

AGENDA PAPER

Item Number: 5(d)
Date of Meeting: 29 November 2016
Subject: Annual review of APES 330 *Insolvency Services*

Action required For discussion For noting For information

Purpose

In accordance with Accounting Professional & Ethical Standards Board's (APESB) constitution, an annual review of APES 330 *Insolvency Services* (APES 330) has been performed to identify and resolve any issues identified by stakeholders.

Background

The APESB originally issued APES 330 in September 2009. Since then APES 330 has been revised in November 2011 and September 2014.

Consideration of Issues

APESB Technical Staff have completed the following procedures to identify any issues associated with APES 330:

- Consulted with the Professional Bodies to identify whether Members or other stakeholders have raised any issues with the Professional Bodies in respect of APES 330;
- Consulted with stakeholders with specialised industry knowledge;
- Reviewed the APESB Issues Register to identify whether stakeholders have reported any matters in relation to APES 330; and
- Performed an internal technical review of APES 330.

The issues identified as a result of completion of the above procedures are set out below.

Laws and regulations

In February 2016, new legislation affecting insolvency services was issued - the *Insolvency Law Reform Act 2016* (Cth).

The Act will become effective in two tranches:

- From 1 March 2017 the reforms in respect of promoting competency and professionalism such as the practitioner registration and discipline provisions and enhancements to ASIC's powers will commence;
- From 1 September 2017 the reforms to insolvency administration processes, to enhance efficiency, improve communication and increase competition will commence.

Additional legislative instruments are still to be enacted to give full effect to the Act, including:

- Insolvency Practice Rules (Corporations) 2016, which provides a range of rules regarding the external administration of companies and the registration and discipline of external administrators;
- Insolvency Practice Rules (Bankruptcy) 2016, which provides a range of rules regarding the external administration of private individuals and the registration and discipline of bankruptcy trustees;
- Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016, which amends the Bankruptcy Regulations 1996, Corporations Regulations 2001 and other relevant regulations consequential on the Insolvency Practice Rules. This instrument also provides for the partial delay of the corporate law amendments under the Act;
- Insolvency Law Reform (Transitional Provisions) Regulation 2016, which provides for the partial delay of the personal insolvency amendments under the Act; and
- Corporations (Fees) Amendment Regulation 2016, which allows for the change of fees required due to the Insolvency Practice Rules (Corporations) 2016.

Treasury has sought consultations from the public, which closed 4 November 2016. The expected release date for these instruments is not yet known.

APESB Technical Staff are aware that the Australian Restructuring, Insolvency and Turnaround Association (ARITA) will update their *Code of Professional Practice* to reflect the legislative reforms. However this will not occur until the additional regulations are released.

Once these reforms are finalised and released, APESB will need to review APES 330 to ensure our standard reflects the new legislation.

Paragraph 3.1 of the standard currently requires Members to comply with Section 100 of the Code and relevant law. This paragraph could be updated to refer to both laws and regulations.

Scope and application paragraph

The following should be included in Section 1 *Scope and application* of APES 330 as paragraph 1.10:

In this Standard, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include corporations or organisations, whether incorporated or not.

This inclusion will ensure consistency with other APESB pronouncements.

Definition of Professional Bodies

The definition of Professional Bodies in APES 330 needs to be updated to replace the reference to the Institute of Chartered Accountants with Chartered Accountants Australia and New Zealand.

Other matters

Technical Staff identified other minor editorial changes which do not impact the usability of APES 330, but should be reflected in the next revision of APES 330.

Recommendation

Due to the upcoming legislative changes that may affect this standard, Technical Staff recommend that amendments to APES 330 identified above be considered in the next planned revision of the standard.

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Date: 11 November 2016