

Reprint  
as at 1 September 2020



## Insolvency Practitioners Regulation (Amendments) Act 2019

Public Act 2019 No 28  
Date of assent 17 June 2019  
Commencement see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Insolvency Practitioners Regulation (Amendments) Act 2019.

**2 Commencement**

- (1) Section 56 (which enables the making of regulations) comes into force on the day after the date of Royal assent.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.
- (3) Any provision that is not earlier brought into force under subsection (2) comes into force on 1 June 2021.

Section 2(2): the rest of this Act brought into force, on 1 September 2020, by clause 2 of the Insolvency Practitioners Regulation (Amendments) Act Commencement Order 2020 (LI 2020/145).

Section 2(3): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

## Part 1

### Amendments to Companies Act 1993

#### 3 Principal Act amended

This Part amends the Companies Act 1993.

#### Subpart 1—Amendments to principal Act

##### *Amendment to Part 1 (Preliminary)*

#### 4 Interpretation

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

**insolvency practitioner** has the same meaning as in section 5(1) of the Insolvency Practitioners Regulation Act 2019

**licensed insolvency practitioner** has the same meaning as in section 5(1) of the Insolvency Practitioners Regulation Act 2019

**prohibition order** means an order made under section 239ADV(1) or 286(5) or under section 37(6) of the Receiverships Act 1993 that prohibits a person from acting as an insolvency practitioner

##### *Amendments to Part 15A (Voluntary administration)*

#### 5 New sections 239F and 239G substituted

Sections 239F and 239G are repealed and the following sections substituted:

##### **239F Who may be appointed as administrator**

- (1) A person may be appointed as an administrator of a company if the person—
  - (a) is a licensed insolvency practitioner who is permitted to act as an administrator of the company under the Insolvency Practitioners Regulation Act 2019; and
  - (b) is not disqualified under subsection (2).
- (2) Unless the court orders otherwise, a person is disqualified from appointment as an administrator of a company if the person would be disqualified from appointment as a liquidator of that company under section 280(2).
- (3) For the purpose of subsection (2),—
  - (a) in section 280,—
    - (i) a reference to the commencement of the liquidation must be read as if it were a reference to the commencement of the administration;
    - (ii) a reference to a company must be read as if it were a reference to the company in administration; and

- (b) section 280(4)(c) does not apply.
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—
  - (a) the person knows or ought reasonably to know that they are disqualified under subsection (2); and
  - (b) the person,—
    - (i) with their consent, is appointed as an administrator; or
    - (ii) acts as an administrator.
- (5) *See also* section 8(2) of the Insolvency Practitioners Regulation Act 2019.

### **239G What administrator must do before appointment**

- (1) A person must not be appointed as the administrator of a company unless the person has—
  - (a) consented in writing and has not withdrawn the consent at the time of appointment; and
  - (b) certified in writing that the person—
    - (i) is a licensed insolvency practitioner; and
    - (ii) is permitted to act as an administrator of the company under the Insolvency Practitioners Regulation Act 2019; and
    - (iii) is not disqualified from appointment under section 239F(2).
- (2) A person who, with their consent, is appointed as an administrator despite failing to certify the matters set out in subsection (1)(b) commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (3) The acts of a person as an administrator are valid even if the person does not meet the requirements of section 239F(1) or fails to certify the matters set out in subsection (1)(b).

### **6 Who may appoint administrator**

- (1) Section 239H(2)(c) is amended by omitting “disqualified” and substituting “disqualified from appointment under section 239F(2)”.
- (2) Section 239H is amended by adding the following subsection:
- (3) The appointment of a replacement administrator by a company must be made by a resolution of the board of the company.

### **7 When office of administrator is vacant**

- (1) Section 239P is amended by repealing paragraph (a) and substituting the following paragraph:
  - (a) resigns in accordance with section 239Q; or
- (2) Section 239P is amended by adding “; or” and also by adding the following paragraph:

- (e) ceases to be a licensed insolvency practitioner who is permitted to act as an administrator of the company in accordance with the Insolvency Practitioners Regulation Act 2019.

## 8 Removal of administrator

- (1) Section 239R(2)(a) is amended by omitting “another person who is not disqualified” and substituting “a person who is permitted to act as an administrator of the company in accordance with section 239F(1)”.
- (2) Section 239R(2) is amended by repealing paragraph (b) and substituting the following paragraph:
  - (b) the person named in the resolution as the new administrator has, before the resolution is considered, tabled at the meeting—
    - (i) the written consent and certificate required under section 239G; and
    - (ii) an interests statement that complies with section 239APA.
- (3) Section 239R is amended by adding the following subsection:
  - (3) A person who, with the person’s consent, is appointed as a replacement administrator under subsection (2) but who has not tabled an interests statement that complies with section 239APA commits an offence and is liable on conviction to the penalty set out in section 373(2).

## 9 Section 239S repealed

Section 239S is repealed.

## 10 New section 239TA inserted

The following section is inserted after section 239T:

### **239TA Provision of information and assistance to replacement administrator**

- (1) This section applies if a replacement administrator is appointed.
- (2) The previous administrator must, where practicable, provide to the replacement administrator the information that the previous administrator has in their possession or under their control and that the replacement administrator reasonably requires to carry out the functions and duties of administrator.
- (3) The information referred to in subsection (2) includes—
  - (a) the records and other documents of the company;
  - (b) any information necessary to provide the replacement administrator with control over the property of the company;
  - (c) any information relating to claims;
  - (d) accounting records and other documents of the administration.

- (4) The previous administrator must, where practicable, provide to the replacement administrator any assistance that the replacement administrator reasonably requires to carry out the functions and duties of administrator.
- (5) A person who fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to the penalty set out in section 373(2).

## **11 Section 239AI repealed**

Section 239AI is repealed.

## **12 Power of court where outcome of voting at creditors' meeting determined by related entity**

- (1) Section 239AM is amended by omitting the heading and substituting the following heading: “**Related creditor’s vote disregarded unless court orders otherwise**”.
- (2) Section 239AM is amended by repealing subsections (1) and (2) and substituting the following subsections:
  - (1) The administrator must disregard a related creditor’s vote on a resolution at the creditors’ meeting unless the court orders otherwise.
  - (2) A related creditor may apply to the court for an order that its vote be taken into account.
  - (2A) A related creditor that intends to apply for an order must,—
    - (a) before a vote is taken on the resolution, give notice in writing to the administrator that the creditor—
      - (i) is a related creditor; and
      - (ii) intends to apply to the court for an order that its vote be taken into account; and
    - (b) within 10 working days of the creditors’ meeting, make an application to the court.
  - (2B) The court may order that a related creditor’s vote be taken into account only if satisfied that ordering that the applicant’s vote (or the applicants’ votes) be taken into account—
    - (a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and
    - (b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors who voted against the resolution or for it, as the case may be, to an extent that is unreasonable having regard to—
      - (i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and

- (ii) the nature of the relationship between the applicant (or the applicants) and the company, or between the related creditors and the company; and
  - (iii) any other relevant matter.
- (3) Section 239AM(3) is amended by inserting “and sections 239AMA to 239AMC” after “this section”.

### **13 New sections 239AMA to 239AMC inserted**

The following sections are inserted after section 239AM:

#### **239AMA Creditor’s vote disregarded if administrator considers creditor is related creditor**

- (1) If the administrator considers that a creditor that votes on a resolution at a creditors’ meeting is a related creditor, and the creditor has not given notice under section 239AM(2A), the administrator must (unless the court orders otherwise)—
- (a) disregard the creditor’s vote; and
  - (b) give notice in writing to the creditor stating the reasons for the administrator’s view.
- (2) The court may, on the application of the creditor, order that the creditor’s vote be taken into account if satisfied that the creditor is not a related creditor.
- (3) The creditor must make any application under this section to the court within 10 working days of receiving the notice.

#### **239AMB Further powers where court orders creditor’s vote be taken into account**

- (1) If the court orders, under section 239AM or 239AMA, that a creditor’s vote be taken into account, the court may also—
- (a) order that the resolution be set aside or treated as having passed;
  - (b) order that a new meeting be held to consider and vote on the resolution;
  - (c) order that the creditor’s vote on a resolution to vary or amend the resolution be taken into account;
  - (d) make any other orders that the court thinks necessary.
- (2) Despite any application under section 239AM or 239AMA, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise.

