant event	We must determine what action to take should you lodge notice under s35-1 that you have ceased to have adequate and appropriate insurance.
5. Assessing an industry body notification	We may have to assess whether you have adequate and appropriate insurance if an industry body lodges a notice under s40-100 of possible grounds for disciplinary action.
6. Unilateral ASIC suspension or cancellation of registration	We may suspend or cancel your registration under s40-25 or s40-30 if we consider that you do not hold adequate and appropriate insurance.
7. Issuing a show-cause notice	We may issue you with a show-cause notice under s40-40 if we consider that you do not hold adequate and appropriate insurance.

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Key principles

RG 000.216 Table 9 sets out five key policy principles that will guide us in assessing what is adequate and appropriate PI and fidelity insurance.

Table 9: Key policy principles

Principle 1: Responsibility of registered liquidator	It is the responsibility of each registered liquidator to determine what insurance arrangements are adequate and appropriate in his or her circumstances.
Principle 2: Insurance fit to achieve policy objective	'Adequate and appropriate' broadly means that the insurance is fit for achieving the policy objective and is on usual commercial terms.
Principle 3: Sufficient insurance to cover liabilities	The insurance must be for an amount sufficient to cover the liabilities that a registered liquidator may incur working as a registered liquidator.
Principle 4: Practical availability	An element of adequacy and appropriateness is what insurance cover is practically available in the market at any given time.
Principle 5: Balance between costs and benefits	A balance needs to be struck between the level of protection for creditors and other claimants afforded by the required insurance and the cost for registered liquidators.

Practical application

RG 000.217 Cyclical changes in the insurance market can affect the availability and scope of PI and fidelity insurance for registered liquidators, as for other professional services industries. We will take note of fluctuating market conditions and the availability of insurance and we may update our policy as needed to reflect changes in the insurance market.

Assessing and obtaining insurance

Registered liquidator's responsibility

RG 000.218 You should determine what is adequate and appropriate PI and fidelity insurance against the liabilities you may incur working as a registered liquidator and obtain such cover. You should review your business operations or intended operations and work out your insurance needs each year, or for each external administration or receiver, receiver and manager or other controller appointment, having regard to your own particular risk profile.

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- RG 000.219 Whether a particular PI or fidelity insurance policy or arrangement is adequate and appropriate depends on all of the facts and circumstances, including:
- (a) the nature, scale and complexity of your business;
 - (b) the variety of external administration work and receiver, receiver and manager or other controller appointments you normally undertake; and
 - (c) your other financial resources.
- RG 000.220 You are in the best position to assess what is adequate and appropriate. However, in some cases you might find it helpful to get appropriate professional advice on the appropriateness of the cover you should obtain.
- RG 000.221 Our guidance is intended to assist you to determine what are adequate and appropriate insurance arrangements. However, we will not approve your PI and fidelity insurance arrangements. While ASIC may, by legislative instrument, determine what constitutes adequate and appropriate PI and fidelity insurance, no such determination is in effect at 1 March 2017.

Note: Legislative instruments are registered on the Federal Register of Legislation at legislation.gov.au. It is your responsibility to maintain the currency of your knowledge about any legislative instrument determining what constitutes adequate and appropriate PI and fidelity insurance.

Assessment process

Initial assessment process for applicants

- RG 000.222 You will need to have adequate and appropriate PI and fidelity insurance in place before we can register you as a liquidator: s20-30(1). You should undertake your own analysis of what is adequate and appropriate insurance.
- RG 000.223 An applicant must satisfy the registration committee convened under s20-10 that they will take adequate and appropriate PI and fidelity insurance against the liabilities the applicant may incur working as a registered liquidator: s20-20(4)(b).
- RG 000.224 To help determine whether applicants have taken out, or will take out, cover that meets the insurance requirements, applicants may be asked questions by the committee about the matters in Table 10. We intend to ask successful applicants about these matters before registering them under s20-30. Although an appropriate professional advisor may assist in providing the answers to these questions, you must take responsibility for and may be required to certify the answers you provide.

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Table 10: Matters about which the committee may question applicants

Question	Matter
A	The identity of your insurer (or proposed insurer).
B	Whether: <ul style="list-style-type: none"> the Australian Prudential Regulation Authority (APRA) regulates the insurer; or the contract of insurance is relevantly exempt under the <i>Insurance Act 1973</i> (Insurance Act). <p>Note: If APRA does not regulate the insurer and the insurance contract is not exempt, you will need to explain to us why you believe insurance from that insurer is adequate and appropriate.</p>
C	Whether the insurance policy insures you or your firm against liabilities that you may incur working as a registered liquidator.
D	The policy period.
E	The respective 'per claim' and aggregate limits of indemnity (not taking into account any provision for reinstatement) for your PI and fidelity insurance.
F	Whether the PI insurance cover is 'costs inclusive' as regards defence costs.
G	How many reinstatements the PI insurance provides.
H	The highest gross fees you billed (or, if you are a member or employee of a firm, the highest total of gross fees billed by all registered liquidators who are members or employees of the firm) in any single financial year of the three prior years in relation to a particular insolvency engagement.
	OR
	The number of principals in the firm and the estimated total annual fees for the prior financial year.
I	If the insurance contains excesses or deductibles: <ul style="list-style-type: none"> their level; and whether they are at a level that you or your firm can confidently sustain as an uninsured loss.
J	Whether the insurance covers claims relating to all of the services that you wish to provide in the course of your business in connection with liabilities you may incur working as a registered liquidator.
K	Whether the PI insurance provides retroactive cover and, if so, what the retroactive date is.
L	If defence costs are covered in addition to the sum insured, whether there is any limit on the amount of defence costs covered and, if so, what that maximum is.
M	Whether the insurance contract is cancellable by the insurer for innocent non-disclosure or innocent misrepresentation, or by the insured.
N	Whether the fidelity insurance is provided: <ul style="list-style-type: none"> as a stand-alone fidelity or crime insurance policy; as a fidelity cover extension to the PI policy; or in the form of fraud and dishonesty insurance covering money and similar assets as part of the PI cover.
O	Whether the fidelity insurance includes cover for loss of third parties' money and similar assets.

