



ASIC

Australian Securities &
Investments Commission

CONSULTATION PAPER 376

Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance— Updates to RG 258 and supporting documents and templates

March 2024

About this paper

This consultation paper seeks feedback on proposed changes to the existing Regulatory Guide 258 *Registered Liquidators: Registration, disciplinary action and insurance requirements* ([RG 258](#)), issued on 1 March 2017. Our updates will reflect legislative changes and experiences with the regime during the past six years since the insolvency reforms were implemented.

We have also updated the title of RG 258 to reflect the revised content. The draft update to RG 258 is attached to this paper.

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 paper was issued on 8 March 2024 and is based on the legislation as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to:

- describe any alternative approaches you think would achieve our objectives; and
- provide any other feedback you consider important on our draft guidance and additional documents and templates.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

Your comments will help us develop our policy on the registration, ongoing obligations, disciplinary actions applicable to and insurance requirements for registered liquidators.

Any information about compliance costs, impacts on competition and other impacts, costs and benefits will also be taken into account if we prepare a Regulation Impact Statement: see Section F, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 2 May 2024 to:

RG 258 Consultation Feedback
Companies and Small Business
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001
email: DL-C&SB-RG258.Feedback@asic.gov.au

What will happen next?

Stage 1	8 March 2024	ASIC consultation paper released
Stage 2	2 May 2024	Comments due on the consultation paper
Stage 3	Q3 2024	Regulatory guide released

A Background to the proposals

Key points

This consultation paper contains a summary of updates to RG 258, as well as the *Senior level employment history template* and *Guide to personal and resource capacities* (formerly known as ‘Guide to practice capacities’). The updates primarily reflect:

- Changes to the legislative framework: In 2021, legislative reforms introduced a new category of registered liquidator—a restructuring practitioner. The 2021 reforms also amended the relevant experience requirements for registered liquidator applicants.
- Experience: Since RG 258 was released, there have been numerous committee decisions on whether an applicant should be registered as a liquidator, and we have received feedback through other mechanisms as well.

This consultation paper also seeks feedback on the following proposals:

- providing separate guidance on applications for registration for each category of registered liquidator;
- separating our guidance on ongoing obligations for registered liquidators from our guidance on disciplinary and other actions relating to a registered liquidator;
- updating the separated guidance on the ongoing obligations of registered liquidators, and
- updating the separated guidance on disciplinary actions and the actions that a registered liquidator may take.

Background

- 1 The *Insolvency Law Reform Act 2016* introduced a new registration and disciplinary regime for registered liquidators. This regime commenced on 1 March 2017.
- 2 The [current RG 258](#) was issued when this regime commenced. It provides guidance for individuals who are—or wish to become—registered liquidators under Sch 2 to the *Corporations Act 2001* (Corporations Act).
- 3 RG 258 is supplemented by the following documents and templates to assist an applicant complete their application for registration as a registered liquidator:
 - (a) *Liquidator registration checklist*;
 - (b) *Senior level employment history template*;

- (c) *Guide to personal and resource capacities*; and
 - (d) *Guide for referees*.
- 4 We have updated RG 258, the *Senior level employment history template* and the *Guide to personal and resource capacities* to primarily reflect changes to the legislative framework and based on the experiences of registered liquidators and applicants since 2017.

Changes to the insolvency legislative framework

- 5 On 1 January 2021, the following reforms (2021 reforms) commenced:
- (a) the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020*; and
 - (b) the *Insolvency Practice Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020*.
- 6 The 2021 reforms introduced a new form of external administration and a new category of registered liquidator specifically for eligible small business restructuring and amended the relevant experience requirements for registered liquidator applicants.

Experience since 2017

- 7 Since the release of RG 258, there have been numerous committee decisions relating to liquidator registration and disciplinary actions.
- 8 We regularly meet with new registered liquidators to discuss their experience with the registration process and their interaction with relevant committees. These meetings provide valuable insights into the processes from an applicant's perspective.
- 9 We hold regular liaison meetings with professional bodies whose members are engaged in the insolvency field and bodies who interact regularly with registered liquidators.
- 10 ASIC also participated in the Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS) Inquiry into corporate insolvency in Australia and considered the July 2023 PJCCFS [Inquiry report](#). In addition to providing submissions to the PJCCFS Inquiry, we reviewed submissions by other parties and commentary provided verbally to the inquiry.

Overview of the proposals

- 11 Appendix 1 contains a summary of our updates to RG 258.
- 12 In this paper, we seek feedback on:
- (a) providing separate guidance on application requirements for each category of registered liquidator (Section B);
 - (b) separating guidance on ongoing obligations from our guidance on disciplinary and other actions relating to a registered liquidator (Section B);
 - (c) updating our guidance on application requirements for each of the registered liquidator categories (Section C);
 - (d) updating our separated guidance on ongoing obligations of registered liquidators (Section D); and
 - (e) updating our separated guidance on disciplinary actions and actions a registered liquidator may take (Section E).
- 13 We welcome any feedback on this consultation paper, our draft guidance, and the additional documents and templates. We will take your comments into account when finalising RG 258.

Timing of the consultation

- 14 Given the operation of the new committee and the effect of legislative changes, including the introduction of the restructuring practitioner category of registered liquidator, we deferred work to update RG 258 until sufficient information and feedback was available.
- 15 When the PJCCFS Inquiry was announced, we again deferred updating RG 258 as we responded to the PJCCFS Inquiry and waited for the release of its report.