#### **239AMC Power of court where outcome of voting at creditors’ meeting determined by related creditor**

- (1) This section applies in relation to a resolution at a creditors’ meeting if,—
- (a) after the meeting, the administrator becomes aware that a creditor that voted on the resolution is a related creditor; and

- (b) the administrator is satisfied that,—
  - (i) in accordance with section 239AM or 239AMA, the related creditor’s vote should have been disregarded; and
  - (ii) the resolution would not have been passed, defeated, or required to be decided by a casting vote (as the case may be) if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.
- (2) Despite sections 239AM(1) and 239AMA(1), the outcome of the vote on the resolution is valid and effective unless the court orders otherwise under subsection (4).
- (3) The administrator must, as soon as practicable after becoming aware that this section applies to the resolution, give notice of that fact to every known creditor.
- (4) The court may, on the application of the administrator or a creditor,—
  - (a) order that the resolution be set aside or treated as having passed;
  - (b) order that a new meeting be held to consider and vote on the resolution;
  - (c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it;
  - (d) make any other orders that the court thinks necessary.
- (5) An administrator who fails to comply with subsection (3) commits an offence and is liable on conviction to the penalty set out in section 373(2).

#### **14 New sections 239AP and 239APA substituted**

Section 239AP is repealed and the following sections are substituted:

##### **239AP Administrator must table documents at first creditors’ meeting**

- (1) The administrator must table at the first creditors’ meeting—
  - (a) the written consent and certificate required under section 239G; and
  - (b) an interests statement that complies with section 239APA; and
  - (c) a notice stating that administrators are required to be licensed, and that more information about the regulation of insolvency practitioners is available from the Registrar.
- (2) A person who fails to comply with subsection (1)(a), (b), or (c) commits an offence and is liable on conviction to the penalty set out in section 373(2).

##### **239APA Requirements for interests statement**

- (1) This section sets out the requirements for the interests statement referred to in sections 239R(2)(b)(ii), 239AP(1)(b), 239AU(3)(aa), and 239ACZA(1).
- (2) The interests statement must disclose—

- (a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as the administrator, including anything that would, but for a court order to the contrary, have disqualified the person—
    - (i) from being appointed as or acting as the administrator (*see* section 239F(2)); or
    - (ii) from being a licensed insolvency practitioner; and
  - (b) the nature of any actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and
  - (c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.
- (3) In preparing an interests statement for the purposes of section 239R(2)(b)(ii) or 239AP(1)(b), the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.
  - (4) In preparing an interests statement for the purposes of section 239AU(3)(aa) or 239ACZA(1), the insolvency practitioner need include only the information required under subsection (2) that relates to circumstances, relationships, or other facts that the insolvency practitioner has become aware of during the period since they last prepared an interests statement.
  - (5) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

### 15 Notice of watershed meeting

- (1) Section 239AU(1)(b) is amended by omitting “section 3(1)(b)” and substituting “section 3(1)(a)”.
- (2) Section 239AU(3) is amended by inserting the following paragraph before paragraph (a):
  - (aa) an updated interests statement that complies with section 239APA; and
- (3) Section 239AU is amended by adding the following subsection:
- (4) The updated interests statement may be in the form of a statement to be read in conjunction with previous interests statements and updates.

### 16 Former administrator is default liquidator

- (1) Section 239ABY is amended by repealing paragraph (b) and substituting the following paragraph:
  - (b) the person nominated—
    - (i) is disqualified from acting as a liquidator under section 280(2); or
    - (ii) has not satisfied the requirements of section 282; or

- (iii) is not a licensed insolvency practitioner who is permitted to act as a liquidator of the company in accordance with the Insolvency Practitioners Regulation Act 2019; or
- (2) Section 239ABY is amended by adding the following subsection as subsection (2):
- (2) However, the former administrator must appoint another person as the liquidator if the former administrator is disqualified from acting as a liquidator or is not a licensed insolvency practitioner who is permitted to act as a liquidator of the company in accordance with the Insolvency Practitioners Regulation Act 2019.

#### **17 New section 239ABYA inserted**

The following section is inserted after section 239ABY:

##### **239ABYA Provision of information and assistance to liquidator**

- (1) This section applies if a person was acting as an administrator of a company before the appointment of a liquidator to the company.
- (2) The administrator must, where practicable, provide to the liquidator the information that the administrator has in their possession or under their control and that the liquidator reasonably requires to carry out the functions and duties of liquidator.
- (3) The information referred to in subsection (2) includes—
  - (a) the records and other documents of the company;
  - (b) any information necessary to provide the liquidator with control over the property of the company;
  - (c) any information relating to claims;
  - (d) accounting records and other documents of the administration.
- (4) The administrator must, where practicable, provide to the liquidator any assistance that the liquidator reasonably requires to carry out the functions and duties of liquidator.
- (5) A person who fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to the penalty set out in section 373(2).

#### **18 Voidable transactions**

- (1) The heading to section 239ACB is amended by adding “**and voidable dispositions**”.
- (2) Section 239ACB(1) is amended by omitting “The voidable transaction provisions do not apply to a transaction by a company in administration if the transaction is” and substituting “The voidable transaction and voidable disposition provisions do not apply to a transaction or disposition by a company in administration if the transaction or disposition is”.

- (3) Section 239ACB is amended by repealing subsection (2) and substituting the following subsection:
- (2) In this section, **voidable transaction and voidable disposition provisions** means sections 292 to 296D.

### 19 New sections 239ACD to 239ACEA substituted

Sections 239ACD and 239ACE are repealed and the following sections substituted:

#### 239ACD Who may be appointed as deed administrator

- (1) A person may be appointed as a deed administrator of a company if the person—
- (a) is a licensed insolvency practitioner who is permitted to act as a deed administrator of the company under the Insolvency Practitioners Regulation Act 2019; and
  - (b) is not disqualified under subsection (2).
- (2) Unless the court orders otherwise, a person is disqualified from appointment as a deed administrator of a company if the person would be disqualified from appointment as a liquidator of that company under section 280(2).
- (3) For the purpose of subsection (2),—
- (a) in section 280,—
    - (i) a reference to the commencement of the liquidation must be read as if it were a reference to the execution of the deed of company arrangement;
    - (ii) a reference to a company must be read as if it were a reference to the company under a deed of company arrangement; and
  - (b) section 280(4)(c) does not apply.
- (4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—
- (a) the person knows or ought reasonably to know that they are disqualified under subsection (2); and
  - (b) the person,—
    - (i) with their consent, is appointed as a deed administrator; or
    - (ii) acts as a deed administrator.
- (5) *See also* section 8(2) of the Insolvency Practitioners Regulation Act 2019.

#### 239ACE What deed administrator must do before appointment

- (1) A person must not be appointed as a deed administrator of a company unless the person has—

- (a) consented in writing and has not withdrawn the consent at the time when the deed of company arrangement is executed; and
  - (b) certified in writing that the person—
    - (i) is a licensed insolvency practitioner; and
    - (ii) is permitted to act as a deed administrator of the company under the Insolvency Practitioners Regulation Act 2019; and
    - (iii) is not disqualified from appointment under section 239ACD(2); and
  - (c) tabled at the watershed meeting (or, if section 239ACP applies, circulated to creditors with the draft deed under that section)—
    - (i) the written consent and certificate required under paragraphs (a) and (b); and
    - (ii) an interests statement that complies with section 239ACEA.
- (2) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—
- (a) the person, with their consent, is appointed as a deed administrator despite failing to certify the matters set out in subsection (1)(b); or
  - (b) the person fails to comply with subsection (1)(c).
- (3) The acts of a person as a deed administrator are valid even if the person does not meet the requirements of section 239ACD(1), fails to certify the matters set out in subsection (1)(b), or fails to comply with subsection (1)(c).

### **239ACEA Requirements for interests statement**

- (1) This section sets out the requirements for the interests statement referred to in section 239ACE(1)(c)(ii).
- (2) The interests statement must disclose—
- (a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as a deed administrator, including anything that would, but for a court order to the contrary, have disqualified the person—
    - (i) from being appointed as or acting as a deed administrator (*see* section 239ACD(2)); or
    - (ii) from being a licensed insolvency practitioner; and
  - (b) the nature of any actual or perceived conflict of interest created by a circumstance, relationship, or other fact; and
  - (c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.

- (3) In preparing the interests statement, the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.
- (4) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

## **20 When office of deed administrator vacant**

- (1) Section 239ACH is amended by repealing paragraph (a) and substituting the following paragraphs:
  - (a) resigns in accordance with section 239ACI; or
  - (ab) dies; or
- (2) Section 239ACH is amended by adding “; or” and also by adding the following paragraph:
  - (d) ceases to be a licensed insolvency practitioner who is permitted to act as a deed administrator of the company in accordance with the Insolvency Practitioners Regulation Act 2019.

## **21 New section 239ACJA inserted**

The following section is inserted after section 239ACJ:

### **239ACJA Provision of information and assistance to replacement deed administrator**

- (1) This section applies if a replacement deed administrator is appointed.
- (2) The previous deed administrator must, where practicable, provide to the replacement deed administrator the information that the previous deed administrator has in their possession or under their control and that the replacement deed administrator reasonably requires to carry out the functions and duties of deed administrator.
- (3) The information referred to in subsection (2) includes—
  - (a) the records and other documents of the company;
  - (b) any information necessary to provide the replacement deed administrator with control over the property of the company (to the extent permitted by the deed);
  - (c) any information relating to claims;
  - (d) accounting records and other documents of the administration of the deed of company arrangement.
- (4) The previous deed administrator must, where practicable, provide to the replacement deed administrator any assistance that the replacement deed administrator reasonably requires to carry out the functions and duties of deed administrator.

