

Insolvency practitioner regulation and oversight plan

This is version 1.0 of the 2024 regulation and oversight plan, published on 10 July 2024.

Background

The Insolvency Practitioners Regulation Act 2019 (the Act) introduced a co-regulatory scheme to promote quality, expertise, and integrity in the profession of insolvency practitioners. Prior to the passage of the Act, insolvency practitioners were not regulated as a specialist profession.

- Accredited bodies are responsible for carrying out the frontline regulation of insolvency practitioners, including licensing their entry and regulating ongoing competence, investigating complaints about them, and taking disciplinary action where appropriate.
- The Registrar of Companies (the Registrar) is responsible for oversight of the accredited bodies. Oversight includes accreditation of bodies, ongoing monitoring and reporting, and corrective action to ensure the quality and effectiveness of the accredited bodies' regulatory systems and processes. The Registrar will also maintain a register of insolvency practitioners, which will be publicly searchable.

The Act prescribes duties for insolvency practitioners, including:

- the duty to report serious problems in insolvent bodies corporate, such as director offences, company mismanagement, and breach of directors' duties
- restrictions on insolvency practitioners from purchasing assets from an insolvent body corporate for which they are acting
- restrictions on related party transactions concerning insolvency practitioners and their close connections.

The insolvency practitioners legislative reforms also update the reporting requirements for liquidations, receiverships, and voluntary administrations. Under the legislative regime prior to the Act, insolvency practitioners filed various reports about insolvency engagements (for example, liquidators filed initial, 6 month and final reports). The contents of these reports were only prescribed in general terms. The new reporting requirements specify in greater detail the content of insolvency reports. The new reporting requirements also introduce new requirements for summary insolvency reports.

Regulation and oversight plan

Section 38 of the Act requires the Registrar to publish a plan relating to insolvency practitioner regulation and oversight. The regulation and oversight plan must describe:

- the specific effects, outcomes, or objectives that the Registrar seeks to achieve or contribute to
- the ways in which the Registrar expects accredited bodies to contribute to those effects, outcomes, or objectives
- how the Registrar proposes to monitor accredited bodies under section 40.

The regulation and oversight plan must set out the Registrar's plan for up to the next 4 years. This plan must be updated at least every 4 years.

This document is the second plan under this section and sets out the regulation and oversight plan for the financial years for the period July 2024 to June 2028. The Registrar may, however, review and update this plan at any time.

This plan will help accredited bodies, insolvency practitioners, creditors and other interested stakeholders to understand how the Registrar will approach insolvency practitioner regulation.

Effects, outcomes, and objectives

The purpose of the Act is to regulate insolvency practitioners and to establish an independent oversight system in order to promote:

- a. quality, expertise, and integrity in the profession of insolvency practitioners; and
- b. compliance with the statutory duties of insolvency practitioners.

In addition, section 24 of the Act sets out guiding principles that apply to certain acts and decisions of the Registrar:

- a. promoting quality, expertise, and integrity in the profession of insolvency practitioners;
- b. promoting compliance with the statutory duties of insolvency practitioners;
- c. not unnecessarily restricting the licensing of insolvency practitioners; and
- d. not imposing undue costs on insolvency practitioners or on creditors.

Strictly, these principles apply only to prescribing certain matters under subpart 2 of part 2 of the Act (minimum standards). However, the Registrar considers these principles have wider application. This regulation and oversight plan adopts these section 24 principles as the effects, outcomes, and objectives.

Year 1 - July 2024 - June 2025

Focus areas

- Ensuring that the regulatory regime is not unnecessarily restricting the licensing of insolvency practitioners, and not imposing undue costs on insolvency practitioners or on creditors.
- Onsite monitoring assessment of accredited body.

The Registrar will conduct a post-implementation review of the insolvency practitioners' regulatory regime. In particular, the Registrar will review:

- the prescribed minimum standards for licensing
- the prescribed minimum standards for accreditation
- insolvency disclosure requirements
- other statutory instruments made under the Act, such as the Registrar's policies
- this regulation and enforcement plan
- summary reporting by insolvency practitioners under the Companies (Reporting by Insolvency Practitioners) Regulations 2020 and the accompanying Companies Office forms.

