



**ASIC**

Australian Securities & Investments Commission

INFORMATION SHEET 0034

# **How to apply for registration as a liquidator**

**Kit issued in September 2005**

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

# About this kit

## Before you start your application

**1** Take the time to thoroughly read our Policy Statement 186 *External administration: Liquidator registration* [PS 186].

**2** This policy statement outlines our approach to the registration of liquidators and official liquidators under Part 9.2 of the *Corporations Act 2001* (Act) including:

- our approach to the criteria you must meet to become a registered liquidator;
- our approach to what you must do to remain registered as a liquidator; and
- when we will register you under the categories of ‘official liquidator’ or ‘liquidator of a specified body corporate’.

## How to use this kit

**3** This kit provides guidance on:

- the application process for registration as a liquidator (**Section 1**); and
- what information you must submit with your application to help us make an informed assessment about whether to grant it (**Section 2**).

**4** This kit also includes relevant policy statements, pro formas and other attachments that should be used to prepare your application, in particular [PS 186].

**5** As we have noted above, please ensure that you read and understand [PS 186] *before* completing your application.

**6** Due to the small number of applications we receive in a year for registration as a liquidator, we do not accept electronic lodgement of applications at this stage.

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<b>Form 903B <i>Application for registration as a liquidator</i></b>	

# Section 1: Information for applicants

Note: For details on how to apply for registration as an official liquidator, see Section C of [PS 186].

## Form of application

**1.1** Your application under s1279(1)(b) for registration as a liquidator must:

- (a) substantially comply with Form 903B;
- (b) include the documents referred to in Form 903B and other information and documents (see paragraph 1.2 and Section 2 of this kit) that we will need in order to decide whether you meet each of the criteria in [PS 186.6];
- (c) be dated not more than 3 months before the date the application is lodged; and

Note: This applies to each document included in the application.

- (d) be accompanied by the prescribed fee: see paragraph 1.3 'Where should you send your application?'.

## Supporting material

**1.2** You must give us information and documents that evidence each of the following matters:

- (a) your qualifications;
- (b) your experience in winding up bodies corporate;
- (c) your personal and practice capacities for performing the duties of a registered liquidator;
- (d) that you are a fit and proper person to be registered;
- (e) that you are not disqualified from managing corporations;
- (f) that you are resident in Australia; and
- (g) your arrangements for complying with security requirements under s1284 of the *Corporations Act 2001* (Act).

You must also provide independent verification by referees of your corporate insolvency experience, and your overall capability, fitness and propriety.

Note: Section 2 of this kit sets out full details of the supporting material you must provide and the preferred formats.

## Where should you send your application?

**1.3** Please send your application together with the prescribed fee of \$330 to:

Liquidator Registration Team,  
Australian Securities & Investments Commission,  
GPO Box 9827, Adelaide SA 5001.

## How will we deal with your application?

**1.4** We will return your application without processing if it does not meet all the criteria listed under 'Form of application': see paragraph 1.1.

**1.5** We will verify at our discretion the information you provide in your application. We may contact the police, relevant professional and industry bodies, Insolvency and Trustee Service (ITSA) and your referees to verify the information you provide. We may contact both domestic and overseas authorities as appropriate.

**1.6** If your application is accepted for lodgement, we will publish a statement on the Australian Securities and Investments Commission's (ASIC) website that we have received an application from you for registration as a liquidator, and ask for any comments or objections to your registration to be made to us within 14 days.

**1.7** We will take into account any objections we receive when we decide whether to grant your application. If, as a result of objections we receive, we change our preliminary view and propose to refuse your application, we will take the same steps as if our preliminary view had been that we should refuse your application: see paragraph 1.9

**1.8** We aim to form a preliminary view about whether to grant or refuse your application within 6 weeks of receiving all the information and documents required. However, this time will be affected by:

- (a) whether we are waiting for further information from you about any aspect of the application; and
- (b) how quickly we receive from third parties any confirmation that we may have requested about information in your application.

## Proposed refusal of registration

**1.9** If our preliminary view is that we should refuse your application for registration, we must give you an opportunity to appear at a hearing, make submissions and give evidence on the matter: s1282(10). We will send you a letter:

- (a) stating that we propose to refuse your application;
- (b) identifying the basis for our proposed refusal; and

- (c) asking you to notify us within 7 days whether you wish to appear at a hearing and make submissions and give evidence.

## **Refusal of registration**

**1.10** We may refuse your application if you choose not to appear at the hearing or after holding the hearing. If we refuse it, we must notify you in writing of the refusal and give our reasons: s1282(11). A person whose application for registration has been refused may seek a review of our decision by the AAT: see s1317B.

## **Certificate of registration**

**1.11** If your application is successful, we aim to register you and issue your certificate of registration within 5 business days of being satisfied that you have complied with our policy on the security required under s1284: see s1282(6)(b).

# Section 2: Full details of supporting material

## Qualifications: s1282(2)(a)

### Membership of accounting body: s1282(2)(a)(i)

#### 2.1 You must provide:

- (a) a certified copy of a membership certificate for the relevant body, indicating on its face that the membership is current; or
- (b) a letter from an authorised person in the relevant body confirming that your membership is current.

Note: Alternatively, this evidence may be provided in the document you provide under 'Fit and proper:/:1282(2)(c)/ Not a disqualified person: s1282(4)'.

### Australian qualifications: s1282(2)(a)(ii)

#### 2.2 You must provide:

- (a) a certified copy of your statement of academic record from each institution that has given you a qualification on which you rely, which identifies the subjects you have undertaken for that qualification;
- (b) if the statement of academic record in paragraph (a) does not state the name of your qualification, a certified copy of your qualification; and
- (c) if we do not have a standing certification from the institution where you obtained the relevant qualification, a letter from an authorised person at the institution certifying that the subjects shown on your academic record (that you have passed) comprise a 3-year course of study in accountancy and a 2-year course of study in commercial law (including company law).

### 'Equivalent' qualifications and experience: s1282(2)(a)(iii)

#### 2.3 You must provide:

- (a) a statement setting out the qualifications and experience you rely on for your knowledge of accountancy and commercial law (including company law) and the reasons we should treat those qualifications and experience as equivalent to a qualification under s1282(2)(a)(i) or (ii);
- (b) if you are relying on an overseas accounting qualification, an assessment letter from a National Office of Overseas Skills Recognition (NOOSR) authorised assessing authority of the

comparability between your qualifications and an Australian undergraduate degree in accounting;

- (c) a certified copy of your statement of academic record from each institution that has given you a qualification on which you rely, which identifies the subjects you have undertaken for that qualification;
- (d) if the statement of academic record in paragraph (c) does not state the name of your qualification, a certified copy of your qualification; and
- (e) a referee report from the person or people who supervised the experience set out in your statement under paragraph (a) which verifies that experience.

## **Winding up experience: s1282(2)(b)**

2.4 You must include specific information about your experience in winding up bodies corporate in the details you provide under ‘Capability: s1282(2)(c)’.

## **Capability: s1282(2)(c)**

### **Personal capacities**

2.5 To substantiate your personal capacities, you must provide as a minimum:

- (a) a summary of your employment history for the last 10 years (including names of employers, positions held and dates);
- (b) full details of your relevant corporate insolvency experience (see below);
- (c) (if applicable) a certified copy of your certificate of completion of an Australian specialist corporate insolvency course; and
- (d) (if applicable) details of any non-insolvency corporate management experience you have.

Note: For the preferred format for this information, see the ‘Attachments’ to this kit.

### **Corporate insolvency experience**

2.6 You must provide information about your corporate insolvency experience that is sufficiently detailed to enable us to assess whether you satisfy our requirements in [PS 186.19].

Note: For calculating the full-time equivalence of your experience, we will accept as a full-time workload either:

- (a) the usual average annual hours worked by a full-time professional employee in the firm/s where you gained your experience; or
- (b) 1610 hours (being 46 weeks x 35 hours).

**2.7** As a minimum, you will need to:

- (a) identify the years during the immediate past 10 years when you gained the corporate insolvency experience on which you rely, specifying:
  - (i) the name and location of each firm you worked at;
  - (ii) each position you held at the firm and your level of responsibility in that position;
  - (iii) sufficient information about your duties in the more senior positions to demonstrate that your experience has been at a very senior level for at least the equivalent of 3 years full-time over the immediate past 5 years (see [PS 186.54]);
  - (iv) the name of the external administrators you worked for at each firm;
  - (v) the total number of years of corporate insolvency experience (calculated on a full-time basis) that you believe you have; and
  - (vi) the estimated percentage of time over those 10 years spent working directly on external administrations; and
- (b) identify external administrations you worked on at a very senior level, the period you worked on those administrations and the aspects of your work on those administrations that best demonstrate your skill, diligence and judgment. This must include some external administrations you worked on in the immediate past 3 years. You should specifically identify:
  - (i) complex matters that you were directly involved in, how you were involved, and why those matters were complex (see [PS 186.55]); and
  - (ii) how your experience in those particular external administrations demonstrates that you have the specific competencies your referees will report on (see the 'Attachments' to this kit).

Note: For paragraph (b), you do not need to list every single external administration if you have worked at a senior level on many external administrations. Select those that best demonstrate your skill, diligence and judgment, particularly in complex matters.

**Practice capacities**

**2.8** You must provide information that is sufficiently detailed to enable us to assess whether you satisfy our requirements in [PS 186.20]: see also [PS 186.60]–[PS 186.66].

**2.9** To substantiate your practice capacities, provide as a minimum:

- (a) a description of your practice's resources that are or will be available to you for conducting insolvency administrations, including:
  - (i) the number and seniority of specific insolvency staff;
  - (ii) the corporate insolvency experience of those staff;
  - (iii) the internal processes for monitoring and ensuring the continuing adequacy of human and technological resources, ongoing staff supervision and training;
  - (iv) the general business processes, procedures and manuals for the practice, including complaints-handling procedures and risk management systems; and
  - (v) whether you propose to accept appointments to entities located a long way from your principal or other places of practice (e.g. interstate or in remote areas). If so, provide details;
- (b) if you are an employee or consultant, a letter signed by an authorised person in the practice confirming that the practice's resources will be made available to you for external administrations if you are registered as a liquidator;
- (c) if you will be relying at all on staff and/or resources from another practice:
  - (i) details of the extent of that reliance; and
  - (ii) an unconditional written consent signed by an authorised person in the other practice that the relevant staff or other resources of that practice will be made available to you as and when required;
- (d) (if applicable) a copy of your certificate of registration as a trustee under the Bankruptcy Act.

**Fit and proper: s1282(2)(c)/Not a disqualified person: s1282(4)**

**2.10** If you are, or have been at any time in the last 10 years, a member of a relevant professional body, you must provide a letter from an authorised person in each such body specifying:

- (a) whether your membership is current;
- (b) when your membership began;
- (c) if applicable, when and why your membership ceased;

- (d) particulars of any disciplinary action taken against you by the body; and
- (e) particulars of any complaints received by the body about your personal or professional conduct, and whether or not the body took disciplinary action as a result.

**2.11** You must also provide a signed statement as to whether:

- (a) any of the matters in [PS 186.23]–[PS 186.24] apply to you, and, if so, give full particulars. If there are any legal or disciplinary proceedings pending against you, give full particulars; and
- (b) you are, or have been at any time in the last 10 years, disqualified from managing corporations under Part 2D.6, and, if so, give full particulars.

Note: For the preferred format for this information, see samples provided in the ‘Attachments’ to this kit.

## **Resident in Australia: s1282(5)**

**2.12** You must provide particulars of your current address and each address you have lived at during the last 10 years, indicating the approximate dates between which you lived at those addresses.

**2.13** If your addresses show that you have not lived continuously in Australia for the last 3 years, we may require additional evidence that you are residing in Australia on a long-term basis.

## **Security: s1284**

**2.14** You must provide information and documents demonstrating that, if you are registered, you will have in place immediately upon registration:

- (a) a performance bond that complies with Policy Statement 33 *Security deposits* [PS 33]; or
- (b) alternative compensation arrangements that comply with our policy in [PS 33.9A]–[PS 33.9C].

### **Performance bond**

**2.15** If you are relying on this option, you must lodge a security in the amount of \$250,000 in the form of a bond prepared in accordance with Pro Forma 14 *Performance bond liquidator* [PF 14] and [PS 33]: see the ‘Attachments’ to this kit.

**2.16** The bond must be assessed for stamp duty (if necessary) before it is lodged with ASIC, and must be either on the issuer’s letterhead or stamped/sealed by the issuer.

## Alternative compensation arrangements

**2.17** In accordance with [PS 33] we will not take enforcement action against you for failing to lodge and maintain a security if you:

- (a) hold and maintain a public practice certificate from The Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants; and
- (b) have and maintain professional indemnity insurance cover in accordance with the requirements of the relevant body that also meets our requirements.

Note: The minimum acceptable terms of the professional indemnity insurance cover are set out in [PS 33].

**2.18** If you are relying on this option, you must lodge the following documents:

- (a) a deed of undertaking (see Pro Forma 221 *Liquidator's undertaking: Pro forma deed for partners/sole proprietors* [PF 221] and Pro Forma 222 *Liquidator's undertaking: Pro forma deed for employees* [PF 222]);

Note 1: [PF 221] is for partners/sole proprietors and [PF222] is for employees. Please follow the wording of the most relevant pro forma for your circumstances in preparing the deed for lodgement.

Note 2: If you are a consultant to a firm, rather than an employee, please amend clause 1.5 of [PF 222] by substituting the words 'consultant to' for 'employee of'.

- (b) a certificate of currency for the professional indemnity insurance policy under which you are covered, clearly showing the insurer, the level of cover, *whether there is any aggregate limit on the policy* and the expiry date of the cover; and
- (c) a copy of your public practice certificate from a relevant accounting body that is no more than 3 months old. Alternatively, provide a letter from an authorised person in the relevant accounting body confirming that you currently hold the certificate.

**2.19** If your application for registration is successful, we may at any time after you are registered call for proof that you hold a current public practice certificate and/or professional indemnity insurance cover. We also have the right to reimpose the security requirement at any time.

## Referee reports

**2.20** You must name at least two referees in Form 903B and provide us with referee reports by them. These reports will help us decide if you:

- (a) have the personal capacities (particularly adequate corporate insolvency experience) to perform the duties of a registered liquidator; and

(b) are otherwise a fit and proper person to be a registered liquidator.

**2.21** We will also use referee reports to verify information you provide in your application about your experience.

**2.22** Where possible, at least one referee report should be from a registered liquidator (or an appropriately licensed corporate insolvency practitioner in a country referred to in paragraph (b)(ii) of [PS 186.19]) who has directly supervised your work on external administrations for at least the equivalent of 3 years full-time over the last 5 years. If the nature of your experience means that you do not have a referee who meets those requirements, you should contact our Liquidator Registration Team.

**2.23** The other referee should be a person who is able to verify your professional knowledge, skill, experience, diligence and judgment in corporate insolvency work, as well as attest to your honesty, integrity and reputation.

**2.24** We have included guidance for referees and a pro forma referee report in the 'Attachments' to this kit to improve the reliability, comparability and usefulness to us of referee reports. You should give your referees a copy of your application and the supporting material about your corporate insolvency experience, so that the referees can attest to and comment on that experience.

**2.25** The pro forma referee report includes specific competency-based questions. Referees who have directly supervised your work are expected to provide detailed responses to these competency-based questions. Other referees are expected to respond to the competency-based questions to the extent they can.

# Attachments

The following attachments are part of this kit and should be used to prepare your application:

- (a) a checklist to ensure that you have included all the relevant material;
- (b) preferred formats for providing supporting information on:
  - (i) your personal capacities; and
  - (ii) why you are a fit and proper person/not a disqualified person;
- (c) guidance for referees providing a report in support of your application (including a pro forma referee report);
- (d) relevant policy statements:
  - (i) Policy Statement 186 *External administration: Liquidator registration* [PS 186]; and
  - (ii) Policy Statement 33 *Security deposits* [PS 33];
- (f) relevant pro formas:
  - (i) Pro Forma 14 *Performance bond liquidator* [PF 14];
  - (ii) Pro Forma 221 *Liquidator's undertaking: Pro forma deed for partners/sole proprietors* [PF 221]; and
  - (iii) Pro Forma 222 *Liquidator's undertaking: Pro forma deed for employees* [PF 222]; and
- (g) Form 903B *Application for registration as a liquidator*.