- (5) A person who fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to the penalty set out in section 373(2).

**22 Heading to subpart 14 of Part 15A amended**

The heading to subpart 14 of Part 15A is amended by adding “and summary reports”.

**23 Administrator must file accounts**

Section 239ACZ is amended by adding the following subsection:

- (4) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2).

**24 New sections 239ACZA and 239ACZB inserted**

The following sections are inserted after section 239ACZ:

**239ACZA Administrator must file updates to interests statement**

- (1) An administrator must, within 20 working days after the end of each period of 6 months following the date on which the administrator was appointed, prepare and send to every known creditor an updated interests statement that complies with section 239APA.
- (2) The updated interests statement may be in the form of a statement to be read in conjunction with previous interests statements and updates.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2).

**239ACZB Administrator must file summary report**

- (1) This section applies to—
- (a) a person who is the administrator at the end of an administration; and
  - (b) a person who is the deed administrator on the termination of a deed of company arrangement.
- (2) As soon as practicable after completing his or her duties in relation to the administration or deed of company arrangement (as the case may be), the person must provide to the Registrar, in the manner specified by the Registrar, a summary report.
- (3) The summary report must contain the prescribed information.
- (4) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2).

**25 New section 239ADUA inserted**

The following section is inserted after section 239ADU:

**239ADUA Meaning of failure to comply**

- (1) In section 239ADV, **failure to comply** means a person's failure to comply with an enactment, a rule of law, or a court order to the extent that the enactment, rule, or order applies to the person in the person's capacity as an administrator or a deed administrator.
- (2) In proceedings under section 239ADV,—
  - (a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact;
  - (b) a finding described in paragraph (a) may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

**26 Prohibition order**

- (1) Section 239ADV is amended by repealing subsection (3) and substituting the following subsection:
- (3) A person to whom a prohibition order applies—
  - (a) must not act (or continue to act) as an insolvency practitioner; and
  - (b) must be treated as if they are not a licensed insolvency practitioner (*see* section 8 of the Insolvency Practitioners Regulation Act 2019).
- (2) Section 239ADV(4) is amended by omitting “or deed administrator of a company in administration” and substituting “of a company in administration, or a past or current deed administrator of a company under a deed of company arrangement,”.
- (3) Section 239ADV is amended by repealing subsections (5) to (7) and substituting the following subsections:
  - (5) A copy of every order made under subsection (1) must be delivered by the applicant to the Registrar before the end of the working day after the day on which the order was made.
  - (6) The Registrar must provide a copy of the order to each accredited body (within the meaning of the Insolvency Practitioners Regulation Act 2019) before the end of the working day after the day on which the Registrar receives a copy of the order.

**27 Administrator must give notice of appointment**

Section 239ADW is amended by adding the following subsection:

- (3) A notice of appointment must identify who made the appointment and, if the administrator was appointed by the court, who applied to the court for the appointment.

## 28 New section 239ADWA inserted

The following section is inserted after section 239ADW:

### **239ADWA Deed administrator must give notice of appointment**

- (1) This section applies if the creditors at the watershed meeting, by resolution, appoint a person other than the administrator of the company to be the deed administrator.
- (2) The deed administrator must,—
  - (a) before the end of the next working day after appointment, lodge a notice of appointment with the Registrar; and
  - (b) not later than 5 working days after appointment, advertise the appointment in accordance with section 3(1)(a).
- (3) A notice of appointment must state that the appointment was made by the creditors at the watershed meeting.

### *Amendments to Part 16 (Liquidations)*

## 29 Interpretation

- (1) Section 240(1) is amended by inserting the following definition in its appropriate alphabetical order:

**liquidator** means a person who is appointed as a liquidator of a company (and includes a person who is appointed as an interim liquidator of a company under section 246)

- (2) Paragraph (a) of the definition of **creditor** in section 240(1) is amended by omitting “and 289” and substituting “280, and 289”.

## 30 Liquidation of associations

Section 240B is amended by adding the following subsection as subsection (2):

- (2) The Insolvency Practitioners Regulation Act 2019 applies to an association put into liquidation under this Part as if the association were a company.

## 31 New section 241AA substituted

Section 241AA is repealed and the following section substituted:

### **241AA Restriction on appointment of liquidator by shareholders or board after application for court appointment served on company**

- (1) This section applies if an application for the appointment of a liquidator under section 241(2)(c) has been filed and served on the company.
- (2) A liquidator may be appointed under section 241(2)(a) or (b) only if—
  - (a) the liquidator is appointed within 10 working days after the application is served on the company; or

- (b) if the application is made under section 241(2)(c)(iv), the creditor who filed the application consents to the appointment under section 241(2)(a) or (b).
- (3) This section ceases to apply from the time that the court disposes of the application.

### **32 Liquidator to summon meeting of creditors**

- (1) Section 243(2)(a) is amended by omitting “report and notice” and substituting “report, interests statement, and notices”.
- (2) Section 243 is amended by omitting subsections (8) to (10) and substituting the following subsection:
- (8) Nothing in this section applies if section 243A applies to the company.

### **33 New section 243A inserted**

The following section is inserted after section 243:

#### **243A Directors’ declaration that debts will be paid within 12 months**

- (1) This section applies to a company if—
  - (a) a liquidator is appointed under section 241(2)(a) or (b); and
  - (b) before the appointment of the liquidator, a copy of a declaration described in this section is made by a majority of the company’s directors and delivered to the Registrar for registration.
- (2) The declaration must—
  - (a) be to the effect that the directors have made an inquiry into the affairs of the company and have formed the opinion, on reasonable grounds, that the company will be able to pay its debts in full within a period of not more than 12 months after the appointment of the liquidator; and
  - (b) be in writing; and
  - (c) be made within 20 working days before the appointment of the liquidator; and
  - (d) include a statement of the affairs of the company that contains the prescribed information and shows, as at the latest practicable date before the making of the declaration,—
    - (i) the property of the company, and the total amount expected to be realised from that property; and
    - (ii) the liabilities of the company; and
    - (iii) the estimated expenses of the liquidation.
- (3) A director who makes a declaration under this section without having reasonable grounds for their opinion that the company will be able to pay or other-

- wise provide for its debts within the period stated in the declaration commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (4) If, at any time, the liquidator considers, or has reasonable grounds to consider, that the company will not be able to pay or otherwise provide for its debts in full within the period stated in the declaration,—
- (a) this section ceases to apply to the company; and
  - (b) the liquidator must, as soon as practicable, notify the Registrar that this section no longer applies to the company.
- (5) A liquidator who fails to comply with subsection (4)(b) commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (6) The fact that this section ceases to apply to a company does not limit or affect subsection (3).

**34 New section 244 substituted**

Section 244 is repealed and the following section substituted:

**244 Liquidator to summon meeting of creditors in other cases**

- (1) Despite section 243(8), the liquidator of a company to which section 243A applies must call a meeting of creditors for the purpose specified in section 243(1)(a) or (b) if—
- (a) the liquidator is satisfied that the directors who made the declaration described in section 243A did not have reasonable grounds to believe that the company would be able to pay or otherwise provide for its debts within the period stated in the declaration; or
  - (b) section 243A ceases to apply to the company.
- (2) If, as a consequence of section 243A ceasing to apply, a new liquidator is appointed, the new liquidator must call the meeting of creditors.
- (3) The provisions of section 243 apply, with any necessary modifications, in relation to the meeting of creditors.
- (4) This section is subject to section 245.

**35 Liquidator may dispense with meetings of creditors**

Section 245(2) is amended by omitting “report and notice” and substituting “report, interests statement, and notices”.

**36 Power of court where outcome of voting at meeting of creditors determined by related entity**

- (1) Section 245A is amended by omitting the heading and substituting the following heading: “**Related creditor’s vote at meeting of creditors to be disregarded unless court orders otherwise**”.

- (2) Section 245A is amended by repealing subsections (1) and (2) and substituting the following subsections:
- (1) The liquidator must disregard a related creditor's vote on a resolution at the meeting of creditors unless the court orders otherwise.
- (2) A related creditor may apply to the court for an order that its vote be taken into account.
- (2A) A related creditor that intends to apply for an order must,—
- (a) before a vote is taken on the resolution, give notice in writing to the liquidator that the creditor—
- (i) is a related creditor; and
- (ii) intends to apply to the court for an order that its vote be taken into account; and
- (b) within 10 working days of the meeting of creditors, make an application to the court.
- (2B) The court may make an order that a related creditor's vote be taken into account only if satisfied that ordering that the applicant's vote (or the applicants' votes) be taken into account—
- (a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and
- (b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors who voted against the resolution or for it, as the case may be, to an extent that is unreasonable having regard to—
- (i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and
- (ii) the nature of the relationship between the applicant (or the applicants) and the company, or between the related creditors and the company; and
- (iii) any other relevant matter.
- (3) Section 245A(3) is amended by inserting “and sections 245B to 245D” after “this section”.