The objective of this review will be to ensure that the objectives of the Act are being met in practice, particularly the balance between promoting quality, expertise, and integrity in the profession of insolvency practitioners, and not unnecessarily restricting the licensing of insolvency practitioners or imposing undue compliance costs. For example, if the minimum standards for licensing make it too difficult or costly to obtain an insolvency practitioner license, the Registrar may review those standards.

This will include a review of the disclosure requirements for insolvencies and insolvency practitioners. A key part of this monitoring and oversight plan is data collection and analysis. This review will consider the data collected, the method of data collection, and the uses of that data to ensure that appropriate data is being collected without undue compliance costs.

Statutory changes and the underlying policy of the Act are outside the Registrar's area of responsibility; however, if the Registrar identifies any such issues, they will be referred on to the relevant policy team.

The Registrar will carry out this review in consultation with accredited bodies, licensed insolvency practitioners, creditors, and other interested stakeholders. The Registrar will also review and analyse data collected in previous years.

The Registrar will also conduct its second on site monitoring assessment of the frontline regulator NZICA. This visit will assess NZICA's regulatory systems and the extent to which they are adequate and effective within the meaning of the Insolvency Practitioners Regulation Act 2019 ("the Act"). The review period will be from 1 July 2022 to 30 June 2024.

The Registrar will review NZICA's implementation of its recommendations from the previous monitoring visit, as well as focusing on NZICA's monitoring of ongoing competence and compliance processes and the results of its practice reviews (areas that were under development at the time of the previous review). This monitoring review is scheduled for November 2024.

Year 2 - July 2025 - June 2026

Focus areas

- Monitoring the implementation of recommendations from the onsite monitoring assessment of accredited body.
- Analysis and public report on the data in the liquidation summary Reports.
- Promoting compliance with the statutory duties of insolvency practitioners.

The Registrar's primary focus areas in year 2 will be:

- Monitoring the implementation of any recommendations contained in the report published on the regulatory systems of NZICA. This report will be completed as early as possible in 2025 based on the findings of the onsite monitoring visit. It will then be published publicly on the Companies Office website (after being advertised in the Gazette).
- Developing and publishing an analysis report summarising the data gained from all Liquidation Summary Reports filed by Licensed Insolvency Practitioners at the end of each insolvency engagement. This report will focus on dollar recoveries made each year, fees charged, and eventual distributions to secured, preferential and unsecured creditors. This report will be published publicly on the Companies Office website.

The Registrar will continue monitoring compliance of licensed insolvency practitioners with:

- insolvency practitioner duties
- insolvency reporting requirements.

The Registrar will do this via:

- sampling, reviewing, and analysing insolvency reports filed with the Companies Office
- working with accredited bodies to monitor complaints, investigations, and practice reviews.

Non-compliance may result in referrals to the licensed insolvency practitioner's accredited body and other enforcement actions under the Act.

Year 3 - July 2026 - June 2027

Focus areas

- Reviewing NZICA's Accredited Body Report.
- Promoting quality, expertise, and integrity in the profession of insolvency practitioners.
- Promoting compliance with the statutory duties of insolvency practitioners.

The Registrar will review NZICA's Accredited Body Report for the period 1 September 2023 to 30 June 2025. This report contains self-reported information relating to:

- the ongoing adequacy and effectiveness of its regulatory functions and systems
- monitoring and general oversight
- education and training
- complaints, enquiries, investigations, and discipline
- confirmation of legal obligations.

After review the Registrar will make any required recommendations and will monitor their implementation by NZICA.

The Registrar will also focus on working with accredited and professional industry bodies to promote quality, expertise, and integrity in the profession of insolvency practitioners. Activities may include:

- additional educational and training activities for insolvency practitioners
- additional or revised Companies Office guidance
- increased monitoring and/or enforcement activities.

The Registrar will also continue monitoring compliance of licensed insolvency practitioners with:

- insolvency practitioner duties
- insolvency reporting requirements.

Year 4 - July 2027 - June 2028

Focus areas

- Ensuring that the regulatory regime remains fit for purpose and continues to achieve the purposes of the Insolvency Practitioners Regulation Act 2019.
- Analysis and public report on the data in the Liquidation Summary Reports.