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Question	Matter
P	Whether the insurance provides automatic run-off cover in the event of insolvency or external administration of you or your firm and, if so, for how many years after the expiry of the policy period.
Q	Additional or different questions as the circumstances of the case require.

RG 000.225 You will need to produce evidence in writing to us that you have adequate and appropriate PI and fidelity insurance before we can register you as a liquidator: s20-30(1). You may produce a certificate of cover or currency for this purpose. If one policy includes both PI and fidelity insurance, the certificate must clearly show that both types of insurance are provided.

Assessment process for liquidators with existing registrations

RG 000.226 You should review the terms of your PI and fidelity insurance in accordance with s25-1 and our guidance at least annually (e.g. when your existing policy or arrangement comes up for renewal) to ensure that it continues to be adequate and appropriate at all times. More frequent review will be required if the nature of your practice changes.

RG 000.227 If the limit of indemnity under your PI policy is determined having regard to a relevant Professional Standards Scheme approved under professional standards legislation, you should ensure that the approved scheme operated at all times during the period of cover (and, if it did not, increase the limit of indemnity if necessary) to ensure it is adequate to meet the liabilities you may incur working as a registered liquidator.

RG 000.228 You will have to confirm each year in the annual liquidator return (or Form 908, if applicable) that your cover meets the insurance requirements of the Corporations Act.

Note: The annual liquidator return under s30-1 applies to liquidator return years that begin on or after 1 March 2017. Accordingly, for current registered liquidators as at 1 March 2017, Form 908 will continue to be lodged on the first anniversary of your registration date after 1 March 2017.

ASIC's ongoing compliance surveillance

RG 000.229 From time to time, we may require you to provide certificates of insurance cover/currency for your PI and fidelity insurance policies and other information about your insurance arrangements (such as those details referred to in Table 10). For example, we may ask for these documents or details when:

- (a) you lodge your annual liquidator return under s30-1;
- (b) you lodge an application to renew your registration as a registered liquidator under s20-70;

- (c) an industry body lodges a notice under s40-100 setting out possible grounds for disciplinary action relating to whether you have adequate or appropriate insurance;
- (d) you lodge a notice of a significant event under s35-1 that you have ceased to have adequate or appropriate insurance;
- (e) we conduct a compliance review of your firm; or
- (f) as part of targeted or random reviews of PI and fidelity insurance arrangements.

Registered liquidators' compliance systems

- RG 000.230 We expect you to take personal responsibility for ensuring that:
- (a) you renew, vary or extend your PI and fidelity insurance when required;
 - (b) you pay premiums on time; and
 - (c) your insurance remains adequate and appropriate at all times.
- RG 000.231 Your complaints handling arrangements should ensure that claims are brought to your attention and promptly notified to insurers. Regardless of whether you delegate responsibility for insurance within the firm, you hold ultimate responsibility for your insurance arrangements.
- RG 000.232 You should also review the adequacy and appropriateness of your insurance arrangements in light of any major changes in your business (e.g. if you provide new services or engage significantly more staff).

Obtaining insurance: Authorised or exempt insurers only

- RG 000.233 Unless we otherwise agree, an adequate and appropriate insurance policy must be provided by an insurer that is:
- (a) regulated by APRA under the Insurance Act;
 - (b) operating under an exemption under the Insurance Act and associated regulations; or
 - (c) regulated by a system of foreign prudential insurance regulation sufficiently equivalent to that administered in Australia by APRA.
- RG 000.234 If you or your firm intends to obtain PI or fidelity insurance from a foreign insurer that is neither APRA-regulated nor exempt, you should contact ASIC to discuss whether the relevant foreign prudential insurance regulatory regime is equivalent to regulation by APRA.

Please email: LiquidatorRegistration@asic.gov.au.

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Adequate and appropriate PI insurance

The legislative requirement

- RG 000.235 Section 25-1 requires that the PI insurance must be ‘adequate and appropriate’ and must cover liabilities that you may incur working as a registered liquidator. The requirement covers claims against registered liquidators for breach of professional, fiduciary or statutory obligations. These obligations include duties to:
- (a) act independently, impartially, properly and fairly;
 - (b) act in good faith at all times in the best interests of the general body of creditors as a whole;
 - (c) act within your powers for the purpose for which those powers were conferred, and not for any private or collateral purpose;
 - (d) not place yourself in a position where your own private or commercial interests conflict with your duties;
 - (e) not obtain any unauthorised benefit from the fiduciary relationship;
 - (f) act with reasonable care and skill and a high standard of diligence; and
 - (g) act with efficiency, honesty and integrity.

