

5 September 2014

### APESB issues revised APES 330 Insolvency Services

Accounting Professional & Ethical Standards Board Limited (APESB) today announced the issue of the revised APES 330 *Insolvency Services* (APES 330) to update the existing APES 330 (Issued November 2011).

Please refer to Appendix 1 of this technical update for details of the revisions. The revised APES 330 will be effective for Insolvency Services commencing on or after 1 January 2015 with early adoption permitted.

The revised standard is available from APESB's website: [www.apesb.org.au](http://www.apesb.org.au)

– ENDS –

#### Technical Enquiries:

Mr Channa Wijesinghe  
Technical Director  
Email: [channa.wijesinghe@apesb.org.au](mailto:channa.wijesinghe@apesb.org.au)  
Phone: 03 9642 4372

## Appendix 1

### Revision to APES 330 (Issued November 2011)

Accounting Professional & Ethical Standards Board Limited (APESB) has approved the following revisions to APES 330 *Insolvency Services* which was originally issued in September 2009 and revised in November 2011.

Paragraph Reference	Revisions
1.1	<p>The objectives of APES 330 <i>Insolvency Services</i> are:</p> <ul style="list-style-type: none"> <li>• <u>to mandate Independence requirements for Members in Public Practice who are responsible for Appointments;</u></li> <li>• <u>to mandate that Members in Public Practice provide the Approving Body with a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) and to specify the minimum requirements of the DIRRI;</u></li> <li>• <u>to specify requirements for a Member in Public Practice who intends to replace another practitioner who has commenced an Appointment;</u></li> <li>• <u>to specify the professional obligations of a Member in Public Practice who is acting in the capacity of an Expert Witness during the course of an Administration;</u></li> <li>• <u>to specify requirements for a Member in Public Practice to disclose relevant information about Professional Fees and Expenses to the director(s) of the insolvent Entity or to the Insolvent Debtor; and</u></li> <li>• <u>to specify the quality control and documentation obligations of a Member in Public Practice who provides Insolvency Services.</u></li> </ul>
1.42	<p>Accounting Professional &amp; Ethical Standards Board Limited (APESB) <del>has revised professional standard issues</del> APES 330 <i>Insolvency Services</i> (<b>the Standard</b>), which is effective for Insolvency Services commencing on or after <del>1 April 2012</del> 1 January 2015 and supersedes APES 330 <i>Insolvency Services</i> issued in November 2011. Earlier adoption of this Standard is permitted.</p>
2	<p><b>Administration</b> means <del>an insolvency arrangement arising from an Appointment; under either the Bankruptcy Act 1966, the Corporations Act 2001 or any other than</del> <u>legislation. Where appropriate, the term, Administration, applies to a members' voluntary liquidation, under which an insolvent Entity operates solvent administration under Chapter 5 of the Corporations Act 2001.</u></p> <p><b>Appointment</b> means the appointment of a Member in Public Practice as a <del>Trustee in bankruptcy, a Trustee appointed under Section 50, a debt agreement administrator under Part IX, or a Trustee or controlling Trustee under Part X of the Bankruptcy Act 1966;</del> or as a liquidator or provisional liquidator <del>(other than a liquidator in a members' voluntary liquidation),</del> a voluntary administrator, an administrator of a deed of company arrangement, a Controller, or a scheme manager under Chapter 5 of the <i>Corporations Act 2001</i>; or an appointment to provide Insolvency Services under any other legislation.</p> <p><b>Approving Body</b> means the body with authority to approve Professional Fees. Depending on the type of Appointment, this body will be the creditors, <del>the members,</del> the secured creditor, <del>the</del> a Committee or the court. In limited circumstances in an Appointment under the <i>Corporations Act 2001</i> or the <i>Bankruptcy Act 1966</i>, this approval is provided pursuant to those Acts.</p>

**Associated Entity** means an Entity, including an unincorporated Entity such as a partnership, over which a Member in Public Practice has significant influence, that is neither a Controlled Entity nor an interest in a joint venture.

**Contingent Fee** means a fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the work services performed by a Member in Public Practice. A fee that is established by a court or other public authority is not a Contingent Fee.

**Controlled Entity** means an Entity over which a Member in Public Practice has the power to govern the financial and operating policies of the Entity so as to obtain benefits from its activities.

**Controller** means a Member in Public Practice appointed as controller or managing controller under Part 5.2 of the *Corporations Act 2001*, or a receiver appointed to property of an individual. It does not include a receiver appointed by the court.