## Liquidator registration checklist

Before submitting your application, please use this checklist to ensure that you have included all the relevant material.

Criteria	Elements	Relevant material
Qualifications: s1282(2)(a)	<ul style="list-style-type: none"> <li>Member of accounting body (s1282(2)(a)(i)) <i>or</i></li> <li>Australian qualifications under s1282(2)(a)(ii) <i>or</i></li> <li>'Equivalent' qualifications and experience (s1282(2)(a)(iii))</li> </ul>	<ul style="list-style-type: none"> <li>Certificate of membership or letter from professional body <i>or</i></li> <li>Copy of academic record or copy of qualification and certification letter <i>or</i></li> <li>Statement of qualifications and experience</li> <li>Copy of academic record and certified copy of qualification</li> <li>NOOSR assessment (if overseas qualification)</li> <li>Referee report (1)</li> </ul>
Winding up experience: s1282(2)(b)	<ul style="list-style-type: none"> <li>Assessed under '(C) Capability'</li> </ul>	<ul style="list-style-type: none"> <li>Information about experience in winding up bodies corporate to be provided under 'Capability: s1282(2)(c)'</li> </ul>
Capability: s1282(2)(c) —Personal capacities  <i>For the preferred format for this information, see attachment below.</i>	<ul style="list-style-type: none"> <li>Corporate insolvency experience</li> <li>Completion of a specialist corporate insolvency course</li> <li>Non insolvency corporate management experience</li> <li>Any other relevant factors</li> </ul>	<ul style="list-style-type: none"> <li>Employment history for 10 years</li> <li>Details of corporate insolvency experience</li> <li>Insolvency course certificate (if applicable)</li> <li>Details of any non-insolvency corporate management (if applicable)</li> </ul>
Capability: s1282(2)(c) —Practice capacities	<ul style="list-style-type: none"> <li>Adequate resources—human and technological</li> <li>Monitoring processes</li> <li>Supervision and training</li> <li>Procedures and manuals (including complaints handling)</li> <li>Risk management systems</li> </ul>	<ul style="list-style-type: none"> <li>Description of resources available for your practice</li> <li>Letter of authorisation from your practice (if you are an employee or consultant)</li> <li>Letter of consent from supporting practice (if relying on another practice's resources)</li> <li>Copy of certificate of registration (if trustee in bankruptcy)</li> </ul>
Fit and proper: s1282(2)(c)/Not a disqualified person: s1282(4)  <i>For the preferred format for this information, see attachment below.</i>	<ul style="list-style-type: none"> <li>Honesty, integrity, good reputation and personal solvency</li> <li>Eligibility to manage any body corporate</li> </ul>	<ul style="list-style-type: none"> <li>Letter from professional body (if applicable)</li> <li>Signed statement about legal/disciplinary matters</li> <li>Referee reports (2)</li> </ul>
Resident in Australia: s1282(5)	<ul style="list-style-type: none"> <li>Living in Australia on a permanent or long-term basis</li> </ul>	<ul style="list-style-type: none"> <li>Details of current/past addresses</li> <li>Additional information (if needed)</li> </ul>
Security: s1284	<ul style="list-style-type: none"> <li>Provide security for potential compensation liability</li> </ul>	<ul style="list-style-type: none"> <li>Proof of performance bond or acceptable insurance arrangements</li> </ul>
Referee reports	See under 'Qualifications: s1282(2)(a)' and 'Fit and proper: s1282(2)(c)/Not a disqualified person: s1282(4)'.	

## Personal capacities for registration as a liquidator—Corporate insolvency experience

Before completing this information, you should read [PS186.19] and [PS 186.48]–[PS 186.55] on our requirements for corporate insolvency experience.

For calculating the full-time equivalence of your experience, we will accept as a full-time workload either:

- the usual average annual hours worked by a full-time professional employee in the firm/s where you gained your experience; or
- 1610 hours (being 46 weeks x 35 hours).

### A: Summary of employment history for past 10 years

Total number of full-time equivalent years working in corporate insolvency in the last 10 years: \_\_\_\_\_

Name and address of firm	Period of employment*	Position in firm	Level of responsibility	Supervising liquidator/s	Estimated % of time spent
					Total Ch5 EXADs: —Court liqs & CVLs —Pt 5.3A admins Overseas EXADs Other insolvency**
					Total Ch5 EXADs: —Court liqs & CVLs —Pt 5.3A admins Overseas EXADs Other insolvency**
					Total Ch5 EXADs: —Court liqs & CVLs —Pt 5.3A admins Overseas EXADs Other insolvency**

\*Please identify any periods of part time employment

\*\*Please provide details below

**B: Experience at a very senior level in complex matters**

- You should read paragraphs (e)–(f) of [PS 186.19] and [PS 186.54]–[PS 186.55] on the meaning of ‘very senior level’ and ‘complex matters’.
- If you have worked at a very senior level on many external administrations, do not list every single external administration. Select those that best demonstrate your skill, diligence and judgment, particularly in complex matters.
- You should particularly refer to external administrations that you think demonstrate the specific competencies to be addressed in the referee report from a supervising liquidator.
- For ‘complex matters’, please ensure that you provide enough information to demonstrate why the issues in the external

administration were complex and your role in how they were resolved. Examples of matters that may be complex in a particular external administration include (but are not limited to):

- trading on a business with a view to selling it as a going concern
- conduct of public examinations
- large litigation matters
- social/environmental issues or government policy
- investigations into insolvent trading, voidable transactions, fraudulent transactions etc
- listed companies.

Name of company	ACN	Type of appointment	Period working at very senior level	Supervising liquidator	Description of complex matters and your role

Name of company	ACN	Type of appointment	Period working at very senior level	Supervising liquidator	Description of complex matters and your role

**C: Other corporate insolvency experience (if applicable)**

- See [PS 186.49]–[PS 186.52] on the meaning of ‘other corporate insolvency experience’.
- If you are relying on other corporate insolvency experience, you will need to demonstrate why ASIC should consider this other experience equivalent to the experience that would be gained from working on external administrations.

Relevant dates	Details of experience	Reasons why equivalent

**D: Non-insolvency corporate management experience (if applicable)**

- Before completing this section, you should read [PS 186.18] and [PS 186.59].

Relevant dates	Details of experience	Relevant skills/competencies demonstrated

## Statement: Fit and proper person/Not a disqualified person

Australian Securities & Investments Commission  
 GPO Box 9827  
 Adelaide SA 5001

I, \_\_\_\_\_ *[insert full name]* of  
 \_\_\_\_\_ *[insert residential address]*,

make the following statement as part of my application to become registered as a liquidator within Australia.

1. I confirm that all the information contained in my application is true and correct as at the date of this statement.
2. \* I confirm that in the last ten years I have only resided at the address stated in my application.  
 \* I confirm that in the last ten years I have also resided at the addresses listed below.  
*[\* cross out whichever does not apply]*
3. \* I confirm that I have never been insolvent under administration.  
 \* I confirm that I was insolvent under administration for the period from \_\_\_\_\_ to \_\_\_\_\_.  
*[\* cross out whichever does not apply]*
4. Except for any circumstances identified as an annexure to this statement, I have not been convicted of a criminal offence within Australia or any other country.
5. Except for circumstances identified as an annexure to this statement, I confirm that in the last ten years I have not been:
  - disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001
  - subject to legal or disciplinary action from a relevant professional body
  - refused membership of a relevant professional body, or
  - subject to legal or disciplinary action from the Australian Taxation Office.
6. I understand that ASIC may contact overseas authorities to enquire about my solvency status and any criminal record.
7. I make this statement in the clear understanding that should it be incorrect, then ASIC would be entitled under the provisions of the Corporations Act 2001 to apply to the Companies Auditors and Liquidators Disciplinary Board for the cancellation of my registration.
8. I also understand that any false or misleading statement made in this application may constitute a breach of the Corporations Act 2001 and result in prosecution or referral to the Companies Auditors and Liquidators Disciplinary Board.

\_\_\_\_\_  
*Signed*

\_\_\_\_\_  
*Date*



**ASIC**

Australian Securities & Investments Commission

## Liquidator registration— Guidance for referees

### What is the purpose of this document?

You have been asked by an applicant for registration as a liquidator under Part 9.2 of the *Corporations Act 2001* (Act) to provide a referee report for that application. This document will help you provide a referee report in a form that is appropriate for ASIC's assessment of the application.

### What should you do before you sign a referee report?

Before you sign a referee report, you should read:

- (a) a copy of the application for registration and the supporting material the applicant intends to give ASIC about their corporate insolvency experience; and
- (b) Section A of ASIC's Policy Statement 186 *External administration: Liquidator registration*, 'What criteria must you meet to become a registered liquidator?'

### Why does ASIC require referee reports?

ASIC uses referee reports to help it decide if the applicant:

- (a) has the personal capacities (particularly adequate corporate insolvency experience) to be capable of performing the duties of a registered liquidator; and
- (b) is otherwise a fit and proper person to be a registered liquidator.

ASIC also uses referee reports as a means of verifying information provided by the applicant about their experience.

### Who can provide a referee report?

An applicant for registration as a liquidator must provide at least two referee reports.

Referees should be a registered liquidator (or appropriately licensed overseas insolvency practitioner) who has directly supervised the applicant's work on external administrations, or a person who is able to attest to the applicant's:

- (a) knowledge, skill, experience, diligence and judgment in corporate insolvency work; and
- (b) honesty, integrity and good reputation.

We will not accept a referee report from an employee or fellow employee of the applicant. We will generally not accept a referee report from a relative of the applicant, unless we are satisfied that the relative is the only registered liquidator realistically in a position to provide the supervising registered liquidator's report.

Referees must be able to express opinions about the applicant based on the referee's personal knowledge of the applicant and their direct observation of the applicant's conduct.

### What should you do with your referee report?

You may give your referee report to the applicant to forward to us, or you may post it directly to:

**Liquidator Registration Team,  
Australian Securities & Investments  
Commission,  
GPO Box 9827, Adelaide SA 5001.**

## Liquidator registration—Pro forma referee report

**Applicant's name:**

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### SECTION A: Referee's details

**1** Provide your full name, address and contact details.

**2** Are you a registered liquidator?

**3** What is your professional and (if relevant) personal relationship to the applicant?

**4** How long have you known the applicant in each of these relationships?

**5** Provide details of when, how long and to what extent you have directly supervised the applicant's work in:

- (a) external administrations; and
- (b) general accounting.

### SECTION B: Applicant's corporate insolvency experience and competencies

*Referees who have directly supervised the applicant's corporate insolvency work are expected to provide detailed responses to the following questions. Other referees are expected to respond to the questions to the extent they are able, and to explain in their response any limitations on their ability to respond more fully.*

*When responding to the following competency-based questions, please use concrete examples from identified external administrations to illustrate your responses. Where possible, the examples you give should relate to the external administrations that the applicant has identified as involving complex matters.*

**6** In the context of a 'trade-on', is the applicant able to:

- (a) control cash flow and formulate realistic cash flow projections?
- (b) quickly analyse available information and assess whether the business is a going concern?
- (c) respond to unexpected events and carry out a progressive assessment of commercial risks?
- (d) efficiently manage staff in their own practice and in the insolvent entity?

**7** In the context of identifying and realising assets, is the applicant able to:

- (a) secure and maintain assets?
- (b) market an asset to achieve an optimal commercial outcome?
- (c) negotiate the sale of an asset of substantial value?

**8** In the context of conducting an investigation, is the applicant able to:

- (a) apply a sceptical and critical approach to situations?
- (b) appreciate legal responsibilities involved in insolvency work?
- (c) instruct lawyers in complex matters and respond appropriately to legal advice?

**9** In the context of managing large and complex matters, is the applicant able to:

- (a) apply relevant law to practical problems?
- (b) design solutions and strategies for complex problems and situations?
- (c) manage large amounts of complex information, competing priorities and multiple administrations?

**10** In the context of communicating with creditors, is the applicant able to:

- (a) write reports that are informative and meaningful?
- (b) clearly communicate complex information to an audience?

**11** Is the applicant able to:

- (a) recognise and assess circumstances that might give rise to a conflict of interest for the applicant?
- (b) respond appropriately when faced with ethical dilemmas?

**12** In relation to the applicant's examples of complex matters they have been involved in, do you agree:

- (a) that they were complex matters?
- (b) with the applicant's description of their role in those matters?

**13** Do you agree with the other information stated in the applicant's application about their corporate insolvency experience?

**SECTION C: Concluding opinions**

*Where possible, support your responses to the following questions with examples.*

**14** In your opinion:

- (a) does the applicant have adequate knowledge, skill and experience in insolvent corporate external administrations, and the diligence and good judgment, to be capable of performing the duties of a registered liquidator?
- (b) will the applicant have adequate practice resources to be capable of performing the duties of a registered liquidator?
- (c) is the applicant:
  - (i) honest, and a person of integrity and good reputation?
  - (ii) in all other respects a fit and proper person to be registered as a liquidator?

**15** Are there any matters or information about the applicant not already identified in your report that you think ASIC should be aware of when considering whether to register the applicant as a liquidator?

*(Please attach separate sheets if needed.)*

**SECTION D: Referee’s declaration and signature**

**16** I declare that:

- (a) before signing this report:
  - (i) the applicant gave me a copy of their application and the supporting material relating to their corporate insolvency experience; and
  - (ii) I read Section A of ASIC’s Policy Statement 186 *External administration: Liquidator registration*, ‘What criteria must you meet to become a registered liquidator’; and
- (b) my opinions in this report are based on my personal knowledge of the applicant and direct observation of the applicant’s conduct and work.

**Date:**

\_\_\_\_\_

**Signed:**

\_\_\_\_\_



**ASIC**

Australian Securities & Investments Commission

## [PS 186]

# External administration: Liquidator registration

Part 9.2 — Registration of auditors and liquidators

Issued 30/9/2005

## What this policy statement is about

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[PS 186.1] This policy statement outlines our approach to the registration of liquidators and official liquidators under Part 9.2 of the *Corporations Act 2001* (Act).

[PS 186.2] It sets out:

- A** our approach to the criteria you must meet to become a registered liquidator (s1279(1)(b) and 1282(2))  
*see [PS 186.6]–[PS 186.82]*
- B** our approach to what you must do to remain registered as a liquidator  
*see [PS 186.83]–[PS 186.137]*
- C** when we will register you under the categories of ‘official liquidator’ (s1283) or ‘liquidator of a specified body corporate’ (s1279(1)(c) and 1282(3))  
*see [PS 186.138]–[PS 186.156]*

[PS 186.3] For details of how to apply for registration as a liquidator and what information we require in an application, see the Liquidators registration kit on our website at [www.asic.gov.au/insolvency](http://www.asic.gov.au/insolvency).

[PS 186.4] This policy statement replaces:

- (a) Policy Statement 40 *Registration of liquidators—experience criteria* [PS 40]; and
- (b) Policy Statement 24 *Registration of official liquidators* [PS 24].

[PS 186.5] Our approach in this policy statement has been influenced by:

- (a) the fact that registered liquidators act in a fiduciary capacity, often have total management control of the affairs, money and other property of a body corporate, and in some cases, are officers of the court;
- (b) legislative and other developments affecting the insolvency industry since [PS 40] and [PS 24] were issued (including the introduction of Part 5.3A of the Act); and
- (c) requirements in other jurisdictions for registration of corporate insolvency practitioners.

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**Important note:** This policy statement does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Act applies to you. It is your responsibility to determine your obligations under the Act and regulations.