B Structural changes

Key points

We are seeking feedback on:

- providing separate guidance on applications for registration in each of three registered liquidator categories; and
- separating our guidance on the ongoing obligations of registered liquidators from the section on disciplinary and other actions.

Separate guidance on registration applications for each registered liquidator category

Proposal

- B1** We propose to separate our guidance on applications for registration to provide information for each of the following registered liquidator categories:
- an external administrator of companies, receiver, and receiver and manager (RG 258 Section B); or
 - a restructuring practitioner for a company or a restructuring practitioner of a restructuring plan only (RG 258 Section C); or
 - a receiver and receiver and manager only (RG 258 Section D).

Your feedback

B1Q1 Is the overall guidance in RG 258 Sections B, C and D clear and comprehensive? If not, how can the guidance be better structured?

B1Q2 Is guidance needed on any other topic regarding liquidator registration, in particular the new category of restructuring practitioners (RG 258 Section C)? If so, what is needed?

Rationale

16 The 2021 reforms introduced a new category of registered liquidator (restructuring practitioner), specifically for eligible small business restructuring. Following the reforms, an individual can be registered as a liquidator to practise in one of three categories:

- as an external administrator of companies, receiver and receiver and manager (which includes a voluntary administrator, an administrator of a deed of company arrangement, a restructuring practitioner for a

company, a restructuring practitioner for a restructuring plan, a liquidator and a provisional liquidator);

- (b) only as a restructuring practitioner for a company or a restructuring practitioner of a restructuring plan; or
- (c) only as a receiver and receiver and manager.

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With the introduction of the restructuring practitioner category, we consider that separating requirements for each registered liquidator category would provide more clarity for applicants. This is because there are differing requirements for initial registration for the three categories, particularly qualifications, experience, knowledge and abilities requirements:

- (a) For registered liquidators who can act as an external administrator of companies, receiver and receiver and manager and registered liquidators who can act only as a receiver and receiver and manager, the qualifications, experience, knowledge and abilities prescribed under Rule 20–1(2) are:
 - (i) the applicant has completed the academic requirements for the award of a tertiary qualification that includes at least three years of full-time study (or its equivalent) in commercial law and accounting;
 - (ii) the applicant has completed the academic requirements for 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 1966* (the Bankruptcy Act);
 - (iii) if the applicant wishes to be registered to practise as an external administrator of companies, receiver and receiver and manager—the applicant has, during the five years immediately preceding the day on which the application is made, been engaged in at least 4,000 hours of relevant employment at senior level;
 - (iv) if the applicant wishes to be registered to practise only as a receiver, and receiver and manager—the applicant has, during the five years immediately preceding the day on which the application is made, been engaged in at least 4,000 hours of relevant employment at senior level;
 - (v) the applicant has demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator; or
 - (vi) the applicant can satisfy any conditions to be imposed under the *Insolvency Practice Schedule (Corporations)* if the applicant is registered as a liquidator.
- (b) For registered liquidators who can act only as a restructuring practitioner for a company or a restructuring practitioner of a

restructuring plan, the qualifications, experience, knowledge and abilities prescribed are different. They are that:

- (i) the applicant is a recognised accountant;
- (ii) the applicant has demonstrated the capacity to perform satisfactorily the functions and duties of a restructuring practitioner for a company and for a restructuring plan; or
- (iii) the applicant can satisfy any conditions to be imposed under the *Insolvency Practice Schedule (Corporations)* if the applicant is registered as a liquidator.

- 18 To avoid repetition, where there are common topics among the application requirements for each category, we refer the reader to previous paragraphs in RG 258 Section B which contain the requirements for an external administrator of companies, receiver and receiver and manager.

Separated guidance for ongoing obligations and disciplinary and voluntary actions

Proposal

- B2** In the updated RG 258 we propose to separate the guidance on ongoing obligations from the section on disciplinary and other actions into two sections, E and F. Note: we further propose to move Section C into the revised Section E (see paragraph 20).

Your feedback

- B2Q1 Is the restructure of the guide with separate Sections E (ongoing obligations) and F (disciplinary and voluntary actions) useful and easier to navigate? If not, please provide reasons.
- B2Q2 Is guidance needed on any other topic across these two sections? If so, what other details are needed?

Rationale

- 19 RG 258 currently integrates guidance on the ongoing obligations of registered liquidators in the same section as disciplinary and other actions that can result where those ongoing obligations have not been met.
- 20 By creating a separate section on ongoing obligations, and also moving the existing section on renewal, lodgement of annual liquidator return and notifications to ASIC into the new section on ongoing obligations, we consider this will enable registered liquidators to more easily locate information about their ongoing obligations.

C Application requirements to be a registered liquidator

Key points

We are seeking feedback on:

- adding guidance on applications by New Zealand insolvency practitioners;
- updating guidance on the experience requirements for registration as an external administrator of companies, receiver and receiver and manager and a receiver and receiver and manager only;
- updating guidance on resource capacity and providing specific guidance on the personal capacity requirements specific to each of the three categories of registered liquidators; and
- updating guidance on each committee's interview process.

