

Addendum to Agenda Item 12.7: Six Monthly Review of APES 330 Insolvency Services

Issue: The relationships the Member in Public Practice needs to consider when issuing the DIRRI under the Bankruptcy Act.

This refers to issue 2.2 in the APES 330 *Insolvency Services* Six Monthly Review Report.

An alternative drafting option to address issue 2.2 is given below.

2 Definitions

Related Party means a person or entity that has any of the following relationships with an insolvent Entity in respect of an Appointment under the *Bankruptcy Act*:

- A spouse, dependant or direct relative of the insolvent Entity;
- A spouse or dependant of a direct relative; and
- Any Entity with which the insolvent Entity or any of the persons noted above are associated.

4.14 ~~Subject to paragraph (New 4.15)~~ A Member in Public Practice shall include the following in the *Declaration of Independence, Relevant Relationships and Indemnities*:

- 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;
- a declaration setting out the circumstances of the Appointment including the number of meetings and time period over which advice was provided, a summary of the general nature of the issues discussed, the amount of any remuneration received for this advice and an explanation as to why such meetings do not result in a conflict of interest or duty;
- a declaration setting out all relationships ~~(for Bankruptcy Act refer New 4.15)~~ the Member, the Member's Firm or Network Firm has had in the preceding two years with:
 - the insolvent Entity;
 - an Associate or Related Party of the insolvent Entity;
 - a former Appointee of the insolvent Entity; or
 - a person who has a charge over the whole or substantially the whole of the insolvent Entity's property and other assets;and the reasons why these relationships, if any, do not result in a conflict of interest or duty;
- a declaration of prior Professional Services provided to the insolvent Entity by the Member, the Members' Firm or Network Firm, 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 reasons why the Professional Service does not result in a conflict of interest or duty;

- a declaration that there are no other known prior Professional Services or other relevant relationships that require disclosure; and
- 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.

~~NEW4.15 Where a Member in Public Practice provides a *Declaration of Independence, Relevant Relationships and Indemnities* in respect of Appointments under the *Bankruptcy Act*, the Member shall disclose all relationships the Member, the Member's Firm or Network Firm has had in the preceding two years with:~~

- ~~• a spouse, dependent or direct relative of the insolvent Entity~~
- ~~• a spouse or dependent of a direct relative; and~~
- ~~• any Entity with which the Insolvent Entity or any of the persons noted above are associated.~~