



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Inquiry into Corporate Insolvency in Australia
Question No.	026
Date	1 March 2023
Topic	Liquidator registration
Reference	Spoken, 1 March 2023, Page 40
Committee member	Senator Deborah O'Neill

Question

CHAIR: You can take this on notice also. You indicated progress with regard to applicants being able to get around the 4,000 hours in a way that was still going to provide integrity in their registration. Could you indicate how many and how the suitability was determined? What were the criteria for the assessment that liquidators should be acknowledged without the 4,000 hours?

Mr Day: We will do what we can. It was the committee's decision and their criteria. It wasn't us. We may have to write to the committee and ask them to see if they'd support us with answers along those lines. I will take the question on notice in any event, Senator.

Answer

Subdivision B of Division 20 of the Insolvency Practice Schedule (IPS) (which is Schedule 2 to the Corporations Act) establishes a registration regime for liquidators.

These provisions (and the Insolvency Practice Schedule in general) introduced a framework for registering liquidators based on the existing framework for regulating registered trustees provided for under the Bankruptcy Act:

ASIC may convene a committee to consider applications for registration as a liquidator (IPS s20-10).

Each independent committee must consist of an ASIC representative, a registered liquidator with over five years' experience as a registered liquidator nominated by the Australian Restructuring, Insolvency and Turnaround Association and a person appointed by the Minister (who is required to have experience in one or more fields including business, law, economics, accounting, public policy or administration of companies including insolvent companies) (IPS s20-10(2)).

The IPS provides that a committee must decide that an applicant should be registered as a liquidator if it is satisfied, among other things, that the applicant has each of the qualifications, experience, knowledge and abilities prescribed in s20-1 of the Insolvency Practice Rules (Corporations) 2016 (IPR) (see s20-20(4)(a) of the IPS).

A committee must be satisfied the applicant has, during the 5 years immediately preceding the day on which the application is made, been engaged in at least 4,000 hours of relevant employment at senior level (s20-1(2)(c) of the IPR).

Under s20-20(5) of the IPS, a committee may decide that an applicant should be registered even if the committee is, relevantly, not satisfied the applicant has the qualifications, experience, knowledge and abilities prescribed in s20-1 of the IPR, (that is, the matters mentioned in s20-20(4)(a) of the IPS), provided the applicant would be suitable to be registered as a liquidator.

Prior to 1 January 2021, a committee could decide that an applicant should be registered if it was satisfied the applicant would be suitable to be registered as a liquidator if the applicant complied with conditions specified by the committee. Since 1 January 2021, it has been open to a committee to decide that an applicant should be registered as a liquidator even though it is not satisfied the applicant meets a matter specified in, relevantly, s20-20(4)(a) of the IPS without imposing a condition.

From 1 January 2021, the definition of “relevant employment” for the purposes of s20-1(2)(c) in s20-1(3) of the IPR changed.

The change to the definition of relevant employment means that applicants are now able to include a wider range of work when calculating whether they have attained the requisite 4000 hours by including as relevant employment turnaround and restructuring work and other relevant employment that does not involve the external administration of companies, receivership or receivership and management. As a result of the change to the definition, an applicant may now be able to demonstrate that they had been engaged in 4000 hours of relevant employment at senior level when, prior to 1 January 2021, an applicant with the same experience may have been unable to do so.

Both before and after 1 January 2021 committees have registered applicants who had less than 4,000 hours relevant employment at senior level.