**Expert Witness** means a Member in Public Practice who during the course of an Administration acts as has been engaged, assigned or otherwise obligated to provide an Expert Witness Service. As an Expert Witness, the Member may express opinions or provide Other Evidence to the court based on the Member's specialised knowledge derived from the Member's training, study or experience on matters such as whether technical or Professional Standards have been breached, the amount of damages, the amount of an account of profits, or the amount of a claim under an insurance policy. Generally all opinion evidence is expert evidence if it is wholly or substantially based on the specialised knowledge derived from the Member's training, study or experience, however not all expert evidence is opinion evidence. Expert evidence may be opinion or Other Evidence.

**Expert Witness Service** means a Professional Activity provided in the context of legal proceedings to give expert evidence in a written report, affidavit or written statement or, in certain circumstances, orally.

**Independence** means is:

- (a) Independence of mind - the state of mind that permits the provision expression of an opinion a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (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 a Firm's, or a member of the Engagement team's, weighing all the specific facts and circumstances, that the integrity, objectivity or professional scepticism had of a Member, or a Firm, or Partner, or employee, or agent, or consultant, or contractor of the Member, has been compromised.

**Insolvency Services** means a Professional Service, excluding those in respect of members' voluntary liquidations, provided by a Member in Public Practice to an insolvent Entity under an Appointment.

**Insolvent Debtor** means a person who is unable to pay debts, whether or not they are subject to an Administration.

**Member** means a member of a pProfessional bBody that has adopted this Standard as applicable to their membership, as defined by that pProfessional

	<p><u>Body.</u></p> <p><b>Member in Public Practice</b> means a Member, irrespective of functional classification (e.g. audit, tax or consulting) in a Firm that provides Professional Services. <del>The</del><u>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.</u></p> <p><b>Network Firm</b> means a Firm or Entity that belongs to a Network.</p> <p><b>Other Evidence</b> means evidence which does not provide an opinion, but which requires the application of the Expert Witness's specialised knowledge derived from the Expert Witness's training, study or experience. An example might be where a Member provides a summary of the sales by month, by product, by geography based on the information contained within a series of invoices and a general ledger. Whilst it may be a matter of fact as to what sales were made, the extraction and summary of this information is facilitated by the Member's specialised knowledge. Another example requiring specialised knowledge might be where a Member sets out the accounting standards that are relevant to particular types of transactions without actually expressing an opinion as to whether the actual treatment is in line with those standards.</p> <p><b>Professional Activity</b> means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, taxation, management consulting, and financial management.</p> <p><b>Professional Bodies</b> means the Institute of Chartered Accountants Australia, CPA Australia and the Institute of Public Accountants.</p> <p><b>Professional Services</b> means <del>services requiring accountancy or related skills Professional Activities performed by a Member in Public Practice including accounting, auditing, taxation, management consulting and financial management services for clients.</del></p> <p><b>Professional Standards</b> means all Standards issued by Accounting Professional &amp; Ethical Standards Board Limited and all professional and ethical requirements of the applicable Professional <del>body</del> <u>Bodies.</u></p> <p><b>Referring Entity</b> means an Entity that has provided a Member in Public Practice's contact details to a director(s), Insolvent Debtor or creditor for the purposes of the director(s), Insolvent Debtor or creditor seeking specialist insolvency advice that may result in an Appointment.</p> <p><b>Witness Report</b> means a written report, affidavit or written statement that is for the purpose of communicating expert evidence in a matter that is to be considered by a court.</p>
3.1211	<p>In undertaking an Insolvency Service, a Member in Public Practice should consider any guidance issued by the <del>professional accounting bodies</del> <u>Professional Bodies</u> and appropriate regulatory authorities.</p>
3.512	<p><b><u>Prior to accepting an Appointment, a Member in Public Practice shall ensure that the Member has the capacity and has access to the necessary resources to conduct the proposed Administration in an effective and efficient manner.</u></b></p>
3.13	<p><b><u>If a Member in Public Practice accepts an Appointment with another insolvency practitioner, all Appointees are equally responsible for all decisions made on the Appointment.</u></b></p>