Notice to be registered by New Zealand insolvency practitioners

Proposal

- c1 We propose to provide guidance on notices to be registered by New Zealand insolvency practitioners, including matters that a notice must include.

Your feedback

- C1Q1 Is the guidance on notices to be registered by New Zealand insolvency practitioners at RG 258.12–RG 258.16 clear and comprehensive? If not, what additional information would be helpful?

Rationale

- 21 Under the *Trans-Tasman Mutual Recognition Act 1997*, an insolvency practitioner registered in New Zealand is entitled to registration in an Australian jurisdiction as if the law of Australia expressly provided that registration in New Zealand is a sufficient ground of entitlement to registration in Australia.
- 22 The matters that any notice must include are those we consider necessary for registration, and for identifying any conditions that may need to be imposed on registration. ASIC cannot apply more onerous conditions to New Zealand practitioners than those which would be imposed in similar circumstances for Australian applicants (having regard to relevant qualifications and

experience). However, ASIC can also impose conditions on the applicant's registration (if approved) that apply to the person's registration in New Zealand.

Experience requirements

Proposal

- c2 Following the amended definition of 'relevant employment' in the 2021 reforms, we propose to update guidance on the experience requirements for:
- (a) external administrator of companies, receiver, and receiver and manager (RG 258.34–RG 258.38); and
 - (b) receiver, and receiver and manager only (RG 258.120–RG 258.124).

Your feedback

C2Q1 Are the experience requirements for an external administrator of companies, receiver, and receiver and manager at RG 258.34–RG 258.38 clear and comprehensive? If not, what further clarification is needed for these categories?

C2Q2 Are the experience requirements for a receiver, and receiver and manager only at RG 258.120–RG 258.124 clear and comprehensive? If not, what further clarification is needed for these categories?

Rationale

- 23 The prescribed qualifications, experience, knowledge and abilities for registered liquidators who can act as an external administrator of companies, receiver, and receiver and manager; and registered liquidators who can act only as a receiver, and receiver and manager include the requirement that the applicant has—during the five years immediately preceding the day on which the application is made—been engaged in at least 4,000 hours of 'relevant employment' at senior level (see paragraph 17).
- 24 Prior to January 2021, the definition of 'relevant employment' was:
- (a) For registered liquidators who can act as an external administrator of companies, receiver and receiver and manager:
 - (i) involves assisting a registered liquidator in the performance of his or her duties as external administrator of companies, receiver or receiver and manager; and
 - (ii) involves providing advice in relation to the external administration of companies, receivership or receivership and management; and
 - (iii) provides exposure to processes (including bankruptcy) under the Bankruptcy Act.

- (b) For registered liquidators who can act as a receiver and receiver and manager only:
 - (i) involves assisting a registered liquidator in the performance of his or her duties as receiver and receiver and manager; and
 - (ii) involves providing advice in relation to receivership or receivership and management; and
 - (iii) provides exposure to processes (including bankruptcy) under the Bankruptcy Act.

25 The 2021 reforms amended the definition of ‘relevant employment’. This is now defined at Rule 20–1(3) as:

- (a) For registered liquidators who can act as an external administrator of companies, receiver and receiver and manager:
 - (i) employment that involves any of the following:
 - (A) assisting a registered liquidator in the performance of the registered liquidator’s duties as external administrator of companies, receiver or receiver and manager;
 - (B) providing advice in relation to the external administration of companies, receivership or receivership and management;
 - (C) providing advice in relation to Subdiv C of Div 3 of Pt 5.7B of the Corporations Act;
 - (D) providing advice in relation to the restructuring of company debt outside the external administration of companies, receivership or receivership and management; and
 - (ii) employment that provides direct or indirect exposure to processes (including bankruptcy) under the Bankruptcy Act; and
 - (iii) any other employment that the committee considers relevant.
- (b) For registered liquidators who can act as a receiver and receiver and manager only:
 - (i) employment that involves any of the following:
 - (A) assisting a registered liquidator in the performance of the registered liquidator’s duties as receiver or receiver and manager;
 - (B) providing advice in relation to receivership or receivership and management;
 - (C) providing advice in relation to Subdiv C of Div 3 of Pt 5.7B of the Corporations Act;
 - (D) providing advice in relation to the restructuring of company debt outside the external administration of companies, receivership or receivership and management; and

- (ii) employment that provides direct or indirect exposure to processes (including bankruptcy) under the Bankruptcy Act; and
- (iii) any other employment that the committee considers relevant.

- 26 For the purposes of paragraphs 25(a)(iii) and 25(b)(iii), above, our updated guidance provides examples of ‘other employment’ that each committee may consider under Rule 20–1(3)(c) for an external administrator of companies, receiver and receiver and manager. The examples provided in our guidance take into account previous committee decisions.
- 27 The 2021 reforms also provided that a committee may decide that an applicant should be registered—even if the committee is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed—provided the applicant is suitable to be registered as a liquidator (s20–20(5)).
- 28 We provide an example of the possible application of this provision where the applicant does not have 4,000 hours of relevant employment at a senior level during the five years preceding the application due to a career break or other leave of absence, yet they have experience beyond the five-year period. We provided this example after considering the PJCCFS Inquiry and committee decisions. Reflecting on previous decisions of the committee, we consider that an applicant should provide an explanation of their specific circumstances.

