

# APES 330

## Insolvency Services

(Issued XXXX 2009)

### CONTENTS

	<b>Section</b>
Scope and application.....	1
Definitions .....	2
Fundamental responsibilities of Members in Public Practice .....	3
- Public interest	
- <a href="#">Professional Appointment</a>	
- Professional competence and due care	
- Confidentiality	
- Marketing	
Professional Independence .....	4
Professional Engagement matters .....	5
Dealings with property .....	6
Expert Witness obligations .....	7
Professional Fees and Expenses .....	8
Documentation and quality control.....	9
<i>Conformity with International Pronouncements</i>	

Copyright © 2009 Accounting Professional & Ethical Standards Board Limited (“APESB”). All rights reserved. Apart from fair dealing for the purpose of study, research, criticism and review as permitted by the *Copyright Act 1968*, no part of these materials may be reproduced, modified, or reused or redistributed for any commercial purpose, or distributed to a third party for any such purpose, without the prior written permission of APESB.

Any permitted reproduction including fair dealing must acknowledge APESB as the source of any such material reproduced and any reproduction made of the material must include a copy of this original notice.

## Insolvency Services

---

### 1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional standard APES 330 Insolvency Services (**the Standard**), which is effective for Insolvency Services commencing on or after 1 January 2010. Earlier adoption of this Standard is permitted.
- 1.2 APES 330 sets the standards for Members in Public Practice in the provision of quality and ethical Insolvency Services. The mandatory requirements of this Standard are in **bold-type (black lettering)**, preceded or followed by discussion or explanations in normal type (grey lettering). APES 330 should be read in conjunction with other professional duties of Members and any legal obligations that may apply.
- 1.3 **Members in Public Practice in Australia shall follow the mandatory requirements of APES 330 when they provide Insolvency Services.**
- 1.4 **Members in Public Practice outside of Australia shall follow the mandatory requirements of APES 330 when they provide Insolvency Services, to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.**
- 1.5 **Members in Public Practice shall be familiar with relevant Professional Standards and guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.6 The Standard is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.7 All references to Professional Standards, guidance notes and legislation are references to those provisions as amended from time to time.
- 1.8 In applying the requirements outlined in APES 330, Members in Public Practice should be guided not merely by the words but also by the spirit of the Standard and the Code.

### 2. Definitions

For the purpose of this Standard:

**Administration** means an insolvency arrangement arising from an Appointment, other than a members' voluntary liquidation, under which an insolvent Entity operates.

**Appointment** means the appointment of a Member in Public Practice as a 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*; or as a liquidator or provisional liquidator, a voluntary administrator ~~an administrator of a deed of company arrangement~~, a Controller, or a scheme manager under ~~Chapter 5~~ of the *Corporations Act 2001*; or an appointment to provide Insolvency Services under any other legislation.

**Approving Body** means the body with authority to approve Professional Fees or which can approve a course of conduct. Generally this body will be the creditors, the committee of creditors or the court. In a personal insolvency Appointment, this approval may be provided through legislation.

**Close Family** means a parent, child or sibling, who is not an Immediate Family member.

**Deleted:** or a deed

**Deleted:** under Part 5.3A

**Deleted:** or as

**Deleted:** under Part 5.2

**Deleted:** as

**Deleted:** Part 5.1

## Insolvency Services

---

**Code** means APES 110 *Code of Ethics for Professional Accountants*.

**Contingent Fee** means a fee calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. A fee that is established by a court or other public authority is not a Contingent Fee<sup>3</sup>.

**Controller** means a Member in Public Practice appointed as controller or managing controller under Part 5.2 of the *Corporations Act 2001*.

**Engagement** means an agreement, whether written or otherwise, between a Member in Public Practice and a client relating to the provision of Professional Services by a Member in Public Practice. However, consultations with a prospective client prior to such agreement are not part of an Engagement.

**Entity** means any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives.

**Expenses** means the financial outlays incurred or paid by a Member in Public Practice to carry out an Administration. The term includes costs and disbursements.

**Expert Witness** means a Member in Public Practice who during the course of an Administration acts as an Expert Witness. As an Expert Witness, the Member may express opinions to the court based on the Member's specialised training, study or experience<sup>2</sup>.

**Firm** means

- (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
- (b) An entity that controls such parties through ownership, management or other means<sup>1</sup>;
- (c) An entity controlled by such parties through ownership, management or other means<sup>1</sup>; or
- (d) An Auditor-General's office or department.

**Financial Interest** means an interest in an equity or other security, debenture, loan or other debt instrument of an Entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.