Adequate PI insurance

Level of cover

- RG 000.236 As a guide (and subject to guidance in RG 000.227 and RG 000.237) we generally consider either of the methods used to determine the minimum amount, as outlined in Appendix 1 of this guide, to be adequate for the purposes of s25-1. We will assess this on a case-by-case basis.

Note: Costs-in-addition cover should be obtained to ensure that the legal and other costs of defending and settling claims do not reduce the level of cover available to a claimant below the limit of indemnity. If costs-in-addition cover cannot be obtained and costs-inclusive cover is held, the level of cover required to meet the limitation amount must be increased by 25%.

- RG 000.237 This approach for calculating the adequacy of insurance cover held by a registered liquidator accords with limitation of liability schemes approved under professional standards legislation for members of CA ANZ and CPA. If you are not eligible to be covered by a limitation of liability scheme or are eligible under other appropriate limitation of liability schemes, you are required to meet, as a minimum, either of the methods used to determine the minimum insured amounts as outlined in Appendix 1.

Note: Most registered liquidators are current members of either or both of CA ANZ and CPAA.

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RG 000.238 We consider that the minimum insured amount is a useful guide to what is adequate PI insurance for registered liquidators. Notwithstanding this, you must review your business operations to determine your insurance needs and ensure that the cover is adequate and appropriate against the liabilities you may incur working as a registered liquidator.

Excesses and deductibles

RG 000.239 Generally, the excess or deductible in an appropriate PI insurance policy must be set at a sufficiently low level for the registered liquidator's business to confidently sustain it as an uninsured loss, taking into account the financial resources of the registered liquidator and their firm.

Note: This is consistent with cl 9.2(d) of the Professional Standards Council's Policy Statement on PI Insurance (PSC Policy Statement), which refers to deductibles or excesses being set at reasonable levels having regard to, among other things, the apparent capacity of the member to meet the deductible or excess from other available assets.

RG 000.240 As a guide, a PI insurance policy's excess or deductible for each and every claim should not exceed either of the following two amounts:

- (a) whichever is the greater of:
 - (i) the amount calculated by multiplying the number of principals, partners, directors or officers of the registered liquidator's firm and its related entities as at the beginning of the period of insurance by \$10,000 for each and every claim; and
 - (ii) 3% of the total gross fee income of the registered liquidator, their firm and any related entity for the financial year immediately preceding the beginning of the period of insurance, whichever is greater; and
- (b) 5% of the limit of indemnity under the PI insurance policy.

Reinstatements

RG 000.241 To be adequate, your insurance policy should provide for at least one automatic reinstatement of the limit of indemnity.

Note: This is consistent with cl 9.2(c) of the PSC Policy Statement, which refers to having at least one automatic reinstatement.

RG 000.242 As an alternative, the insurance policy should have an aggregate limit of indemnity at least twice the minimum limit of indemnity.

Appropriate PI insurance

RG 000.243 Whether your PI insurance is appropriate depends on the terms and conditions of your insurance policy.

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Scope of cover

RG 000.244 To be appropriate, the insurance policy should:

- (a) cover civil liability for loss or damage suffered by creditors and other claimants arising from acts, errors or omissions by you or your staff in the course of providing professional insolvency services, including for example:
 - (i) negligence;
 - (ii) misleading or deceptive conduct; and
 - (iii) breaches of professional, fiduciary or statutory duties;
- (b) not be cancellable by the insurer for innocent non-disclosure or innocent misrepresentation, or by the insured at all; and
- (c) be on usual, ordinary commercial terms offered by insurers for this type of insurance.

Note: This is consistent with cl 9.2(a) of the PSC Policy Statement, which refers to a reasonably broad insuring clause, including cover for misleading and deceptive conduct.

Persons covered

RG 000.245 An appropriate PI insurance policy will cover your, and your firm's, civil liability resulting from your work or the work of your employees, directors, officers, partners, agents, consultants and subcontractors or your firm, performed in connection with your work as a registered liquidator.

Note: However, the insurance policy need not, and often will not, indemnify such employees, agents, consultants and subcontractors personally.

Exclusions

RG 000.246 An appropriate PI insurance policy should not contain clauses with the effect of excluding cover for:

- (a) your appointment as an officer of an insolvent or failing company by virtue of becoming the external administrator or receiver or receiver and manager of the company;
- (b) claims against you as one particular type of external administrator (e.g. as creditors' voluntary liquidator); or
- (c) breaches of obligations (by you, your employees or partners, or your firm's employees, directors, officers, partners, agents, consultants or subcontractors) while providing services in connection with the external administration of companies, acting as receiver or as receiver and manager, for which you or your firm are legally responsible.

Note: This is consistent with cl 9.2(b) of the PSC Policy Statement, which refers to insurance covering 'all reasonable occupational activities and services' and to 'minimal exclusions'.