Examples in this paper are purely illustrative; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

This paper is based on legislation and regulations as at 30 September 2005.

## A What criteria must you meet to become a registered liquidator?

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### Our policy

[PS 186.6] To become a registered liquidator, you must be a natural person (s1279(1)) who:

- (a) has certain base level qualifications (s1282(2)(a), see [PS 186.7]–[PS 186.15]);
- (b) has experience in winding up bodies corporate (s1282(2)(b), see [PS 186.16]);
- (c) is capable of performing the duties of a registered liquidator (s1282(2)(c), see [PS 186.17]–[PS 186.20]); and
- (d) is otherwise a fit and proper person to be a registered liquidator (s1282(2)(c), see [PS 186.21]–[PS 186.24]);
- (e) is not a person disqualified under Part 2D.6 from managing corporations (s1282(4), see [PS 186.25]);
- (f) is (generally) resident in Australia (s1282(5), see [PS 186.26]); and
- (g) if the application is granted, will comply with our policy on the security required under s1284 (see [PS 186.27]).

Note: For details on how to apply for registration as a liquidator and the forms necessary for completing your application, see the Liquidators registration kit on our website at [www.asic.gov.au/insolvency](http://www.asic.gov.au/insolvency).

### Qualifications: s1282(2)(a)

[PS 186.7] To meet this requirement, you must satisfy us that you:

- (a) are a member of an Australian accounting body listed in s1282(2)(a)(i) or an overseas accounting body listed in reg 9.2.04;
- (b) have a qualification that falls within s1282(2)(a)(ii) from an Australian university or tertiary institution listed in reg 9.2.02; or
- (c) have ‘equivalent’ qualifications and experience (s1282(2)(a)(iii)).

[PS 186.8] In this policy statement, we refer to membership under s1282(2)(a)(i) and Australian qualifications under s1282(2)(a)(ii) as ‘standard’ qualifications. That is, if you are within one of those categories, you will automatically satisfy the base qualifications required under s1282(2)(a).

‘Standard’ qualifications: s1282(2)(a)(i) and (ii)

[PS 186.9] For s1282(2)(a)(i), we interpret ‘member’ as referring to a full member entitled to all the privileges and subject to all the obligations of membership of the relevant body.

[PS 186.10] If you are relying on s1282(2)(a)(ii), the subjects completed for your qualification must comprise:

- (a) a 3-year course of study in accountancy; and
- (b) a 2-year course of study in commercial law (including company law).

[PS 186.11] To meet s1282(2)(a)(ii), you will need to provide us with certification from the university or tertiary institution you attended that the subjects you completed for your qualification comprise those courses of study, unless we have a standing certification from that university or institution.

Note: A standing certification means that the university or tertiary institution has certified to us the combinations of subjects at that university or institution that comprise a 3-year course of study in accountancy and a 2-year course of study in commercial law (including company law).

[PS 186.12] The content of courses of study for qualifications that fall within s1282(2)(a)(ii) will usually have been determined in consultation with one or more of the professional accounting bodies. We expect that, as a minimum, these courses of study will include subjects (by whatever name) dealing with:

- (a) *for accountancy*—Australian accounting and auditing standards, financial and corporate accounting; cost and management accounting; and corporate finance; and
- (b) *for commercial law*—introductory contract law, torts and trust law; and introductory Australian business, corporations and taxation law.

#### 'Equivalent' qualifications: s1282(2)(a)(iii)

[PS 186.13] If you are relying on s1282(2)(a)(iii), you must satisfy us that your qualifications and experience taken together have given you knowledge equivalent to the knowledge that would be gained from an Australian 3-year full-time bachelor degree that includes a 3-year course of study in accountancy and a 2-year course of study in commercial law (including company law).

[PS 186.14] We will generally accept that you have 'equivalent' qualifications if you have one of the following combinations of qualifications and experience:

- (a) *Non-standard Australian qualification*—you hold a minimum 3-year full-time undergraduate qualification from an Australian tertiary institution but the qualification and/or the institution does not meet s1282(2)(a)(ii), and you have also completed:
  - (i) a tertiary level bridging course that we approve for this purpose, in either or both of accountancy and commercial law, depending on whether your qualification includes a course of study in either of those areas; and

- (ii) 1–3 years (depending on the number and nature of the bridging courses you need to undertake for subparagraph (i)) of supervised, relevant practical experience;
- (b) *Non-standard overseas accounting qualification*—you hold a minimum 3-year full-time undergraduate accounting qualification (which includes commercial and company law subjects) from a university in a country with comparable accounting standards and practices to Australia, and you have also completed:
  - (i) a conversion course in Australian accountancy and Australian commercial and company law that we approve for this purpose; and
  - (ii) 1 year of supervised, relevant practical experience in Australia.

[PS 186.15] We will consider the equivalence of other combinations of qualifications and experience on a case-by-case basis.

Note: See also [PS 186.34]–[PS 186.43].

### ***Winding up experience: s1282(2)(b)***

[PS 186.16] We will assess your experience in winding up bodies corporate as part of our assessment of your personal capacities for s1282(2)(c): see [PS 186.18]–[PS 186.19].

### ***Capability: s1282(2)(c)***

[PS 186.17] We will only be satisfied that you are capable of performing the duties of a registered liquidator if we are satisfied about the adequacy of your:

- (a) personal capacities (see [PS 186.18]–[PS 186.19]); and
- (b) practice capacities (see [PS 186.20]).

Note: For the definition of practice, see ‘Key terms’.

### **Personal capacities**

[PS 186.18] When we assess your personal capacities, we will take into account (in addition to your qualifications for s1282(2)(a)):

- (a) whether you have adequate corporate insolvency experience (see [PS 186.19]);
- (b) whether you have successfully completed a specialist program in Australian corporate insolvency law and practice;
- (c) the length and nature of any non-insolvency corporate management experience you may have; and
- (d) any other relevant factors.

*Corporate insolvency experience*

[PS 186.19] We will only be satisfied that you have adequate corporate insolvency experience if:

- (a) you have worked in corporate insolvency for at least the equivalent of 5 years full-time over the last 10 years;
- (b) substantially all of your corporate insolvency experience has involved work on external administrations:
  - (i) under the supervision of a registered liquidator in Australia; or
  - (ii) as, or under the supervision of, an appropriately licensed corporate insolvency practitioner in a country where we consider the corporate insolvency laws and practices are comparable with those in Australia;
- (c) where all your corporate insolvency experience has not been gained in Australia, you have worked in Australia on external administrations under the supervision of a registered liquidator for at least the equivalent of 1 year full-time over the last 2 years;
- (d) your corporate insolvency experience includes a broad range of external administrations, of which 2 must be:
  - (i) court liquidations or creditors' voluntary liquidations under Ch 5; and
  - (ii) administrations under Part 5.3A;
- (e) your corporate insolvency experience has been gained at a very senior level for at least the equivalent of 3 years full-time over the last 5 years;
- (f) your corporate insolvency experience at a very senior level includes dealing with a range of complex matters that typically arise in external administrations, and
- (g) over the course of gaining your corporate insolvency experience, you have demonstrated:
  - (i) skill and diligence; and
  - (ii) sound judgment in complex matters while working at a very senior level.

Note: We require this experience because of s1282(2)(b).

Note: For further explanation, see also [PS 186.46]–[PS 186.59].

**Practice capacities**

[PS 186.20] We will only be satisfied that you have adequate practice capacities if you demonstrate that you have, or have reliable access to (as and when required):

- (a) adequate human and technological resources to enable you to accept appointments as an external administrator from the time of registration and on a continuing basis;

- (b) appropriate processes for monitoring and ensuring the continuing adequacy of the human and technological resources available to you;
- (c) appropriate processes for ongoing supervision and training of staff;
- (d) appropriate operational procedures and manuals for conducting external administrations, including internal procedures for recording and handling complaints about the performance of duties by you or staff who perform duties on your behalf; and
- (e) adequate systems for managing risks to your own practice and each entity to which you may be appointed.

Note: For further explanation, see also [PS 186.60]–[PS 186.67].

### ***Fit and proper: s1282(2)(c)***

[PS 186.21] We will only be satisfied that you are a fit and proper person to be registered as a liquidator if we are satisfied as to your honesty, integrity, good reputation and personal solvency. This is in addition to our being satisfied about your overall capability.

[PS 186.22] When we assess whether you are a fit and proper person to be registered as a liquidator, current membership of a relevant professional body will be a factor in your favour but that membership will not be determinative.

Note: For the definition of relevant professional body, see 'Key terms'.

[PS 186.23] We will consider that you are not fit and proper to be registered if any of the following apply to you:

- (a) in the last 10 years, you have been convicted of any offence of which one element is dishonesty, even though that conviction does not make you a disqualified person under Part 2D.6;
- (b) in the last 10 years, you have been found civilly liable for any breach of trust, breach of fiduciary duty, dishonesty, gross negligence or recklessness in the course of your professional duties;
- (c) in the last 10 years, you have been convicted of a serious tax offence;
- (d) you have:
  - (i) executed a debt agreement under Part IX of the Bankruptcy Act or an authority under s188 of that Act and the operation of the agreement or authority has not ended; or
  - (ii) property that is subject to control under s50 or Div 2 of Part X of the Bankruptcy Act.

Note: In this case, you may be within the s9 definition of an insolvent under administration, even though you are not a disqualified person under s206B(4).

- (e) you are a disqualified person under Part 2D.6; or

Note: In this case, we are specifically prohibited by s1282(4) from registering you as a liquidator.

- (f) we are not satisfied that you have full legal or mental capacity.

[PS 186.24] We *may* consider that you are not fit and proper to be registered, depending on the particular facts and circumstances, if:

- (a) any legal or disciplinary action is pending against you, or has been taken against you in the last 10 years and resulted in an adverse finding, by any of the following:
- (i) a relevant professional body of which you are or have been a member;
  - (ii) ASIC;
  - (iii) the CALDB;
  - (iv) ITSA;
  - (v) the Tax Agents' Board; or
  - (vi) the ATO; or
- (b) in the last 10 years you have:
- (i) executed a debt agreement under Part IX of the Bankruptcy Act, an authority under s188 of that Act or a personal insolvency agreement under Part X of that Act;
  - (ii) had property that was subject to control under s50 or Div 2 of Part X of the Bankruptcy Act;
  - (iii) been a disqualified person under Part 2D.6;
  - (iv) been refused membership by a relevant professional body; or
  - (v) made an application for registration as a liquidator or as an official liquidator that was refused for fitness and propriety reasons.

This list is not exhaustive.

Note: For further explanation, see also [PS 186.68]–[PS 186.73].

### ***Disqualified persons: s1282(4)***

[PS 186.25] Even if you have permission from us under s206F(5) or leave from the court under s206G to manage a particular corporation or corporations, we will consider you are:

- (a) still a disqualified person for the purposes of s1282(4); and/or
- (b) not a fit and proper person to be registered, because you are not capable of managing all corporations.

Note: For further explanation, see also [PS 186.74]–[PS 186.76].

***Resident in Australia: s1282(5)***

[PS 186.26] To be considered resident in Australia, you must satisfy us that you are living in Australia on a permanent or long-term basis. We will generally refuse to register you as a liquidator if we do not consider you are resident in Australia.

Note: For further explanation, see also [PS 186.77]–[PS 186.79].

***Security: s1284***

[PS 186.27] We will continue to apply our policy in Policy Statement 33 *Security deposits* [PS 33] on how a registered liquidator may comply with s1284.

Note: For further explanation, see also [PS 186.80]–[PS 186.82].

***Transitional arrangements***

[PS 186.28] Our policy in this section applies immediately. It replaces our policy in [PS 40] on the experience we require an applicant to have for registration as a liquidator, and sets out our policy on the other criteria for registration as a liquidator.

[PS 186.29] All new applicants for registration must comply with this policy. If we have received your application but not finally determined it before this policy statement is published, we will assess your application under this policy. However, we will give you time to provide any additional information that may be necessary.

***Underlying principles***

[PS 186.30] Registered liquidators (who are not also official liquidators) can be appointed as any type of external administrator other than a court-appointed liquidator or provisional liquidator: see s411(7)(d), 418(1)(d), 448B, 532(1A) and 532(1)(a).

[PS 186.31] ASIC and the public must have confidence that persons registered by ASIC under Part 9.2 as liquidators are capable of undertaking the work that a registered liquidator is entitled to perform, and that they are fit and proper persons to undertake such work.

[PS 186.32] We will only register a person as a liquidator if we are satisfied that they meet all the requirements listed in [PS 186.6]. Most of the criteria for registration give ASIC a discretion to determine whether those criteria are met. Our policy will guide the exercise of our discretion in such cases, but we will consider each application for registration on its merits.

[PS 186.33] An applicant for registration does not have a right to be registered merely because they fall within examples given in our policy. Similarly, an applicant who satisfies us that they meet all the criteria for registration will not be refused registration merely because their individual situation is not described in our policy.

## Explanation

### **Qualifications: s1282(2)(a)**

'Equivalent' qualifications: s1282(2)(a)(iii)

[PS 186.34] If you do not have 'standard' qualifications, the onus is on you to satisfy us that your qualifications and experience have given you knowledge that is equivalent to the knowledge in accountancy and commercial law a person with the standard qualifications would have. When we consider non-standard qualifications, we will be guided by our expectations for the minimum content of courses of study that meet s1282(2)(a)(ii): see [PS 186.12].

[PS 186.35] We consider that the experience relevant for s1282(2)(a)(iii) is experience that contributes to the acquisition of knowledge of accountancy and commercial law, particularly Australian accountancy and Australian commercial law. It need not be (and generally we expect it will not be) corporate insolvency experience. Specific corporate insolvency experience is a separate requirement under s1282(2)(b) and (c).

[PS 186.36] In [PS 186.14], we have identified the non-standard qualifications that we think are most likely to arise for consideration under s1282(2)(a)(iii): see also [PS 186.37]–[PS 186.43]. We will consider the equivalence of other combinations of qualifications and experience on a case-by-case basis, based on these guidelines.

#### *'Non-standard' Australian qualification*

[PS 186.37] The more your qualifications match the content and level of courses of study that meet s1282(2)(a)(ii), the less emphasis we will need to place on bridging courses and on your experience in order to assess you as meeting the initial knowledge requirements for s1282(2)(a).

[PS 186.38] Bridging courses for the purpose of paragraph (a)(i) of [PS 186.14] must be assessable by examination and cover (typically in an accelerated format) the same minimum content that we expect for courses of study under s1282(2)(a)(ii): see [PS 186.12].

[PS 186.39] The number and type of bridging courses and the length of experience that we will generally require before we consider that you have equivalent knowledge for the purposes of s1282(2)(a)(iii) depends on the subject matter covered in your qualification. For example:

- (a) if your qualification contains tertiary level courses of study in both accountancy and commercial law but does not fall within s1282(2)(a)(ii), we will require you to have at least 1 year's supervised, relevant practical experience. If your accountancy and commercial law subjects do not cover the minimum content set out

in [PS 186.12], you will also need to do a bridging course to achieve that minimum knowledge;

- (b) if your qualification contains a tertiary level course of study only in accountancy, you will need to do a bridging course in commercial law, and we will require you also to have at least 1 year's supervised, relevant practical experience;
- (c) if your qualification contains a tertiary level course of study only in commercial law, you will need to do a bridging course in accountancy, and we will require you also to have at least 2 years' supervised, relevant practical experience;
- (d) if your qualification does not contain a tertiary level course of study in either accountancy or commercial law, you will need to do bridging courses in both accountancy and commercial law, and we will require you also to have at least 3 years' supervised, relevant practical experience.

*'Non-standard' overseas accounting qualification*

[PS 186.40] If you have an overseas accounting qualification but you are not a full member of an overseas accounting body listed in reg 9.2.04, the onus is on you to satisfy us about the equivalence of the content and level of your qualification. Initially, you should have your qualifications assessed under the National Office of Overseas Skills Recognition (NOOSR) guidelines by an authorised assessing authority for accounting qualifications (currently ICAA, CPA Australia and NIA) for comparability to an Australian undergraduate accounting degree.