### 37 New sections 245B to 245D inserted

The following sections are inserted after section 245A:

#### **245B Creditor's vote disregarded if liquidator considers creditor is related creditor**

- (1) If the liquidator considers that a creditor that votes on a resolution at a meeting of creditors is a related creditor, and the creditor has not given notice under section 245A(2A), the liquidator must (unless the court orders otherwise)—

- (a) disregard the creditor's vote; and
  - (b) give notice in writing to the creditor stating the reasons for the liquidator's view.
- (2) The court may, on the application of the creditor, order that the creditor's vote be taken into account if satisfied that the creditor is not a related creditor.
- (3) The creditor must make any application under this section to the court within 10 working days of receiving the notice.

**245C Further powers where court orders creditor's vote be taken into account**

- (1) If the court orders, under section 245A or 245B, that a creditor's vote be taken into account, the court may also—
- (a) order that the resolution be set aside or treated as having passed:
  - (b) order that a new meeting be held to consider and vote on the resolution:
  - (c) order that the creditor's vote on a resolution to vary or amend the resolution be taken into account:
  - (d) make any other orders that the court thinks necessary.
- (2) Despite any application under section 245A or 245B, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise.

**245D Power of court where outcome of voting at meeting of creditors determined by related creditor**

- (1) This section applies in relation to a resolution at a meeting of creditors if,—
- (a) after the meeting, the liquidator becomes aware that a creditor that voted on the resolution is a related creditor; and
  - (b) the liquidator is satisfied that,—
    - (i) in accordance with section 245A or 245B, the related creditor's vote should have been disregarded; and
    - (ii) the resolution would not have been passed, defeated, or required to be decided by a casting vote (as the case may be) if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.
- (2) Despite sections 245A(1) and 245B(1), the outcome of the vote on the resolution is valid and effective unless the court orders otherwise under subsection (4).
- (3) The liquidator must, as soon as practicable after becoming aware that this section applies to the resolution, give notice of that fact to every known creditor.
- (4) The court may, on the application of the liquidator or a creditor,—
- (a) order that the resolution be set aside or treated as having passed:
  - (b) order that a new meeting be held to consider and vote on the resolution:

- (c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it;
  - (d) make any other orders that the court thinks necessary.
- (5) A liquidator who fails to comply with subsection (3) commits an offence and is liable on conviction to the penalty set out in section 373(2).

### 38 Other duties of liquidator

- (1) Section 255(2)(a)(i) is amended by inserting “, specifying who made the appointment (*see* section 241(2)) and, if the liquidator was appointed by the court, who applied to the court for the appointment” after “liquidator’s appointment”.
- (2) Section 255(2) is amended by repealing paragraph (b) and substituting the following paragraph:
- (b) before the end of the next working day after appointment, deliver to the Registrar for registration a notice of the liquidator’s appointment; and
- (3) Section 255(2)(c) is amended by repealing subparagraph (i) and substituting the following subparagraph:
- (i) prepare a list of every known creditor of the company and, if known, each creditor’s address for communications (which may be an electronic address); and
- (4) Section 255(2)(c)(ii) is amended by repealing subsubparagraph (A) and substituting the following subsubparagraph:
- (A) an initial report containing the prescribed information; and
- (5) Section 255(2)(c)(ii) is amended by repealing subsubparagraph (C) and substituting the following subsubparagraphs:
- (C) an interests statement that complies with section 255A; and
  - (D) a notice stating that liquidators of insolvent companies are required to be licensed insolvency practitioners, and that more information about the regulation of insolvency practitioners is available from the Registrar; and
- (6) Section 255(2) is amended by repealing paragraph (d) and substituting the following paragraph:
- (d) within 20 working days after the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and every shareholder, and to the Registrar for registration,—
    - (i) a report on the liquidation containing the prescribed information; and
    - (ii) an updated interests statement that complies with section 255A.

- (7) Section 255 is amended by inserting the following subsections after subsection (3):
- (3A) A person who fails to comply with subsection (2)(c) or (d) commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (3B) Subsection (2)(c)(ii)(C) and (D) does not apply to an Official Assignee.
- (8) Section 255(4) is amended by repealing paragraph (a) and substituting the following paragraph:
- (a) exempt the liquidator from compliance with subsection (2)(c) or (d); or

### **39 New section 255A inserted**

The following section is inserted after section 255:

#### **255A Requirements for interests statement**

- (1) This section sets out the requirements for the interests statement referred to in section 255(2)(c)(ii)(C) and (d)(ii).
- (2) The interests statement must disclose—
- (a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as the liquidator, including anything that would, but for a court order to the contrary, have disqualified the person—
- (i) from being appointed as or acting as the liquidator (*see* section 280(2)); or
- (ii) from being a licensed insolvency practitioner; and
- (b) the nature of any actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and
- (c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.
- (3) In preparing an interests statement for the purposes of section 255(2)(c)(ii)(C), the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.
- (4) In preparing an interests statement for the purposes of section 255(2)(d)(ii), the insolvency practitioner need include only the information required under subsection (2) that relates to circumstances, relationships, or other facts that the insolvency practitioner has become aware of during the period since they last prepared an interests statement.
- (5) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

### **40 New section 256 substituted**

Section 256 is repealed and the following section substituted:

**256 Duties in relation to records**

- (1) The liquidator of a company must—
  - (a) keep accounting records and other documents of the liquidation and permit those records, and the records and other documents of the company, to be inspected by—
    - (i) any liquidation committee appointed under section 314, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and
    - (ii) if the court so orders, a creditor or shareholder; and
  - (b) keep the accounting records and other documents of the liquidation, and the records and other documents of the company, for not less than 6 years after completion of the liquidation (or any longer period specified in a notice referred to in subsection (3)).
- (2) The Registrar may, before or after the completion of the liquidation, require any records and documents to be retained for longer than 6 years after the completion of the liquidation.
- (3) The Registrar must give notice of a requirement under subsection (2) on an Internet site maintained by or on behalf of the Registrar.
- (4) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(2).

**41 New section 256A inserted**

The following section is inserted after section 256:

**256A Duties in relation to company money**

- (1) A liquidator must deposit the money of a company under his or her administration at a registered bank and in—
  - (a) a bank account to the credit of the company; or
  - (b) a general or separate trust account.
- (2) However, the liquidator may invest, in financial products issued by a registered bank, in a public security, or in any other financial products as authorised by the court, any amount of the company's money that is—
  - (a) in the bank account or trust account; and
  - (b) not required for the time being to meet claims made against the company.
- (3) All dividends, interest, and other profits from an investment described in subsection (2) must, as soon as practicable after they are received, be paid into the bank account or trust account.

- (4) Money that is deposited in a trust account under subsection (1)(b) must be held by the liquidator on trust for the benefit of the persons legally entitled to that money.
- (5) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(3).
- (6) In this section, **public security** has the same meaning as in section 2(1) of the Public Finance Act 1989.
- (7) This section does not limit section 260.

#### **42 Duties in relation to final report and accounts**

- (1) Section 257(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph:
  - (i) a final report containing the prescribed information; and
- (2) Section 257(1) is amended by adding the following paragraph:
  - (c) provide to the Registrar, in the manner specified by the Registrar, a summary report that contains the prescribed information.
- (3) Section 257 is amended by adding the following subsection:
  - (3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(2).

#### **43 Sections 258A and 258B repealed**

Sections 258A and 258B are repealed.

#### **44 Restriction on enforcement of lien over documents**

Section 263(3)(a) is repealed and the following paragraph substituted:

- (a) section 243A applies to the company; and

#### **45 Heading above section 280 amended**

The heading above section 280 is amended by omitting “*Qualifications*” and substituting “*Appointment*”.