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Defence costs

RG 000.247 Insurance policies should generally cover defence costs (i.e. costs and expenses of investigating, defending and settling claims) in addition to the sum insured under the policy, as opposed to requiring defence costs to be paid out of the sum insured. If there is a maximum limit on the amount of defence costs covered in addition, that additional limit must not be less than 25% of the limit of indemnity.

Note: PI insurance policies based on a costs-in-addition format commonly limit the amount of defence costs covered in addition to the limit of indemnity to the same proportional basis which the limit of indemnity bears to the civil liability in respect of the claim (which is acceptable).

RG 000.248 However, an acceptable alternative would be for you to have costs-inclusive cover with a higher limit of indemnity, to offset the effect of costs reducing the level of indemnity available for meeting liability. This higher limit should not be less than 25% greater than the minimum limit of indemnity.

Note: This guidance is consistent with cl 9.3 of the PSC Policy Statement, which refers to defence costs in addition to the stated level of cover being preferred.

Retroactive cover

RG 000.249 If your insurance policy will form the latest in an immediately preceding series of continuous 'claims made and notified' PI insurance policies, the retroactive date should be the same as or must precede the retroactive date specified in the first PI insurance policy in the series (or, if there was no such retroactive date, the commencement date of that first PI insurance policy).

RG 000.250 If there will not be an immediately preceding insurance policy, the new PI insurance policy will need, in order to be appropriate, to have a retroactive date that is:

- (a) on or earlier than the date on which you started providing services as a registered liquidator;
- (b) at least seven years before the beginning of the period of insurance; or
- (c) unlimited.

Note: This is consistent with cl 9.2(e) of the PSC Policy Statement, which states that a not unreasonably limited retroactive date is preferred.

RG 000.251 A retroactive date on a 'claims made and notified' PI insurance policy is the date on or after which the insurance cover responds to claims of civil liability against the insured. If the policy has a retroactive date, any claim made during the policy period will not be covered if the circumstances from which it arises occurred before the retroactive date.

RG 000.252 The date may be a specified date, or it may be expressed to be 'inception' or 'unlimited'. If the retroactive date is 'inception', this means there is no

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retroactive cover. The policy will only respond to claims of civil liability that occurred after the inception of the policy (i.e. the start of the period of insurance). If the policy is ‘unlimited’, however, this means there is in effect no retroactive date specified in the policy, so the policy responds to claims of civil liability against the insured that occurred at any time (as long as they are made and notified during the policy period).

RG 000.253 It is important that the insurance covers your civil liability that occurs during the whole period that you or your staff perform work in connection with your activities as a registered liquidator. However, the operation of statutory limitation periods means that exposure to such liability in most cases extends only for a limited number of years.

RG 000.254 Further, when seeking to effect a new policy for a subsequent period post the expiry of your current policy, or if you change your insurer, you should review your insurance requirements to ensure continuity of cover in respect of past circumstances that occurred during the period of the former policy of insurance or circumstances that might lead to a claim, or an actual claim that was not reported to the prior insurer. In these circumstances, without appropriate continuity cover, the new insurer, or policy in the subsequent period of insurance, may not respond, regardless of whether the retroactive date of the current policy is earlier than the effective date of the new policy.

Note: When assessing the adequacy and appropriateness of your cover, give consideration to your PI policy’s approach to continuous cover or extended continuous cover.

Fidelity insurance

The legislative requirement

RG 000.255 Section 25-1(1)(b) requires a registered liquidator to maintain adequate and appropriate fidelity insurance against the liabilities that you may incur working as a registered liquidator.

What is fidelity insurance?

Scope of fidelity insurance

RG 000.256 Fidelity insurance varies in scope, depending on the insurance provider.

RG 000.257 Where the loss is directly attributable to fraudulent or dishonest acts by your staff or your firm’s staff, some insurers offer broad fidelity policies covering the risk of loss of money and similar assets:

- (a) belonging to the insured or firm (first-party losses); or

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- (b) in the care, physical custody or control of the insured, for which the insured is legally liable to account to third parties, such as creditors of the insolvent company to which the registered liquidator has been appointed as external administrator (third-party losses).

Note: By 'money and similar assets' we mean money, negotiable instruments, bearer bonds, coupons, stamps, bank notes, currency, cheques, bills of exchange and letters of credit. Some fidelity insurance clauses may specifically cover coins, bullion, local or foreign currency, postal orders, money orders, shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes and other equity or debt securities.

RG 000.258 Fidelity insurance cover only indemnifies innocent parties. It does not cover any persons committing or condoning the fraudulent or dishonest acts.

Structure of fidelity insurance

RG 000.259 Fidelity insurance cover for you or your firm may:

- (a) form part of the PI insurance policy offered by an insurer;
- (b) be incorporated as an additional extension to that PI insurance policy if requested you or your firm; or
- (c) constitute a separate, stand-alone fidelity insurance policy (sometimes called a 'crime insurance policy').

Note: Within a PI insurance policy, an insurer may provide a sub-limit for fidelity in the overall PI limit of indemnity. Separately, the PI policy may provide third-party fidelity via the wording used in the policy's fraud and dishonesty section.

