



ASIC

Australian Securities & Investments Commission

## Insolvency Law Reform Bulletin 3

**Guide for registered liquidators:** This bulletin is one of a series about implementing changes in the Corporations Amendment (Insolvency) Act 2007, the Corporations Amendment Regulations 2007 and the Australian Securities and Investments Commission Regulations 2007. These changes, collectively referred to as 'insolvency law reform' or 'the amendments', generally come into effect on 31 December 2007.

### Registration and regulation of liquidators

This bulletin informs applicants for registration as a liquidator about the information that ASIC will require to assess your application after 31 December 2007 and informs all liquidators about changes to your ongoing obligations. The amendments relate to changes to the Corporations Act (the Act), the Corporations Regulations (the Regs) and ASIC Regulatory Guide 186: *External administration: liquidator registration* (RG 186). This bulletin also refers to Information Sheet 34 *How to apply for registration as a liquidator* (the liquidator registration kit), which is published on ASIC's website: [www.asic.gov.au](http://www.asic.gov.au).

#### ASIC guidance

RG 186 and the liquidator registration kit have not yet been updated. This bulletin contains information about the legal position and administrative arrangements applicable from 31 December 2007.

#### Further guidance

We may provide further guidance on the requirements covered in this bulletin or other matters relating to the registration or ongoing obligations of liquidators.

For specific registration inquiries, please contact [stephen.ween@asic.gov.au](mailto:stephen.ween@asic.gov.au).

### 1. Changes to registration requirements

There are three changes in the amendments that affect registration applications by changing what you must demonstrate about you:

- qualifications;
- experience in winding up; and
- insurance.

#### Qualifications

The removal of s1282(2)(a)(i) of the Act has the effect that membership of the Institute of Chartered Accountants, CPA Australia or any other prescribed body no longer automatically relieves the applicant of the requirement to show that they hold the requisite qualifications specified in s1282(2)(a)(ii) or to satisfy ASIC that they hold a combination of other qualifications and experience that would be equivalent to the requisite qualifications (see s1282(2)(a)(iii)).

#### Experience

Changes to s1282(2)(b) mean that ASIC must be satisfied that the applicant has experience in connection with externally-administered bodies

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**Important note:** This bulletin contains general information from ASIC to assist registered liquidators to comply with the amended Corporations Act 2001, Corporations Regulations 2001 and Australian Securities and Investments Commission Regulations 2001 as at 31 December 2007. The information does not purport to be, and is not, a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to the specific circumstances of a registered liquidator or a company subject to an external administration.

corporate, rather than just the winding-up of bodies corporate. In RG 186, ASIC already requires applicants to have broader experience than just in windings-up (relying on s1282(2)(c)). ASIC outlines the experience requirement in detail in paragraph RG 186.19 and gives guidance to applicants about the information they must provide about their experience in the liquidator registration kit.

## Insurance

All applicants for registration as a liquidator after 31 December 2007 will have to comply with the new insurance requirements in s1284. The new s1284 replaces the need for liquidators to lodge and maintain security with ASIC for the due performance of their duties with a requirement to maintain adequate and appropriate professional indemnity insurance and adequate and appropriate fidelity insurance.

## Existing applications

If you have an existing application that has been lodged with us by 31 December 2007 but not dealt with us by that date, you should bear in mind the following.

## Qualifications

You should provide ASIC with direct evidence that you hold the requisite qualifications or equivalency if you were relying on membership of the ICAA, CPAA or other prescribed body as evidence of your qualifications.

## Experience

You will not be required to provide us with any additional information about the practical experience you possess unless we contact you and ask you to provide more details. The amendment to s1282(2)(b) does not apply to applications lodged before 31 December 2007.

## Insurance

You will be required to have in place adequate and appropriate professional indemnity and fidelity insurance. You should provide a certificate of currency for the policies, which includes the following details:

- type of insurance;
- period of the insurance cover;

- company providing the insurance cover;
- specified maximum limits on cover; and
- any specified exclusions in the policy.

We intend to consult on whether ASIC should release guidance on the new insurance requirements in early 2008. Until we release any such guidance we will consider each application on a case-by-case basis.

## New applicants

It will not be possible to lodge an application on 31 December 2007 as ASIC offices will be closed.

If you lodge an application after 31 December 2007, your application should follow the general requirements of RG 186 and the liquidator registration kit except that:

- You should provide ASIC with direct evidence that you hold the relevant qualifications or equivalent qualifications and experience.
- You should provide details of the insurance that will be in place upon your registration.

Details that will need to be provided are the same as those outlined under the heading 'Existing applications' (see above).

A revised deed of undertaking will be in place after 31 December 2007.

## 2. Changes to ongoing obligations

There are two main changes to the ongoing obligations of registered liquidators:

- the obligation to maintain insurance rather than lodge security; and
- the obligation to lodge an annual rather than a triennial statement.

## Professional indemnity and fidelity insurance

All liquidators who are currently registered as at 31 December 2007 are required by s1284 to have in place by 1 July 2008 adequate and appropriate professional indemnity and fidelity insurance for claims that may be made against them in connection with externally-administered bodies.

## Annual statements

### Existing liquidators with outstanding triennial statements

If you have an outstanding triennial statement due before 31 December 2007, you must lodge that statement, even if you lodge the statement after 31 December 2007. You may lodge it on paper or electronically before the operative date using the **current Form 908**. You will only be able to lodge the form on paper after the operative date.

### New liquidators in 2008

If you are registered as a liquidator between 31 December 2007 and 31 December 2008, you will be required to lodge an **annual statement** in the format of the **revised Form 908** within one month after the anniversary date of your registration and each subsequent 12 months. The first anniversary date will either be the 31 December 2008 or a date in 2009.

### Liquidators with current registration as at 31 December 2007

If you are currently registered as a liquidator as at 31 December 2007, you will be required to lodge an **annual statement** in the format of the **revised Form 908** on the anniversary date of your registration in 2008 and each subsequent 12 months. You will not be required to lodge any statement to cover the period since the lodgement of your last triennial statement up to the date of your anniversary date in 2007. That is, you are not required to lodge any 'catch up' statement.

### Lodgement of annual statement with current and revised forms

Paper forms for lodgement of a current or revised Form 908 will be available to download from the ASIC website by 31 December 2007.

The electronic lodgement facility will be updated with a revised Form 908 for annual statements on 3 January 2008.

## 3. ASIC's powers to cancel registration

A new section has been inserted into the Act with the amendments. This new section (s1290A) allows ASIC to cancel the registration of a liquidator or official liquidator on certain grounds, without a referral to the Companies Auditors and Liquidators Disciplinary Board (CALDB).

This applies if the liquidator:

- becomes an insolvent under administration; or
- becomes disqualified from managing corporations under Part 2D.6; or
- contravenes s1284(1) (i.e. maintaining adequate and appropriate professional indemnity and fidelity insurance).

You should be aware that we may use information supplied on the annual statement as evidence of these matters.