



**Annual Review of APES 330 *Insolvency Services*  
(revised November 2011)**

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## 1. Executive Summary

### 1.1. Background

Accounting Professional and Ethical Standards Board (APESB) issued APES 330 *Insolvency Services* (the Standard) in September 2009 with an effective date of 1 April 2010. APES 330 sets out mandatory requirements and guidance for Members in Public Practice that provide Insolvency Services. In November 2011, APESB revised APES 330 to align it with the revised IPAA Code. The revised Standard has an effective date 1 April 2012.

### 1.2. Reason for this report

In accordance with APESB's constitution, an annual review needs to be performed in respect of each professional standard. This report presents a review of issues reported to APESB by stakeholders or identified by an internal technical review and the proposed recommendations to address the identified issues.

### 1.3. Issues identified

*Issue carried forward from the 2013 annual review:*

#### **Insolvency Law Reform Legislation**

Treasury released an exposure draft of the amendments to be included in the *Insolvency Law Reform Bill* (the Bill). The closing date for comments on the exposure draft was 8 March 2013. It is expected that Treasury will release a second tranche of the Bill shortly that will set out further consequential amendments to the corporate and personal insolvency legislation as a result of the reforms in the Bill, together with transitional measures. It is anticipated that draft regulations will also be released for public consultation. Following finalisation of the Legislation and the draft regulations, APES 330 will need to be revised in order to align with the Government's insolvency law reforms.

#### **2014 update**

The final *Insolvency Law Reform legislation* is yet to be released with the expected time frame for finalisation not yet confirmed.

*New Issues identified:*

#### **Third Edition of the ARITA Code of Professional Practice**

In late 2013, the Australian Restructuring & Turnaround Association (ARITA), previously known as the Insolvency Practitioners Association of Australia (IPAA), finalised a project to update their Code of Professional Practice in response to feedback from practitioners, current industry practice and recent outcomes of disciplinary cases. The *ARITA Code of Professional Practice* (3<sup>rd</sup> Edition) was finalised in late 2013 and is effective from 1 January 2014. Accordingly, APESB

needs to consider the impact it has on APES 330 and to amend APES 330, as appropriate.

### **Defined terms**

The Technical staff review identified that the definitions section in APES 330 needs to be revised as a result of the IESBA's revision of the International Code and APESB's subsequent amendments to APES 110 *Code of Ethics for Professional Accountants* (the Code).

### **Appointment of a Controller by the Court**

A stakeholder raised the issue that paragraph 4.7 of APES 330 overlooks the appointment of a Controller by the Court.

## **1.4. Summary of Actions/Recommendations**

*Issue carried forward from the 2013 annual review:*

### **Insolvency Law Reform Legislation**

#### **2013 Comments**

Technical staff will monitor the release of the second tranche of the Insolvency Law Reform legislation. Following its release, APES 330 will be reviewed to incorporate any amendments required due to these legislative reforms.

#### **2014 Update**

The Insolvency Law Reform Legislation is yet to be finalised. APESB Technical staff will continue to monitor the progress of the legislative reforms and consider the impact on APES 330 when the final legislation is released.

*New Issues identified:*

### **Third Edition of the ARITA Code of Professional Practice**

APESB technical staff reviewed APES 330 *Insolvency Services* to incorporate any amendments required due to changes in the ARITA Code of Professional Practice. Refer to attachments 9(b) and 9(c) for details of proposed changes to the existing APES 330.

### **Defined terms**

It is recommended that the defined terms "*Independence*", "*Member in Public Practice*" and "*Professional Services*" be revised and the defined terms "*Professional Activity*" and "*Professional Bodies*" be added to the Standard for consistency with the Code and other APESB pronouncements. This is to be done at the next revision of APES 330.

### **Appointment of a Controller by the Court**

It is recommended that the defined term, *Controller*, in APES 330 be revised in a manner consistent with the ARITA Code of Professional Practice to exclude Court appointed receivers. It is recommended that this change be processed at the next revision of APES 330.

## **Review of Issues**

*Issue carried forward from the 2013 annual review:*

### **2.1 Insolvency Law Reform Legislation**

#### **Issue**

Treasury has released an exposure draft of the primary amendments to be included in the Insolvency Law Reform Bill. Following the finalisation of the Legislation and the accompanying regulations, the IPAA Code (note that the IPAA is now known as ARITA) and APES 330 will need to be revised in order to align with the Government's insolvency law reforms.

The ED implements reforms previously released in the proposal paper, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia* released in December 2011. The ED provides a framework for corporate and personal insolvency regulation that promotes a high level of practitioner professionalism and competency, enhances transparency and communication between insolvency practitioners and stakeholders, and promotes increased efficiency in insolvency administration. The closing date for submissions was March 2013.