3.14	<u>A Firm which provides Insolvency Services should establish policies and procedures to ensure that in Appointments involving more than one Appointee, all Appointees are knowledgeable about the conduct of the Administration.</u>
Heading to paragraph 3.16	<b><u>Marketing Professional Behaviour</u></b>
3.1719	A Member in Public Practice may include the Firm's logo in non-statutory advertisements as long as that logo does not take prominence in the advertisement.
<b>3.204.17</b>	<b><u>A Member in Public Practice shall not provide any Inducement to any Entity to secure an Appointment for the Member or to secure or prevent the Appointment or nomination of another person.</u></b>
<b>3.214.18</b>	<b><u>A Member in Public Practice shall not accept an Appointment or perform an Administration that involves:</u></b> <b>(a) <u>referral or other commissions, or monetary or non-monetary benefits;</u></b> <b>(b) <u>spotter's fees;</u></b> <b>(c) <u>understandings or requirements that work in the Administration will be given to a referrer; or</u></b> <b>(d) <u>any other such arrangements that restrict the proper exercise of the Member's judgement and duties.</u></b>
4.1	<u>The requirements in section 4 of this Standard do not apply to Appointments as Controller or Liquidator in a members' voluntary liquidation.</u>
4.2	<u>Paragraph 4.1 does not remove a Member in Public Practice's obligations to comply with the relevant law in respect of Independence.</u>
4.31	<b>Subject to paragraph 4.24, a Member in Public Practice accepting an Appointment or conducting an Administration shall maintain Independence.</b>
4.6	<b>For the purpose of this Standard, when seeking to identify relationships with an insolvent Entity, a Member in Public Practice shall take reasonable steps to identify and evaluate any threats the Member has reason to believe are created by the Firm's or Network Firms' interests and relationships with the insolvent Entity or, its Related Entities or Associates. The Member shall consider the following matters when identifying relevant Network Firms:</b> <b>(a) the geographical regions or countries in which the insolvent Entity or, its Related Entities or Associates operate; and</b> <b>(b) relationships with the directors or officers of the insolvent Entity or, its Related Entities or Associates.</b>
4.75	<u>The following circumstances and relationships are not considered to create a threat to the Independence of a Member in Public Practice, who is considering accepting or continuing an Appointment:</u> <b>(a) <u>the Engagement of the Member, the Member's Firm or a Network Firm by a third party, who is not an Associate or Related Entity of an insolvent Entity, engaging the Member, the Member's Firm or a Network Firm to investigate, monitor or advise on the affairs of the insolvent Entity on behalf of the third party where the scope of the Engagement will not compromise the Member's Independence and will</u></b>

	<p><u>not be subject to review or challenge in a subsequent Administration and any Professional Fees received for the Engagement would not be a preferential payment in a subsequent Administration; or</u></p> <p>(b) the transition of an Appointment from one type of insolvency Administration to another under the relevant legislation, subject to the terms of that legislation, for example from an Appointment as administrator to voluntary liquidator under the <i>Corporations Act 2001</i>; or</p> <p><del>(c) an Appointment as Controller of an insolvent Entity of which that Member or another Partner of the Member's Firm or Network Firm has been a Controller under a different debenture or where the Appointment has been made by the court; or</del></p> <p>(dc) <u>Pre-appointment Advice</u> provided by the Member, the Member's Firm or the Network Firm to the insolvent Entity prior to the Appointment, which was limited to:</p> <ul style="list-style-type: none"> <li>• the financial situation of the Entity;</li> <li>• the solvency of the Entity;</li> <li>• the consequences of insolvency for the Entity; or</li> <li>• alternative courses of action available to the Entity.</li> </ul>
4.86	<p>Trivial or inconsequential relationships are not a bar to acceptance or retention of an Appointment by a Member in Public Practice. The Member is not required to list trivial or inconsequential relationships in the <i>Declaration of Independence, Relevant Relationships and Indemnities</i> referred to in paragraph 4.2022. A relationship is trivial or inconsequential if it is remote, coincidental or insignificant.</p>
4.97	<p><del>Subject to paragraph 4.8, a</del> <b>A Member in Public Practice shall not accept an Appointment, other than to act as a Controller, where the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises have, or have had, any of the following relationships:</b></p> <p>(a) <b>a Close or Immediate Family relationship with:</b></p> <ul style="list-style-type: none"> <li>• the insolvent Entity;</li> <li>• a director or officer of the insolvent Entity; or</li> <li>• an employee of or adviser to the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity.</li> </ul> <p>(b) <b>a close personal relationship with:</b></p> <ul style="list-style-type: none"> <li>• the insolvent Entity;</li> <li>• <del>a director</del> <b><u>an Associate</u> or <u>officer</u> <u>Related Entity</u> of the insolvent Entity; or</b></li> <li>• an employee of or adviser to the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity.</li> </ul> <p>(c) <b>a material business relationship, including the holding of a material Financial Interest, whether directly or indirectly in or jointly <u>in the previous two years</u> with:</b></p> <ul style="list-style-type: none"> <li>• the insolvent Entity;</li> <li>• <del>a director</del> <b><u>an Associate</u> or <u>officer</u> <u>Related Entity</u> of the insolvent Entity; or</b></li> </ul>