The Registrar proposes to initiate a further review of the insolvency practitioners' regulatory regime.

The objective of this review will be to ensure that the objectives of the Act are being met in practice - promoting quality, expertise, and integrity in the profession of insolvency practitioners, and compliance with the statutory duties of insolvency practitioners.

The specific focus areas of the review will be developed in consultation with the relevant industry bodies prior to its implementation.

Statutory changes and the underlying policy of the Act are outside the Registrar's area of responsibility; however, if the Registrar identifies any such issues, they will be referred on to the relevant policy team.

The Registrar will carry out this review in consultation with accredited bodies, licensed insolvency practitioners, creditors, and other interested stakeholders.

The Registrar will also develop and publish a further analysis report summarising the data gained from all Liquidation Summary Reports filed by Licensed Insolvency Practitioners at the end of each insolvency engagement. This report will be published publicly on the Companies Office website.

Accredited body contributions

The Registrar works closely with accredited bodies. Accredited bodies have a crucial role to play in the success of the insolvency practitioners' regime as the frontline regulators of the profession. The Registrar expects accredited bodies to contribute to the effects, outcomes and objectives as follows:

Effect, outcome or objective	Accredited body contribution
<p>Promoting quality, expertise, and integrity in the profession of insolvency practitioners</p>	<p>Promoting awareness</p> <p>Promote awareness of the regime and insolvency practitioner duties and reporting requirements.</p> <p>Licensing</p> <p>The Registrar has set expectations to promote licensing-related quality, expertise, and integrity in the prescribed minimum standards for licensing insolvency practitioners.</p> <p>Continuing professional development (CPD)</p> <p>The Registrar expects accredited bodies to consider and set appropriate CPD requirements for their members.</p> <p>Detection, monitoring, and enforcement</p> <p>The Registrar has set expectations to promote systemic detection, monitoring, and enforcement-related minimum standards for accreditation. The Registrar expects accredited bodies to have systems and processes to detect any compliance issues and take appropriate disciplinary action when warranted.</p>
<p>Promoting compliance with the statutory duties of insolvency practitioners</p>	<p>Promoting awareness</p> <p>See above.</p> <p>Detection, monitoring, and enforcement</p> <p>The Registrar has set expectations to promote systemic detection, monitoring, and enforcement-related minimum standards for accreditation. The Registrar expects accredited bodies to have systems and processes to detect any compliance issues and take appropriate disciplinary action when warranted. Serious non-compliance with statutory duties will also be referred to the Registrar.</p>
<p>Not unnecessarily restricting the licensing of insolvency practitioners</p>	<p>Licensing</p> <p>The Registrar has set expectations regarding licensing in the minimum standards for licensing and has reviewed accredited bodies rules and systems and processes for licensing as part of the accreditation process. The Registrar has made clear his view that accredited bodies must not unnecessarily restrict the licensing of insolvency practitioners and expects accredited bodies to act accordingly in issuing licenses.</p>

Effect, outcome or objective	Accredited body contribution
<p>Not imposing undue costs on insolvency practitioners or on creditors</p>	<p>Licensing</p> <p>The Registrar has endeavoured to implement a regulatory regime that does not impose undue costs on insolvency practitioners. The Registrar expects accredited bodies to support this by not imposing undue application or licensing fees for licensing.</p>
<p>Information and data sharing</p>	<p>Applicable to all the above effects, outcomes and objectives, the Registrar expects accredited bodies to:</p> <ul style="list-style-type: none"> • notify the Registrar if an accredited body becomes aware of any issues with the regulatory regime • notify the Registrar of significant issues of non-compliance • provide information and data to support the Registrar’s monitoring and oversight of the regulatory regime and the insolvency profession.

Monitoring accredited bodies

The Registrar has directed accredited bodies to provide regular reports to the Registrar. This must include information regarding:

- membership and licensing
- monitoring and general oversight
- education and training
- complaints, enquiries, investigations, and discipline
- confirmation of legal obligations

In addition, the Registrar anticipates working closely with accredited bodies, and expects them to provide proactive notification of emerging issues. The Registrar may also seek information from accredited bodies outside the annual reporting cycle if required. This could include information in response to specific issues that are referred to the Registrar.