#### **46 New section 280 substituted**

Section 280 is repealed and the following section substituted:

#### **280 Who may be appointed as liquidator**

- (1) A person may be appointed as a liquidator of a company if the person is—
  - (a) a licensed insolvency practitioner (or, if section 243A applies to the company, a licensed insolvency practitioner or any other person described in section 68(1) of the Insolvency Practitioners Regulation Act 2019); and

- (b) permitted to act as a liquidator of the company under the Insolvency Practitioners Regulation Act 2019; and
  - (c) not disqualified under subsection (2).
- (2) Unless the court orders otherwise, the following persons are disqualified from being appointed or acting as a liquidator of a company:
- (a) a creditor of the company;
  - (b) a person who has, within the 2 years immediately before the commencement of the liquidation, been a director, an auditor, or a receiver of the company or of a related company;
  - (c) a person who has, within the 2 years immediately before the commencement of the liquidation, been a director of a creditor of the company;
  - (d) a person who has, or who has had, within the 2 years immediately before the commencement of the liquidation,—
    - (i) a direct interest in a share issued by the company; or
    - (ii) an interest, direct or indirect, in 5% or more of any class of shares issued by a creditor of the company (but only if the person is aware that they have the interest):
  - (e) a person who has—
    - (i) a direct interest in a share issued by a related company of the company; or
    - (ii) an indirect interest in 5% or more of any class of shares issued by a related company of the company:
  - (f) if an instrument confers a power to appoint a receiver of any assets of the company, a person who is disqualified by the instrument from acting as the receiver of any assets of the company;
  - (g) a person who is a relative of a person described in any of paragraphs (a) to (f):
  - (h) a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation,—
    - (i) provided professional services to the company; or
    - (ii) had a continuing business relationship with the company, its majority shareholder, or any of its directors, or with any of the company's shareholders that (under its constitution or any other agreement) have a power to appoint or remove a director of the company:
  - (i) a person to whom a prohibition order applies.
- (3) For the purpose of subsection (2)(c), each of the following is a **director of a creditor of a company**:

- (a) if the creditor is a company, a person occupying the position of a director of the company, by whatever name called;
  - (b) if the creditor is a limited partnership, a general partner (within the meaning of the Limited Partnerships Act 2008);
  - (c) if the creditor is a partnership other than a limited partnership, a partner;
  - (d) if the creditor is any other body corporate or unincorporated body, a person occupying a position in the body that is comparable with that of a director of a company.
- (4) A person is not disqualified under subsection (2)(h)—
- (a) if the professional services are provided, or the relationship arises, by reason only of the appointment of the person, or of the person’s firm,—
    - (i) by, or at the instigation of, the company or a creditor or other party that has an actual or potential financial interest in the company; and
    - (ii) to investigate or to advise on the solvency of the company or to monitor the affairs of the company; or
  - (b) if all the creditors consent to the appointment of the person; or
  - (c) if section 243A applies to the company.
- (5) If subsection (4)(a) applies, subsection (2)(a) or (c) does not disqualify a person merely because the person is (or was) a creditor, or a director of a creditor, of the company as a consequence of the appointment referred to in subsection (4)(a).
- (6) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—
- (a) the person knows or ought reasonably to know that they are disqualified under subsection (2); and
  - (b) the person,—
    - (i) with their consent, is appointed as a liquidator; or
    - (ii) acts as a liquidator.
- (7) *See also* section 8(2) of the Insolvency Practitioners Regulation Act 2019.
- (8) This section does not apply to an Official Assignee.

**47 Validity of acts of liquidators**

Section 281 is amended by omitting “is not qualified to act as a liquidator” and substituting “does not meet the requirements of section 280(1) or fails to certify the matters set out in section 282(1)(b)”.

**48 New section 282 substituted**

Section 282 is repealed and the following section substituted:

**282 What liquidator must do before appointment**

- (1) A person must not be appointed as a liquidator of a company unless the person has—
  - (a) consented in writing and has not withdrawn that consent at the time of appointment; and
  - (b) certified in writing that they—
    - (i) are a licensed insolvency practitioner (or, if section 243A applies to the company, a licensed insolvency practitioner or any other person described in section 68(1) of the Insolvency Practitioners Regulation Act 2019); and
    - (ii) are permitted to act as a liquidator of the company under the Insolvency Practitioners Regulation Act 2019; and
    - (iii) are not disqualified from appointment under section 280(2).
- (2) A person who, with their consent, is appointed as a liquidator despite failing to certify the matters set out in subsection (1)(b) commits an offence and is liable on conviction to the penalty set out in section 373(2).
- (3) This section does not apply to an Official Assignee.

**49 Vacancies in office of liquidator**

- (1) Section 283 is amended by repealing subsection (1) and substituting the following subsection:
  - (1) The office of liquidator becomes vacant if the liquidator—
    - (a) resigns; or
    - (b) dies; or
    - (c) becomes disqualified under section 280(2); or
    - (d) ceases to be a licensed insolvency practitioner (unless section 243A applies to the company) or otherwise ceases to be permitted to act as a liquidator of the company in accordance with the Insolvency Practitioners Regulation Act 2019; or
    - (e) is not a licensed insolvency practitioner and section 243A ceases to apply to the company (*see* section 243A(4)).
  - (2) Section 283(2) is amended by omitting “and sending or delivering notice in writing of the appointment of his or her successor to the Registrar for registration”.
  - (3) Section 283 is amended by inserting the following subsection after subsection (3):
    - (3A) A liquidator of a company to which section 243A applies must, unless the liquidator is a licensed insolvency practitioner, resign without delay and appoint a successor if section 243A ceases to apply (*see* section 243A(4)).

- (4) Section 283(4) is amended by omitting “any person who could be appointed as liquidator under paragraph (a) or paragraph (b) or paragraph (c), as the case may be, of subsection (2) of section 241 to be the liquidator of the company” and substituting “any person who is permitted to act as a liquidator of the company in accordance with section 280”.
- (5) Section 283 is amended by repealing subsections (5) and (6) and substituting the following subsections:
  - (5) If a vacancy occurs in the office of liquidator, the person vacating office must, as soon as practicable, give written notice of the vacancy to the Registrar.
  - (6) If, as the result of the vacation of office by a liquidator, no person is acting as liquidator, the Registrar may appoint an Official Assignee or a licensed insolvency practitioner as liquidator.
- (6) Section 283(7) is amended by omitting “, or the Official Assignee for New Zealand, appoint any person who could be appointed as liquidator under paragraph (a) or paragraph (b) or paragraph (c), as the case may be, of subsection (2) of section 241” and substituting “appoint any person who is permitted to act as a liquidator of the company in accordance with section 280”.
- (7) Section 283(8) is amended by omitting “within 10 working days of being appointed or being notified of his or her appointment” and substituting “before the end of the next working day after appointment”.
- (8) Section 283 is amended by repealing subsection (9) and substituting the following subsection:
  - (9) A person who fails to comply with subsection (5) or (8) commits an offence and is liable on conviction to the penalty set out in section 373(2).

#### **50 New section 283A inserted**

The following section is inserted after section 283:

#### **283A Provision of information and assistance to replacement liquidator**

- (1) This section applies if a replacement liquidator is appointed.
- (2) The previous liquidator must, where practicable, provide to the replacement liquidator the information that the previous liquidator has in their possession or under their control and that the replacement liquidator reasonably requires to carry out the functions and duties of a liquidator.
- (3) The information referred to in subsection (2) includes—
  - (a) the records and other documents of the company;
  - (b) any information necessary to provide the replacement liquidator with control over the property of the company;
  - (c) any information relating to claims;
  - (d) accounting records and other documents of the liquidation.

- (4) The previous liquidator must, where practicable, provide to the replacement liquidator any assistance that the replacement liquidator reasonably requires to carry out the functions and duties of a liquidator.
- (5) A person who fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to the penalty set out in section 373(2).

#### 51 New section 285 substituted

Section 285 is repealed and the following section substituted:

#### 285 Meaning of failure to comply

- (1) In section 286, **failure to comply** means a person's failure to comply with an enactment, a rule of law, or a court order to the extent that the enactment, rule, or order applies to the person in the person's capacity as a liquidator.
- (2) In proceedings under section 286,—
  - (a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact;
  - (b) a finding described in paragraph (a) may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

#### 52 Orders to enforce liquidator's duties

- (1) Section 286(1) is amended by adding the following paragraph:
  - (i) the Registrar.
- (2) Section 286 is amended by repealing subsections (3) to (5) and substituting the following subsections:
- (3) If the court is satisfied that there is, or has been, a failure to comply, the court may—
  - (a) relieve the liquidator of the duty to comply wholly or in part; or
  - (b) order the liquidator to comply to the extent specified in the order; or
  - (c) remove the liquidator from office; or
  - (d) make a prohibition order.
- (4) A court may, in relation to a person who is or becomes disqualified under section 280(2) from becoming or remaining a liquidator,—
  - (a) remove the person from office; or
  - (b) order that the person may be appointed and act, or may continue to act, as a liquidator, despite section 280(2).
- (5) If the court is satisfied that a person is unfit to act as a liquidator by reason of persistent failures to comply or the seriousness of a failure to comply, the court must make a prohibition order.

