

2 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)

Dear Sir/Madam,

We are pleased to provide our submission regarding the draft *Regulatory Guide 258*: CP 376 Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance Requirements.

In this submission, we raise two matters that we believe require further consideration. We are concerned if the draft RG 258 is implemented without further change in relation to these two matters, there may be unintended consequences for the registration of Liquidators in Australia.

Other than the two issues raised below, we support the redrafted RG 258.

## 1. Notice to be registered by New Zealand Insolvency Practitioners

The first matter concerns the ability of New Zealand (NZ) licenced practitioners to become Registered Liquidators in Australia.

Your Consultation Paper 376 states at paragraph 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.”*

Further paragraph 22 states as follows:

*“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”.*

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We are concerned that an approach of this nature may dilute the current standards that are presently in place in Australia for the registration of insolvency practitioners. These standards are well recognised and have placed Australia in an outstanding position to administer its insolvency laws.

New Zealand (NZ) only introduced licensing or registration requirements in place for persons that undertake insolvency matters in 2020. Prior to that NZ insolvency practitioners were also not required to be a member of an existing NZ professional body which imposed ethical standards, codes of conduct and have the ability to discipline or suspend members who breached those standards and codes.

Whilst steps have been undertaken in relation to updating registration and licencing, the NZ experience requirements for licensing remain substantially lower than the Australian requirements. We draw your attention to the [NZ Insolvency Practitioners Regulation Act 2019](#) and related regulations & notices that outlines the prescribed experience and qualification requirements for licensing in NZ as:

- if the NZ applicant is a Chartered Accountant with a Certificate of Public Practice (CPP), 1,000 hours of relevant experience at a senior level; or
- if no CPP, 2,000 hours of relevant experience at a senior level

In Australia, we require 4,000 hours of relevant experience at a senior level irrespective of whether the applicant holds a CPP or not.

Whilst we are supportive of the general propositions being considered in the draft in relation to this issue, we believe further requirements are needed to ensure that the current standards in Australia are not reduced in any way.

We therefore suggest the following additional requirements be considered in any assessment of a NZ practitioner who issues a notice to ASIC to be registered in Australia stating their qualifications:

- State their professional and academic qualifications,
- State and detail their CPE hours,
- State why the practitioner in this instance seeks to be registered in Australia, and
- State the practitioners recent experience in the last 12 months.

We also suggest the amended RG 258 make reference to the possibility that conditions may be imposed upon the NZ applicant such that an Australian Registered Liquidator be required to be appointed jointly and severally to all Australian external administrations the NZ practitioner seeks to be appointed to.

## 2. Relevant Employment for Australian applicants

We also have a concern that the draft RG 258 does not adequately articulate circumstances where the Committee may grant registration despite an applicant not meeting all requirements listed in s20-20(4) of the Insolvency Practice Schedule (Corporations) 2016 (IPS).

As you are aware, s20-20(5) of the IPS provides that the Committee may decide to grant registration to an applicant even if the Committee is not satisfied of a matter mentioned in s20-20(4)(a), (e), (f) or (i). It is the provision in paragraph (a) that we are particularly referring to (i.e., *the qualifications, experience, knowledge and abilities prescribed*). Section 20-1(2) of the Insolvency Practice Rules (Corporations) 2016 (IPR) prescribes those qualifications, experience, knowledge and abilities and includes, amongst other things, a requirement of at least 4,000 hours of relevant experience at a senior level over 5 years.

ASIC is aware one of the issues arising from the [Parliamentary Joint Committees Report on Corporate Insolvency in Australia](#) (Report) that, with less than 10% of the registered liquidator population being female, this experience

requirement may be a barrier to entry for women who are more likely than their male counterparts to either take a career break or work part-time, or both (refer paragraphs 8.16 – 8.22 of the Report).

In addition to the gender imbalance issue, any professional who has recently worked overseas in the insolvency field may also consider registration will not be possible until they have accrued a further 5 years/4,000 hours relevant experience in Australia.

For example, at paragraph 258.35 and 258.36 it states the following:

*“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)”*

*“For example, this may be applicable where an 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. If you believe there are valid reasons why you may not meet the ‘relevant employment’ criterion, you may apply for registration and explain your circumstances to the committee”.*

Whilst we acknowledge that some consideration has been given to this issue, we do not believe it has been adequately or sufficiently articulated in the draft RG. The current drafting of paragraph 258.36 gives no real positive direction other than it may be considered, and the person can apply and explain their circumstances. We think a more positive statement should be made in support of generally lesser hours particularly where the person does have 4,000 hours experience over a long period of time and the reason it is not condensed into the immediately preceding 5 year period is due to a career break and/or part-time working hours or some of the 4,000 hours has been derived whilst working overseas. Further, we believe paragraph 258.36 should also positively indicate that, where the applicant doesn't meet the requirements due to career breaks/part time work, that they will still be considered for registration.

Finally, we thank you for the opportunity to comment on RG 258 guide and thank ASIC for their continued commitment to updating this very important guide.

If you have any questions or wish to seek any clarification, please do not hesitate to contact me or [REDACTED] on phone number [REDACTED] or email [REDACTED]

Yours faithfully