	<ul style="list-style-type: none"> <li>• an employee of or adviser to the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity.</li> </ul> <p>(d) a material loan <del>to or from</del> or material guarantee, <u>in the previous two years</u>, to or from:</p> <ul style="list-style-type: none"> <li>• the insolvent Entity;</li> <li>• <del>a director</del> <u>an Associate</u> or <del>officer</del> <u>Related Entity</u> of the insolvent Entity; or</li> <li>• an employee of or adviser to the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity.</li> </ul> <p>(e) employment with the insolvent Entity in the preceding two years, in a position to exert direct and significant influence over the insolvent Entity.</p>
4.10	<u>A material business relationship includes the provision of goods or services by the insolvent Entity to the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practices.</u>
4.118	<p>In respect of prior relationships of the nature referred to in paragraphs 4.79(c), 4.9(d) and 4.9(de), <u>notwithstanding that the relationship occurred more than two years prior to the proposed Appointment</u>, a Member in Public Practice <del>shall</del> <u>should</u> evaluate any threats a prior relationship is likely to create to the Member's Independence. In performing this assessment, the Member <del>shall</del> <u>should</u> determine whether a reasonable person considering all of the facts and circumstances would conclude that there are significant threats to the Member's Independence posed by a prior relationship. Factors to consider include the: <u>nature of the prior relationship and the reasons for it being terminated.</u></p> <ul style="list-style-type: none"> <li>• <del>nature of the prior relationship;</del></li> <li>• <del>time elapsed since the relationship ended; and</del></li> <li>• <del>reasons for the termination of the relationship.</del></li> </ul>
4.1310	<b>A Member in Public Practice shall not accept an Appointment, <del>other than to act as a Controller</del>, where the Member, the Member's Firm or a Network Firm has during the prior two years provided a Professional Service to the insolvent Entity, unless the Professional Service is considered immaterial or is referred to in paragraph 4.57.</b>
4.1512	<b>Where a Member in Public Practice is considering accepting an Appointment and two or more Firms or Network Firms have merged in the preceding two years, the Member shall evaluate any relationships that the Member is aware of or ought reasonably to be aware of which the insolvent Entity had with the Firm, previous Firm(s) or Network Firm(s) in the <del>preceding two years</del> in accordance with the requirements of this standard.</b>
4.1714	<b>If the insolvent Entity is a company, a Member in Public Practice shall not provide Pre-appointment Advice to both the <del>Entity</del> <u>company</u> and its directors in their personal capacity, as the threat to Independence created would be so significant that no safeguard could reduce the threat to an <u>Acceptable L</u>level.</b>
4.18	<b><u>If the insolvent Entity is an individual, and a Member in Public Practice provides Pre-appointment Advice to that individual, the Member shall not provide Pre-appointment Advice to any company controlled by that individual or of which the individual serves as a director or an officer.</u></b>

4.1945	The requirements of paragraphs 4.44 4.17 and 4.18 do not prohibit a Member in Public Practice from providing general information on the insolvency process and the consequences of insolvency to both the <del>Entity</del> company and its directors in their personal capacity, <del>or the individual and related companies, as the case may be.</del>
4.2119	A Member in Public Practice shall provide a <i>Declaration of Independence, Relevant Relationships and Indemnities</i> in respect of an Insolvency Service <del>(excluding an Appointment as a Controller)</del> . The Member shall provide the <i>Declaration</i> in the first communication to the creditors and table it at the first meeting of the creditors.
4.2220	<p>A Member in Public Practice shall include the following in the <i>Declaration of Independence, Relevant Relationships and Indemnities</i>:</p> <ul style="list-style-type: none"> <li>• <u>a statement as to whom the <i>Declaration of Independence, Relevant Relationships and Indemnities</i> is being made in respect of;</u></li> <li>• a declaration that the Member has undertaken an evaluation of the significance of any threats to Independence and that the Member determined that the Member is independent for the purpose of accepting the Appointment in accordance with the requirements of the relevant legislation and this Standard;</li> <li>• <u>where the <i>Declaration of Independence, Relevant Relationships and Indemnities</i>, or similar document, is required by law or where it is not required by law and the Member has obtained consent from the Referring Entity:</u> <ul style="list-style-type: none"> <li>- <u>the name of the Referring Entity;</u></li> <li>- <u>the connection to the insolvent Entity (if applicable) of the Referring Entity; and</u></li> <li>- <u>the Member's reasons for believing the relationship with the Referring Entity does not result in the Member having a conflict of interest or duty;</u></li> </ul> </li> <li>• a declaration setting out the circumstances of the Appointment including the number of meetings with the <del>insolvent</del> Entity or its advisors and the period over which Pre-appointment Advice was provided, a summary of the nature of the issues discussed, the amount of any Professional Fees received for the Pre-appointment Advice and <del>an explanation as to</del> <u>the Member's reasons for believing why such Pre-appointment Advice does not result in a conflict of interest or duty;</u></li> <li>• <u>a declaration that no other information or advice beyond that outlined in the <i>Declaration of Independence, Relevant Relationships and Indemnities</i>, was provided to the insolvent Entity, directors of the insolvent Entity (if the insolvent Entity is a company) or their advisors;</u></li> <li>• a declaration setting out all relationships the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises, have had in the preceding two years with: <ul style="list-style-type: none"> <li>• the insolvent Entity;</li> <li>• if the insolvent Entity is a company - an Associate of the company;</li> <li>• if the insolvent Entity is an individual: <ul style="list-style-type: none"> <li>• an Immediate or Close Family member of the</li> </ul> </li> </ul> </li> </ul>



