



Wednesday, 1 May 2024

RG 258 Consultation Feedback  
Companies and Small Business  
Australian Securities and Investments Commission  
GPO Box 9827  
Melbourne VIC 3001

By email: [DL-C&SB-RG258.Feedback@asic.gov.au](mailto:DL-C&SB-RG258.Feedback@asic.gov.au)

**Consultation Paper 376: Updates to RG 258 Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance**

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback to Australian Securities and Investments Commission (ASIC) on the proposed updates to RG 258. More information about CA ANZ can be found in Appendix B.

Our members consider the separation of guidance by specific conditions that can apply to a registered liquidator does provide greater clarity. We also welcome the inclusion of guidance for licensed insolvency practitioners in New Zealand applying to be registered as a liquidator in Australia.

We are concerned that the use of the word 'category' when referring to a specific condition, that a person may seek on application to become registered as a liquidator, may lead to confusion. This term is not used in the legislative framework and may imply that categories, rather than enforceable conditions, apply. For clarity and consistency, where a person applies to practise as a restructuring practitioner only or as a receiver and receiver and manager only, guidance should refer to a condition applied, not a category.

**We recommend each instance of the word 'category' be replaced with 'condition'.**

While hesitant to suggest any additions that would increase the volume of the document, we would seek consideration of a visual representation, such as a flow chart, at the commencement of each section. This would not need to be detailed and could aid readers who digest information easier when presented in a visual form.

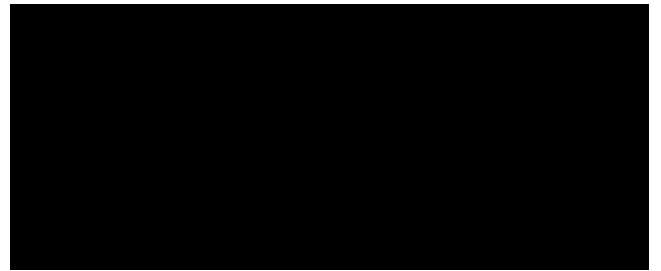
**We recommend adding flow charts at the start of each section.**

As noted above, the proposed separation of guidance does increase the volume of the document substantially. We consider if the intent is to separate guidance there is no need to repeat information that it provided in preceding sections. The table in Appendix A notes paragraphs that could be removed and other terms in the document we consider may be misleading.

We support the separation of guidance as outlined in the draft RG 258 as it may improve the accessibility for a person seeking to apply for registration with a specific condition.

Please do not hesitate to reach out to [REDACTED] or on [REDACTED] to explore our feedback in greater detail. We would also advise that [REDACTED] will be attending the roundtable to discuss the proposed updates to this guide on 9 May 2024.

Sincerely,



# Appendix A

## Further suggestions and concerns

|                    |  |
|--------------------|--|
| RG 258.3           | <p>Change heading to 'Conditional registration'</p> <ul style="list-style-type: none"> <li>'category' is not used in the legislative framework</li> </ul> <p>Opening sentence to then read<br/>'...can be registered to practice as an external administrator of companies, receiver and receiver and manager or</p> <p>(a) with the condition of only as a restructuring...<br/>(b) with the condition of only as a receiver...</p>   |
| RG 258.14          | <p>Change to 'insolvency practitioner'</p> <ul style="list-style-type: none"> <li>An applicant from New Zealand is incorrectly referred to as a 'Registered liquidator'</li> <li>Replace with 'insolvency practitioner'</li> </ul>   |
| RG 258.25 and 26   | <p>Remove paragraphs and sub heading</p> <ul style="list-style-type: none"> <li>unnecessary repetition</li> </ul>  |
| RG 258.27          | <p>Move</p> <ul style="list-style-type: none"> <li>this is not relevant to sub heading</li> <li>Include this comment in opening key points</li> </ul>  |
| RG 258.101 and 102 | <p>Remove paragraphs</p> <ul style="list-style-type: none"> <li>unnecessary repetition</li> <li>Paragraphs are not relevant for a person applying under this condition</li> </ul>  |
| RG 258.111         | <p>Reword some competencies</p> <p>These should reflect the limited role of a restructuring practitioner (RP)</p> <p>(b) 'realisation of company assets'</p> <ul style="list-style-type: none"> <li>the directors, not the RP, would realise assets, albeit with the RPs approval.</li> <li>Suggest 'methods of sale of company assets', which is in line with Table 2 in Attachment 2</li> </ul> <p>(g) 'the duties and obligations of registered liquidators'</p> <ul style="list-style-type: none"> <li>As this is a conditional registration, it appears unreasonable for an applicant to demonstrate high-level competencies in the activities required of a registered liquidator with no conditions.</li> <li>Suggest 'duties and obligations of a restructuring practitioner'</li> </ul> |

