

# Approval to act as administrator, liquidator or in certain other capacities under section 41 of the *Registered Clubs Act 1976*



This Guideline provides information about the Independent Liquor & Gaming Authority Board's processes for the approval of persons to act as an administrator, controller of property, official manager, receiver or manager, member of the committee of management, liquidator or special manager of a registered club under section 41 of the *Registered Clubs Act 1976* ("Act"). The guideline applies to those requests for approval that are received by the Authority after the date of this guideline.

## Background

1. An Insolvency Practitioner may not be appointed to a registered club that is a company or co-operative unless the person has been appointed by the Supreme Court of NSW ("Supreme Court") or approved by the Authority to act in the capacity sought.
2. Insolvency practitioners and registered clubs are reminded that the proposed appointment or approval (as the case may be) **must** be secured before the proposed appointment of the practitioner occurs, lest the validity of the appointment be called into question - see for example *Correa v Whittingham* [2013] NSWCA 263 (15 August 2013) where the New South Wales Court of Appeal held that a club was not capable of appointing a voluntary administrator in circumstances when it had not yet obtained approval by the Authority of the appointment.
3. Section 41 of the Act provides:

### 41 Registered clubs under official management or receivership or in liquidation

(1) A person is not capable of being appointed to act in the capacity of the administrator, the controller of property, the official manager, the receiver or manager, a member of the committee of management, the liquidator or the special manager of a registered club that is a company within the meaning of the

*Corporations Act 2001* of the Commonwealth or a co-operative registered under the *Co-operatives Act 1992* or of acting in any such capacity unless the person has been:

- a. appointed to act in that capacity by the Supreme Court, or
- b. approved to act in that capacity by the Authority.

## Making an Application for Approval

4. A request to approve an insolvency practitioner to act in a relevant capacity ("Application") should be made by the President of the named club ("the Relevant Club") or the legal representative of the club ("the Applicant"). The Application should take the form of a letter addressed to the Chair. It is strongly preferred that Applications be made in electronic form, by email where possible. Applications should be sent to [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)
5. The Application and any supporting material should be submitted as a PDF file(s) when lodged electronically. The Application must:
  - a. enclose evidence, in the form of a board minute by the Relevant Club, that the board agrees to the proposed insolvency practitioner ("the Proposed Practitioner") to act in the relevant capacity, and the date of commencement of the proposed appointment if this commencement will not take effect immediately upon approval; and
  - b. enclose evidence from the Proposed Practitioner that the Proposed Practitioner agrees to work in the proposed capacity (e.g. a letter or email); and
  - c. enclose a statutory declaration made by the Proposed Practitioner that:
    - i. provides a concise resume of the Proposed Practitioner's professional qualifications, including whether the Proposed Practitioner is a registered liquidator or an official liquidator under the *Corporations Act 2001* (Cth);

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- ii. provides a concise summary of the Proposed Practitioner's previous experience acting in any of the capacities listed under section 41(1) of the Act ("Relevant Capacities"), including whether the Proposed Practitioner has been previously approved or appointed (or refused approval) to act in any of the Relevant Capacities in relation to any registered club in New South Wales. If so, the summary should identify each club, the Relevant Capacity in which the Proposed Practitioner was approved or appointed to act, and the dates (the month and year) upon which the Proposed Practitioner commenced and ceased acting in each Relevant Capacity with regard to each club;
- iii. provides a statement as to whether the Proposed Practitioner has been approved or appointed to act in any Relevant Capacity in relation to any NSW registered club that has remained under administration for an extended period of time - whether as an externally administered body corporate within the meaning of the *Corporations Act 2001* (Cth) or otherwise. For the purposes of this guideline, an "extended period of time" means a continuous period in excess of 18 months;
- iv. provides a statement outlining the Proposed Practitioner's knowledge of the various legislation that registered clubs operate under e.g. *Registered Clubs Act 1976*, *Liquor Act 2007*, *Gaming Machines Act 2001*;
- v. provides a statement outlining the resources the Proposed Practitioner has at his or her disposal as evidence that the Proposed Practitioner will be in a position to undertake the type of work required;
- vi. provides an explanation as to why approval of the Proposed Practitioner in the Relevant Capacity requested in the Application has become necessary in relation to the Relevant Club;
- vii. provides an account of how any other legal requirements that must be satisfied before the Proposed Practitioner may act in the Relevant Capacity have been satisfied (for example, any requirements under the *Corporations Act 2001* (Cth));
- viii. annexes financial information and advice that forms the basis of the Relevant Club's decision to seek the approval or appointment of the Proposed Practitioner in the Relevant Capacity stated in the Application. For example, if the Relevant Club's governing body has decided to enter into voluntary administration and appoint the Proposed Practitioner as an Administrator, sufficient financial information and analysis should be provided to satisfy the Authority why the Relevant Club is, or is likely to become, insolvent if that is the reason for the proposed appointment;
- ix. advises whether any civil, criminal or disciplinary proceedings have been commenced against the Proposed Practitioner or whether any claims of a civil, criminal or disciplinary nature against the Proposed Practitioner have been notified to the Proposed Practitioner and if so, the nature and current status of any proceedings or claims or any prior adverse outcomes;
- x. advises whether any concerns have been raised by any party with the Relevant Club or the Proposed Practitioner in relation to the proposed approval or appointment of the Proposed Practitioner in the proposed Relevant Capacity. If such concerns have been made orally, provide a summary of those concerns and identify the party who has made those concerns. If such concerns have been made in writing, provide a copy of any written communication containing those concerns; and
- xi. discloses the nature of any prior personal or commercial relationship or dealings between the Proposed Practitioner and:
  - the Relevant Club;
  - a current or former secretary, manager or member of the governing body of the Relevant Club; and

