



## **Consultation Feedback Statement**

## Contents

1. Introduction.....	2
2. Consultation on an authorisation process for certain individuals as liquidators .....	2
3. Consultation on the amount and terms of indemnity against losses and claims arising in respect of civil liability by liquidators.....	3

## 1. Introduction

The Companies Act 2014 ('the 2014 Act') came into force on 1 June 2015. The 2014 Act provides, at Sections 633 and 634, for the qualifications governing those who wish to act as company liquidators.

The 2014 Act now affords IAASA with responsibility for:-

- receiving applications from and granting authorisation to persons with adequate relevant experience of the winding up of companies and knowledge of relevant law<sup>1</sup>;
- making regulations in respect of the amount and terms of professional indemnity cover required to be held by all liquidators<sup>2</sup>; and
- recognising professional bodies (other than the Law Society or the Prescribed Accountancy Bodies) which may in turn grant authorisations to act as liquidators to its members.

As part of IAASA's new responsibilities under Section 633 and 634 of the 2014 Act it published two Consultation Papers.

- Paper 1: Consultation on an authorisation process for certain individuals as liquidators published on the 01 June 2015.
- Paper 2: Consultation on the amount and terms of indemnity against losses and claims arising in respect of civil liability by liquidators published on 07 August 2015.

## 2. Consultation on an authorisation process for certain individuals as liquidators

IAASA may authorise a person to act as a liquidator where the person concerned has, prior to 1 June 2015-

- (a) obtained adequate relevant experience of the winding up of companies and knowledge of the law applicable thereto. Such experience must have been gained either by being employed in relevant work by a person who at the relevant time fell (or, if this section had been in operation at that time, who would have fallen) within paragraph 1, 2 or 3 of the table, i.e. those persons listed in Categories 1 – 3 of section 1 above; or
- (b) practised in an EEA state as a liquidator.

IAASA must also be of the opinion that the person is a fit and proper person to act as a liquidator. IAASA is required to consult with the Director of Corporate Enforcement in this regard.

A draft application form proposed for use by IAASA was included in the Consultation Paper. The information requested in the form is intended to enable IAASA to assess whether authorisation to act as liquidator should be granted to an applicant. In other words, applicants are required to demonstrate-

- (a) adequate relevant experience of the winding up of companies and knowledge of the law applicable thereto; and

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<sup>1</sup> Section 633(2)(b) and Category 5 of the Table to Section 633

<sup>2</sup> Section 634(1)

- (b) that he or she is a fit and proper person to act as a liquidator.

## 2.1 Consultation Responses

IAASA received responses to this Consultation from:

- the Revenue Commissioners;
- the Consultative Committee of Accounting Bodies – Ireland (CCAB-I); and
- the Chartered Accountants Regulatory Board (CARB).

These responses while largely in agreement with the proposed application form and process made additional suggestions, which will be incorporated in the final process.

For example:

- requirement for a current tax clearance certificate and reference to tax authorities in other EEA states in which the applicant may have practised; and
- disclosure of previous membership of a professional body and cessation of such membership.

A number of submissions did suggest expanding questions relating to the 'Experience and Knowledge' section of the form. Upon consideration and consultation with our legal advisors IAASA has not amended the form to widen this section in the context of IAASA's statutory powers in relation to liquidators as conferred in the 2014 Act.

IAASA is currently finalising the prescription of the Application Forms and in the interim will continue to accept initial applications using it's draft application process as outlined in the consultation paper. The Companies Act 2014 contains a potential anomaly regarding the prescription of forms, which has been referred to the Department of Jobs, Enterprise and Innovation for amendment.

## 3. Consultation on the amount and terms of indemnity against losses and claims arising in respect of civil liability by liquidators

Section 634(1) of the 2014 Act provides that a person shall not be qualified for appointment as a liquidator of a company unless there is in place in relation to the person an indemnity, in such amount and on such terms as may from time to time be prescribed by regulations made by IAASA, against losses and claims arising in respect of civil liability incurred by the person in respect of any act or omission by-

- (a) the person,
- (b) any servant or agent of the person, or
- (c) both of them,

in the conduct of the winding up of the company concerned<sup>3</sup>.

Section 634(2) provides that the reference in section 634(1) to an indemnity being in place in relation to a person is a reference to an indemnity being provided (against the losses and claims referred to in that subsection) by either of the following means:

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<sup>3</sup> Section 634(3) provides that this requirement does not apply to a person as respects any winding up in relation to which he or she has been appointed liquidator before 1 June, 2015.

- (a) a policy of indemnity insurance being effected and maintained by the person with an insurance undertaking; or
- (b) the person's participating, in a manner legally enforceable by the person, in an indemnity fund of a mutual nature that is recognised by IAASA for the time being for the purposes of section 634.

In advance of publication of the Consultation Paper, the insurance requirements of other professions in which PII is required were surveyed, for example, the nine prescribed accountancy bodies ('PABs') falling under IAASA's remit and the Law Society of Ireland. We also liaised with a competent authority in another EU Member State with a similar regulatory role, and approached a number of insurance industry practitioners to elicit their views. The Consultation Paper contained the proposed amounts and terms of the Professional Indemnity Insurance. It also detailed a number of questions upon which IAASA sought submissions.

### 3.1 Consultation Responses

Four responses were received to the consultation from;

- Chartered Accountants Regulatory Board (CARB);
- The Consultative Committee of Accounting Bodies – Ireland (CCAB-I);
- Irish Society of Insolvency Practitioners (ISIP); and
- PJ Lynch & Company.

The responses received were very useful in finalising the draft Regulations which are available for comment on our website for a limited period of time.

Respondents differed in their views on the proposed terms of the Indemnity Insurance in a number of areas some of which are detailed below.

- Minimum level of cover: There were some suggestions that the level of €1,500,000 was set too high while others agreed that it was appropriate as the setting of too low a value could result in insufficient cover. For this reason IAASA was satisfied that setting the minimum level of cover at €1,500,000 remains appropriate to ensure adequate cover while giving consideration to costs of obtaining such insurance within the market place.
- Annual Indemnity Aggregate: Concerns were raised about the cost and need for an annual indemnity aggregate. After consideration of the submissions IAASA concluded that inclusion of such an annual aggregate limit may result in insufficient overall cover. The draft regulations have been drafted without this requirement.

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