|                    |   |
|--------------------|---|
| RG 258.116 and 117 | <p>Remove paragraphs</p> <ul style="list-style-type: none"> <li>• unnecessary repetition</li> <li>• Paragraphs are not relevant for a person applying under this condition</li> </ul>   |
| RG 258.133         | <p>Add 'within conditions applied'</p> <ul style="list-style-type: none"> <li>• This paragraph could be read as any registered liquidator must meet the ongoing requirements irrespective of whether they hold a conditional registration.</li> <li>• For clarity, suggest at the close of the opening sentence adding the words '...a registered liquidator within conditions applied.'</li> </ul>   |
| RG 258.134         | <p>Remove 'Additional' and add 'only' to preceding subheading</p> <ul style="list-style-type: none"> <li>• This implies a registered liquidator must meet RG 258.133 and in addition be a recognised accountant.</li> <li>• As noted in comments to RG 258.133, for conditional registrations, there are fewer ongoing experience and knowledge requirements.</li> <li>• Suggest sub heading be reworded to read 'Qualifications for only restructuring practitioner.'</li> </ul> |
| RG 258.134         | <p>Add 'continue to'</p> <ul style="list-style-type: none"> <li>• this section is talking to 'ongoing' obligations</li> <li>• therefore 'must be' should be '...must continue to be a...'</li> </ul>  |
| RG 258.150         | <p>Remove paragraph</p> <ul style="list-style-type: none"> <li>• duplicates content already covered in RG 258.145-146</li> <li>• If retained, for completeness add a similar paragraph for the condition 'only receiver and receiver and manager'</li> </ul>  |
| RG 258.155         | <p>Remove paragraph (and preceding sub-heading)</p> <ul style="list-style-type: none"> <li>• unnecessary repetition</li> <li>• adequately covered by RG258.151-154</li> </ul>   |
| RG 258.156         | <p>Move paragraph</p> <ul style="list-style-type: none"> <li>• Better aligned with subsequent section</li> <li>• Suggest move to before RG 258.160</li> </ul>   |
| RG 258.167         | <p>Remove</p> <ul style="list-style-type: none"> <li>• duplicates content already covered: RG 258.133, 258.155, 258.157...</li> <li>• not relevant to 'fit and proper' subsection</li> </ul>  |
| RG 258.168         | <p>Move</p> <ul style="list-style-type: none"> <li>• not relevant to 'fit and proper' subsection</li> <li>• suggest move before RG 258.152.</li> </ul>  |

|                  |  |
|------------------|--|
| RG 258.212(g)    | <p>Remove subsection (g)</p> <ul style="list-style-type: none"> <li>• duplicates content already covered.</li> <li>• non-payment of a debt when due renders a registered liquidator insolvent (RG 258.191)</li> <li>• non-payment should trigger cancellation of registration to maintain public confidence in the profession (RG 258.2)</li> </ul> <p>We note that, where a registered liquidator has difficulties paying their debt to ASIC, ASIC have the discretion to agree to an extended payment date and/or wavier elements of the debt due.</p> <p>This flexibility allows ASIC to defer cancellation or suspension of registration where ASIC consider the circumstances of the RL are reasonable to agree to an extended due date or debt wavier.</p> |
|                  |  |
| Attach 2 Pg 1    | <p>Add 'within conditions applied'</p> <ul style="list-style-type: none"> <li>• to clarify the distinction where a limiting condition is applied, add to the end of the first sentence in the second paragraph '...a registered liquidator within conditions applied.'</li> </ul>  |
| Attach 2 Table 2 | <p>Replace 'prepare' with 'review'</p> <ul style="list-style-type: none"> <li>• In 'Understanding company affairs', third dot point, it is the directors obligation to prepare budget when developing a restructuring plan</li> <li>• The role of the restructuring practitioner is to review and determine if a restructuring plan is achievable.</li> <li>• Suggest replacing 'prepare' with 'review budgets and other forecasts'</li> </ul>   |
| Attach 2 Table 2 | <p>Voidable transactions – a query</p> <ul style="list-style-type: none"> <li>• In 'Understanding company affairs', last dot point, we note that a restructuring practitioner cannot recover voidable transactions.</li> <li>• Therefore we would question the intent of this requirement?</li> </ul>  |

# Appendix B

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 136,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.