

Guideline 9

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

Overview

An insolvency practitioner may not be appointed to a registered club to act in certain capacities unless they have first been appointed by the Supreme Court of New South Wales (**NSW**) or approved by the Independent Liquor & Gaming Authority (**Authority**). This guideline provides information about the process for obtaining the approval of the Authority for a person to act in a capacity listed in section 41(1) under the *Registered Clubs Act 1976 (NSW)* (the **Registered Clubs Act**).

1. Background

1.1 An insolvency practitioner must have been appointed by the Supreme Court of NSW or approved by the Authority to act in the relevant capacity before being appointed to a registered club to act in any of the capacities listed in section 41(1) of the Registered Clubs Act. The capacities are: an administrator (including a voluntary administrator), controller of property, official manager, receiver or manager, member of the committee of management, liquidator or special manager of a registered club.

1.2 A purported appointment of an insolvency practitioner in any of the above capacities may be invalid if this first step has not been taken. This may result in invalidity of any action taken by the practitioner.

2. Making an application for approval

2.1 An application to the Authority to approve an insolvency practitioner to act in a capacity listed in section 41(1) of the Registered Clubs Act should be made by the President of the club or the legal representative of the club in the form of a letter addressed to the Chairperson sent by email to office@ilga.nsw.gov.au.

2.2 The application should:

- a. enclose evidence, in the form of a board minute by the club, that the board agrees to the proposed appointment of the insolvency practitioner (the proposed practitioner) in the relevant capacity listed in section 41(1) of the Registered Clubs Act, and the proposed date of commencement of the appointment if the commencement will not take effect immediately upon approval;
- b. enclose evidence that the proposed practitioner agrees to accept appointment in the proposed capacity (e.g. a letter or email);
- 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 they are a registered liquidator or an official liquidator under the *Corporations Act 2001 (Cth)*;

- 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 Registered Clubs Act, including whether they have been previously approved or appointed (or refused approval) to act in any of those capacities in relation to any registered club in NSW. If so, the summary should identify each club, the capacity in which they were approved or appointed to act, and the dates (the month and year) upon which they commenced and ceased acting in each 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 of the capacities listed under section 41(1) of the Registered Clubs Act 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 attesting to the appreciation of the relevant legislation under which registered clubs operate e.g. *Registered Clubs Act 1976 (NSW)*, *Liquor Act 2007 (NSW)*, *Gaming Machines Act 2001 (NSW)* and *Corporations Act 2001 (Cth)*;
- v. provides a statement outlining the resources the proposed practitioner has at their disposal as evidence that they will be in a position to undertake the type of work required;
- vi. provides a brief outline of the financial position of the club, to the extent it is known;
- vii. annexes financial information and advice that forms the basis of the club's decision to seek the approval or appointment of the proposed practitioner in the proposed capacity. For example, if the 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 club is, or is likely to become, insolvent;
- viii. advises whether any civil, criminal or disciplinary proceedings have been commenced against the proposed practitioner or whether they have been notified of any claims of a civil, criminal or disciplinary nature against themselves and if so, the nature and current status of any proceedings or claims or any prior adverse outcomes;
- ix. advises whether any concerns have been raised by any party with the club or the proposed practitioner in relation to the proposed approval or appointment of the proposed practitioner in the proposed 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;
- x. discloses the nature of any prior personal or commercial relationship or dealings between the proposed practitioner and:
 - o the club; and/or
 - o a current or former secretary, manager or member of the governing body of the club;
- xi. discloses the details of any indemnities provided by any third parties.

3. Procedure

3.1 The Authority is an independent administrative body. It complies with relevant provisions of the Registered Clubs Act and the rules of natural justice or procedural fairness. The Authority administers its powers in a manner that is as efficient and informal as possible, with a view to minimising time and costs to all stakeholders.

3.2 In order to expedite the processing of these applications before the Authority, applicants should ensure that 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.

3.3 A separate approval is required for each appointment. The Authority will not grant a general or ongoing approval for an appointment to more than one club.

4. Urgent applications

4.1 Applications under section 41 of the Registered Clubs Act may be decided by the Authority on an urgent basis outside the Authority's usual monthly meeting cycle. Applications for the urgent appointment of a proposed practitioner to act in a capacity under section 41(1) of the Registered Clubs Act may also be made to the Supreme Court of NSW.

5. Appeal rights

5.1 There is no statutory mechanism for review on the merits of a decision made by the Authority under section 41 of the Registered Clubs Act. Judicial review of administrative action is available only at common law on limited grounds, which is accessed via section 69 of the *Supreme Court Act 1970 (NSW)*.

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

6.1 If an insolvency practitioner encounters issues of non-compliance with or breaches of legislation, they should report those matters to the relevant regulator. 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 & Enforcement.

7. Review of this guideline

7.1 The Authority will review and update this guideline from time to time.

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