[PS 186.41] We will take the NOOSR assessment into account when assessing the equivalence of your overseas qualification with a standard Australian qualification. The greater the comparability between:

- (a) your overseas qualification and a standard Australian qualification; and
- (b) the accounting and legal regimes of the overseas country and Australia,

the less emphasis we will need to place on conversion courses and on Australian experience in order to assess you as meeting s1282(2)(a).

[PS 186.42] For example, if you have a bachelor-level accounting qualification obtained from a university in a country with comparable accounting standards and practices to Australia, we will generally consider that you have 'equivalent' qualifications for the purposes of s1282(2)(a)(iii) if you have also completed a conversion course in Australian accounting and commercial law, and you have at least 1 year's supervised, relevant practical experience in Australia.

[PS 186.43] We will require all overseas-qualified applicants with ‘non-standard’ qualifications to have practical Australian accounting experience regardless of how much overseas accounting or corporate insolvency experience they have. However, in the example in [PS 186.42], if the minimum 1 year of Australian experience has been gained doing exclusively corporate insolvency work under the supervision of a registered liquidator, we will generally be prepared to count that period towards the corporate insolvency experience required under [PS 186.19]: see also [PS 186.53].

### ***Winding up experience: s1282(2)(b)***

[PS 186.44] The experience referred to in s1282(2)(b) is limited to experience ‘in connection with the winding up of bodies corporate’. This is only one type of external administration referred to in Ch 5 to which a registered liquidator may be appointed. Therefore, we will assess your winding up experience as part of the broader personal capacities you must have for s1282(2)(c): see in particular paragraph (d)(i) of [PS 186.19] and [PS 186.52].

### ***Capability: s1282(2)(c)***

[PS 186.45] We interpret ‘capability’ as referring to the overall capacities that enable a person to perform adequately and properly the duties and functions that a registered liquidator will have upon registration and when acting as an external administrator. Our interpretation of ‘capability’ includes both personal and practice capacities.

#### **Personal capacities**

[PS 186.46] Capacity to perform the duties of a registered liquidator ‘refers not simply to a person’s technical abilities but also to the more ephemeral quality of judgment’: *Re Lofthouse and ASIC* [2004] AATA 327 at paragraph 74. An applicant’s judgment is one of the factors we will consider in the context of their corporate insolvency experience.

#### ***Corporate insolvency experience***

[PS 186.47] Given the range of appointments under Ch 5 that a registered liquidator can accept, a person will not be capable of performing the duties of a registered liquidator unless they have broad external administration experience. In *Re Lofthouse and ASIC* [2004] AATA 327, the AAT held that the experience relevant for the purposes of registration as an official liquidator was not limited to experience in windings up, but included experience across a broad range of external administrations. We consider that this approach applies equally to the experience a person must have in order to demonstrate that they are capable of performing adequately and properly the duties and functions a registered liquidator has when acting as an external administrator.

[PS 186.48] You must have at least:

- (a) the equivalent of 5 years' full-time corporate insolvency experience. This experience must have been gained over the last 10 years, in Australia or in a country that we consider has comparable corporate insolvency laws and practices to Australia.

If all your experience was not gained in Australia, at least 1 year's experience over the last 2 years must have been gained in Australia working on Ch 5 external administrations under the supervision of a registered liquidator;

- (b) the equivalent of 3 years' full-time corporate insolvency experience at a very senior level. This experience must have been gained over the last 5 years.

Note: For details about how to calculate the full-time equivalence of your experience, see the Liquidators registration kit on our website at [www.asic.gov.au/insolvency](http://www.asic.gov.au/insolvency).

[PS 186.49] Substantially all of your corporate insolvency experience must have involved work on external administrations under the supervision of a registered liquidator or overseas equivalent. We will not require all your corporate insolvency experience to be on external administrations because we recognise that certain other corporate insolvency work can provide experience directly relevant to the work a registered liquidator must be capable of performing as external administrator.

[PS 186.50] If you do not have 5 years' experience on external administrations, we may be prepared to count some or all of your other experience towards your overall corporate insolvency experience. Whether, and the extent to which, we are prepared to do so will be affected by the type and length of your other corporate insolvency experience, and our assessment of its quality and relevance.

[PS 186.51] As a guide, however, we can indicate that:

- (a) at least 80% of your total corporate insolvency experience will generally need to have been gained on external administrations;
- (b) the other corporate insolvency work that we will generally accept is:
  - (i) insolvency advisory work for corporate reconstructions or informal work-outs;
  - (ii) secondment to or engagement by ASIC doing insolvency work;
  - (iii) secondment to or engagement by a lending institution in a debt management or advisory role focusing specifically on insolvent or potentially insolvent corporate borrowers;
  - (iv) technical or training roles in a corporate insolvency practice under the supervision of a registered liquidator; and
  - (v) technical roles in an insolvency professional organisation; and

- (c) we will not accept experience gained in a practice management or risk management role in an insolvency practice because that work is not sufficiently connected to the work of a registered liquidator.

[PS 186.52] We will not include under this category experience you may have in members' voluntary liquidations because members' voluntary liquidations are not a form of insolvent external administration. In addition, members' voluntary liquidations do not require the liquidator to be a registered liquidator unless the company being wound up is a public company. However, experience in members' voluntary liquidations is relevant to your overall experience and we may take it into account when we consider your non-insolvency management experience: see [PS 186.59].

[PS 186.53] If you need to rely on equivalent qualifications and experience to meet s1282(2)(a), and your experience for s1282(2)(a)(iii) purposes has included a significant, continuous period of Australian corporate insolvency experience, we may be prepared to count some or all of that experience towards the corporate insolvency experience we require for s1282(2)(c). Whether, and the extent to which, we are prepared to do so will be affected by:

- (a) the content and level of the formal qualifications you hold and the country where those qualifications were obtained;
- (b) whether your Australian corporate insolvency experience was gained under the supervision of a registered liquidator; and
- (c) the length of the total supervised experience we require under [PS 186.14].

[PS 186.54] For paragraphs (e) and (g)(ii) of [PS 186.19], your external administration experience will have been at a very senior level if:

- (a) you were a principal or at the level immediately below that of principal;

Note: For the definition of principal, see 'Key terms'.

- (b) you reported directly to the relevant external administrator; and
- (c) you:
  - (i) formed opinions and made recommendations to the external administrator about the financial and potential legal position of the body corporate;
  - (ii) were directly involved in planning and managing on behalf of the external administrator the conduct of the external administration;
  - (iii) prepared draft reports to creditors on behalf of the external administrator;
  - (iv) instructed solicitors and evaluated legal advice as directed by the external administrator; and
  - (v) supervised staff who reported through you to the external administrator, and had responsibility for allocating other resources.

This list is not exhaustive.

[PS 186.55] For paragraphs (f) and (g)(ii) of [PS 186.19], examples of external administration matters that may be complex include:

- (a) trading-on a business with a view to selling it as a going concern;
- (b) investigations into insolvent trading, voidable transactions or breach of directors' duties;
- (c) large litigation matters;
- (d) public examinations; and
- (e) external administrations that concern listed companies, large-scale social or environmental issues, or matters concerning government policy.

*Specialist corporate insolvency program*

[PS 186.56] We expect that a person who wishes to become a registered liquidator will generally have undertaken some specialist studies in corporate insolvency before applying for registration, because the standard qualifications referred to in s1282(a)(i) or (ii) rarely provide adequate training in corporate insolvency issues.

[PS 186.57] Therefore, we will regard favourably completion by examination of a program in Australian corporate insolvency law and practice, particularly where an applicant has only the minimum corporate insolvency experience.

[PS 186.58] An acceptable program will deal with (at least) all the types of external administration under Ch 5 of the Act and cover (at least) the following topics:

- (a) the duties, functions, powers and responsibilities of each type of external administrator;
- (b) conducting creditors' meetings;
- (c) conducting investigations and examinations;
- (d) recovery and realisation of assets;
- (e) adjudicating proofs of debt and distributing dividends;
- (f) reporting to creditors and to ASIC; and
- (g) professional ethics.

*Non-insolvency corporate management experience*

[PS 186.59] We will regard favourably any non-insolvency corporate management experience you may have, particularly where you only have the minimum corporate insolvency experience. This may include experience in members' voluntary windings up of public companies or in complex members' voluntary liquidations of private companies.

## Practice capacities

[PS 186.60] You must satisfy us that you have a base level of practice capacities that will enable you to perform adequately and properly your duties as a registered liquidator. You must decide how you will demonstrate that your practice capacities are adequate.

[PS 186.61] All applicants must satisfy us that they have resources, processes, procedures and systems of the kind set out in [PS 186.20], but the nature and sophistication of those resources in each case will depend on the type of assignments that the applicant, once registered, is likely to take on.

Note: For example, we will generally require applicants who work in large practices and are likely to be appointed to larger or more complex external administrations to demonstrate a more sophisticated level of practice capacities.

[PS 186.62] In particular, you must satisfy us that your own resources, or the practice resources that will be available to you, are adequate to enable you to deal appropriately with a fluctuating workload, given the significant demands placed on resources at the beginning of each appointment or if unexpected or urgent situations arise during the course of an external administration.

[PS 186.63.] If you propose to accept appointments to entities located a long way from your places of practice, you will also need to demonstrate that you have adequate practice capacities to undertake that work without unreasonably increasing the overall costs of the external administration.

[PS 186.64] We do not expect that all the processes, procedures and systems in paragraphs (b)–(e) of [PS 186.20] will necessarily be documented. Whether any of them are, or should be, documented will depend on the size and structure of your practice. However, if they are not documented, it may be more difficult to demonstrate to us that adequate processes, procedures and systems exist. In addition, documented operational procedures will usually be necessary for adequate risk management.

[PS 186.65] We consider that your practice capacities will not be adequate unless you have systems and processes in place for identifying and managing risks in:

- (a) your own practice; and
- (b) each entity to which you may be appointed as external administrator.

[PS 186.66] What is required to appropriately manage risks will depend on each practice and each appointment. You will need to explain to us your risk management processes and generally, we expect that risk management processes will be documented. At a minimum, we expect you

to have explicit processes (dealing separately with your own practice and the external administrations you may be appointed to) for:

- (a) controlling internal fraud;
- (b) monitoring and minimising your exposure to personal liability;
- (c) monitoring and minimising the potential for conflicts of interest or breaches of other legal obligations; and
- (d) ensuring business continuity in the event of technological failure or other business interruption.

#### *Trustees in bankruptcy*

[PS 186.67] If you are a registered trustee, we will take that status into account when we assess your practice capacities. Such status may operate on practice capacities in two ways. On one hand, a registered trustee will already have resources, systems and procedures in place that may be easily adapted or supplemented for corporate insolvency work. On the other hand, the fact that both bankruptcy and corporate insolvency work will be undertaken may increase the level of practice resources required to perform both roles adequately and properly.

#### ***Fit and proper: s1282(2)(c)***

[PS 186.68] We interpret the expression ‘fit and proper’ as referring to an applicant’s:

- (a) overall capability of performing their duties and functions; and
- (b) honesty, integrity, good reputation and personal solvency.

Note: Our interpretation of fit and proper is consistent with *Hughes and Vale Pty Ltd v The State of NSW (No. 2)* (1955) 93 CLR 127 at 156–7; *Re Su and the Tax Agents’ Board of SA* (1982) 82 ATC 4284 at 4286; *Stasos v Tax Agents’ Board of NSW* (1990) 90 ATC 4950 at 4959; *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 348; and *Davies v Australian Securities Commission* (1995) 131 ALR 295 at 305–7.

[PS 186.69] The reference to ‘otherwise’ in s1282(2)(c) reinforces our view that an applicant’s overall ‘capability’ is part of their ‘fitness and propriety’ to be registered as a liquidator. It also implies that a person who is not capable of performing adequately and properly the duties of a registered liquidator is not a fit and proper person to be a registered liquidator.

[PS 186.70] When we consider for s1282(2)(c) whether you are ‘otherwise’ a fit and proper person to be registered as a liquidator, we will specifically consider whether you have the honesty, integrity, good reputation and personal solvency that we think a registered liquidator must have in view of:

- (a) the fiduciary nature of a registered liquidator’s duties and functions when appointed as an external administrator;

- (b) the fact that registered liquidators as external administrators often have control of very large amounts of money, other property, financial facilities and financial obligations that belong to third parties; and
- (c) the need for a registered liquidator's words and actions to be regarded with complete trust by persons who deal with them in their capacity as an external administrator.

[PS 186.71] Legal or disciplinary action pending or taken by the bodies set out in [PS 186.24] may affect your fitness and propriety to be a registered liquidator where it relates to professional conduct or personal qualities that are relevant to the role of registered liquidator.

Note: For example, action by the ATO will be relevant to our assessment of your fitness and propriety where it relates to matters such as non-payment of your personal taxation liabilities or your involvement in non-payment of corporate taxation liabilities of an entity with which you are associated personally or professionally.

[PS 186.72] We will regard favourably current membership of a body that monitors the professional performance of its members and has disciplinary functions, because such bodies usually require their members to be fit and proper persons. Therefore, they will have also considered your honesty, integrity and reputation. However, your membership of such a body will not be determinative in our assessment of whether you are a fit and proper person to be a registered liquidator.

#### Trustees in bankruptcy

[PS 186.73] If you are a registered trustee, we will take into account your record and reputation as a registered trustee when we assess whether you are fit and proper to be a registered liquidator.

#### ***Disqualified persons: s1282(4)***

[PS 186.74] A registered liquidator must be eligible to be appointed as an external administrator (and to undertake the management) of any body corporate.

[PS 186.75] A person who is disqualified from managing corporations is ineligible to be a registered liquidator under s1282(4) and is not a fit and proper person to be registered as a liquidator because they are inherently incapable of performing the duties of a registered liquidator. In our view, a person who has specific permission to manage only one or more bodies corporate by way of a 'carve out' from a general disqualification under Part 2D.6 is still disqualified from managing corporations generally.

[PS 186.76] Section 206B sets out the reasons for disqualification that are potentially most relevant to applicants for registration as a liquidator. Under that section, a person is automatically disqualified from managing a corporation if they have been convicted of certain types of offences or if they are personally insolvent under Australian or foreign law.

**Resident in Australia: s1282(5)**

[PS 186.77] Under s1282(5), we have a discretion to refuse to register as a liquidator a person who is not resident in Australia. 'Resident' is not defined in the Act. It is a word that can be used in a variety of senses, and its meaning depends on its context: *Henry v Boehm* (1973) 128 CLR 482. Its meaning in other legislative contexts does not determine its meaning for Part 9.2.

[PS 186.78] In the context of liquidator registration, we interpret 'resident in Australia' as requiring a degree of permanence in the person's living arrangements in Australia, but not necessitating continuous physical presence in Australia.

[PS 186.79] Our interpretation recognises that registered liquidators:

- (a) are appointed as external administrators under Australian law and in that capacity will be applying Australian law;
- (b) have obligations under Australian law to creditors (among others);
- (c) must be able to be directly supervised by ASIC and the CALDB, and be subject to the jurisdiction and control of Australian courts;
- (d) are appointed to external administrations that often last a number of years; and
- (e) remain registered until their registration is cancelled or they die (see s1282(8)).

**Security: s1284**

[PS 186.80] If we grant your application for registration as a liquidator, you must lodge security for the due performance of your duties as a registered liquidator: s1284(1). This requirement provides a source of funds to compensate people who may suffer pecuniary loss if a registered liquidator fails to perform their duties adequately and properly: see reg 9.2.05(1).

[PS 186.81] We will only grant your application for registration as a liquidator if we are satisfied that you comply (or will comply immediately upon registration) with our policy in [PS 33] on this security.