Personal capacity requirements

Proposal

- c3 In the updated RG 258, and the *Guide to personal and resource capacities*, we propose to provide specific guidance on personal capacity requirements that a committee may consider for each of the three categories of registered liquidator:
- (a) for external administrator of companies, receiver and receiver and manager, see RG 258.42;
 - (b) for restructuring practitioner for a company, or a restructuring practitioner of a restructuring plan only, see RG 258.111; or
 - (c) for receiver, and receiver and manager only, see RG 258.128.

Your feedback

- C3Q1 Are the personal capacity requirements for an external administrator of companies, receiver, and receiver and manager at RG 258.42 and in the *Guide to personal and resource capacities* clear and comprehensive? If not, can you suggest any changes?

- C3Q2 Are the personal capacity requirements for a restructuring practitioner for a company, or a restructuring practitioner of a restructuring plan at RG 258.111 and in the *Guide to personal and resource capacities* clear and comprehensive? If not, can you suggest any changes?
- C3Q3 Are the personal capacity requirements for a receiver, and receiver and manager at RG 258.128 and in the *Guide to personal and resource capacities* clear and comprehensive? If not, can you suggest any changes?

Rationale

- 29 The prescribed qualifications, experience, knowledge and abilities requirements are that:
- (a) registered liquidators who can act as an external administrator of companies, receiver and receiver and manager and registered liquidators who can act only as a receiver and receiver and manager: an applicant has demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator (see paragraph 17(a)); and
 - (b) registered liquidators who can act only as a restructuring practitioner: the applicant has demonstrated the capacity to perform satisfactorily the functions and duties of a restructuring practitioner for a company and for a restructuring plan (see paragraph 17(b)).
- 30 Committee decisions have considered both an applicant’s personal capacity as well as the applicant’s practice or firm resources (noting that ASIC has not received any applications for registered liquidators who can act only as a receiver and receiver and manager). As the existing guidance only deals with practice (resource) capacity, we have included personal capacity factors that a committee may consider based on previous committee decisions.
- 31 Given the different nature of the work performed under each of the categories, we have provided specific guidance in our *Guide to personal and resource capacities* on the personal capacity factors that a committee may consider for each of the three registered liquidator categories. For example, while a registered liquidator who can act as an external administrator and a receiver and receiver and manager requires competencies in reporting possible offences by company officers, the same does not apply to restructuring practitioners.

Resource capacity requirements

Proposal

- c4 In the updated RG 258 and the *Guide to personal and resource capacities*, we propose to separate guidance on resource capacity across the three categories of registered liquidator:

- (a) as an external administrator of companies, receiver and receiver and manager (RG 258.41);
- (b) as a restructuring practitioner for a company or a restructuring practitioner of a restructuring plan (RG 258.110); and
- (c) as a receiver and receiver and manager (RG 258.127).

Your feedback

C4Q1 Are the resource capacity requirements in RG 258 and the *Guide to personal and resource capacities* clear and comprehensive? If not, what changes do you suggest to our updated guidance?

Rationale

- 32 We have made some minor adjustments to our guidance on resource capacity for the three registered liquidator categories to reflect committee decisions and developments since 2017. These changes include recognition of the growing importance of management of cyber-related risks in as part of risk management systems.

Committee interview process

Proposal

- c5 We propose to update guidance on the committee’s interview process regarding:
- (a) the possibility of the committee asking about the applicant’s personal experience (RG 258.84); and
 - (b) the need to demonstrate eligibility by referencing work undertaken, where appropriate (RG 258.85).

Your feedback

C5Q1 Is the guidance on the committee process for interviewing applicants at RG 258.84–RG 258.85 clear and comprehensive?

Rationale

- 33 Our updated guidance on the committee process seeks to provide more clarity to applicants on the possible approach taken by a committee, after considering previous committee decisions.

D Ongoing obligations of registered liquidators

Key points

We are seeking feedback on updates to RG 258 Section E:

- updating guidance on maintaining the qualifications, experience, knowledge and abilities required of a registered liquidator; and
- updating guidance on remaining a fit and proper person.

Maintaining the qualifications, experience, knowledge and abilities

Proposal

- D1** We propose to provide additional guidance on maintaining the qualifications, experience, knowledge and abilities required of a registered liquidator, including:
- that a registered liquidator should remain up to date with amendments to the various laws, regulations and rules (RG 258.138); and
 - that restructuring practitioners should notify ASIC immediately if they cease to be a recognised accountant (RG 258.134).

Your feedback

- D1Q1** Is the guidance about maintaining the qualifications, experience, knowledge and abilities required of a registered liquidator at RG 258.133–RG 258.140 clear and comprehensive? If not, provide reasons.
- D1Q2** Do you agree with our proposed additional guidance at RG 258.134 and RG 258.138? If not, provide reasons.

Rationale

34 In order to be registered as a liquidator, an applicant must have the prescribed qualifications, experience, knowledge and abilities (s20–20(4)). ASIC may also give a show-cause notice if a liquidator no longer has the prescribed qualifications, experience, knowledge and abilities (s40–40(1)).