A second tranche of the Bill was expected to be released in 2013 setting out further consequential amendments to the corporate and personal insolvency legislation as a result of these reforms, along with transitional measures. Draft regulations will also be released for public consultation.

Important elements of the Insolvency Law Reform Bill include:

- creation of a new Schedule to the Corporations Act and Bankruptcy Act that aligns the registration process for registered liquidators and registered trustees.
- the newly aligned registration process based upon the existing Bankruptcy Act provisions to replace the current systems for registration of liquidators and registered trustees.
- a single class of practitioner in corporate insolvency.
- reforms to the insurance obligations of insolvency practitioners that will significantly strengthen the penalties attached to not holding adequate and appropriate insurance, improve the regularity with which practitioners are required to show evidence of their insurance to the regulators, and allow for the insurance obligations for insolvency practitioners to more

easily be amended in light of the insurance markets prevailing at a relevant period of time.

- requirement for insolvency practitioners to lodge an annual practitioner return.
- obligation for insolvency practitioners to inform their respective regulator when the trustee becomes aware of prescribed significant events that would result in the practitioner automatically being deregistered by law, by a regulator without reference to a committee, or the practitioner ceases to have adequate and appropriate insurance.
- capacity for the regulators to deregister or suspend a practitioner directly without referral to a committee on certain objectively determinable grounds.
- application of the reforms to apply the current three-person committee approach to the registration and discipline of liquidators.

### **Impacted Stakeholders**

Members in Public Practice, Firms and Professional Bodies.

### **2014 Update**

The *Insolvency Law Reform legislation* is yet to be finalised with the expected timeframe for finalisation not yet known.

### **Action/Recommendation**

The Insolvency Law Reform Legislation is yet to be finalised. APESB Technical staff will continue to monitor the progress of the legislative reforms and consider the impact on APES 330 when the final legislation is released.

*New Issues identified:*

## **2.2 Third Edition of the ARITA Code of Professional Practice**

### **Issue**

In 2013, ARITA reviewed and amended their Code of Professional Practice which was subsequently finalised in late 2013 incorporating changes that arose as the result of feedback received from practitioners, current industry practice and the outcomes of disciplinary cases. The third edition of the ARITA Code of Professional Practice took effect from 1 January 2014.

### **Impacted Stakeholders**

Members in Public Practice, Firms and Professional Bodies.

## **Action/Recommendation**

APESB technical staff worked in consultation with ARITA Technical Staff to identify areas of APES 330 that require amendment due to changes in the revised ARITA Code of Professional Practice issued in late 2013. The recommended changes are shown at Attachment 9(c) with the explanation for the basis for the proposed changes detailed at Attachment 9(b).

### **2.3 Defined terms**

#### **Issue**

The technical review identified that the definitions section of APES 330 needs to be revised.

#### **Definitions to be revised**

##### **Independence means is:**

(a) Independence of mind – the state of mind that permits the ~~provision of an opinion~~ expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism.

(b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably be likely to conclude, weighing all the specific facts and circumstances, that a Firm's, Partner's or an employee, or agent, consultant, or contractor of the Members' or a member of the Engagement Audit or Assurance team's, integrity, objectivity or professional scepticism has been compromised.

**Member in Public Practice** means a Member, irrespective of functional classification (e.g., audit, tax or consulting) in a Firm that provides Professional Services. This term is also used to refer to a Firm of Members in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable professional body.

**Professional Services** means ~~services requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services.~~ Professional Activities performed for clients.

Definitions to be added

**Professional Activity** means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, taxation, management consulting, and financial management.

**Professional Bodies** means the Institute of Chartered Accountants Australia, CPA Australia and the Institute of Public Accountants.

Subsequent to the revision of the definitions section, consequential editorial amendments may also be required to APES 330.

**Impacted Stakeholders**

Members in Public Practice, Firms and Professional Bodies

**Recommendation**

The defined terms in APES 330 should be revised in a manner consistent with the Code and other APESB standards. It is recommended that these changes and any other consequential amendments be processed at the next revision of APES 330.

**2.4 Appointment of a Controller by the Court**

**Issue**

A stakeholder raised the issue that paragraph 4.7 of APES 330 overlooks the appointment of a Controller by the Court. The recent release of the third edition of the ARITA Code of Professional Practice excludes Court appointed receivers from the definition of *Controller*. Exclusion of such receivers from the definition of *Controller* addresses this issue.

**Impacted Stakeholders**

Members in Public Practice, Firms and Professional Bodies

**Recommendation**

The defined term, *Controller*, in APES 330 should be revised in a manner consistent with the ARITA Code of Professional Practice to exclude Court appointed receivers. It is recommended that this change be processed at the next revision of APES 330.