[PS 186.82] Under [PS 33], you must:

- (a) lodge a performance bond of the kind specified in [PS 33]; or
- (b) meet the alternative compensation arrangements set out in [PS 33.9A]–[PS 33.9C] that we accept as the basis for adopting a no-action approach to non-compliance with s1284.

Note: These alternative arrangements are that you:

- (a) hold a public practice certificate from a professional accounting body (as defined in 'Key terms' ) and undertake to maintain that public practice certificate; and
- (b) undertake to remain covered by insurance that meets the requirements for a public practice certificate and that satisfies [PS 33.9B]. The insurance must cover conduct of the registered liquidator (and staff acting on their behalf) in their capacity as an external administrator.

## **B What are your ongoing obligations as a registered liquidator?**

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### **Our policy**

[PS 186.83] To remain registered as a liquidator, you must on an ongoing basis:

- (a) perform adequately and properly the duties and functions of a registered liquidator (see [PS 186.84]);
- (b) remain a fit and proper person to be registered (see [PS 186.85]–[PS 186.90]);
- (c) not become disqualified from managing corporations under Part 2D.6;
- (d) remain resident in Australia (see [PS 186.91]);
- (e) maintain security that complies with our policy on s1284 (see [PS 186.92]); and
- (f) lodge triennial statements under s1288 (see [PS 186.93]).

### ***Perform duties and functions adequately and properly***

[PS 186.84] The obligation to perform adequately and properly your duties and functions as a registered liquidator means that you must comply with all the legal and equitable duties under the Act, other domestic legislation and the general laws that apply to you in your capacity as a registered liquidator or as appointee to a particular external administration. This obligation includes adequately and properly managing absences: see [PS 186.95] and [PS 186.102]–[PS 186.105].

### ***Remain fit and proper***

[PS 186.85] We will consider that you are not fit and proper to remain registered as a liquidator if:

- (a) we consider that you are no longer capable of performing adequately and properly the duties and functions of a registered liquidator (see [PS 186.87]–[PS 186.90]); or
- (b) any of the circumstances or events referred to in [PS 186.23] have occurred or apply to you.

[PS 186.86] We *may* consider that you are no longer fit and proper to remain registered as a liquidator if:

- (a) any of the circumstances or events referred to in [PS 186.24] have occurred or apply to you; or
- (b) you have ceased to be a member of a relevant professional body; or

- (c) we have received serious or numerous complaints about you or your staff.

This list is not exhaustive.

### No longer capable of performing duties

[PS 186.87] We will consider that you are no longer capable of performing adequately and properly the duties and functions of a registered liquidator if we consider you do not have:

- (a) sufficiently current Australian corporate insolvency knowledge, skills and experience (see [PS 186.88]–[PS 186.90] and [PS 186.113]); or
- (b) adequate practice capacities (see [PS 186.114]).

[PS 186.88] When we consider whether you have sufficiently current Australian corporate insolvency knowledge, skills and experience, we will take into account:

- (a) the number and type of insolvent Ch 5 appointments (that is, other than as liquidator in a members' voluntary winding up) you have taken;
- (b) the nature and extent of your involvement in insolvent Ch 5 external administrations where you were not the external administrator;
- (c) the nature and extent of your involvement in foreign corporate external administrations;
- (d) the nature and extent of your involvement in other corporate insolvency work, in Australia or overseas, that in ASIC's opinion is sufficiently connected to the knowledge, skills and experience required to perform the duties and functions of a registered liquidator;
- (e) the nature and extent of your participation in continuing professional development activities; and
- (f) any other relevant factors.

[PS 186.89.] We will generally consider that you do not have sufficiently current Australian corporate insolvency knowledge, skills and experience if you have not taken any Ch 5 appointments (other than as liquidator in a members' voluntary winding up) for 3 consecutive years.

[PS 186.90] We *may* consider that you do not have sufficiently current Australian corporate insolvency knowledge, skills and experience if, for a consecutive period of more than 12 months, you have not:

- (a) been engaged in any corporate insolvency work of the kind referred to in paragraphs (a)–(d) of [PS 186.88]; or
- (b) undertaken appropriate continuing professional development activities.

Note: See also [PS 186.95] and [PS 186.112]–[PS 186.113].

### ***Remain resident in Australia***

[PS 186.91] We will generally consider that you have ceased to be resident in Australia if you have lived outside Australia for a continuous period of more than 12 months.

Note 1: This does not imply that absence from Australia for more than 12 months is the only circumstance where we may consider you have ceased to be resident in Australia.

Note 2: See also [PS 186.95].

### ***Maintain security***

[PS 186.92] We will treat non-compliance with our policy in [PS 33] as grounds for applying to the CALDB to cancel or suspend your registration under s1292(2)(d) for failure to perform adequately and properly your duties as a registered liquidator.

### ***Lodge triennial statements***

[PS 186.93] We will generally only extend the time for lodging a triennial statement under s1288 if:

- (a) you apply for an extension before the due date for lodgement; and
- (b) we are satisfied that exceptional circumstances beyond your control will prevent you lodging it within time.

### ***Monitoring your compliance***

[PS 186.94] We will monitor your compliance with your ongoing obligations as a registered liquidator. When assessing your compliance, the factors we will take into account include whether you have:

- (a) contravened, or caused a body corporate of which you are external administrator to contravene, a provision of the Act or any other legal or equitable obligation;
- (b) complied with ASIC policy or other guidance on the adequate and proper performance of your obligations; and
- (c) complied with professional standards, practices and principles, including codes of conduct and statements of best practice of a relevant professional body or an insolvency industry body of which you are a member.

This list is not exhaustive.

[PS 186.95] When assessing whether you have complied with the obligations in paragraphs (a), (b) or (d) of [PS 186.83], we will take into account any information you have provided to us in connection with an extended absence: see [PS 186.127]–[PS 186.132].

Note: For the definition of extended absence, see 'Key terms'.

### ***Transitional arrangements***

[PS 186.96] Our policy in this section applies immediately. We consider that it does not impose any undue additional costs or other burdens on currently registered liquidators that would warrant a transition period.

### **Underlying principles**

[PS 186.97] Registered liquidators have legal and equitable obligations under the Act, other domestic legislation and the general law. Some of these obligations are express while others are inherent in, or necessarily implied from, express obligations.

[PS 186.98] ASIC and the public must have confidence that persons who are on the register of liquidators maintained by ASIC under Part 9.2 are still capable of undertaking the work that a registered liquidator is entitled to perform, are still fit and proper persons to undertake such work and still satisfy the other criteria for gaining registration.

### **Explanation**

[PS 186.99] Under s1282(8), a person's registration as a liquidator lasts until it is cancelled or the person dies. A registered liquidator may ask ASIC to cancel their registration: s1290(1).

Note See also [PS 186.133]–[PS 186.137].

[PS 186.100] Alternatively, on an application by ASIC, the CALDB:

(a) may cancel or suspend a registered liquidator's registration for breaches of specific and general obligations (s1292(2)); and

Note: The CALDB may also impose other sanctions under s1292(9).

(b) must cancel a registered liquidator's registration in the event of disqualification under Part 2D.6 or mental infirmity (s1292(7)).

[PS 186.101] The CALDB's power to cancel or suspend the registration of, or otherwise sanction, a registered liquidator means that registered liquidators have ongoing obligations to conduct themselves and perform their duties and functions in a way that does not trigger the CALDB's powers.

### ***Perform duties and functions adequately and properly***

[PS 186.102] To perform adequately and properly the duties and functions of a registered liquidator, you must comply with all the obligations that apply to you in your capacity as a registered liquidator or as appointee in a particular external administration.

[PS 186.103] These obligations include:

- (a) general law duties to exercise reasonable care, competence and skill, and to perform your duties and functions with the highest standards of honesty and integrity; and
- (b) statutory duties in s180–184 (including care and diligence and good faith).

[PS 186.104] You also have express statutory obligations under Part 9.2 to lodge (as applicable) various particulars about yourself and your practice.

Note: These obligations are to lodge:

- (a) within 21 days, particulars if you cease to practise as a registered liquidator, change your name, change your principal place of practice or change the name of your practice (s1287(2)): see Form 905A.
- (b) within 3 days, particulars if you become disqualified under Part 2D.6 from managing corporations (s1287(4)): see Form 906.

[PS 186.105] The CALDB may cancel a liquidator's registration if the liquidator fails to perform adequately and properly their duties or functions: s1292(2)(d). We may make an application to the CALDB if we consider that you have not performed your duties or functions adequately and properly.

#### Implied duty to resign in certain cases

[PS 186.106] The obligation to perform adequately and properly your duties or functions as a registered liquidator may include an obligation to promptly take steps to resign from a particular appointment if an event occurs that disentitles you from continuing to hold that appointment: see *ASIC v Lockwood* SC Vic, No. 04/412, 21 May 2004.

[PS 186.107] You may become disentitled to remain as a particular external administrator because:

- (a) you have become disqualified under Part 2D.6;
- (b) your registration as a liquidator has been cancelled;
- (c) you have become an insolvent under administration;
- (d) of some other reason.

[PS 186.108] In certain cases, you may have a duty to resign if a conflict arises between your duties as external administrator and your own interests, or between the duties you owe as external administrator to different entities.

[PS 186.109] If you resign from one or more appointments, you must lodge with ASIC the appropriate notice of termination of appointment for each relevant appointment: see Form 505. Registered liquidators should note that their disqualification under Part 2D.6 or cancellation of their registration as a liquidator does not automatically result in a change to information on the public register about their status as external administrator of a particular entity.

***Remain fit and proper***

[PS 186.110] When we assess whether you are fit and proper to remain registered, we will take into account:

- (a) whether you are still capable of performing adequately and properly the duties and functions of a registered liquidator;

Note: We consider that a person who is no longer capable of adequately and properly performing the duties and functions of a registered liquidator is no longer a fit and proper person to remain a registered liquidator: see [PS 186.69] and [PS 186.112]–[PS 186.114].

- (b) whether any of the circumstances or events referred to in [PS 186.23] or [PS 186.24] have occurred or apply to you;
- (c) your relationship with a relevant professional body of which you are or have been a member since your registration;

Note: This includes whether you have ceased to be a member of the body and, if so, the reasons. Our view on whether you remain fit and proper to be registered will be negatively influenced by a decision of a relevant professional body that you are no longer fit and proper to be one of its members.

- (d) the number and seriousness of any complaints we have received about you and/or your staff; and

Note: Substantiated complaints may indicate either that you are not performing your duties or functions adequately and properly, or that you are otherwise not fit and proper to remain registered.

- (e) any other relevant factors.

[PS 186.111] The CALDB may cancel a liquidator's registration if they are not a fit and proper person to remain registered: s1292(2)(d). We may make an application to the CALDB if we consider that you are not a fit and proper person to remain a registered liquidator.

**No longer capable of performing duties**

[PS 186.112] To remain capable of adequately and properly performing the duties and functions of a registered liquidator, you must maintain:

- (a) the currency of your knowledge, skills and experience (see [PS 186.113]); and
- (b) the adequacy of your practice capacities (see [PS 186.114]).

[PS 186.113] We expect you to maintain the currency of your knowledge, skills and experience by:

- (a) taking insolvent Ch 5 appointments;

Note: This is why we registered you, and it is the most effective way of maintaining the knowledge, skills and experience that a registered liquidator needs to adequately and properly perform their duties and functions. We will generally consider that your knowledge, skills and experience are not sufficiently current if you have not taken any insolvent Ch 5 appointments for 3 years, whether or not you have been engaged in other corporate insolvency work. In relation to the exclusion of members' voluntary liquidations,

see [PS 186.52]. We think a 3-year period adequately allows for the cyclical nature of corporate insolvencies, and that if you have taken no new insolvent Ch 5 appointments in 3 years, you are likely to have ceased practising as a registered liquidator.

- (b) undertaking other corporate insolvency work of the kind referred to in paragraphs (b)–(d) of [PS 186.88] if, for some reason, you are not able to take any insolvent Ch 5 appointments for a period of up to 3 years; and

Note: For paragraph (d) of [PS 186.88], the types of other corporate insolvency work that we will generally consider to be ‘sufficiently connected’ are:

- (a) insolvency advisory work for corporate reconstructions or informal work-outs;
- (b) secondment to or engagement by ASIC doing insolvency work;
- (c) secondment to or engagement by a lending institution in a debt management or advisory role focusing specifically on insolvent or potentially insolvent corporate borrowers;
- (d) technical or training roles in a corporate insolvency practice; and
- (e) technical roles in an insolvency professional organisation.

However, we will *not* consider as being ‘sufficiently connected’ your work in a practice management or risk management role in an insolvency practice, or other work that does not substantially involve the application of specific insolvency knowledge and skills.

- (c) undertaking continuing professional development activities (CPD) in accountancy, commercial law or corporate insolvency law and practice, as appropriate to remain up-to-date with developments affecting your work as a registered liquidator.

Note: Registered liquidators who are members of a relevant professional body usually must meet specific CPD requirements to remain a member. Compliance with those CPD requirements may enable a registered liquidator to remain sufficiently up-to-date for our purposes, provided the CPD they undertake is connected to their work as a registered liquidator. Otherwise, we expect registered liquidators to remain appropriately up-to-date by, for example, attending professional development programs offered by the IPAA or other reputable education providers.

[PS 186.114] We expect you to maintain the ongoing adequacy of your practice capacities by continuously monitoring your resources and the demands of your current and anticipated workload. It is particularly important for registered liquidators whose practice undergoes changes or who move to a different practice to ensure that their practice capacities remain adequate.

### Notifying ASIC

[PS 186.115] Even though there is currently no express obligation under the Act, we expect you to notify us within 21 days if any circumstance or event occurs or applies to you that means we will or may consider that you are no longer a fit and proper person to be registered.

Note: This specifically includes (but is not limited to) a circumstance or event mentioned in [PS 186.23]–[PS 186.24].

[PS 186.116] We also expect registered liquidators to request cancellation of their registration if, under our policy, they are no longer fit and proper to remain registered, including for one of the reasons set out in [PS 186.133].

Note: See also [PS 186.134]–[PS 186.137].

[PS 186.117] These measures will help us ensure that only persons who are fit and proper to be registered liquidators remain on the register.

### ***Not become disqualified***

[PS 186.118] A registered liquidator who becomes disqualified from managing corporations under Part 2D.6 of the Act is automatically no longer entitled to hold any appointment as an external administrator, and therefore has an inherent obligation immediately to take steps to resign from all the appointments held at that time. If they fail to do so, we may take action to compel removal. Depending on the type of appointments held at the time, we may also seek appointment of a replacement external administrator.

[PS 186.119] In our view, a registered liquidator who is no longer eligible to be appointed as any type of external administrator is also no longer a fit and proper person to be a registered liquidator. If you do not request cancellation of your registration under s1290(1) immediately upon becoming a disqualified person, we will apply to the CALDB for cancellation of your registration under s1292(7) and/or 1292(2)(d).

Note: For details of how to apply for cancellation of your registration, see [PS 186.133]–[PS 186.137].

### ***Remain resident in Australia***

[PS 186.120] The CALDB may cancel a liquidator's registration if they cease to be resident in Australia: s1292(2)(d). We may make an application to the CALDB if we consider that you have ceased to be resident in Australia.

### ***Maintain security***

[PS 186.121] Registered liquidators have an express obligation under s1284(1) to maintain security. If you are relying on alternative insurance arrangements under [PS 33.9A]–[PS 33.9C], you must:

- (a) comply at all times with that policy; or
- (b) immediately provide a performance bond that complies with [PS 33].

### ***Lodge triennial statements***

[PS 186.122] Registered liquidators must lodge a triennial statement under s1288 within 1 month after the third anniversary date of registration, and thereafter at 3-yearly intervals: see Form 908.

[PS 186.123] The information provided in a triennial statement is intended to help us monitor a registered liquidator's compliance with ongoing obligations. We will therefore only exercise our power under s1288(4) to extend the period for lodging a triennial statement if we are

satisfied that exceptional circumstances beyond the control of the registered liquidator will prevent the registered liquidator from lodging the statement within time.