	<p>individual;</p> <ul style="list-style-type: none"> <li>• a spouse or dependant of an Immediate or Close Family member of the individual; or</li> <li>• any Entity with which the individual or any of the persons noted above are associated;</li> <li>• a former Appointee of the insolvent Entity; and</li> <li>• a person who has a <u>chargesecurity</u> over the whole or substantially the whole of the insolvent Entity's property and other assets;</li> </ul> <p>and the <u>Member's</u> reasons <u>for believing</u> why these relationships, if any, do not result in a conflict of interest or duty;</p> <ul style="list-style-type: none"> <li>• a declaration of prior Professional Services provided in the preceding two years to the insolvent Entity by the Member, the Members' Firm, a Network Firm or their Partners, including the nature of the Professional Services, when the Professional Service was provided, the period over which the Professional Service was provided, the Professional Fees paid and the <u>Member's</u> reasons <u>for believing</u> why the Professional Service does not result in a conflict of interest or duty;</li> <li>• a declaration that there are no other known prior Professional Services or other relationships that require disclosure; and</li> <li>• a declaration of indemnities (other than statutory indemnities) and upfront payments, including the identity of each indemnifier or provider of an upfront payment (name and relationship with the insolvent Entity) and the extent and nature of each indemnity or upfront payment, a statement as to where the funds are being held, when and how the funds will be applied and that there are no other indemnities or upfront payments to be disclosed.</li> </ul>
4.23	<p>In addition to the requirements contained in paragraph 4.22, a Member in Public Practice should consider including the following in the <i>Declaration of Independence, Relevant Relationships and Indemnities</i>:</p> <ul style="list-style-type: none"> <li>• a declaration setting out all relationships the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises, have had more than two years prior to the Appointment with: <ul style="list-style-type: none"> <li>• <u>the insolvent Entity;</u></li> <li>• <u>if the insolvent Entity is a company – an Associate of the company;</u></li> <li>• <u>if the insolvent Entity is an individual:</u> <ul style="list-style-type: none"> <li>• <u>an Immediate or Close Family member of the individual;</u></li> <li>• <u>a spouse or dependant of an Immediate or Close Family member of the individual; or</u></li> <li>• <u>any Entity with which the individual or any of the persons listed above are associated.</u></li> </ul> </li> </ul> </li> </ul> <p><u>When determining whether to make additional disclosures, the Member should take into consideration the nature of the prior relationship, the reasons for termination of the relationship and the relevance that additional information</u></p>

	<p>may have for creditors in assessing the Member's Independence.</p>
4.2421	<p>Where more than one Member in Public Practice is appointed to an insolvent Entity, all Appointees shall sign the <i>Declaration of Independence, Relevant Relationships and Indemnities</i> prior to its issue. Where this is not possible and a <i>Declaration of Independence, Relevant Relationships and Indemnities</i> is issued before all Appointees sign it, the Members shall:</p> <ul style="list-style-type: none"> <li>• Provide an explanation in the <i>Declaration of Independence, Relevant Relationships and Indemnities</i> as to why all Appointees were not able to sign it; and</li> <li>• Sign a replacement <i>Declaration of Independence, Relevant Relationships and Indemnities</i> as soon as possible and ensure that it is provided to creditors.</li> </ul>
4.2522	<p>When circumstances or relationships giving rise to a threat to Independence are identified after the commencement of an Administration, a Member in Public Practice shall evaluate that threat and:</p> <ol style="list-style-type: none"> <li>a) continue performing the Administration if the Member determines that the threat would not have precluded the Member from accepting the Appointment had the threat been identified prior to the commencement of the Appointment. The Member shall amend the <i>Declaration of Independence, Relevant Relationships and Indemnities</i> and send it to all the creditors; or</li> <li>b) where the threat to the Independence of the Member would have precluded the Member from accepting the Appointment had the threat been identified prior to the commencement of the Appointment, the Member shall notify the court, all creditors and <del>regulatory authorities</del> as <u>the appropriate regulatory authority</u> of the following: <ul style="list-style-type: none"> <li>• the nature of the threat;</li> <li>• the key facts and circumstances;</li> <li>• reasons why the circumstances or relationships giving rise to the threat were not identified prior to acceptance of the Appointment;</li> <li>• the potential impact on the Independence of the Member;</li> <li>• the status of the Administration;</li> <li>• the costs of ceasing and transferring the Appointment; and</li> <li>• Professional Fees and Expenses billed and any outstanding amounts; and</li> </ul> </li> <li>c) in the circumstances described in paragraph 4.2225(b), apply to the court to either continue or resign from the Appointment.</li> </ol>
4.2623	<p>Where a Member in Public Practice becomes aware that the <i>Declaration of Independence, Relevant Relationships and Indemnities</i> is out of date or inaccurate, the Member shall update the <i>Declaration</i> and provide it to the creditors <del>or</del> <u>and</u> the Committee with the next communication and table it at the next meeting of the creditors or the Committee.</p>