35 We considered committee decisions and informal feedback from registered liquidators and professional bodies in providing additional guidance that a registered liquidator should remain up to date with amendments to the various laws, regulations and rules such as the Corporations Act, *Corporations Regulations 2001* and the *Insolvency Practice Rules (Corporations) 2016*. We consider that remaining up to date with these laws, regulations and rules is important in ensuring that a registered liquidator satisfactorily performs their functions and duties.

- 36 Given that a restructuring practitioner must be a registered accountant under the 2021 reforms, we consider it necessary that ASIC be notified immediately if they cease to be recognised as a registered liquidator.

Remaining a fit and proper person

Proposal

- D2 We propose to provide additional guidance on remaining a fit and proper person, i.e. that when you are appointed to an external administration with limited to no funds, you are still required to adequately and properly perform your duties and functions and that you must not resign from such an appointment purely due to a lack of funds or remuneration.

Your feedback

- D2Q1 Is the updated guidance about remaining a fit and proper person at RG 258.165–RG 258.168 clear and comprehensive? If not, provide reasons.

Rationale

- 37 In order to be registered as a liquidator, an applicant must be a fit and proper person (Sch 2 s20–20(4)). ASIC may also give a show-cause notice if the liquidator is no longer a fit and proper person (Sch 2 s40–40(1)).
- 38 We consider that for a registered liquidator to fulfil the requirement of being a fit and proper person, they must adequately and properly perform their duties and functions, including not resigning from an appointment purely due to a lack of funds or remuneration.

E Disciplinary and other actions

Key points

We are seeking feedback on:

- providing additional guidance on evaluating the currency of qualifications, experience, knowledge, abilities and capacity for the purposes of show notices;
- updating our guidance on interaction with industry bodies; and
- updating our guidance on voluntary cancellation or suspension of registration.

Show cause notice relating to the currency of knowledge

Proposal

E1 We propose to provide additional guidance on evaluating the currency of knowledge in relation to the requisite amount of continuing practice education hours (CPE) required by Rule 20–5 of the *Insolvency Practice Rules (Corporations) 2016*.

Your feedback

E1Q1 Is our additional guidance on maintaining the currency of knowledge at RG 258.216–RG 258.218 clear and comprehensive? If not, provide reasons.

Rationale

- 39 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, including where a registered liquidator does not maintain the currency of their experience, knowledge and ability as a registered liquidator.
- 40 We have updated our guidance to reflect ASIC’s expectations of registered liquidators to maintain required knowledge by undertaking sufficient CPE related to Australian insolvency law and practice. We consider this an important consideration for show-cause notices as it is a condition on a liquidator’s registration (Rule 20–5).

Interaction with industry bodies

Proposal

E2 We propose to update guidance about how we will interact with industry bodies after they have lodged a notice with ASIC regarding possible grounds for disciplinary action on a registered liquidator.

Your feedback

E2Q1 Is our guidance on interaction with industry bodies RG 258.248–RG 258.255 clear and comprehensive? If not, what further details would be helpful on this topic?

Rationale

- 41 We have updated our guidance to reflect the approach we have applied in recent years after receiving a notice of possible grounds for disciplinary action from an industry body in relation to a registered liquidator (s40–100).
- 42 When an industry body lodges a notice, ASIC must:
- (a) notify the industry body within 45 business days if we decide to take no action (Sch 2 s40–100(3)); and
 - (b) notify the industry body if ASIC takes any of the following actions listed below wholly or partly on the basis of information or a copy of a document included with the industry notice (Sch 2 s40–100(6)):
 - (i) suspending the registration of a registered liquidator under s40–25;
 - (ii) cancelling the registration of a registered liquidator under s40–30;
 - (iii) giving a registered liquidator a notice under s40–40 (a show-cause notice); and
 - (iv) imposing a condition on a registered liquidator under another provision of Sch 2 of the Corporations Act.
- 43 In addition to these statutory requirements:
- (a) we acknowledge receipt of the notice;
 - (b) if we decide to take any action in response to an industry notice, we may advise the industry body that we intend to make further inquiries and may provide the industry body with updates depending on the nature of the action taken.
- 44 This is to ensure that the industry body is aware that ASIC is responding to their notice, particularly since it can take different lengths of time to take the actions outlined at paragraph 42(b) above in response to an industry notice.

Voluntary cancellation or suspension of registration

Proposal

- E3** We propose to update our guidance on voluntary cancellation or suspension of registration to:
- (a) clarify that when requesting suspension of registration, a registered liquidator may request an indefinite period of suspension or a defined period of suspension and that they cannot accept or retain external administration or controller appointments while suspended; and
 - (b) reflect that, among other matters, we will generally only cancel or suspend a registered liquidator's registration if the registered liquidator has ensured they have adequate and appropriate insurance cover (including run-off cover) for liabilities they may have incurred while they acted as a registered liquidator.

Your feedback

- E3Q1** Is the guidance on a voluntary cancellation or suspension of registration at RG 258.281–RG 258.288 clear and comprehensive? If not, what additional details would be helpful?

Rationale

- 45 At any time, you may lodge a request with ASIC in the approved form to cancel or suspend your registration as a liquidator (Sch 2 s40–25(1)(f) or 40–30(1)(f)).
- 46 We have updated our guidance to clarify that when requesting suspension of registration, a registered liquidator may request an indefinite period of suspension or a defined period of suspension and that they cannot accept or retain external administration or controller appointments while suspended.
- 47 We have also updated our guidance to reflect that, among other matters, we will generally only cancel or suspend registration if a registered liquidator has ensured that they have adequate and appropriate insurance cover (including run-off cover) for liabilities they may have incurred while acting as a registered liquidator. This is to maximise the protection of creditors should issues arise after a registered liquidator's registration has been cancelled or suspended.