Note: Examples of exceptional circumstances may be sudden injury or serious ill health. We do not consider that a heavy workload or preventable circumstances are exceptional circumstances beyond a registered liquidator's control.

[PS 186.124] The CALDB may cancel a liquidator's registration if they fail to lodge a triennial statement: s1292(2)(a)(i).

### **Monitoring your compliance**

[PS 186.125] We have direct powers under s1292 to apply to the CALDB for cancellation or suspension of your registration as a liquidator and/or for one of the lesser sanctions referred to in s1292(9).

[PS 186.126] We also have power under various provisions of the Act to apply to the court in relation to your conduct or proposed conduct as a registered liquidator in your capacity as a particular external administrator: see, for example, s423(2), 447E(3), 536(2), 1324(1)–(2).

### **Extended absence**

[PS 186.127] We consider that when you take extended leave from work or are absent from Australia for an extended period, you potentially breach (at least) the ongoing obligations to:

- (a) perform adequately and properly your duties as a registered liquidator (particularly where you still hold an appointment);

Note: External administrators must personally attend to each external administration, even if they are appointed jointly and severally.

- (b) remain fit and proper to be registered;

Note: While you are on leave, you are not continuing to accept appointments and may not be sufficiently maintaining the currency of your knowledge, skills and experience. This means you are potentially failing to remain capable of performing adequately and properly your duties and functions.

- (c) remain resident in Australia.

Note: Whether this obligation is breached will depend partly on the length of time you are outside Australia.

[PS 186.128] However, we recognise that you may have valid reasons for taking leave from work or for leaving Australia for a period longer than 3 months (e.g. to undertake further study, to gain complementary experience, or for family reasons).

[PS 186.129] Therefore, we will generally not take regulatory action against you for failure to comply with the obligations in paragraphs (a), (b) or (d) of [PS 186.83] during a period of extended absence if, before

you start the extended absence, you give us written notice of:

- (a) your proposed extended absence, indicating approximate start and finish dates, reason for absence and the country or countries where you intend to spend the absence; and
- (b) the arrangements you have made for:
  - (i) your continuing appointments (if any), including transfer of your files; and
  - (ii) maintaining your performance bond or insurance under [PS 33].

[PS 186.130] Our ‘no-action’ approach will generally be limited to 12 months from the start of your absence and will not exceed 3 years. It will only apply to non-compliance that occurs by reason of or during the period of extended absence. In the case of the obligation to remain fit and proper, it will only apply to the aspect of fitness and propriety that relates to your maintenance of current knowledge, skills and experience. We may impose conditions on taking a ‘no-action’ approach in a particular case.

[PS 186.131] We ask you to give us 2 months’ notice of your intended extended absence so that we can discuss with you (if necessary) aspects of your arrangements to cover your absence. However, if this amount of notice is not practical, you should give us as much notice as possible. Whatever the reason for your extended absence or your location while absent, we will need contact details so that we can communicate directly with you while you are absent.

[PS 186.132] Telling us the reason for your absence and the country or countries where you will spend your time means that we can assess the relevance of any work you do during your absence for your ongoing registration in Australia.

### ***Cancelling your registration***

[PS 186.133] You may ask us to cancel your registration as a liquidator under s1290(1) at any time. We expect you to request cancellation of your registration if:

- (a) you cease to practise as a registered liquidator;
- (b) you have not taken any Ch 5 appointments for 3 years (see [PS 186.89] and paragraph (a) of [PS 186.113]), unless you have informed us that this is only because you are completing existing appointments prior to ceasing to practise as a registered liquidator;
- (c) you leave Australia permanently, or you have lived outside Australia for 12 months and you do not intend to return immediately (see [PS 186.91]);
- (d) you become a disqualified person under Part 2D.6; or
- (e) you cease to be fit and proper to remain registered for any other reason.

[PS 186.134] We expect you to request cancellation of your registration in these situations even though there is currently no express obligation under the Act to do so. This is so that the register contains only the names of persons who remain fit and proper to be registered.

[PS 186.135] If you do not request cancellation of your registration in these situations, we have the power to apply to the CALDB for cancellation of your registration under s1292(2), and under s1292(7) in the case of disqualification under Part 2D.6.

[PS 186.136] We have a discretion whether to grant your request for cancellation and will not automatically grant it. We will generally only cancel your registration under s1290(1) if:

- (a) we are satisfied that you have made adequate arrangements for transferring your files, resigning from all your appointments and, if relevant, replacing you as appointee; and
- (b) there are no outstanding applications to the CALDB in relation to your conduct and we are not considering making such an application; and
- (c) there is no legal action pending against you or that otherwise involves you in your capacity as an external administrator.

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### **[PS 186.137] How to apply to cancel your registration**

- A** If you have ceased to practise because you have become a disqualified person under Part 2D.6, you should lodge the following forms at the same time:
- Form 906 (notification of disqualification) within 3 days of becoming disqualified; and
  - Form 905A (notification of cessation) with the lodgement fee (Form 906 does not contain a section for requesting cancellation of your registration); and
  - Form 505 for each terminating appointment (see [PS 186.109]).

- B** If you have ceased to practise for reasons other than because you have become a disqualified person, you should:

- complete the relevant section in Form 905A; and
- lodge Form 905A (with the lodgement fee) within 21 days of ceasing to practise.

Note: For example, you may have ceased to practise because you are no longer resident in Australia, because you are no longer able to comply with our policy on s1284 (security or alternative insurance arrangements) or because you wish to retire.

- C** If Form 905A is not appropriate to your circumstances, you should make your request in writing and send it to:

Liquidator Registration Team,  
Australian Securities and Investments Commission,  
GPO Box 9827, Adelaide SA 5001.

You can also contact ASIC Infoline on 1300 300 630 for general information and assistance.

## C Other categories

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### Our policy

#### ***Official liquidator***

[PS 186.138] We will register a liquidator as an official liquidator if:

- (a) we receive from the registered liquidator:
  - (i) a written request for registration under s1283 that briefly states why registration as an official liquidator is sought;
  - (ii) a written undertaking to ASIC that, if they are registered as an official liquidator, they will not refuse consent to act as liquidator in a court winding up solely because the company in question has no assets or otherwise appears to have insufficient funds to cover their anticipated costs of the liquidation;
  - (iii) a written acknowledgement that, when appointed by the court to conduct a particular winding up, an official liquidator is an officer of the court and as a result has responsibilities to the court in connection with that external administration; and
  - (iv) the prescribed fee; and
- (b) we are satisfied that there is no reason based on fitness and propriety why we should refuse the request.

[PS 186.139] We will accept concurrent applications for registration as a liquidator and as an official liquidator. If we refuse your application for registration as a liquidator, we will automatically refuse your application for registration as an official liquidator.

#### ***Liquidator of a specified body corporate***

[PS 186.140] We will not register a person as liquidator of a specified body corporate if the body corporate is or may be insolvent.

#### ***Transitional arrangements***

[PS 186.141] Our policy in this section applies immediately and replaces our policy in [PS 24] on the additional criteria we require a registered liquidator to have for registration as an official liquidator.

[PS 186.142] If, when this policy statement is published, you have been a registered liquidator for less than 2 years and you wish to be registered as an official liquidator, we will not be satisfied of your fitness and propriety under paragraph (b) of [PS 186.138] unless you demonstrate that you have the minimum corporate insolvency experience and practice capacities set out in [PS 186.19]–[PS 186.20]. See also [PS 186.149].

[PS 186.143] If you are currently an official liquidator, we encourage you to provide the same undertaking and acknowledgement that we require from applicants for registration as an official liquidator under paragraphs (a)(ii) and (iii) of [PS 186.138].

## Underlying principles

[PS 186.144] The Act distinguishes between registered liquidators and official liquidators in that only an official liquidator may be appointed by the court to be a provisional liquidator or liquidator of a company: see s472(1)–(2) and 532(8).

[PS 186.145] In view of developments in corporate insolvency law and practice (particularly the introduction of Part 5.3A), we consider that there is no significant policy justification for ASIC to continue to distinguish between the experience and resources required for registered liquidators who may be appointed by the court and those who may not.

[PS 186.146] Our policy therefore aims to minimise the additional requirements for registration as an official liquidator while recognising the legislative distinction between the two categories.

## Explanation

### *Official liquidator*

[PS 186.147] We have a discretion to register as official liquidators as many registered liquidators as we think fit: s1283(3). We also have a discretion under s1291 to cancel or suspend an official liquidator's registration or restrict conduct by an official liquidator.

[PS 186.148] We will register as an official liquidator any registered liquidator who provides us with the items in paragraph (a) of [PS 186.138], unless we are satisfied that there is a reason based on fitness and propriety for refusing the request. We will accept any reason for seeking registration as an official liquidator, as long as it is reasonable on its face.

[PS 186.149] We think that it is appropriate to review your fitness and propriety before we accept the written undertaking and acknowledgement in paragraphs (a)(ii) and (iii) of [PS 186.138]. Therefore:

- (a) if you are already a registered liquidator, refusal of your application on fitness and propriety grounds will generally be based on our assessment of your conduct and reputation while a registered liquidator, including whether we may need to impose conduct restrictions through an undertaking under s1291(2); and
- (b) on a transitional basis, if you have been a registered liquidator for less than 2 years at the date of publication of this policy statement, we will also consider your corporate insolvency experience and practice capacities: see [PS 186.142].

[PS 186.150] We consider it is no longer appropriate to require registered liquidators seeking registration as an official liquidator to:

- (a) have additional experience or resources; or

Note: This is because our policy in Sections A and B will mean that registered liquidators will have the minimum experience and type of practice resources that we currently require for official liquidators under [PS 24].

- (b) declare to us in advance that they will consent to all appointments by a specified court.

Note: We take this view because s532(9) is company-specific. In addition, for the purposes of s532(9), most Australian courts require the applicant for a winding-up order to file a consent to act for the particular company signed by the proposed official liquidator, before a liquidator or provisional liquidator is appointed.

[PS 186.151] However, it is essential that a potentially assetless company be able to be wound up by the court. Therefore, a registered liquidator applying for registration as an official liquidator must undertake not to refuse consent to act as liquidator in a court winding up solely on the grounds that the company is assetless or appears to have insufficient funds to cover the liquidator's anticipated professional fees and expenses in the liquidation. We will treat a breach of this undertaking as grounds for using our powers under s1291(1) to cancel or suspend the person's registration as an official liquidator.

[PS 186.152] All registered liquidators appointed as external administrators have fiduciary duties and duties of care, impartiality and integrity. The performance of their duties and the exercise of their powers is subject to supervision by the court whether they are appointed by the court or not: see, for example, s423, 447E, 472(6), 536 and 1321.

[PS 186.153] However, we consider that an applicant for registration as an official liquidator should specifically acknowledge the special relationship that exists between an official liquidator and the court that appoints them to a particular winding up.

### ***Liquidator of a specified body corporate***

[PS 186.154] Under s1282(3), we must (subject to s1282(4) and (5)) grant an application for registration as liquidator of a specified body corporate if we are satisfied that the applicant has sufficient experience and ability (and is a fit and proper person) to act as liquidator of the body given:

- (a) the nature of its property or business; and  
 (b) the interests of its creditors and contributories.

[PS 186.155] We will not be satisfied about the matters set out in s1282(3) if the body corporate is or may be insolvent. In our view, it will never be in the interests of the creditors and contributories of an insolvent body corporate for the body to be wound up by a person who is not registered as a liquidator on a general basis.

[PS 186.156] A person registered as liquidator of a specified body corporate may only act as liquidator of the named body and not any other body. They may not act as any other type of external administrator: see s532(1)(b), 532(4) and 532(8).

Note: A person who is not registered under any category in Part 9.2 may act as:

- (a) a liquidator of a solvent proprietary company under a members' voluntary winding up (see s532(4)); or
- (b) a controller who is not a receiver or a receiver and manager (see s9 definition of 'controller' and s418(1)(d)).

## Key terms

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[PS 186.157] In this policy statement, the following terms have the following meaning:

**Act** *Corporations Act 2001* (Cth).

**administrator** Has the same meaning as in s9.

**ASIC** Australian Securities and Investments Commission.

**ATO** Australian Taxation Office.

**Bankruptcy Act** *Bankruptcy Act 1966* (Cth).

**CALDB** Companies Auditors and Liquidators Disciplinary Board.

**Ch 5** (for example) A Chapter of the Act (in this example, numbered 5).

**Ch 5 appointment** An appointment as external administrator in a Ch 5 external administration.

**Ch 5 external administration** An external administration regulated under Ch 5.

**CLERP 9 Act** *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (Cth).

**controller** Has the same meaning as in s9.

Note: It therefore includes ‘managing controller’, ‘receiver’ and ‘receiver and manager’.

**DCA** Deed of company arrangement.

**deed administrator** Administrator of a DCA.

**extended absence** A period of leave from work or absence from Australia that is longer than 3 months.

**external administration** Where an external administrator is appointed.

**external administrator** Scheme administrator, voluntary administrator, deed administrator, controller, provisional liquidator or liquidator, or a relevant overseas equivalent.

**ICAA** Institute of Chartered Accountants in Australia.

**IPAA** Insolvency Practitioners Association of Australia.

**ITSA** Insolvency and Trustee Service of Australia.

**liquidator** A person appointed to wind up the affairs and distribute the property of a body corporate.

**managing controller** Has the same meaning as in s9.

**NIA** National Institute of Accountants.

**NOOSR** National Office of Overseas Skills Recognition

**Part 9.2** (for example) A Part of the Act (in this example, numbered 9.2).

**practice** The firm or other business structure (whether incorporated or unincorporated) through or by means of which a person conducts or intends to conduct their work as a registered liquidator.

**principal** A partner or sole practitioner of an unincorporated practice, or a member of the board of directors of an incorporated practice.

**professional accounting body** ICAA, CPA Australia or NIA.

**provisional liquidator** A person appointed by the court under s472(2).

**receiver** A person appointed under an instrument or by the court to receive property of a body corporate, who does not manage, and under the terms of the person's appointment does not have power to manage, affairs of the body corporate.

**receiver and manager** Has the same meaning as in s9.

**reg 9.2.01** (for example) A regulation in the *Corporations Regulations 2001* (in this example, numbered 9.2.01).

**registered liquidator** A person registered by ASIC under s1282(2).

**relevant professional body** A body that, in relation to its members (whether generally in their capacity as a member, or specifically in relation to performance of their duties as corporate insolvency practitioners):

- (a) sets standards for professional competency and ethics (including independence and management of conflicts of interest); and
- (b) monitors professional performance and exercises disciplinary functions.