4.2724	<p>Where a Member in Public Practice is requested by an insolvent Entity, its directors or its creditors to consent to an Appointment to replace another person who has commenced the Administration, and the Member intends to agree to the request, the Member shall:</p> <ul style="list-style-type: none"> <li>(a) give reasonable notice to the other person being not less than one business day prior to the meeting of creditors, except when the request is received within one business day before that meeting;</li> <li>(b) not solicit proxies directly or indirectly and shall act, and be seen to act, in the creditors' interests;</li> <li>(c) provide a <i>Declaration of Independence, Relevant Relationships and Indemnities</i> containing the information required by paragraph 4.2022 at the meeting where the creditors decide whether to replace the other person; and</li> <li>(d) disclose to the creditors the basis on which the Member proposes to charge Professional Fees; and</li> <li>(e) provide details of the Member's relationship with the Entity nominating the Member for the Appointment.</li> </ul>
6.1	<p>A Firm which provides Insolvency Services shall establish policies and procedures which prohibit the Firm, a Network Firm, their Partners and employees, and the Close and Immediate Families, <del>C</del>controlled and <del>A</del>associated Entities of the Firm's and Network Firms' Partners and employees from acquiring or deriving a benefit from dealing with any assets including property which comes under the control of a Partner or employee due to an Appointment, without obtaining the prior approval of the court.</p>
6.3	<p>A Member in Public Practice shall take all reasonable steps to ensure that the Member does not knowingly sell property or other assets of an Administration to the Member's Firm, a Network Firm, their Partners or employees, or to the Immediate and Close Families, <del>C</del>controlled or <del>A</del>associated Entities of the Member, the Firm's or Network Firms' Partners and employees without obtaining prior approval of the court.</p>
7.1	<p>A Member in Public Practice who during the course of an Administration acts as an Expert Witness shall comply with <del>the following:</del> <u>APES 215 Forensic Accounting Services</u> as if an Appointment is an Engagement.</p> <ul style="list-style-type: none"> <li><del>(a) the paramount duty to the court which overrides any other duty;</del></li> <li><del>(b) a duty to assist the court on matters relevant to the Member's area of expertise in an objective manner; and</del></li> <li><del>(c) a duty to make it clear to the court when a particular question or issue falls outside the Member's expertise.</del></li> </ul>
7.2	<p><del>A Member in Public Practice who during the course of an Administration acts as an Expert Witness should comply with relevant evidentiary and procedural requirements relating to Expert Witnesses.</del></p>
7.3	<p><del>Subject to any legal requirements or restrictions, a Member in Public Practice who during the course of an Administration acts as an Expert Witness shall clearly communicate in a Witness Report issued by the Member:</del></p> <ul style="list-style-type: none"> <li><del>(a) the scope of work performed by the Member;</del></li> <li><del>(b) any limitations on the scope of work performed;</del></li> </ul>