Fulfilling the purpose of the fidelity insurance requirement

RG 000.260 What is critical is that the fidelity cover adequately and appropriately indemnifies third-party losses. Insurance against loss of money and similar assets belonging to *third parties*, which is attributable to fraud or dishonesty by people for whose misconduct you are liable, is more important in trying to meet the policy objective than *first-party* insurance cover that merely protects the insured or their firm against loss of their own funds.

RG 000.261 For the purposes of complying with the Corporations Act, it does not matter what form the fidelity insurance takes. Depending on the scope of the insuring clause wording and any relevant exclusions, fraud and dishonesty cover forming part of or an extension to PI insurance, can serve a sufficiently similar function to third-party fidelity insurance and, therefore, fulfil the purpose of the fidelity insurance requirement in the Act.

RG 000.262 Our view of the underlying policy objective means that we consider that you or your firm should obtain either:

- (a) fidelity insurance (whether in the form of an annual policy or extension) for third-party loss, resulting from fraud or dishonesty, of money and

similar assets in the insured's care, custody or control, for which the insured is legally responsible; or

- (b) the liability insurance equivalent to such fidelity cover obtained through the fraud and dishonesty aspect of normal PI insurance, which should cover liability to third parties for losses of money and similar assets.

Appropriate fidelity insurance

Scope of cover

RG 000.263 You or your firm should maintain either:

- (a) as a part of your PI insurance policy—cover for *civil liability* to third parties for loss of money and similar assets through fraud and dishonesty of your staff or your firm's staff; or
- (b) fidelity insurance for *loss* (resulting from the fraud or dishonesty of your staff or your firm's staff) of money and similar assets belonging to a third party, in the insured's care, custody or control, for which the insured is legally responsible.

Note: This fidelity cover could be provided as part of, or as a policy extension to, the registered liquidator's PI insurance policy, or as a separate fidelity or crime insurance policy, see RG 000.259–RG 000.262.

RG 000.264 If it is practically available at a reasonable cost, you should obtain fidelity insurance or fraud and dishonesty cover for physical assets, including goods, chattels and equipment (but not real property such as land or buildings).

Fidelity cover not intended for insolvent company's staff

RG 000.265 When you are appointed as an external administrator, receiver or receiver and manager of a failing or insolvent company, you assume responsibility for the running of that company. The company may not already have fidelity insurance in place. One decision you may have to make is whether, in order to protect the insolvent company's assets, you should enter into a form of temporary insurance that includes fidelity insurance to cover the risk of fraud or dishonesty by officers, employees or agents of the insolvent company.

Note: Registered liquidators make such decisions as part of their identification and management of risks in each entity to which they may be appointed as external administrator. If the external administrator is negligent, or breaches their duties, in deciding not to cause the insolvent company to enter into such insurance, the registered liquidator's PI insurance policy is likely to cover any liability arising out of that possible negligence or breach of duty.

RG 000.266 We do not consider that having fidelity insurance to cover the risk of fraud or dishonesty by staff of the insolvent company falls within the scope of the fidelity insurance requirement set out in s25-1.

Criminal penalties

- RG 000.267 A fidelity insurance policy or arrangement may be appropriate even though it contains blanket exclusions relating to all criminal penalties and fines imposed by law.
- RG 000.268 Fidelity insurance policies sometimes define the scope of cover by reference to losses suffered as a result of specific conduct that amounts to a crime. However, policies or arrangements with this wording may not cover the actual penalties imposed on the insured themselves for dishonest, intentional or reckless statutory breaches that amount to a crime. We do not consider that the policy objective requires fidelity insurance to cover criminal penalties, as they do not comprise a civil claim for pecuniary loss suffered by a creditor or other person.

Prior prosecution and indemnification

- RG 000.269 To be appropriate, a fidelity insurance policy or arrangement should not contain a condition requiring a successful criminal prosecution against the fraudulent or dishonest party before the indemnity is provided.
- RG 000.270 The presence of a prior prosecution clause may mean that significant civil liability to third parties is not covered under the policy, because the higher standard of proof in criminal cases compared to civil liability cases means that you or your firm may be liable to third parties for the loss of the money stolen, embezzled or misappropriated, but either:
- (a) no criminal prosecution is undertaken owing to insufficient evidence; or
 - (b) the criminal prosecution is unsuccessful because the higher onus of proof ('beyond a reasonable doubt') is not satisfied at trial.

Post-discovery notification periods in fidelity insurance

- RG 000.271 Fidelity cover is commonly restricted to loss arising from acts of fraud or dishonesty that are *discovered* within the policy period (or within a specified period after the period of insurance ends) and *notified* before the expiration of a specified notification period that runs from the date of discovery (i.e. when the insured has reasonable cause to suspect a loss resulting from dishonesty or fraud, or discovers or becomes aware of such a loss).
- RG 000.272 Although post-discovery notification periods are not required, if the fidelity insurance is in the form of a 'claims made and notified' contract, the existence of reasonable notification periods (i.e. of not less than 21 days) for the acts of fraud or dishonesty will not prevent the insurance from being appropriate.

