

AGENDA PAPER

Item Number: 11.6
Date of Meeting: 8th May 2009
Subject: APES 330 *Insolvency Services*

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Purpose

Subject to the Board's review comments and editorials approve the proposed Standard APES 330 *Insolvency Services*.

Background

The existing professional standard APS7 *Statement of Insolvency Standards* was issued in March 1998. The statement was issued to provide members with the basic principles governing professional responsibilities to be exercised in the conduct of insolvency practices. Traditionally the practice of insolvency has been complex and varied and this complexity has increased significantly in the last 10 years.

The Insolvency Practitioners Association of Australia (IPAA) developed a *Code of Professional Practice for Insolvency Professionals* which was issued in May 2008. The stated purpose of this initiative was to provide stakeholders in the insolvency profession, including the community generally, with a practice that adheres to a system of regulation in which insolvency practitioners are held to standards of loyalty, avoidance of conflicts, independence, and impartiality. Given that some members of the professional accounting bodies are involved in providing insolvency services, it is imperative that ethical standards issued by APESB are broadly consistent with the requirements of bodies such as the IPAA.

The Board approved the creation of the APES 330 Insolvency Services taskforce in February 2008 to develop APES 330 with a view to replacing APS 7 at a future date. The Insolvency Services taskforce prepared an exposure draft which is released for public comment in December 2008. APESB received five submissions from professional bodies, IPA, firms and the corporate regulator.

Consideration of Issues

The key issues raised by respondents are in three main categories:

- Professional Independence;
- Expert Witness;
- Professional fees and expenses.

Professional Independence

Respondents noted that the independence requirements in the APES 330 ED were not entirely consistent with the IPA Code of Professional Practice (COPP). The issues raised by respondents were considered and appropriate amendments made to align the proposed APES 330 with IPA COPP (Refer specific issues 18 -20).

Expert Witness Services

The Expert Witness Services is another area where respondents raised concerns. Whilst some responded strongly supported the inclusion of Expert Witness provisions, others such as the IPA had a view that it should not be included in the proposed APES 330. However, the parties concerned agree that it is possible for a Member who is acting in an Appointment may be called upon to give expert evidence. The proposed APES 330 now includes amendments which are acceptable to the key respondents who commented on this issue. (Refer specific issues 38 -40).

Professional Fees and Expenses

Based on comments made from respondents amendments have been made to section 8 to clarify member's professional obligations in respect of remuneration (Specific issues 41 – 46). In addition two new paragraphs 8.7 and 8.8 have been included which deal with contingent fees in the insolvency context. The IPA Code allows for success fees based remuneration arrangements in limited circumstances (as allowed under the Corporations law) and this has been reflected in the proposed APES 330 taking into consideration the general principles of APES 110 (ASIC comments 31).

Staff Recommendation

Subject to the Board's review comments and editorials, the Board approve the issue of APES 330 *Insolvency Services*.

Material Presented

- Proposed marked up version of APES 330 *Insolvency Services*;
- Proposed clean version of APES 330 *Insolvency Services*;
- General comments table;
- Specific comments table;
- ASIC comments table;

Author: Channa Wijesinghe

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Respondents noted that the independence requirements in the APES 330 ED were not entirely consistent with the IPA Code of Professional Practice (COPP). The issues raised by respondents were considered and appropriate amendments made to align the proposed APES 330 with IPA COPP (Refer specific issues 18 -20).

Expert Witness Services

The Expert Witness Services is another area where respondents raised concerns. Whilst some responded strongly supported the inclusion of Expert Witness provisions, others such as the IPA had a view that it should not be included in the proposed APES 330. However, the parties concerned agree that it is possible for a Member who is acting in an Appointment may be called upon to give expert evidence. The proposed APES 330 now includes amendments which are acceptable to the key respondents who commented on this issue. (Refer specific issues 38 -40).

Professional Fees and Expenses

Based on comments made from respondents amendments have been made to section 8 to clarify member's professional obligations in respect of remuneration (Specific issues 41 – 46). In addition two new paragraphs 8.7 and 8.8 have been included which deal with contingent fees in the insolvency context. The IPA Code allows for success fees based remuneration arrangements in limited circumstances (as allowed under the Corporations law) and this has been reflected in the proposed APES 330 taking into consideration the general principles of APES 110 (ASIC comments 31).

Staff Recommendation

Subject to the Board's review comments and editorials, the Board approve the issue of APES 330 *Insolvency Services*.

Material Presented

- Proposed marked up version of APES 330 *Insolvency Services*;
- Proposed clean version of APES 330 *Insolvency Services*;
- General comments table;
- Specific comments table;
- ASIC comments table;

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