	<p><del>(c) details of the Member's training, study and experience that are relevant to the matters on which the Member is providing expert evidence;</del></p> <p><del>(d) the relationships, if any, the Member, the Member's Firm, or a Network Firm has with any of the parties to the proceedings that may create a threat or a perceived threat to the Member's obligation to comply with the fundamental principles of the Code or the Member's paramount duty to the court, and any appropriate safeguards implemented;</del></p> <p><del>(e) the extent, if any, of reliance by the Member on the work of others;</del></p> <p><del>(f) the opinions formed by the Member;</del></p> <p><del>(g) whether an opinion is provisional rather than concluded, and, if so, the reasons why a concluded opinion has not been formed;</del></p> <p><del>(h) the significant facts upon which the opinions are based;</del></p> <p><del>(i) the significant assumptions upon which the opinions are based and the reasons why the Member made those assumptions;</del></p> <p><del>(j) if the Member considers that an opinion of the Member may be misleading because a significant assumption is likely to mislead, then a statement to that effect and an explanation of why the assumption is likely to mislead;</del></p> <p><del>(k) where applicable, that the Member's opinion is subject to the veracity of another person's report upon which the Member's Witness Report is based;</del></p> <p><del>(l) the reasoning by which the Member formed the opinions, including an explanation of any method employed and the reasons why that method was chosen;</del></p> <p><del>(m) a list of all documents and sources of information relied upon in the preparation of the Witness Report; and</del></p> <p><del>(n) any restrictions on the use of the Witness Report.</del></p>
8.1	<p>A Member in Public Practice performing an Administration shall be remunerated for such service by way of Professional Fees in accordance with Section 240 <i>Fees and other Types of Remuneration</i> of the Code, subject to the limitations in paragraph 4.183.21.</p>
8.2	<p><u>When requested to consent to an Appointment, other than as a Controller or in an Appointment by the court, a Member in Public Practice shall provide to the director(s) of the insolvent Entity or the Insolvent Debtor the following information prior to Appointment:</u></p> <ul style="list-style-type: none"> <li>• <u>The basis of calculating Professional Fees the Member proposes to use in the Administration;</u></li> <li>• <u>If the Member proposes to use a time basis, the scale of hourly rates that will be used;</u></li> <li>• <u>An explanation that:</u> <ul style="list-style-type: none"> <li>• <u>Professional Fees drawn in the Administration will be those approved by the Approving Body;</u></li> <li>• <u>creditors will be advised of the basis of calculating Professional Fees proposed to the director(s) of the insolvent Entity or the Insolvent Debtor; and</u></li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• <u>where the director(s) of the insolvent Entity, Insolvent Debtor or other Entity have paid money towards the cost of the Administration, the amount paid may not satisfy the full costs of the Administration. Professional Fees above that amount of money are subject to approval by the Approving Body and if so approved, may be paid from the assets of the Administration;</u></li> <li>• <u>If the Member provides an estimate to the director(s) of the insolvent Entity or the Insolvent Debtor:</u> <ul style="list-style-type: none"> <li>• <u>it shall be in writing clearly detailing any variables which may affect the estimate;</u></li> <li>• <u>the director(s) of the insolvent Entity or the Insolvent Debtor shall be informed that creditors will be advised of the estimate and that the actual Professional Fees drawn in the Administration may exceed that estimate and this higher amount can be approved by the Approving Body; and</u></li> <li>• <u>If the estimate provided to the director(s) of the insolvent Entity or the Insolvent Debtor differs to any subsequent estimate provided to creditors or the actual amount of Professional Fees claimed, the Member shall provide an explanation of the reason for the variance.</u></li> </ul> </li> </ul>
<u>8.3</u>	<u>Where a Member in Public Practice provides a fixed fee or unconditional quote to the director(s) of the insolvent Entity or the Insolvent Debtor, the Member shall not ask the Approving Body for approval of Professional Fees greater than the fixed fee or unconditional quote.</u>
<u>8.4</u>	<u>Members in Public Practice should exercise care in providing a fixed fee or unconditional quote to the director(s) of the insolvent Entity or Insolvent Debtor prior to accepting an Appointment as this may be perceived to restrict the proper conduct of the Administration.</u>
<u>8.5</u>	<u>Members in Public Practice should obtain acknowledgement from the director(s) of the insolvent Entity or the Insolvent Debtor of the information provided under 8.2 and 8.3 prior to accepting the Appointment.</u>
<u>8.73</u>	The term 'necessary' in paragraph 8.26 means professional work that is: <ul style="list-style-type: none"> <li>• directly connected with the Administration; and</li> <li>• performed in accordance with the duties of the Appointment and Professional Standards.</li> </ul>
<u>8.84</u>	The term 'proper' in paragraph 8.26 means professional work that is performed in an effective and efficient manner in an Administration.
<u>8.12</u>	<u>A Member in Public Practice who has accepted an Appointment shall not claim as an Expense any disbursements that were incurred prior to the date of Appointment.</u>
<u>8.149</u>	When considering whether a proposed Contingent Fee arrangement in a particular Administration meets the requirements of paragraph 8.813, a Member in Public Practice shall consider the following: <ul style="list-style-type: none"> <li>• funds available to the Administration;</li> <li>• funding from alternative sources such as creditors or a litigation funder;</li> <li>• the costs of the alternative sources of funds in comparison to the</li> </ul>