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- xii. discloses the details of any indemnities provided by any third parties.
- d. Provide a completed Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) from the Proposed Practitioner.

### Procedure

6. The Authority is an independent board, not a court. The Authority administers its powers in a manner that is as efficient and informal as appropriate, with a view to minimising time and costs to all stakeholders.
7. The Authority is not bound by rules of evidence when considering an Application but it is required to comply with relevant provisions of the Act and the rules of natural justice or procedural fairness. There may be circumstances in which the Authority is required to act urgently and in those cases the content of the duty to accord natural justice may be modified accordingly.
8. The Authority notes that, aside from seeking approval by the Authority under section 41(1)(b) of the Act, a Proposed Practitioner may act in a Relevant Capacity if he or she is appointed to act in that capacity by the Supreme Court.
9. In order to expedite the processing of these Applications before the Authority, Proposed Practitioners should ensure that all material requested in this Guideline is provided when the Application is made to enable the Application to be assessed without the need for further enquiries.
10. Proposed Practitioners who seek the Authority's approval to act in a Relevant Capacity upon an urgent basis may also seek appointment in that capacity by the Court under section 41(1)(a) of the Act, if that option is available.
11. The Authority will consider each Application on its merits. A fresh approval will be required each time a practitioner is proposed to act in a Relevant Capacity in relation to a club. That is, the Authority will not grant an ongoing approval for a person to act as a liquidator, administrator, or other capacity in relation to clubs generally.

**The Authority will usually notify Applicants of its decision by way of a letter or email to the Applicant.**

### List of Recognised Insolvency Practitioners

12. The Authority no longer maintains a list of recognised insolvency practitioners.

### Urgent applications

13. The Authority acknowledges that requests made under section 41 of the Act are often time critical.
14. Applications can be determined on an urgent basis outside the Authority's usual monthly meeting cycle.

### Appeal Rights

15. There is no statutory mechanism for review on the merits of a decision made by the Authority under section 41 of the Act. In New South Wales judicial review of administrative action is available only at common law, which is accessed via Section 69 of the *Supreme Court Act 1970*.

### Non-compliance or breaches of the *Registered Clubs Act 1976*

16. The Authority is not the compliance regulator for Clubs. If an Insolvency Practitioner encounters any issues of non-compliance with or breaches of legislation, the Authority expects that the Insolvency Practitioner would contact and report those matters to the relevant regulator. This may include self-reporting breaches and deal with any non-compliance to minimise the regulatory response. Depending on the nature of the non-compliance or breaches, the relevant regulator may be the Australian Securities and Investments Commission (ASIC), NSW Police or the Liquor & Gaming NSW Director of Compliance. That communication may be made on a confidential basis.

### Review of this Guideline

17. The Authority may review the operation of the Guideline from time to time and may update the Guideline as and when considered appropriate.

**Guideline updated March 2019**