Notification of losses to ASIC or creditors

RG 000.273 In order for the insurance policy to be appropriate, the wording of any ‘no admission of liability’ condition must not be such as to prohibit factual notification of incidents to ASIC or to the creditors of the insolvent company. Notification of claims, incidents or losses to ASIC or to the creditors of the insolvent company to which you have been appointed may be a requirement of your statutory or fiduciary duties. As a matter of public policy, the terms of an insurance contract should not undermine a person’s compliance with the law.

Adequate fidelity insurance

RG 000.274 You or your firm must obtain an adequate level of fidelity insurance or fraud and dishonesty cover. In assessing adequacy, you should have regard to the factors in Table 11.

Table 11: Factors to consider when determining an adequate level of cover

Factors to consider	Explanation
Prudence and reasonableness	In light of the policy objective, you should take a prudent, conservative approach when assessing the infidelity risk to your business. Your approach should also be reasonable from a practical commercial perspective.
Liabilities that might reasonably be expected during the period of cover	You should consider the liabilities that might reasonably be expected to arise from fraud and dishonesty claims during the period of cover, having regard to, for example: <ul style="list-style-type: none"> • the number of insolvent companies to which you is expected or likely to be appointed as external administrator during the period of cover; • the volume of insolvency business you or your firm have, in terms of expected billings, during the period of cover; • the nature and infidelity risk profile of the kinds of businesses to which you are usually appointed as external administrator; • the nature, geographical scope, and complexity of the insolvency services work you and your firm perform; • the number of claims that could arise from a single event; and • a reasonable estimate (e.g. projections based on past experience) of the amount of funds likely to be controlled by you and your staff.
Internal aspects of your firm	You should consider all the internal circumstances of your firm relevant to the infidelity risk, for example: <ul style="list-style-type: none"> • the number of employees and partners; • the quality of internal controls and compliance systems; • the infidelity claims history; and • the assets and other financial resources.

RG 000.275 As a general rule, if larger engagements are undertaken, or expected to be undertaken, higher amounts of cover will be needed in order for the fidelity

insurance to be adequate, on the basis that the level of assets to which you and your staff have access is greater.

- RG 000.276 Rather than mandating a one-size-fits-all minimum amount of cover, we have adopted a principles-based approach to determining an adequate level of fidelity insurance cover. This is because of:
- (a) the diverse size and type of potential fraud, infidelity or dishonesty risks to which registered liquidators may be exposed; and
 - (b) differences in the size, revenue and activities of the firms in which registered liquidators work.

Previous business, former principals and run-off cover

Mergers and acquisitions of insured firms

- RG 000.277 If your firm is a new firm formed by the merger of two (or more) firms or the acquisition of one firm (or more) by another, consideration should be given to the appropriateness of the new firm's cover. If the PI and fidelity insurance of the new firm is on a 'claims made and notified' basis, then, in order to be appropriate, it generally needs to cover civil liability claims arising from work performed in the predecessor businesses for a period after the merger or acquisition until expiration of the relevant statutory limitation periods.
- RG 000.278 Alternatively, the predecessor firms may maintain separate run-off cover for their claims arising from their prior work.

Note: This is consistent with cl 9.2(f) of the PSC Policy Statement, which refers to reasonable run-off cover for at least traditional statutory limitation periods.

Staff who leave a firm

Previous firm still operating: Former principals' cover

- RG 000.279 Firms need to ensure that their PI and fidelity insurance continues to cover civil liability claims against a registered liquidator who leaves the insured firm (whether to retire, cease business as an insolvency practitioner or to move to another firm) in respect of civil liability exposures made in their work undertaken while at the firm for a reasonable, commercially available period of time (e.g. a total of seven years after the departure for PI insurance).
- RG 000.280 We expect that firms would provide sufficient details of the ongoing cover to the registered liquidator who has left the firm to allow that liquidator to assess the firm's compliance with the requirement set out in RG 000.279.

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Previous firm no longer maintains insurance

- RG 000.281 You are responsible for ensuring that the ongoing risk of claims arising from your prior conduct is covered, either by:
- (a) the previous firm from which you moved (or that firm's successor in business);
 - (b) your current firm if, for example, your previous firm no longer maintains its own PI and fidelity insurance for claims relating to the external administration work you undertook while at the previous firm (e.g. because it is insolvent or otherwise no longer operating); or
 - (c) by stand-alone run-off insurance cover taken out by you personally if, for example, the current firm's insurer is unwilling to accept the risk for insolvency work that you previously carried out at another firm.

Retiring sole practitioners

- RG 000.282 If a sole practitioner registered liquidator retires or ceases practice, and claims made in connection with work performed by them or their staff before the registered liquidator retired will not be covered by future insurance policies of any firm that may have acquired the registered liquidator's insolvency business, the registered liquidator should use their best endeavours to obtain run-off PI and fidelity insurance cover each year for a reasonable, commercially available period of time (e.g. a total of seven years for PI insurance).

Note: This is consistent with cl 9.2(f) of the PSC Policy Statement, which refers to reasonable run-off cover for at least traditional statutory limitation periods.