	<p><b>Contingent Fee arrangement;</b></p> <ul style="list-style-type: none"> <li>• the risk associated with the tasks to be undertaken for the Contingent Fee; and</li> <li>• the appropriateness of the amount of the proposed Contingent Fee in relation to the nature of the Administration and the risk associated with the task to be undertaken.</li> </ul>
8.1644	<p>A Member in Public Practice who has accepted an Appointment, other than an Appointment as a Controller, shall provide the following information in the first communication to the creditors:</p> <ul style="list-style-type: none"> <li>• the methods that may be used to calculate Professional Fees;</li> <li>• the basis upon which Professional Fees will be charged for the Administration; <del>and</del></li> <li>• why the Member considers that the chosen method is suitable for the Administration;</li> <li>• <u>information that details the classes of Expenses that may be charged to the Administration; and</u></li> <li>• <u>the basis for recovery of Expenses charged directly by the Firm.</u></li> </ul>
8.1843	<p>Where a Member in Public Practice has accepted an Appointment, other than as a Controller, and is seeking approval for Professional Fees from the Approving Body, the Member shall provide sufficient information so as to allow the Approving Body to make an informed assessment as to whether the remuneration is reasonable, and shall:</p> <ul style="list-style-type: none"> <li>• provide details of how the Professional Fees are computed;</li> <li>• provide a description of the Professional Services performed, or to be performed, broken down into broad categories, and the costs associated with each category;</li> <li>• state the terms of the approval sought from the Approving Body;</li> <li>• advise the total of Professional Fees previously determined and whether the Member will be seeking approval for additional Professional Fees in the future;</li> <li>• advise when the Professional Fees will be drawn; <del>and</del></li> <li>• <u>provide details of Expenses paid from the Administration, including:</u> <ul style="list-style-type: none"> <li>• <u>where Expenses are paid for Professional Services that have not been provided by the Firm, who the Expenses were paid to;</u></li> <li>• <u>what the Expenses were for;</u></li> <li>• <u>for Expenses charged directly by the Firm, the basis of calculation of those Expenses;</u></li> <li>• <u>the amount paid; and</u></li> <li>• <u>the basis of recovery of future Expenses to be charged directly by the Firm; and</u></li> </ul> </li> <li>• provide a summary of receipts and payments to and from the Administration bank account.</li> </ul>

<u>8.22</u>	<u>Where a Member in Public Practice has prospective Professional Fees approved in accordance with paragraph 8.21, the scale of rates used to draw Professional Fees shall be the scale of rates provided by the Member to the Approving Body at the time of the approval, unless a specific formula to increase the scale of rates was incorporated into the resolution passed by the Approving Body. If a specific formula was not incorporated into the resolution, then the Member shall only change the scale of rates by obtaining further approval from the Approving Body.</u>
8.2317	<p>Where a Member in Public Practice receives monies prior to acceptance of an Appointment to meet the costs of the proposed Administration, the Member shall ensure:</p> <ul style="list-style-type: none"> <li>(a) <u>the monies are held on trust in a bank account that is separately identifiable from the Firm's bank accounts;</u></li> <li>(b) there are no conditions on the conduct or outcome of the Administration attached to the monies;</li> <li>(c) full disclosure is made to creditors in the <i>Declaration of Independence, Relevant Relationships and Indemnities</i>; <del>and</del></li> <li>(d) approval of Professional Fees is obtained prior to them being <del>withdrawn from the trust account paid to the Appointee; and</del></li> <li>(e) <u>the monies are accounted for as funds of the Administration.</u></li> </ul>
<u>8.24</u>	<u>Where a Member in Public Practice has accepted an Appointment, other than as a Controller, and receives money from an Entity, other than from the assets of the insolvent Entity, to meet the costs of the Administration, the Member shall disclose the receipt of this money to the Approving Body and shall obtain approval to apply the money to Professional Fees from the Approving Body in accordance with paragraph 8.19.</u>
<u>8.25</u>	Approval of the Approving Body under paragraph 8.24 is not required if the <u>Corporations Act 2001, Bankruptcy Act 1966 or guidance issued by the Australian Securities and Investments Commission or Australian Financial Security Authority stipulates that approval is not required.</u>
9.1	<b>A Member in Public Practice shall comply with the requirements of APES 320 <i>Quality Control for Firms</i> as if an Appointment is an Engagement.</b>
<u>9.4</u>	<u>A Member in Public Practice shall establish and adhere to documented procedures for each type of Administration that the Member undertakes to guard against not complying with statutory timeframes.</u>