F Regulatory and financial impact

- 48 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) ensuring that a person registered as a liquidator:
 - (i) has an appropriate level of qualifications, experience and skill;
 - (ii) performs their duties and functions adequately and properly;
 - (iii) maintains adequate and appropriate insurance against the liabilities they may incur working as a registered liquidator; and
 - (b) avoiding imposing unreasonable compliance costs on registered liquidators.
- 49 Before settling on a final policy, we will comply with the Australian Government’s Policy Impact Analysis (PIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options that could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Impact Analysis (OIA); and
 - (c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing an impact analysis or equivalent (by independent review).
- 50 All PIAs are submitted to the OIA for approval before we make any final decision, or if a PIA equivalent—to the OIA for agreement. Without an approved PIA or agreed PIA equivalent, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 51 To ensure that we are able to properly complete any required PIA or PIA equivalent, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.

Also see [The consultation process](#).

Appendix 1: Summary of updates to RG 258 and supporting documents and templates

Section updated	Description of updates and reference
RG 258 A Overview	<ul style="list-style-type: none"> • Added new category of registration (restructuring practitioner for a company or a restructuring practitioner of a restructuring plan) (RG 258.3, RG 258.4, RG 258.6) • Added information about applications by New Zealand insolvency practitioners (RG 258.12–RG 258.16) <i>See paragraphs 21–22 of this consultation paper.</i> • Added summary of ongoing obligations of registered liquidators (RG 258.17)
RG 258 B Applying to act as an external administrator of companies, receiver and receiver and manager	<p>This is a section relating specifically to applicants for registration as a registered liquidator who can take all appointments based on Section B of the current RG 258.</p> <ul style="list-style-type: none"> • Updated guidance relating to a new provision where a committee is not satisfied that the applicant has the qualifications, experience, knowledge and abilities requirements (RG 258.35–RG 258.36) <i>See paragraphs 23–28 of this consultation paper.</i> • Updated definition of ‘relevant employment’ to reflect change to the Rules (RG 258.37) • Updated guidance on resource capacity factors that a committee may consider (RG 258.41) <i>See paragraph 32 of this consultation paper.</i> • Added guidance on personal factors that a committee may consider (RG 258.42) <i>See paragraphs 29–31 of this consultation paper.</i> • Added information about limitations with the NPII (RG 258.52–RG 258.54) • Added guidance on the committee process, including possibility of the Committee asking about the applicant’s personal experience and the need to demonstrate eligibility by referencing work undertaken, where appropriate (RG 258.84–RG 258.85) • Added guidance regarding example conditions that a committee may impose on an applicant (RG 258.88) • Added information about ASIC’s inability to publish committee decisions (RG 258.89) • Added guidance on information disclosed in the Register of Liquidators and other information ASIC publishes (RG 258.92–RG 258.95)

Section updated	Description of updates and reference
RG 258 C Applying to act only as a restructuring practitioner for a company or of a restructuring plan	<p>This is new a section relating specifically to applicants for registration as a registered liquidator to act only as a restructuring practitioner for a company or of a restructuring plan, a new category introduced by the 2021 reforms. Some of the application requirements in this section cross-reference Section B.</p> <ul style="list-style-type: none"> Added specific eligibility requirements under the legislation and Rules (RG 258.103–RG 258.105) Added specific qualifications, experience, knowledge and abilities requirements under the legislation and Rules (RG 258.106–RG 258.107)
RG 258 D Applying to act only as a receiver and receiver and manager	<p>This is a section relating specifically to applicants for registration as a registered liquidator who can act only as a receiver and receiver and manager, separating out guidance in Section B of the current RG 258, including on experience requirements. Some of the application requirements in this section cross-reference Section B.</p> <ul style="list-style-type: none"> Updated definition of 'relevant employment' to reflect change to the Rules (RG 258.123) <p><i>See paragraphs 24–25 of this consultation paper.</i></p>
RG 258 E Ongoing obligations of registered liquidators	<p>This is a new section, the content of which has been separated from the section on Disciplinary and other actions.</p> <ul style="list-style-type: none"> Updated guidance on maintaining the qualifications, experience, knowledge and abilities required of a registered liquidator (RG 258.133–140) <p><i>See paragraphs 34–36 of this consultation paper.</i></p> <ul style="list-style-type: none"> Updated guidance on compliance with conditions to reflect the change in the Rules to CPE requirements from 40 hours (10 hours of which must be capable of being objectively verified by a competent source) during each year of registration to 120 hours (with at least 30 hours being capable of being objectively verified by a competent source) during the three-year period starting on the day you were first registered and each subsequent period of three years during which you are registered (RG 258.148) Added guidance on complying with provisions of the Corporations Act and other relevant law currently located in RG 16 (RG 258.152–RG 258.154) Updated guidance on remaining a fit and proper person in relation to performance of duties, including where you are appointed to an external administration with limited to no funds (RG 258.165–RG 258.168) <p><i>See paragraph 37 of this consultation paper.</i></p> <ul style="list-style-type: none"> Removed references to transitional arrangements which are no longer applicable (RG 258.179–RG 258.180)