Insolvency and automatic run-off cover

- RG 000.283 You should:
- (a) ensure that no clause has been inserted that provides for the insurance policy or arrangement to terminate in the event of:
 - (i) the insolvency of you or your firm; or
 - (ii) you or your firm entering into any form of external administration; and
 - (b) use your best endeavours to obtain automatic run-off cover for as long as reasonably practicable.
- RG 000.284 In any event, your insurance policy should contain run-off cover for at least one year after the expiry of the policy period in the event of your insolvency or external administration of your firm.

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Appendix 1: Minimum insured amounts for PI insurance cover

RG 000.285 Generally, the following methods can be used to determine adequacy of the minimum insured amounts for PI insurance cover in your application for registration as a liquidator.

Table 12: Estimated administration fee method

Administration fee	Minimum insured amount
If the fee is estimated to be less than \$100,000	\$2 million
If the fee is estimated to be \$100,000 or more but less than \$300,000	\$5 million
If the fee is estimated to be \$300,000 or more but less than \$500,000	\$10 million
If the fee is estimated to be \$500,000 or more	\$20 million

Source: CA ANZ PSC 2014 cl 3.5

RG 000.286 The relevant fee is the highest fee for an insolvency service provided in any single financial year of the three prior years.

Note: Insolvency services include:

- services to which Ch 5 or Ch 5A of the Corporations Act applies;
- services provided under s233(2) of the Corporations Act; and
- services arising out of any court appointed liquidation or receivership.

Table 13: Total number of principals and annual fee income method

Applicants	Minimum insured amount
1. Applicants who were in an accounting practice that, at 30 June immediately preceding the application: <ul style="list-style-type: none"> • consisted of less than 20 principals; AND • generated total annual fee income of less than \$10 million for the financial year ended 30 June immediately preceding the application. 	\$2 million
2. Applicants other than those in (1) above and (3) below.	\$10 million
3. Applicants who were in an accounting practice that, at 30 June immediately preceding the application: <ul style="list-style-type: none"> • consisted of more than 60 principals; OR • generated total annual fee income of more than \$20 million for the financial year ended 30 June immediately preceding the application. 	\$75 million

Source: CPAA Professional Standards Scheme Fact Sheet, November 2016

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Key terms

Term	Meaning in this document
AAT	Administrative Appeals Tribunal
ADI	Authorised deposit-taking institution
administrator	Has the same meaning as in s9 of the Corporations Act Note: It therefore includes both deed administrators and voluntary administrators.
AFSA	Australian Financial Security Authority
aggregate sum insured	The amount of cover in the aggregate that the insurance policy provides, irrespective of the number of separate claims that may occur that are subject to a 'per claim' limit
APRA	Australian Prudential Regulation Authority
APRA-regulated insurer	An entity permitted by the Insurance Act to write insurance business in Australia
APS 520	Australian Prudential Standard 520 <i>Fit and proper</i>
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
Bankruptcy Act	<i>Bankruptcy Act 1966</i>
CA ANZ	Chartered Accountants Australia and New Zealand
Ch 5 (for example)	A chapter of the Corporations Act (in this example, numbered 5)
'claims made and notified' policy	A contract that provides cover for claims made against the insured and notified to the insurer during the period of insurance (or any extended reporting period), even though these may have arisen from acts, errors or omissions that occurred before the inception of the policy, as long as they took place on or after the policy's retroactive date, if it has one (see 'retroactive cover' below)
controller	Has the same meaning as in s9 of the Corporations Act Note: It therefore includes 'managing controller', 'receiver' and 'receiver and manager'.
Corporations Act	<i>Corporations Act 2001</i>
CPAA	CPA Australia Ltd
CPE	Continuing professional education

Term	Meaning in this document
creditors	The creditors of an insolvent or failing company to which the registered liquidator is appointed as external administrator
deductible or excess	The first part of a loss, which is borne by the insured, so that the insured in essence self-insures this amount. The insured is responsible for payment of the loss out of their own financial resources up to the threshold amount of damages payable—i.e. the deductible, and the insurer pays the remainder of the loss, up to the policy limit
deed administrator	A person appointed to administer a DOCA under Pt 5.3A of the Corporations Act
DOCA	Deed of company arrangement
employee	A past or present employee of the registered liquidator or their firm
exclusion	A provision of an insurance policy that excludes coverage in particular circumstances; it specifically sets out occurrences that are not covered by the policy
external administration	Where an external administrator is appointed
external administrator	A voluntary administrator, deed administrator, provisional liquidator or liquidator of a company Note: This is a definition contained in s5-20.
firm	The partnership or other business structure (whether incorporated or unincorporated) through or by means of which an insolvency practitioner conducts or intends to conduct their work as a registered liquidator
former principals' cover	Insurance cover provided in relation to former partners and officers (and sometimes employees) who have left the insured registered liquidator's firm
insolvent under administration	Has the same meaning as in s9 of the Corporations Act
Insurance Act	<i>Insurance Act 1973</i>
insured amount	The maximum indemnity that the AFSA insurance policy will provide in respect of the insured's liability for damages arising out of a cause of action resulting from an external administrator's professional work that may be awarded against a person. Also called the 'level of cover', 'limitation amount', 'limit of indemnity' or 'sum insured'