- (5A) The period of a prohibition order under this section is a matter for the discretion of the court, and the court may make a prohibition order permanent.
- (5B) However, the court may make a prohibition order permanent, or for a period longer than 10 years, only in the most serious of cases for which an order may be made.
- (3) Section 286 is amended by repealing subsection (6) and substituting the following subsection:
- (6) A person to whom a prohibition order applies—
- (a) must not act (or continue to act) as an insolvency practitioner; and
  - (b) must be treated as if they are not a licensed insolvency practitioner (*see* section 8 of the Insolvency Practitioners Regulation Act 2019).
- (4) Section 286 is amended by repealing subsection (9) and substituting the following subsections:
- (9) A copy of every order made under this section must be delivered by the applicant to the Registrar before the end of the working day after the day on which the order was made.
- (10) The Registrar must provide a copy of the order to each accredited body (within the meaning of the Insolvency Practitioners Regulation Act 2019) before the end of the working day after the day on which the Registrar receives a copy of the order.

**53 New heading and sections 296A to 296D inserted**

The following heading and sections are inserted after section 296:

*Voidable dispositions*

**296A Dispositions of property after application but before appointment of liquidator**

- (1) A disposition of a company's property is voidable if it is made during the specified period.
- (2) However, the disposition is not voidable if it is made—
- (a) in the ordinary course of business of the company; or
  - (b) by an administrator, a deed administrator, or a receiver, on the company's behalf; or
  - (c) under an order of the court.
- (3) In this section,—

**disposition** has the same meaning as in section 345 of the Property Law Act 2007

**property** has the same meaning as in section 345 of the Property Law Act 2007

**specified period** means the period beginning on the date on which an application is made to appoint a liquidator under section 241(2)(c) and ending at the time the liquidator is appointed (or the court otherwise disposes of the application).

#### **296B Procedure for setting aside dispositions**

- (1) A liquidator who wishes to set aside a disposition that is voidable under section 296A must—
  - (a) file a notice with the court; and
  - (b) serve the notice as soon as practicable on—
    - (i) the party to which the disposition was made; and
    - (ii) any other party from whom the liquidator intends to recover.
- (2) The notice must—
  - (a) be in writing; and
  - (b) state the liquidator’s postal, email, and street addresses; and
  - (c) specify the disposition to be set aside; and
  - (d) describe the property or state the amount that the liquidator wishes to recover; and
  - (e) state that the person named in the notice may object to the disposition being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at an address stated in the liquidator’s notice within 20 working days after the notice has been served on that person; and
  - (f) state that the written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting; and
  - (g) state that the disposition will be set aside as against the person named in the notice if that person does not object; and
  - (h) state that if the person named in the notice does object, the liquidator may apply to the court for the disposition to be set aside.
- (3) The disposition is automatically set aside as against the person on whom the liquidator has served the notice unless that person has sent to the liquidator a written notice of objection that is received by the liquidator at an address stated in the liquidator’s notice within 20 working days after the liquidator’s notice has been served on that person.
- (4) The notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.
- (5) A disposition that is not automatically set aside may still be set aside by the court on the liquidator’s application.

### **296C Other orders**

If a disposition is set aside under section 296B, the court may make 1 or more of the following orders:

- (a) an order that a person transfer to the company—
  - (i) property that the company disposed of;
  - (ii) any proceeds of property referred to in subparagraph (i);
  - (iii) property that, in the court’s opinion, fairly represents the application of proceeds referred to in subparagraph (ii);
- (b) an order that a person pay to the company an amount that, in the court’s opinion, fairly represents some or all of the benefits that the person has received because of the disposition;
- (c) an order releasing, in whole or in part, a charge given by the company;
- (d) an order requiring security to be given for the discharge of an order made under this section;
- (e) an order specifying the extent to which a person affected by the setting aside of a disposition by an order made under this section is entitled to claim as a creditor in the liquidation.

### **296D Additional provisions relating to setting aside dispositions**

- (1) The setting aside of a disposition or an order made under section 296C does not affect the title or interest of a person in property that the person has acquired—
  - (a) from a person other than the company; and
  - (b) for valuable consideration; and
  - (c) without knowing the circumstances in which the property was acquired from the company.
- (2) The setting aside of a charge or an order made under section 296C does not affect the title or interest of a person in property that the person has acquired—
  - (a) as the result of the exercise of a power of sale by the mortgagee of the charge; and
  - (b) for valuable consideration; and
  - (c) without knowing the circumstances relating to the giving of the charge.
- (3) A court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act, any other enactment, or in law or in equity, if the person from whom recovery is sought (A) proves that when A received the property—
  - (a) A acted in good faith; and
  - (b) a reasonable person in A’s position would not have suspected, and A did not have reasonable grounds to suspect, that the company was, or would become, insolvent; and

- (c) A gave value for the property or altered A's position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside.
- (4) Nothing in the Land Transfer Act 2017 restricts the operation of this section or sections 296A to 296C.

*Amendments to Part 20 (Registrar of Companies)*

**54 Registrar and Deputy Registrars of Companies**

- (1) Section 357(1)(b) is amended by inserting “, the Insolvency Practitioners Regulation Act 2019,” after “purposes of this Act”.
- (2) Section 357(2) is amended by inserting “the Insolvency Practitioners Regulation Act 2019,” after “under this Act,”.

*Amendments to Part 21 (Offences and penalties)*

**55 Penalty for failure to comply with Act**

- (1) Section 373(2) is amended by inserting the following paragraphs after paragraph (l):
  - (la) section 239F(4) (which relates to being appointed as an administrator when disqualified):
  - (lb) section 239G(2) (which relates to the duty of administrators to certify certain matters before appointment):
  - (lc) section 239R(3) (which relates to the duty of replacement administrators to table an interests statement):
  - (ld) section 239TA(5) (which relates to the duty of administrators to provide information and assistance to their successor):
  - (le) section 239AMC(5) (which relates to the duty of administrators to give notice to creditors in certain circumstances):
  - (lf) section 239AP(2) (which relates to the duty of administrators to table certain documents):
  - (lg) section 239ABYA(5) (which relates to the duty of administrators to provide information and assistance to liquidators):
  - (lh) section 239ACD(4) (which relates to being appointed as a deed administrator when disqualified):
  - (li) section 239ACE(2) (which relates to the duty of deed administrators to certify certain matters and table certain documents before appointment):
  - (lj) section 239ACJA(5) (which relates to the duty of deed administrators to provide information and assistance to their successor):
  - (lk) section 239ACZ(4) (which relates to the duty of administrators to file accounts):

- (ll) section 239ACZA(3) (which relates to the duty of administrators to file updates to interests statements):
  - (lm) section 239ACZB(4) (which relates to the duty of administrators and deed administrators to file summary reports):
  - (ln) section 243A(3) (which relates to declarations made by directors about a company's ability to pay its debts):
  - (lo) section 245D(5) (which relates to the duty of liquidators to give notice to creditors in certain circumstances):
- (2) Section 373(2) is amended by repealing paragraph (ma) and substituting the following paragraphs:
- (ma) section 255(3A) (which relates to the duty of liquidators to send an interests statement and initial and 6-monthly reports):
  - (mb) section 256(4) (which relates to the duty of liquidators to keep records and documents):
  - (mc) section 257(3) (which relates to the duty of liquidators to submit final reports and summary reports):
- (3) Section 373(2) is amended by repealing paragraph (n) and substituting the following paragraphs:
- (n) section 280(6) (which relates to being appointed as a liquidator when disqualified):
  - (na) section 282(2) (which relates to the duty of liquidators to certify certain matters before appointment):
  - (nb) section 283(9) (which relates to the duty of liquidators to notify the Registrar of certain matters):
  - (nc) section 283A(5) (which relates to the duty of liquidators to provide information and assistance to their successor):
- (4) Section 373(3) is amended by inserting the following paragraph before paragraph (a):
- (aa) section 256A(5) (which relates to the duty of liquidators to hold the money of a company on trust):

*Amendment to Part 22 (Miscellaneous)*

**56 Regulations**

- (1) Section 395(1) is amended by inserting the following paragraph after paragraph (cb):
- (cba) prescribing information that must be contained in a report or statement for the purpose of—
    - (i) section 239ACZB(3), 243A(2), 255(2)(c)(ii), 255(2)(d), 257(1)(a), or 257(1)(c); or

- (ii) section 24(3) or 24A(2) of the Receiverships Act 1993, in relation to a receivership under that Act:
- (2) Section 395 is amended by adding the following subsection:
- (3) Regulations made under this section may provide for different regulations to apply in respect of different kinds or classes of persons or circumstances.

## Subpart 2—Consequential amendments and transitional provisions

### 57 New Part added to Schedule 1AA

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 1 of this Act as the last part in Schedule 1AA; and
- (b) make all necessary consequential amendments.

Section 57: replaced, on 31 August 2019, by section 12(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

### 58 Consequential amendments

The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

## Part 2 Amendments to Receiverships Act 1993

### 59 Principal Act amended

This Part amends the Receiverships Act 1993.