**s1282** (for example) A section of the Act (in this example, numbered 1282).

**scheme administrator** A person appointed to administer an arrangement under Part 5.1.

**voluntary administrator** An administrator of a company but not of a DCA.

## Related information

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[PS 186.158]

### Headnotes

External administration, registration of liquidators, registered liquidator, official liquidator, liquidator of specified body corporate, corporate insolvency

### Policy statements and practice notes

Policy Statement 24 *Registration of official liquidators* [PS 24]

Policy Statement 33 *Security deposits* [PS 33]

Policy Statement 40 *Registration of liquidators—experience criteria* [PS 40]

### Guides/kits

Liquidator registration kit, *How to apply for registration as a liquidator* (September 2005), available at [www.asic.gov.au/insolvency](http://www.asic.gov.au/insolvency)

### Legislation

*Corporations Act 2001*, Chapter 5, Chapter 9, Part 2D.6, Part 5.3A, Part 9.2, s180-184, 206B, 206F, 206G, 411, 418, 423, 447E, 448B, 472, 532, 536, 1279, 1282, 1283, 1284, 1287, 1288, 1290, 1291, 1292, 1321, *Corporations Regulations 2001*, reg 9.2.02, 9.2.04, 9.2.05, *Bankruptcy Act*, Part IX, Part X, s50, 188

### Cases

*Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321

*ASIC v Lockwood* SC Vic, No. 04/412, 21 May 2004

*Davies v Australian Securities Commission* (1995) 131 ALR 295

*Henry v Boehm* (1973) 128 CLR 482

*Hughes and Vale Pty Ltd v The State of NSW (No. 2)* (1955) 93 CLR 127

*Re Lofthouse and ASIC* [2004] AATA 327

*Re Su and the Tax Agents' Board of SA* (1982) 82 ATC 4284

*Stasos v Tax Agents' Board of NSW* (1990) 90 ATC 4950

### Policy proposal papers

*External administration: Liquidator registration* (October 2004)

### Media and information releases

[IR 04-51] ASIC releases policy proposal paper on External administration: Liquidator registration (8 October 2004)



**ASIC**

Australian Securities & Investments Commission

# [PS 33] Policy Statement 33 Security deposits

Chapter 7 — Securities

Chapter 8 — Futures industry

*Issued 25/8/1992*

*Updated 7/6/1993, 4/7/1994, 28/10/1996, 17/6/2003, 22/6/2004*

## Headnotes

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*Sections 786(2)(d), 786A, 826(1), 1284(1), 1284A and 1292(2); reg 7.3.03, 7.3.04, 7.3.06 and 9.2.05; approved form; bank guarantee; claims; discharge of security; execution; insurance bond; irrevocable; liability; payment from deposit; period; performance bond; registration; security deposit; transfer of bond.*

## Introduction

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[PS 33.1] In this Policy Statement, ASIC sets out its requirements for a security deposit lodged as a condition of the grant of an investment adviser's or dealer's licence, or lodged on the grant of registration as a liquidator. Approved forms of wording for the security deposits are published as Pro Formas 13 and 14 and ASIC sets out other relevant matters to assist applicants and registered or licensed persons.

## Background

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[PS 33.2] Under the previous co-operative scheme of corporate regulation, a security deposit required pursuant to the predecessors to either s786(2)(c) or s1284(1) of the Corporations Law (Law) (security deposits) was acceptable in a number of forms, including cash deposits, government issued securities, bank guarantees and insurance bonds. ASIC has reviewed the disadvantages, costs and obligations, such as reports to the Australian Transaction Reporting and Analysis Centre (previously CTRA) and provision of tax file numbers to the

Taxation Department, associated with accepting different types of security deposit.

[PS 33.3] ASIC has resolved that it will only accept as security deposits, performance bonds issued by:

- (a) an Australian bank (as defined by the Law);
- (b) an insurance company registered with the Insurance and Superannuation Commission under the *Insurance Act 1973* (Cth); or
- (c) a state government insurance office (“issuers”).

[*Historical note:* PS 33.3 amended 28/10/1996 by replacing reference to “Life Insurance Act 1945” with “*Insurance Act 1973* (Cth)”.]

[PS 33.4] ASIC requires all new security deposits, whether lodged for a new licence or registration or as substitute for an existing deposit, to comply with this Policy Statement. For the present ASIC will not require existing security deposits which do not comply with this Policy Statement to be withdrawn or replaced but encourages the conversion of existing securities which do not meet the criteria of this Policy Statement.

[PS 33.5] The maximum security deposit prescribed for investment advisers and dealers is \$20,000 and ASIC has determined that the maximum amount for liquidators is \$250,000.

[*Historical note:* PS 33.5 amended 4/7/1994 by replacing “\$50,000” with “\$250,000”.]

## **Approved performance bonds**

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[PS 33.6] A performance bond acceptable as a security deposit must be:

- (a) unconditional;
- (b) revocable only at the request of ASIC;
- (c) payable, in part or whole, immediately on demand by ASIC;
- (d) payable without any reference to any other person;
- (e) unrelated to any other security or agreement; and
- (f) free of any requirement for ASIC to prove its demand.

[PS 33.7] An executed performance bond must be lodged prior to the grant of the licence or registration. The executed bond need not be lodged at the time of application of licence, only at the time of acceptance of ASIC’s letter of offer.

[PS 33.8] It is the responsibility of the applicant to ensure that the performance bond is properly stamped. A licence or registration will not be granted unless the performance bond appears to be properly stamped.

[PS 33.9] A performance bond lodged in the form which ASIC has approved (see [PF 13] and [PF 14]) will normally be accepted without detailed examination. An applicant may use an alternative form of wording for the execution clause, for example to enable the performance bond to be executed as a deed by a person who holds a registered power of attorney for the bank or insurance company, but this may delay granting of a licence or registration while ASIC examines the form of wording used.

## **Alternative arrangement for liquidators**

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[PS 33.9A] ASIC does not intend to take enforcement action for a failure to lodge and maintain security under s1284 where a registered liquidator holds a public practice certificate from either the Institute of Chartered Accountants in Australia (ICAA) or CPA Australia or the National Institute of Accountants (NIA) and the liquidator provides to ASIC, and complies with, an undertaking that the liquidator will maintain professional indemnity insurance in accordance with [PS 33.9B] and maintain a public practice certificate.

*[Historical note: PS 33.9A replaced 17/6/2003. The paragraph (as inserted on 4/7/1994) formerly read:*

*“[PS 33.9A] As an alternative to a security deposit, the ASC will accept an undertaking from all registered liquidators who hold practising certificates from either the Institute of Chartered Accountants in Australia (“ICAA”) or the Australian Society of Certified Practising Accountants (“ASCPA”) to maintain professional indemnity insurance in accordance with the requirements of the ICAA or ASCPA.”*

*PS 33.9A amended 22/6/2004 by inserting the words “or the National Institute of Accountants (NIA)” after the words “or CPA Australia”. ]*

[PS 33.9B] In addition to undertaking to maintain a current practising certificate, the minimum acceptable terms of the professional indemnity insurance will be:

- (a) a minimum of \$250,000 on each and every claim or the sum insured for the practice must not be less than \$500,000 for any

- one claim and in the aggregate during the period of insurance;
- (b) cover for any civil legal liability or any act, error or omission, subject to reasonably common exceptions; and
  - (c) provision for so-called “run-off” cover, whereby the liquidator maintains the policy for at least seven years (or whatever other period ASIC deems appropriate) after ceasing registration.

[*Historical note:* PS 33.9B inserted 4/7/1994. Amended 17/6/2003 by replacing paragraph (a). Paragraph (a) formerly read:

“(a) a minimum of \$250,000 on each and every claim;”]

[PS 33.9C] In all other respects, liquidators must comply with the requirements for a member in public practice of either the ICAA or CPA Australia or the NIA.

[*Historical note:* PS 33.9C inserted 4/7/1994. Amended 17/6/2003 by replacing reference to “ASCPA” with “CPA Australia”. Amended 22/6/2004 by inserting the words “or the NIA” after the words “or CPA Australia”.]

## **Payment from security deposit and topping up security deposit**

[PS 33.10] The Law requires a security deposit to be lodged and *maintained*. The terms of most performance bonds provide for a maximum liability to the issuer of the bond. A client of a licensee, or a person affected by the conduct of a liquidator, (collectively “client”) may suffer pecuniary loss due to the failure of the licensee or liquidator to carry out the business properly. If that client makes a claim, ASIC may apply part or all of the security deposit to the claim. In this case, the payment would reduce the sum of the performance bond to less than the amount required to be maintained, placing the licensee or liquidator in breach of its licence or registration conditions.

[PS 33.11] If a successful claim is made and ASIC applies part of the bond, a new performance bond will be required, either for the sum paid out or for the whole of the original amount. If the latter, ASIC will then request the issuer to revoke the now depleted, original performance bond.

[PS 33.12] Such arrangements will rarely be required because in most cases the licensee or liquidator will pay valid claims by clients who have been damaged without ASIC being required to apply the security deposit.

In many cases, clients and licensees will be able to reach commercial settlement without recourse to official claims. Where a claim is made, ASIC must give the licensee or liquidator an opportunity to be heard before deciding whether a person should be compensated out of a security deposit. After, ASIC will give the licensee or liquidator an opportunity to pay the amount directly to a successful claimant before making an order for application of the security deposit.

[PS 33.13] If:

- (a) ASIC has given a licensee or liquidator an opportunity to be heard in relation to a claim;
- (b) ASIC has decided that a client should be compensated; and
- (c) the licensee or liquidator then decides not to, or is unable to, make direct payment to the person concerned of the amount determined by ASIC,

ASIC will consider whether a person's licence should be revoked (under s826(1)(j) or (k)) or whether it should make application to the Auditors and Liquidators Disciplinary Board for cancellation of a person's registration (under s1292(2)(d)).

## **Change of issuer of security deposit**

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[PS 33.14] A licensee or liquidator who wishes to change the issuer of the performance bond must ensure that there is an acceptable security bond in place at all times. ASIC will not consider revoking or discharging a performance bond until a replacement bond is in place.

[PS 33.15] It is for the licensee or liquidator to prove to ASIC that the change will be effective and seamless. ASIC will not revoke the existing security unless:

- (a) the new bond is in the form approved by ASIC (see Pro Forma 13 and Pro Forma 14);
- (b) the new bond explicitly states that it can be drawn against for application to claims relating to failure of the licensee or liquidator to perform its business adequately and properly before the issue of the bond; or
- (c) the issuer of the earlier bond issues a further performance bond which is specified to be payable for claims arising from the earlier period.

[*Historical note:* PS 33.15 amended 7/6/1993 by inserting new paragraph (a).]

## Termination or discharge

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[PS 33.16] The issuer's liability may only cease and ASIC will only consent to the discharge of the security deposit, when ASIC is satisfied that it no longer has a purpose, ie when no future claims are likely to be made. This will be well after the licensee or liquidator has ceased to carry on the business of liquidator or licensee. The provisions of (reg 7.3.04(4)(b) and reg 9.2.05(3)(b)) indicate that a period of six months after the licence or registration has ceased is a minimum period.

[PS 33.17] A person who has ceased to carry on a business of liquidator, adviser or dealer, or the issuer of a performance bond, should apply to ASIC for consent to the discharge of the security deposit at least six months after the cessation and should supply to ASIC the reasons that it is no longer appropriate for ASIC to hold the security deposit. Any application should be accompanied by evidence that the notification provisions of reg 7.3.06 have been met.

[PS 33.18] Once ASIC is satisfied that discharge is appropriate it will write to the issuer of the performance bond releasing it from any further obligations and notify the licensee or liquidator.

[PS 33.19] Discharge of a security deposit in no way alters any other civil or criminal liabilities of the licensee or liquidator and in no way affects the rights of any person to institute any action in relation to those civil or criminal liabilities.

## Applications

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[PS 33.20] Applicants should ensure that their applications provide sufficient details of the suitability of the issuer of the performance bond. Applicants should also ensure that the relevant branch or office of the issuer is identified. Applications which do not sufficiently address these matters will not be considered by ASIC until all relevant information is provided.

[PS 33.21] An applicant should lodge the executed performance bond with his or her letter of acceptance of ASIC's letter of offer of a licence or registration, at the ASIC Regional Office at which the application was lodged. (See Pro Forma 13 and Pro Forma 14.) This should normally be in the State or Territory of the applicant's principal place of business.

**[PF 14]**  
**Pro Forma 14**  
**Performance bond liquidator**

**Policy Statement 33**

*Updated 7/2/1994, 2/5/1994, 21/6/2005*

*For use under Corporations Act 2001 Part 9.2 and Corporations Regulations Part 9.2.*

To: Australian Securities & Investments Commission (the "Commission") of *[insert address of ASIC Regional Office]*

On account of: *[name and address of liquidator]* (the "Liquidator")

Amount of this Bond \$A *[amount]*

- 1 *[name and address of bank or insurance company]* (the "Issuer") at the request of the Liquidator and for valuable consideration hereby irrevocably and unconditionally undertakes to pay to the Commission upon demand by the Commission any sum or sums demanded in accordance with paragraph 2, without conditions, without reference to the Liquidator and notwithstanding any contrary request or instruction by the Liquidator.
- 2 Each demand by the Commission:
  - (a) shall be in writing signed on behalf of the Commission;
  - (b) shall state:
    - (i) the amount demanded (which shall not exceed the Amount of the Issuer's Liability); and
    - (ii) that the amount demanded is required in order to be applied as prescribed by the Corporations Regulations;
  - (c) shall be left at or posted to the address of the Issuer stated herein or currently recorded in the records kept by the Commission.
- 3 The Issuer's Liability at any time under this Bond shall be the Amount of this Bond reduced by the amount of each payment made by the Issuer under paragraph 2 up to that time.
- 4 This Bond is independent of any other security lodged or required to be lodged or maintained by the Liquidator with the Commission in accordance with the Corporations Act 2001.
- 5 This Bond may be discharged or released wholly or in part only as prescribed by the Corporations Regulations. Discharge or release of this Bond will not prejudice or adversely affect any other security lodged with the Commission in respect of the Liquidator.
- 6 The Issuer may, after giving 14 days notice in writing to the Commission, pay to the Commission an amount equal to the Issuer's Liability; upon receipt of such moneys by the Commission the same shall be paid to the credit of an account with a bank



**[OR]**

The common seal of )  
is affixed in accordance with its Articles of )  
Association and in the presence of: )

.....  
Director

.....  
Name of Director (print)

.....  
Secretary

.....  
Name of Secretary (print)

**Signed sealed and delivered by** ) .....  
) (signature)  
in the presence of: )

.....  
Witness

.....  
Name of Witness (print)

**[OR]**

The common seal of )  
is affixed in accordance with its Articles of )  
Association and in the presence of: )

.....  
Director

.....  
Name of Director (print)

.....  
Secretary

.....  
Name of Secretary (print)

## [PF 221]

### Liquidator's undertaking: Pro forma deed for partners/sole proprietors

*Issued 30/9/2005*

#### Australian Securities and Investment Commission ("ASIC") Corporations Act 2001 – Subsection 1284(1)

#### Liquidator's Undertaking

To: **Australian Securities and Investments Commission of**  
[*address of ASIC Office*]

Undertaking by: [*Liquidator's name*]  
[*Address*]  
[*Address*]

#### 1. Background

1.1 Subsection 1284(1) of the *Corporations Act 2001* (the "Act") requires a person registered as a liquidator under subsection 1282(1) of the Act to:

“lodge and maintain with ASIC a security for the due performance of his or her duties as such a liquidator in such form and for such amount as is, from time to time, determined by ASIC in relation to that liquidator and with such surety or sureties (if any) as ASIC, from time to time, requires.”

1.2 For the purposes of subsection 1284(1) of the Act, ASIC has determined that the security for [*Liquidator*] will be for an amount of \$250,000.

1.3 ASIC has stated in Policy Statement 33: *Security Deposits* ("PS 33") that it will not take enforcement action against a liquidator who fails to lodge and maintain a security under subsection 1284(1) of the Act where the liquidator:

1.3.1 holds a public practice certificate (a "Certificate") from either the Institute of Chartered Accountants in Australia (the "ICAA"), CPA Australia (the "CPA") or the National Institute of Accountants (the "NIA"); and

1.3.2 provides to ASIC, and complies with an undertaking that the liquidator will maintain professional indemnity

insurance (“PI Insurance”) in accordance with PS 33 and maintain a Certificate.

- 1.4 *[Liquidator]* holds a Certificate from the ICAA / CPA / NIA *{delete whichever is not appropriate}*.
- 1.5 *[Liquidator]* has provided ASIC with a certificate of currency for a policy of PI Insurance the terms of which satisfy the requirements of PS 33.
- 1.6 *[Liquidator]* is aware that in the event he/she does not:
- 1.6.1 hold a Certificate; and
- 1.6.2 hold PI Insurance which complies with PS 33; and
- 1.6.3 comply with the requirements applicable in relation to the Certificate that he/she holds,
- it will be necessary to lodge and maintain with ASIC a security in the amount of \$250,000 as required by subsection 1284(1) of the Act.