Section updated	Description of updates and reference
RG 258 F Disciplinary and other actions	<ul style="list-style-type: none"> • Updated to reflect that ASIC may cancel or suspend registration if you do not, within 12 months after the due date for payment, pay in full the levy imposed by the <i>ASIC Supervisory Cost Recovery Levy Act 2017</i>, any late payment penalties imposed and an amount of shortfall penalty payable (RG 258.212(g)) • Added guidance on evaluating the currency of qualifications, experience, knowledge, abilities and capacity for the purposes of considering the issue of show-cause notices (RG 258 Table 8) <i>See paragraphs 39–40 of this consultation paper.</i> • Updated guidance on the committee process in disciplinary actions to clarify that the committee will set the time and place for the interview (RG 258.236) • Updated guidance on information that ASIC can publish regarding committee decisions which is limited to any information that the committee directs to be published and information about referrals to committees on the Registered liquidator disciplinary decisions webpage (RG 258.243–RG 258.245) • Updated guidance on interaction with industry bodies. <i>See paragraphs 43–44 of this consultation paper.</i> • Added reference to provisions relating to ASIC authorising use and disclosure information to a prescribed professional disciplinary body or to another prescribed body where the Chairman or delegate is satisfied that doing so will enable or assist the body perform one of its functions or when doing so will enable or assist that body perform a prescribed function in relation to registered liquidators (RG 258.254–RG 258.255) • Added reference to provisions relating to a court's inquiry into external administration of a company (RG 258.261–RG 258.264) • Updated guidance on voluntary cancellation or suspension of registration (RG 258.282–RG 258.284, RG 258.288–RG 258.291) <i>See paragraph 46–47 of this consultation paper.</i>
Senior level employment history template	<ul style="list-style-type: none"> • Updated guidance relating to a new provision where a committee is not satisfied that the applicant has the qualifications, experience, knowledge and abilities prescribed (Page 1) <i>See paragraphs 23–28 of this consultation paper.</i>
Guide to personal and resource capacities	<ul style="list-style-type: none"> • Updated guidance on resource capacity factors that a committee may consider (Pages 4–5) <i>See paragraph 32 of this consultation paper.</i> • Added guidance on personal factors that a committee may consider for each category of registered liquidators (Pages 1–4) <i>See paragraphs 29–31 of this consultation paper.</i>

Key terms

Term	Meaning in this document
2021 reforms	<ul style="list-style-type: none"> • <i>Corporations Amendment (Corporate Insolvency Reforms) Act 2020</i>; and • <i>Insolvency Practice Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020</i>
ASIC	Australian Securities and Investments Commission
Bankruptcy Act	<i>Bankruptcy Act 1966</i>
Ch 5 (for example)	A chapter of the Corporations Act (in this example, numbered 5)
Committee	A committee convened under Sch 2
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
PJCCFS Inquiry	Parliamentary Joint Committee on Corporations and Financial Services Inquiry
Pt 2D.6 (for example)	A part of the Corporations Act (in this example, numbered 2D.6)
Rule 20–1 (for example)	A section of the <i>Insolvency Practice Rules (Corporations) 2016</i> (in this example numbered 20–1)
Rules	<i>Insolvency Practice Rules (Corporations) 2016</i>
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 <i>Insolvency Practice Schedule (Corporations)</i>

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to separate our guidance on applications for registration to provide information for each of the following registered liquidator categories:</p> <ul style="list-style-type: none"> (a) an external administrator of companies, receiver, and receiver and manager (RG 258 Section B); or (b) a restructuring practitioner for a company or a restructuring practitioner of a restructuring plan only (RG 258 Section C); or (c) a receiver and receiver and manager only (RG 258 Section D). 	<p>B1Q1 Is the overall guidance in RG 258 Sections B, C and D clear and comprehensive? If not, how can the guidance be better structured?</p> <p>B1Q2 Is guidance needed on any other topic regarding liquidator registration, in particular the new category of restructuring practitioners (RG 258 Section C)? If so, what is needed?</p>
<p>B2 In the updated RG 258 we propose to separate the guidance on ongoing obligations from the section on disciplinary and other actions into two sections, E and F. Note: we further propose to move Section C into the revised Section E (see paragraph 20).</p>	<p>B2Q1 Is the restructure of the guide with separate Sections E (ongoing obligations) and F (disciplinary and voluntary actions) useful and easier to navigate? If not, please provide reasons.</p> <p>B2Q2 Is guidance needed on any other topic across these two sections? If so, what other details are needed?</p>
<p>C1 We propose to provide guidance on notices to be registered by New Zealand insolvency practitioners, including matters that a notice must include.</p>	<p>C1Q1 Is the guidance on notices to be registered by New Zealand insolvency practitioners at RG 258.12–RG 258.16 clear and comprehensive? If not, what additional information would be helpful?</p>
<p>C2 Following the amended definition of ‘relevant employment’ in the 2021 reforms, we propose to update guidance on the experience requirements for:</p> <ul style="list-style-type: none"> (a) external administrator of companies, receiver, and receiver and manager (RG 258.34–RG 258.38); and (b) receiver, and receiver and manager only (RG 258.120–RG 258.124). 	<p>C2Q1 Are the experience requirements for an external administrator of companies, receiver, and receiver and manager at RG 258.34–RG 258.38 clear and comprehensive? If not, what further clarification is needed for these categories?</p> <p>C2Q2 Are the experience requirements for a receiver, and receiver and manager only at RG 258.120–RG 258.124 clear and comprehensive? If not, what further clarification is needed for these categories?</p>