### 60 Interpretation

- (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

**insolvency practitioner** has the same meaning as in section 5(1) of the Insolvency Practitioners Regulation Act 2019

**licensed insolvency practitioner** has the same meaning as in section 5(1) of the Insolvency Practitioners Regulation Act 2019

**prohibition order** means an order made under section 37(6) or under section 239ADV(1) or 286(5) of the Companies Act 1993 that prohibits a person from acting as an insolvency practitioner

**related company** has the same meaning as in section 2(1) of the Companies Act 1993

- (2) Section 2 is amended by adding the following subsection:
- (3) A requirement in this Act for a person to provide a notice or other document may be satisfied by the person providing the notice or other document by elec-

tronic means in accordance with Part 4 of the Contract and Commercial Law Act 2017.

**61 New section 3B inserted**

The following section is inserted after section 3A:

**3A Transitional, savings, and related provisions**

*[Repealed]*

**3B Act binds the Crown**

This Act binds the Crown.

Section 61 heading: amended, on 31 August 2019, by section 31(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 61: amended, on 31 August 2019, by section 31(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 61: amended, on 31 August 2019, by section 31(4) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

**62 New section 5 substituted**

Section 5 is repealed and the following section substituted:

**5 Who may be appointed as receiver**

- (1) A person may be appointed as a receiver if the person—
  - (a) is a licensed insolvency practitioner who is permitted to act as a receiver in accordance with the Insolvency Practitioners Regulation Act 2019; and
  - (b) is not disqualified under subsection (2).
- (2) Unless the court orders otherwise, the following persons are disqualified from being appointed or acting as a receiver:
  - (a) a mortgagee of the property in receivership;
  - (b) a person who is, or who has, within the 2 years immediately before the commencement of the receivership, been—
    - (i) a director or an auditor of the grantor or of a related company of the grantor; or
    - (ii) a director of the mortgagee of the property in receivership;
  - (c) a person who has, or who has had, within the 2 years immediately before the commencement of the receivership,—
    - (i) a direct interest in a share issued by the grantor; or
    - (ii) an indirect interest in 5% or more of any class of shares issued by the grantor;
  - (d) if the grantor is a company, a person who has—

- (i) a direct interest in a share issued by a related company of the grantor; or
  - (ii) an indirect interest in 5% or more of any class of shares issued by a related company of the grantor:
  - (e) a person who is a relative (as defined in section 2(1) of the Companies Act 1993) of a person specified in any of paragraphs (b) to (d):
  - (f) a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver:
  - (g) a person to whom a prohibition order applies:
  - (h) if the property in receivership includes a company, a person who is, or who has been, in the 2 years immediately before the commencement of the receivership, an administrator, a deed administrator, or a liquidator of the company.
- (3) A person commits an offence if—
- (a) the person knows or ought reasonably to know that they are disqualified under subsection (2); and
  - (b) the person,—
    - (i) with their consent, is appointed as a receiver; or
    - (ii) acts as a receiver.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding \$75,000.
- (5) *See also* section 8(2) of the Insolvency Practitioners Regulation Act 2019.

### 63 New section 6A inserted

The following section is inserted after section 6:

#### 6A What receiver must do before appointment

- (1) A person must not be appointed as a receiver unless the person has—
- (a) consented in writing to the appointment and has not withdrawn the consent at the time of the appointment; and
  - (b) certified in writing that the person is a licensed insolvency practitioner who is not disqualified from appointment under section 5(2); and
  - (c) provided to the mortgagee the written consent and certificate required under paragraphs (a) and (b).
- (2) A person commits an offence if—
- (a) the person, with their consent, is appointed as a receiver despite failing to certify the matters set out in subsection (1)(b); or
  - (b) the person fails to comply with subsection (1)(c).

- (3) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$10,000.

#### **64 Notice of appointment**

- (1) Section 8 is amended by repealing subsection (1) and substituting the following subsection:

- (1) A receiver must, before the end of the next working day after the receiver's appointment,—

- (a) give to the grantor written notice of the appointment; and
- (b) give to the Registrar written notice of the appointment, including—
  - (i) the receiver's full name;
  - (ii) the date of the appointment;
  - (iii) the receiver's business address;
  - (iv) a brief description of the property in receivership;
  - (v) the name of the person who appointed the receiver or, if the receiver was appointed by the court, the name of the person who applied for the receiver to be appointed;
  - (vi) a description of the deed, agreement, or instrument by or under which the receiver was appointed;
  - (vii) a copy of the notice referred to in paragraph (a).

- (2) Section 8 is amended by inserting the following subsection after subsection (1):

- (1A) Within 5 working days after the receiver's appointment, the receiver must give notice of the appointment, including the matters described in subsection (1)(b)(i) to (vi), in accordance with section 3(1)(a).

- (3) Section 8 is amended by repealing subsection (3) and substituting the following subsection:

- (3) A notice given under this section must include a statement that receivers are required to be licensed insolvency practitioners, and that more information about the regulation of insolvency practitioners is available from the Registrar.

#### **65 Vacancy in office of receiver**

- (1) Section 11 is amended by repealing subsection (1) and substituting the following subsection:

- (1) The office of receiver becomes vacant if the person holding office—

- (a) resigns in accordance with subsection (2); or
- (b) dies; or
- (c) becomes disqualified under section 5(2); or

- (d) ceases to be a licensed insolvency practitioner who is permitted to act as a receiver for the property in receivership in accordance with the Insolvency Practitioners Regulation Act 2019.
- (2) Section 11 is amended by repealing subsections (3) and (4) and substituting the following subsection:
- (3) If a vacancy occurs in the office of receiver, the person vacating office must,—
- (a) as soon as practicable,—
- (i) give public notice of the vacancy; and
- (ii) give written notice of the vacancy to the person who appointed the receiver (unless the vacancy arose under subsection (1)(a)); and
- (b) if the receiver held office in relation to the property of a company, give written notice of the vacancy, before the end of the next working day after the vacancy arose, to the Registrar (unless the vacancy arose under subsection (1)(d)).
- (3) Section 11(6) is repealed.
- (4) Section 11(8) is amended by omitting “or subsection (4)”.
- (5) Section 11(8) is amended by omitting “\$5,000” and substituting “\$10,000”.

#### **66 New section 11A inserted**

The following section is inserted after section 11:

#### **11A Provision of information and assistance to replacement receiver**

- (1) This section applies if a replacement receiver is appointed.
- (2) The previous receiver must, where practicable, provide to the replacement receiver the information that the previous receiver has in their possession or under their control and that the replacement receiver reasonably requires to carry out the functions and duties of receiver, including any accounting records and other documents relating to the property in receivership.
- (3) The previous receiver must, where practicable, provide to the replacement receiver any assistance that the replacement receiver reasonably requires to carry out the functions and duties of receiver.
- (4) A person who fails to comply with subsection (2) or (3) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

#### **67 Duty in relation to money**

Section 21 is amended by adding the following subsection as subsection (2):

- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$75,000.

#### **68 Accounting records**

Section 22 is amended by adding the following subsection:

- (3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

**69 New sections 24 and 24A substituted**

Section 24 is repealed and the following sections are substituted:

**24 Further reports by receiver**

- (1) The receiver must, not later than 2 months after the end of each period of 6 months after the receiver's appointment, prepare a further report on the receivership.
- (2) A person who was a receiver at the end of the receivership must, not later than 2 months after the end of the receivership, prepare a further report on the receivership.
- (3) Each report prepared under this section must contain the information prescribed for the purpose of this section by regulations made under section 395(1)(cba) of the Companies Act 1993.
- (4) A receiver preparing a report under subsection (1) may exclude from the report details of any proposals for disposal of property in receivership if the receiver considers that their inclusion would materially prejudice the exercise of the receiver's functions.
- (5) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

**24A Summary report by receiver**

- (1) The person who was a receiver at the end of a receivership must, as soon as practicable after completing the person's duties in relation to the receivership, provide to the Registrar, in the manner specified by the Registrar, a summary report on the receivership.
- (2) The summary report must contain the information prescribed for the purpose of this section by regulations made under section 395(1)(cba) of the Companies Act 1993.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

**70 Persons entitled to receive reports**

Section 26(4) is amended by omitting "that is a body corporate".

**71 Section 28 repealed**

Section 28 is repealed.

**72 Notice of end of receivership**

Section 29(1) is amended by omitting "the receivership of a grantor that is a body corporate" and substituting "a receivership".

**73 New section 36 substituted**

Section 36 is repealed and the following section substituted:

**36 Meaning of failure to comply**

- (1) In section 37, **failure to comply** means a person's failure to comply with any of the following, to the extent that they apply to the person in the person's capacity as a receiver:
  - (a) the deed, agreement, or order of the court by or under which the receiver was appointed;
  - (b) an enactment;
  - (c) a rule of law;
  - (d) a court order.
- (2) In proceedings under section 37,—
  - (a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact;
  - (b) a finding described in paragraph (a) may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

**74 Orders to enforce receiver's duties**

- (1) Section 37 is amended by repealing subsections (4) to (6) and substituting the following subsections:
  - (4) If the court is satisfied that there is, or has been, a failure to comply, the court may—
    - (a) relieve the receiver of the duty to comply wholly or in part; or
    - (b) order the receiver to comply to the extent specified in the order; or
    - (c) remove the receiver from office; or
    - (d) make a prohibition order.
  - (5) The court may, in respect of a person who is or becomes disqualified under section 5(2) from becoming or remaining a receiver,—
    - (a) remove the person from office; or
    - (b) order that the person may be appointed and act or may continue to act as a receiver, despite section 5(2).
  - (6) If the court is satisfied that a person is unfit to act as a receiver because of persistent failures to comply or the seriousness of a failure to comply, the court must make a prohibition order.
  - (6A) The period of a prohibition order under this section is a matter for the discretion of the court, and the court may make a prohibition order permanent.