## 2. Undertakings

- 2.1 *[Liquidator]* undertakes to ASIC that, for so long as he/she remains registered as a liquidator and does not lodge and maintain with ASIC a security for the due performance of his or her duties as a liquidator in accordance with subsection 1284(1) of the Act, he/she will:
- 2.1.1 hold a Certificate; and
- 2.1.2 comply with the requirements applicable in relation to his/her Certificate; and
- 2.1.3 notify ASIC in writing within 14 days if:
- (a) he/she ceases to hold a Certificate for any reason, including because it has expired without being renewed or replaced; or
  - (b) his/her right to practice under the Certificate is suspended; or
  - (c) he/she fails to comply with any requirement applicable in relation to his/her Certificate.
- 2.2 *[Liquidator]* undertakes to ASIC that, for so long as he/she remains registered as a liquidator and does not lodge and maintain with ASIC a security for the due performance of his or

her duties as a liquidator in accordance with subsection 1284(1) of the Act, he/she will:

2.2.1 hold PI Insurance, which satisfies the requirements of PS 33; and

2.2.2 notify ASIC in writing within 14 days of ceasing to hold such PI Insurance for any reason including because the policy expired without being renewed or replaced; or because of any variation its terms so that it no longer satisfies the requirements of PS 33; and

2.2.3 provide ASIC with a copy of the PI Insurance policy, cover note or brokers certificate of insurance relating to professional indemnity insurance at any time on the written request of ASIC.

2.3 [*Liquidator*] undertakes to ASIC not to vary or revoke this deed without the prior written agreement of ASIC for so long as he/she remains registered as a liquidator and has not lodged with ASIC a security for the due performance of his or her duties as a liquidator in accordance with subsection 1284(1) of the Act.

### 3. Interpretation

3.1 In this deed, except where the context otherwise requires, a reference to “Policy Statement 33: Security Deposits” or “PS 33” is a reference to that policy statement as amended from time to time and includes a reference to any policy statement issued by ASIC to replace that policy statement.

**Executed as a deed** this                      day of                      200 .

Signed sealed and delivered by:

-----  
[*Liquidator*]

in the presence of:

-----  
[*Witness*]

-----  
[*Name of witness*]

## [PF 222]

### Liquidator's undertaking: Pro forma deed for employees

*Issued 30/9/2005*

#### Australian Securities and Investment Commission ("ASIC") Corporations Act 2001 – Subsection 1284(1)

##### Liquidator's Undertaking

To: **Australian Securities and Investments Commission of**  
[*address of ASIC Office*]

Undertaking by: [*Liquidator's name*]  
[*Address*]  
[*Address*]

#### 1. Background

1.1 Subsection 1284(1) of the *Corporations Act 2001* (the "Act") requires a person registered as a liquidator under subsection 1282(1) of the Act to:

“lodge and maintain with ASIC a security for the due performance of his or her duties as such a liquidator in such form and for such amount as is, from time to time, determined by ASIC in relation to that liquidator and with such surety or sureties (if any) as ASIC, from time to time, requires.”

1.2 For the purposes of subsection 1284(1) of the Act, ASIC has determined that the security for [*Liquidator*] will be for an amount of \$250,000.

1.3 ASIC has stated in Policy Statement 33: *Security Deposits* ("PS 33") that it will not take enforcement action against a liquidator who fails to lodge and maintain a security under subsection 1284(1) of the Act where the liquidator:

1.3.1 holds a public practice certificate (a "Certificate") from either the Institute of Chartered Accountants in Australia (the "ICAA"), CPA Australia (the "CPA") or the National Institute of Accountants (the "NIA"); and

1.3.2 provides to ASIC, and complies with an undertaking that the liquidator will maintain professional indemnity

insurance (“PI Insurance”) in accordance with PS 33 and maintain a Certificate.

- 1.4 *[Liquidator]* holds a Certificate from the ICAA / CPA / NIA  
*{delete whichever is not appropriate}*.
- 1.5 *[Liquidator]* is an employee of *[Employer]*.
- 1.6 *[Employer]* has provided ASIC with a certificate of currency for a policy of PI Insurance the terms of which satisfy the requirements of PS 33 and which covers *[Liquidator]*.
- 1.7 *[Liquidator]* is aware that in the event he/she does not:
- 1.7.1 hold a Certificate; and
- 1.7.2 hold PI Insurance which complies with PS 33; and
- 1.7.3 comply with the requirements applicable in relation to the Certificate that he/she holds,
- it will be necessary to lodge and maintain with ASIC a security in the amount of \$250,000 as required by subsection 1284(1) of the Act.

## 2. Undertakings

- 2.1 *[Liquidator]* undertakes to ASIC that, for so long as he/she remains registered as a liquidator and does not lodge and maintain with ASIC a security for the due performance of his or her duties as a liquidator in accordance with subsection 1284(1) of the Act, he/she will:
- 2.1.1 hold a Certificate; and
- 2.1.2 comply with the requirements applicable in relation to his/her Certificate; and
- 2.1.3 notify ASIC in writing within 14 days if:
- (a) he/she ceases to hold a Certificate for any reason, including because it has expired without being renewed or replaced; or
- (b) his/her right to practice under the Certificate is suspended; or
- (c) he/she fails to comply with any requirement applicable in relation to his/her Certificate.
- 2.2 *[Liquidator]* undertakes to ASIC that, for so long as he/she remains registered as a liquidator and does not lodge and

maintain with ASIC a security for the due performance of his or her duties as a liquidator in accordance with subsection 1284(1) of the Act, he/she will notify ASIC in writing within 14 days of becoming aware that:

2.2.1 *[Employer]* has ceased to hold PI Insurance which complies with PS 33 for any reason including because the policy expired without being renewed or replaced, or because of a variation in its terms; or

2.2.2 he/she has ceased to be covered by the PI Insurance held by *[Employer]*.

2.3 *[Liquidator]* undertakes to ASIC not to vary or revoke this deed without the prior written agreement of ASIC for so long as he/she remains registered as a liquidator and has not lodged with ASIC a security for the due performance of his or her duties as a liquidator in accordance with subsection 1284(1) of the Act.

### 3. Interpretation

3.1 In this deed, except where the context otherwise requires, a reference to “Policy Statement 33: Security Deposits” or “PS 33” is a reference to that policy statement as amended from time to time and includes a reference to any policy statement issued by ASIC to replace that policy statement.

**Executed as a deed** this                      day of                      200 .

Signed sealed and delivered by:

-----  
*[Liquidator]*

in the presence of:

-----  
*[Witness]*

-----  
*[Name of witness]*

ASIC registered agent number

903B 1/4 15 July 2001

**lodging party or agent name**

office, level, building name or PO Box no.

street number and name

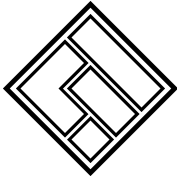
suburb / city state/territory postcode

telephone ( )

facsimile ( )

DX number suburb / city

ASS.	<input type="checkbox"/>	REQ-A	<input type="checkbox"/>
CASH.	<input type="checkbox"/>	REQ-P	<input type="checkbox"/>
PROC.	<input type="checkbox"/>		



**Australian Securities & Investments Commission**

form **903B**

Application for  
**registration as a liquidator**

Corporations Act 2001  
**1279(2)**

If insufficient space, enclose further details in an annexure.  
● Annexures must conform to the requirements shown at the end of this form.

**Application**

- I apply for registration under the Corporations Act 2001 as a liquidator. (A)
- I apply for registration under the Corporations Act 2001 as a liquidator of the body corporate specified below. (B)

**specified body corporate** name

place of incorporation Australian Company Number

registered office at the office of

office, level, building name

street number & name

suburb/city state postcode

country

**Details of the applicant**

name (surname & given names)

residential address

suburb/city state postcode

telephone ( ) facsimile ( )

details of birth (d/m/y) / / town & state country

business occupation

**partnership** Are you a member of an accounting partnership? yes  no

if yes, firm name

date joined (d/m/y) / /

**name or style of practice** Are you practising or do you intend to practise as a liquidator under a name or style other than your name or your firm's name? yes  no

if yes current  proposed

name or style

business registration number

**principal place of practice** current  proposed

office, level, building name

street number & name

suburb/city state postcode

country

telephone ( ) facsimile ( )

Are the address and telephone number of the firm the same as those of the principal place of practice? yes  no

if no, the address and telephone number of the firm are enclosed in the annexure marked ( ) of ( ) pages.

**other places of practice** current  proposed

office, level, building name

street number & name

suburb/city state postcode

country

telephone ( ) facsimile ( )

if more than one other place of practice further details are enclosed in the annexure marked ( ) of ( ) pages.

**employer** (surname & given names or firm name or corporation name) If a corporation give A.C.N. or A.R.B.N. also.

name \_\_\_\_\_

office, level, building name \_\_\_\_\_

street number & name \_\_\_\_\_

suburb/city \_\_\_\_\_ state \_\_\_\_\_ postcode \_\_\_\_\_

country \_\_\_\_\_

telephone ( ) \_\_\_\_\_ facsimile ( ) \_\_\_\_\_

**qualifications** A certified copy of any certificate or documentation as proof of these qualifications should be enclosed in an annexure.

academic \_\_\_\_\_

professional \_\_\_\_\_

**employment and business activities for the past 10 years**

full details are enclosed in the annexure marked ( ) of ( ) pages.

State: - experience as a liquidator or other corporate insolvency experience including

- the name and A.C.N. or A.R.B.N. (if applicable) of administrations
- the legislation under which administrations were conducted
- the size and outcome of administrations
- the extent and nature of your responsibility in relation to each administration

- details of experience in public practice

- any other information to clearly indicate how you satisfy the experience and ability requirements of paragraph 1282(2)(b) of the Corporations Act 2001

**registered liquidators under whose direction you have worked in insolvency administration**

name (surname & given names) \_\_\_\_\_

firm name \_\_\_\_\_

office, level, building name \_\_\_\_\_

street number & name \_\_\_\_\_

suburb/city \_\_\_\_\_ state \_\_\_\_\_ postcode \_\_\_\_\_

country \_\_\_\_\_

period (d/m/y) / / to / /

name (surname & given names) \_\_\_\_\_

firm name \_\_\_\_\_

office, level, building name \_\_\_\_\_

street number & name \_\_\_\_\_

suburb/city \_\_\_\_\_ state \_\_\_\_\_ postcode \_\_\_\_\_

country \_\_\_\_\_

period (d/m/y) / / to / /

**Are you or have you ever been excluded from practice as an auditor or liquidator, or had registration as an auditor or liquidator suspended, or been subject to any other disciplinary action by any of the following bodies?**

- a Companies Auditors Board of a state or territory
- a Companies Auditors and Liquidators Disciplinary Board
- the Public Accountants Registration Board of NSW or QLD
- the National Companies and Securities Commission
- the Australian Securities Commission
- the Australian Securities and Investments Commission
- The Institute of Chartered Accountants in Australia
- the Australian Society of Certified Practising Accountants
- CPA Australia
- any other professional body
- a Tax Agents Board
- any other body ever having authority in Australia or elsewhere relating to the registration or disciplining of auditors or liquidators

yes  no

**if yes,** full details of the action are enclosed in the annexure marked ( ) of ( ) pages.

**Have you ever made a prior application for registration as an auditor or liquidator that has been refused, or is any other application pending?** yes  no

if yes, type of registration \_\_\_\_\_

date of application (d/m/y) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

name of body to whom application was made \_\_\_\_\_

location of body \_\_\_\_\_

reason for rejecting application (if rejected) \_\_\_\_\_

**Are you or have you ever been disqualified from managing corporations under Part 2D.6 or under previous legislation?**

yes  no

if yes, full details of each disqualification, order or notice are enclosed in the annexure marked ( ) of ( ) pages.

**Do you or have you ever had a status equivalent to that of an insolvent under administration under the law of a country other than Australia or under the law of an external territory?** yes  no

if yes, full details are enclosed in the annexure marked ( ) of ( ) pages.

- Note 1 Subsection 1282(4) provides that ASIC must not register as a liquidator a person who is disqualified from managing corporations under Part 2D.6. Sections 206B, 206C, 206D, 206E and 206F provide for such disqualification. An applicant who was previously subject to a disqualification of this type will be considered on the merits of the application.
- 2 If by leave of the Court given under section 206G the applicant is permitted to manage corporations, an office copy of the court order must be annexed, whether or not the order is subject to conditions or limitations.
- 3 The details required are those that would be required to be disclosed in form 906, if section 1287 applied to the disqualification.

**Do you have a conviction, in Australia or elsewhere, for an offence (other than a traffic offence) for which you were dealt with as a minor and**

- which is less than 5 years old, or
- which is more than 5 years old and for which the sentence imposed was more than 30 months imprisonment

**or for which you were dealt with as an adult and**

- which is less than 10 years old, or
- which is more than 10 years old and for which the sentence imposed was more than 30 months imprisonment

yes  no

if yes, and the following details have not previously been disclosed in this application

offence \_\_\_\_\_

date of conviction (d/m/y) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

court where conviction was recorded \_\_\_\_\_

penalty including length of any prison sentence \_\_\_\_\_

**Do you have any legal or disciplinary proceedings pending against you that may result in action that would require disclosure under any of the above items?** yes  no

if yes, full details are enclosed in the annexure marked ( ) of ( ) pages.

**Are you resident in Australia?** yes  no

**Has there been any time in the last five years when you were not resident in Australia?** yes  no

if yes,

period of overseas residency (d/m/y) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ to \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

place of residency \_\_\_\_\_

reasons for overseas residency \_\_\_\_\_

**In the last five years have you resigned (other than where paragraph 324(8)(c) applies) or been removed from office as an auditor or a liquidator?** yes  no

if yes, full details are enclosed in the annexure marked ( ) of ( ) pages.

These details should include

- the type of office (auditor or liquidator)
- whether the manner of ceasing was resignation or removal
- the date of ceasing
- the corporation name and Australian Company Number (if applicable)
- the reason for ceasing

## Details of referees

When you are nominating referees, note that

- you must name at least two referees
- at least one referee must be a registered liquidator
- not more than one of the referees is to be your partner or employer
- you cannot nominate an employee, fellow employee or relative
- the referees should be people who can speak of your conduct, character, experience and ability to act as a liquidator as a result of regular contact with you over the last five years

Referees reports will be received in confidence.

name (surname & given names)		
office, level, building name		
street number & name		
suburb/city	state	postcode
country		
telephone ( )	fax( )	
occupation		

name (surname & given names)		
office, level, building name		
street number & name		
suburb/city	state	postcode
country		
telephone ( )	fax( )	
occupation		

You may provide in an annexure the names, addresses and telephone numbers of other persons authorised to provide additional information in respect of your application.

## Signature

print name of applicant

**sign here**

date / /

<p>Small Business (less than 20 employees), please provide an estimate of the time taken to complete this form</p> <p><b>Include</b></p> <ul style="list-style-type: none"> <li>· The time actually spent reading the instructions, working on the question and obtaining the information</li> <li>· The time spent by all employees in collecting and providing this information</li> </ul> <p style="text-align: right;">hrs          mins</p>
--

## Documents to be lodged with this application

A form endorsed by the Australian Federal Police that the applicant is NOT adversely recorded.

### Send to

The ASIC Regional Office in your state of residence

or  
 Australian Securities & Investments Commission  
 PO Box 4000  
 Gippsland Mail Centre VIC 3841

### Annexures to forms

- To make any annexure conform to the regulations, you must
- 1 use A4 size paper of white or light pastel colour with a margin of at least 10mm on all sides
  - 2 number the pages consecutively
  - 3 print or type in dark blue or black ink, so that the document is clearly legible when copied
  - 4 identify the annexure with a mark such as A, B, C, etc
  - 5 endorse the annexure with the words:  
 This is annexure (mark) of (number) pages referred to in form (form number and title) signed by (insert "me" or "us") and dated.
  - 6 sign and date the annexure. The annexure must be signed by the same person(s) who signed the form.
  - 7 There must be written on the form: the identifying mark and the number of pages.