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Term	Meaning in this document
insuring clause or policy wording	The core clause or essential part of an insurance policy that states the extent of the cover that the insurer provides to the insured and sets out the specific agreement for the insurer to protect the policyholder against the particular risk for which the insurance is purchased
IPA	Institute of Public Accountants
liquidator	A person appointed to wind up the affairs and distribute the property of an externally administered company
managing controller	Has the same meaning as in s9 of the Corporations Act
NPII	National Personal Insolvency Index
old Act	The Corporations Act as in force immediately before 1 March 2017 Note: This is a definition contained in s1551 of the Corporations Act.
old Act registrant	A person who was registered as a liquidator immediately before 1 March 2017
PI insurance	Professional indemnity insurance
practice	The firm or other business structure (whether incorporated or unincorporated) through or by means of which a person conducts or intends to conduct their work as a registered liquidator
principal	A partner or sole practitioner of an unincorporated practice, or a member of the board of directors of an incorporated practice
professional accounting body	CA ANZ, CPAA or IPA
provisional liquidator	A person appointed by the court under s472(2) of the Corporations Act
PSC	Professional Standards Council
PSC Policy Statement	The PSC's Policy Statement on PI Insurance
Pt 5.3A (for example)	A part of the Corporations Act (in this example, numbered 5.3A)
receiver	A person appointed under an instrument or by the court to receive property of a company, who does not manage, and under the terms of the person's appointment does not have power to manage, affairs of the company
receiver and manager	Has the same meaning as in s9 of the Corporations Act
registered liquidator	A person registered by ASIC under s20-30

Term	Meaning in this document
reinstatement	If the aggregate limit of indemnity in the insurance policy is exhausted before the end of the policy period, the policy is 'refreshed' and the sum insured is reinstated for the balance of the period of insurance to cover any new claims that may arise. However, the 'per claim' limit of indemnity remains unaffected. The number of reinstatements refers to the number of times the sum insured may be reinstated during any one policy period
relevant professional/industry body	<p>A body that, in relation to its members (whether generally in their capacity as a member, or specifically in relation to performance of their duties as corporate insolvency practitioners):</p> <ul style="list-style-type: none"> • sets standards for professional competency and ethics (including independence and management of conflicts of interest); and • monitors professional performance and exercises disciplinary functions
retroactive cover	Where a 'claims made and notified' policy extends cover into the past to cover acts, errors or omissions that occurred or were committed during a period of time before the policy was obtained (but after the retroactive date)
retroactive date	A date on a 'claims made and notified' policy that triggers the beginning of the period of insurance coverage—i.e. on or after which acts, errors or omissions are covered: see RG 000.251–RG 000.253
rule 20-1 (for example)	A section of the Insolvency Practice Rules (Corporations) 2016 (in this example numbered 20-1)
Rules	Insolvency Practice Rules (Corporations) 2016
run-off cover	Insurance cover in respect of claims made after the insurance policy has ended that have arisen from the acts, errors or omissions of the insured during the period of insurance cover. In a 'claims made and notified' policy, run-off cover extends the period for reporting covered claims beyond the normal policy period. Run-off cover can be provided as a standard term of a PI policy ('automatic run-off cover'), but is currently more commonly a stand-alone policy that a policyholder can buy each year on an annual renewal basis once they cease to operate their business
s20-5 (for example)	A section of Sch 2 to the Corporations Act (in this example numbered 20-5)
Sch 2	Schedule 2 to the Corporations Act, titled Insolvency Practice Schedule (Corporations)
voluntary administrator	An administrator of a company but not of a DOCA

Related information

Headnotes

corporate insolvency, external administrator, liquidator of specified body corporate, official liquidator, registered liquidators, registration of liquidators

Information sheets

[INFO 153](#) *How ASIC deals with reports of misconduct*

Forms

Form 505 *Notification of appointment or cessation of an external administrator*

Form 903B *Application for registration as a liquidator*

Form 905A *Notification of change to details of a liquidator*

Form 906 *Notification of disqualification from managing corporations under Part 2D.6*

Form 908 *Annual statement by a liquidator*

Form RL05 *Application for renewal of registration as a liquidator*

Legislation

Bankruptcy Act, Sch 2, s40-40

Corporations Act, Ch 5, Pt 2D.6, Pt 5.3A, s9, 472(2), 473A, 489EA, 495, 1322(4)(b), 1553, 1555(1), 1557, 1558, 1560, 1561(1), 1617; Sch 2, Subdiv B of Div 20, s5-20, 20-1, 20-5, 20-10, 20-15, 20-20, 20-25, 20-30, 20-35, 20-40, 20-45(2), 20-55(3), 20-60, 20-65, 20-70, 20-75, 25-1, 30-1, 35-1, 35-5, 40-5, 40-10, 40-15, 40-20(1), 40-25, 40-30, 40-40, 40-45, 40-50, 40-55, 40-60, 40-70, 40-75(2), 40-85(3), 40-90, 40-95, 40-100, 40-111(2), 45-1, 45-5, 70-70, 75-20, 90-15(3)(f)

Crimes Act 1914, Div 3 of Pt VIIC

Insolvency Law Reform Act

Insolvency Practice Rules (Corporations), rule 20-1(2)(a)–(e), 20-1(3)–(4), 20-5(4), 35-5, 40-1, 50-15, 50-65

Insurance Act

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