- (6B) However, the court may make a prohibition order permanent, or for a period longer than 10 years, only in the most serious of cases for which an order may be made.
- (2) Section 37 is amended by repealing subsection (7) and substituting the following subsection:
- (7) A person to whom a prohibition order applies—
- (a) must not act (or continue to act) as an insolvency practitioner; and
  - (b) must be treated as if they are not a licensed insolvency practitioner (*see* section 8 of the Insolvency Practitioners Regulation Act 2019).
- (3) Section 37 is amended by repealing subsection (9) and substituting the following subsections:
- (9) A copy of every order made under this section must be delivered by the applicant to the Registrar before the end of the working day after the day on which the order was made.
- (10) The Registrar must provide a copy of the order to each accredited body (within the meaning of the Insolvency Practitioners Regulation Act 2019) before the end of the working day after the day on which the Registrar receives a copy of the order.

#### **75 Powers and duties of receivers**

Section 40C(2) is amended by omitting “the Schedule” and substituting “Schedule 1”.

#### **76 New Part inserted in Schedule 1AA**

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 3 of this Act as the last part in Schedule 1AA; and
- (b) make all necessary consequential amendments.

Section 76: replaced, on 31 August 2019, by section 31(5) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

#### **77 Schedule amended**

- (1) The heading to the Schedule is amended by omitting “**Schedule**” and substituting “**Schedule 1**”.
- (2) Clause 6 of the Schedule is repealed and the following clause substituted:

#### **6 Persons disqualified from appointment**

- (1) In addition to the persons specified in section 5(2), a person disqualified by section 3 of the Local Authorities (Members’ Interests) Act 1968 or clause 1 of Schedule 7 of the Local Government Act 2002 from holding office as a member of the local authority is disqualified from being appointed as, or acting as, a receiver unless the court orders otherwise.

- (2) The reference in section 5(3) to being disqualified under section 5(2) must be read as if it included a reference to being disqualified under subclause (1).

**Schedule 1**  
**New Part 2 of Schedule 1AA added**

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**Part 4**  
**Provisions relating to Part 1 of Insolvency Practitioners Regulation  
(Amendments) Act 2019**

**7 Interpretation**

In this Part,—

**amendment Act** means Part 1 of the Insolvency Practitioners Regulation (Amendments) Act 2019

**commencement date**, in relation to a provision of this Act, means the date on which the provision is amended, replaced, repealed, or inserted by the amendment Act

**company**, in relation to a liquidation under Part 16, has the meaning given to it in section 240(1A)

**new**, in relation to a provision of this Act, means the provision as amended, replaced, or inserted by the amendment Act

**old**, in relation to a provision of this Act, means the provision as in force immediately before its amendment or repeal by the amendment Act.

**8 Application of new provisions to insolvency engagements already under way**

(1) The new provisions do not apply (and the old provisions continue to apply) in relation to—

- (a) the administration of a company under Part 15A for which an administrator was appointed before the commencement date; or
- (b) a company under a deed of company arrangement under Part 15A for which the deed of company arrangement was executed before the commencement date; or
- (c) the liquidation of a company under Part 16 for which a liquidator was appointed before the commencement date.

(2) Subclause (1)(c) applies subject to clause 5(2) to (4) of Schedule 1 of the Insolvency Practitioners Regulation Act 2019.

**9 Existing court orders relating to appointments continue to have effect**

(1) This clause applies to each court order that—

- (a) is made under old section 239F(2), 239ACD(2), or 280(1) and permits a person to be appointed as an administrator, a deed administrator, or a

- liquidator despite being a person described in old section 280(1)(d) to (m); and
- (b) is in force on the commencement date of the old provision under which the order is made.
- (2) Until the court order ceases to be in force, the order must be treated as if it were made under the new provision that replaces the old provision under which the court order is made.
- (3) However, a person is not eligible to be appointed as an administrator, a deed administrator, or a liquidator (as the case may be) if the person is ineligible under any new provision of this Act for a reason that is not covered by the court order.

## Schedule 2 Consequential amendments

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### Part 1 Amendments to Acts

#### Companies Act 1993 (1993 No 105)

Section 239Q(2)(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”.

Section 239T(3)(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”.

Section 239AO(1)(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”.

Section 239ADF(2)(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”.

Section 239ADY(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”.

Section 239ADZ(a): omit “section 3(1)(b)” and substitute “section 3(1)(a)”.

Section 239AEA(b): omit “section 3(1)(b)” and substitute “section 3(1)(a)”.

#### Insurance (Prudential Supervision) Act 2010 (2010 No 111)

Section 158(1): omit “239AI,” and substitute “239AMC(3),”.

Section 158(1): omit “and 257(1)(a)(i) or (ii)” and substitute “245D(3), and 257(1)(a)(i) and (ii) and (c)”.

### Part 2 Amendments to regulations

#### Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)

Regulation 29: revoke.

Regulations 31 and 32: revoke.

Regulation 34: revoke.

Regulations 37 and 38: revoke.

Form 1 in the Schedule: after “Telephone No: [area code and number]”, insert:

Address for electronic communications: [email address]

Form 1 in the Schedule: after “Full particulars of the claim are set out, and any supporting documents that substantiate the claim are identified, on the reverse of this form.”, insert:

The abovenamed creditor [is/is not<sup>†</sup>] a related entity of the company in liquidation. (See section 245A(3) of the Companies Act 1993.)

<sup>†</sup>Select one.

**Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)—continued**

The abovenamed creditor [*consents/does not consent*<sup>†</sup>] to receive documents by electronic means at the address for communications specified above.

<sup>†</sup>Select one.

Form 2 in the Schedule: after “Telephone No: [*area code and number*]”, insert:

Address for electronic communications: [*email address*]

Form 2 in the Schedule: after “Full particulars of the valuation, claim, and charge are set out, and any supporting documents that substantiate the claim and the charge, are identified on the reverse of this form.”, insert:

The abovenamed creditor [*is/is not*<sup>†</sup>] a related entity of the company in liquidation. (See section 245A(3) of the Companies Act 1993.)

<sup>†</sup>Select one.

The abovenamed creditor [*consents/does not consent*<sup>†</sup>] to receive documents by electronic means at the address for communications specified above.

<sup>†</sup>Select one.

**Schedule 3**  
**New Part inserted in Schedule 1AA**

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Schedule 3 heading: replaced, on 31 August 2019, by section 31(6) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Schedule 3: amended, on 31 August 2019, by section 31(7) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

**Part 2**  
**Provisions relating to Part 2 of Insolvency Practitioners Regulation  
(Amendments) Act 2019**

**2 Interpretation**

In this Part,—

**amendment Act** means Part 2 of the Insolvency Practitioners Regulation (Amendments) Act 2019

**commencement date**, in relation to a provision of this Act, means the date on which the provision is amended, replaced, repealed, or inserted by the amendment Act

**new**, in relation to a provision of this Act, means the provision as amended, replaced, or inserted by the amendment Act

**old**, in relation to a provision of this Act, means the provision as in force immediately before its amendment or repeal by the amendment Act.

**3 Application of new provisions to insolvency engagements already under way**

The new provisions do not apply (and the old provisions continue to apply) in relation to a receivership under this Act for which a receiver was appointed before the commencement date.

**4 Existing court orders relating to appointments continue to have effect**

(1) This clause applies to each court order that—

(a) is made under old section 5(1) or old clause 6 of Schedule 1 and permits a person to be appointed as a receiver despite being a person described in old section 5(1)(e) to (l) or old clause 6(b) of Schedule 1; and

(b) is in force on the commencement date of the old provision under which the order is made.

(2) Until the court order ceases to be in force, the order must be treated as if it were made under the new provision that replaces the old provision under which the court order is made.

- (3) However, the person is not eligible to be appointed as a receiver if the person is ineligible under any new provision for a reason that is not covered by the court order.

## **Reprints notes**

### **1     *General***

This is a reprint of the Insolvency Practitioners Regulation (Amendments) Act 2019 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2     *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3     *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4     *Amendments incorporated in this reprint***

Insolvency Practitioners Regulation (Amendments) Act Commencement Order 2020 (LI 2020/145)  
COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13): section 3  
Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46): sections 12, 31