Proposal	Your feedback
<p>C3 In the updated RG 258, and the Guide to personal and resource capacities, we propose to provide specific guidance on personal capacity requirements that a committee may consider for each of the three categories of registered liquidator:</p> <ul style="list-style-type: none"> (a) for external administrator of companies, receiver and receiver and manager, see RG 258.42; (b) for restructuring practitioner for a company, or a restructuring practitioner of a restructuring plan only, see RG 258.111; or (c) for receiver, and receiver and manager only, see RG 258.128. 	<p>C3Q1 Are the personal capacity requirements for an external administrator of companies, receiver, and receiver and manager at RG 258.42 and in the Guide to personal and resource capacities clear and comprehensive? If not, can you suggest any changes?</p> <p>C3Q2 Are the personal capacity requirements for a restructuring practitioner for a company, or a restructuring practitioner of a restructuring plan at RG 258.111 and in the Guide to personal and resource capacities clear and comprehensive? If not, can you suggest any changes?</p> <p>C3Q3 Are the personal capacity requirements for a receiver, and receiver and manager at RG 258.128 and in the Guide to personal and resource capacities clear and comprehensive? If not, can you suggest any changes?</p>
<p>C4 In the updated RG 258 and the Guide to personal and resource capacities, we propose to separate guidance on resource capacity across the three categories of registered liquidator:</p> <ul style="list-style-type: none"> (a) as an external administrator of companies, receiver and receiver and manager (RG 258.41); (b) as a restructuring practitioner for a company or a restructuring practitioner of a restructuring plan (RG 258.110); and (c) as a receiver and receiver and manager (RG 258.127). 	<p>C4Q1 Are the resource capacity requirements in RG 258 and the Guide to personal and resource capacities clear and comprehensive? If not, what changes do you suggest to our updated guidance?</p>
<p>C5 We propose to update guidance on the committee's interview process regarding:</p> <ul style="list-style-type: none"> (a) the possibility of the committee asking about the applicant's personal experience (RG 258.84); and (b) the need to demonstrate eligibility by referencing work undertaken, where appropriate (RG 258.85). 	<p>C5Q1 Is the guidance on the committee process for interviewing applicants at RG 258.84–RG 258.85 clear and comprehensive?</p>

Proposal	Your feedback
<p>D1 We propose to provide additional guidance on maintaining the qualifications, experience, knowledge and abilities required of a registered liquidator, including:</p> <p>(a) that a registered liquidator should remain up to date with amendments to the various laws, regulations and rules (RG 258.138); and</p> <p>(b) that restructuring practitioners should notify ASIC immediately if they cease to be a recognised accountant (RG 258.134).</p>	<p>D1Q1 Is the guidance about maintaining the qualifications, experience, knowledge and abilities required of a registered liquidator at RG 258.133–RG 258.140 clear and comprehensive? If not, provide reasons.</p> <p>D1Q2 Do you agree with our proposed additional guidance at RG 258.134 and RG 258.138? If not, provide reasons.</p>
<p>D2 We propose to provide additional guidance on remaining a fit and proper person, i.e. that when you are appointed to an external administration with limited to no funds, you are still required to adequately and properly perform your duties and functions and that you must not resign from such an appointment purely due to a lack of funds or remuneration.</p>	<p>D2Q1 Is the updated guidance about remaining a fit and proper person at RG 258.165–RG 258.168 clear and comprehensive? If not, provide reasons.</p>
<p>E1 We propose to provide additional guidance on evaluating the currency of knowledge in relation to the requisite amount of continuing practice education hours (CPE) required by Rule 20–5 of the Insolvency Practice Rules (Corporations) 2016.</p>	<p>E1Q1 Is our additional guidance on maintaining the currency of knowledge at RG 258.216–RG 258.218 clear and comprehensive? If not, provide reasons.</p>
<p>E2 We propose to update guidance about how we will interact with industry bodies after they have lodged a notice with ASIC regarding possible grounds for disciplinary action on a registered liquidator.</p>	<p>E2Q1 Is our guidance on interaction with industry bodies RG 258.248–RG 258.255 clear and comprehensive? If not, what further details would be helpful on this topic?</p>
<p>E3 We propose to update our guidance on voluntary cancellation or suspension of registration to:</p> <p>(a) clarify that when requesting suspension of registration, a registered liquidator may request an indefinite period of suspension or a defined period of suspension and that they cannot accept or retain external administration or controller appointments while suspended; and</p> <p>(b) reflect that, among other matters, we will generally only cancel or suspend a registered liquidator’s registration if the registered liquidator has ensured they have adequate and appropriate insurance cover (including run-off cover) for liabilities they may have incurred while they acted as a registered liquidator.</p>	<p>E3Q1 Is the guidance on a voluntary cancellation or suspension of registration at RG 258.281–RG 258.288 clear and comprehensive? If not, what additional details would be helpful?</p>