**Immediate Family** means<sup>5</sup> a spouse (or equivalent) or dependant.

**Independence** means<sup>6</sup>

- (a) Independence of mind - the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, 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 a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a Firm's, or a member of the Engagement team's, integrity, objectivity or professional scepticism had been compromised.

**Inducement** means any benefit, whether monetary or not, given by a Member in Public Practice, or an employee, agent, consultant, or contractor of the Member, to a third party which may in the view of a reasonable person influence that third party's decision to refer, or to make, an Appointment.

**Deleted:** on matters such as whether technical or Professional Standards have been breached

**Deleted:** , the amount of damages, the amount of an account of profits, or the amount of a claim under an insurance policy

## Insolvency Services

---

An inducement does not include:

- bonus payments to employees structured as part of their salary package;
- benefits to the third party of insignificant value in aggregate;
- sponsorship of events or publications open to the public, or members of a professional body; or
- retainers or other similar payments to marketing consultants.

**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.

**Managerial Employee** means an employee who acts in a managerial capacity within the structure of the Firm, including providing oversight, in the provision of services to clients.

**Member** means a member of a professional body that has adopted this Standard as applicable to their membership, as defined by that professional body.

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

**Partner** means any individual with authority to bind the Firm with respect to the performance of an Administration.

**Professional Fees** means the amounts billed or to be billed by a Member in Public Practice on account of Professional Services performed or to be performed by the Member.

**Professional Services** means services requiring accountancy or related skills performed by a Member in Public Practice including accounting, auditing, taxation, management consulting and financial management services.

**Professional Standards** means all Standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable professional body.

**Witness Report**<sup>40</sup> means a written report, affidavit or written statement that is for the purpose of communicating expert evidence in court.

### 3. Fundamental responsibilities of Members in Public Practice

3.1 A Member in Public Practice providing an Insolvency Service shall comply with Section 100 *Introduction and Fundamental Principles* of the Code and relevant law.

10, 11

#### Public interest

3.2 In accordance with Section 100 *Introduction and Fundamental Principles* of the Code, a Member in Public Practice shall observe and comply with the Member's public interest obligations when the Member provides an Insolvency Service.

**Deleted: ¶**  
A Member in Public Practice shall comply with Section 220 *Conflict of Interest* and Section 280 *Objectivity – All Services* of the Code

**Deleted: . ¶**

## Insolvency Services

---

3.3 A Member in Public Practice shall not advise an insolvent Entity or the directors of an insolvent Entity on how to restructure their financial affairs to avoid the consequences of their conduct or to cause assets to be not available in an Administration.

3.4 Paragraph 3.3 does not prevent a Member in Public Practice from providing Professional Services in respect of the structuring of the financial affairs of a solvent Entity.

Deleted: 4

### Professional Appointment

3.5 Prior to accepting an Appointment, a Member in Public Practice shall ensure that the Member has the necessary resources and capacity to conduct the proposed Administration in an effective and efficient manner.

### Professional competence and due care

3.6 A Member in Public Practice providing an Insolvency Service shall maintain professional competence, take due care and act in a timely manner in the performance of the Member's work in accordance with Section 130 *Professional Competence and Due Care* of the Code.

3.7 Where an Insolvency Service requires the consideration of matters that are outside the professional expertise of the Member in Public Practice, the Member shall seek expert assistance or advice from a suitably qualified third party, or decline the Insolvency Service. Where the Member relies on the advice of a third party, the Member shall disclose in any reports or other relevant communications the name and qualifications of the third party and the areas in which third party advice has been obtained.

3.8 When planning to use the work of a suitably qualified third party, a Member in Public Practice shall assess the professional competence and objectivity of that third party, the appropriateness and reasonableness of the work performed, and the Professional Fees charged.<sup>1</sup>

Deleted: and

3.9 A Member in Public Practice shall take all reasonable steps to communicate with affected parties of the Administration in a timely and clear manner as to the insolvency processes and the rights and obligations of the parties.

3.10 In undertaking an Insolvency Service, a Member in Public Practice should consider any guidance issued by the professional accounting bodies and appropriate regulatory authorities.

Formatted: Bullets and Numbering

### Confidentiality

3.11 In accordance with Section 140 *Confidentiality of the Code*, a Member in Public Practice who acquires confidential information in the course of an Insolvency Service shall not use that information for any purpose other than the proper performance of the professional work.

Formatted: Bullets and Numbering

## Insolvency Services

---

### Marketing

**3.12** A Member in Public Practice providing an Insolvency Service shall comply with Section 250 *Marketing Professional Services* of the Code.

Formatted: Bullets and Numbering

**3.13** When placing an advertisement in a newspaper to comply with a statutory requirement in respect of an Administration, a Member in Public Practice shall not use that advertisement as a means to market the Member's services.

Formatted: Bullets and Numbering

**3.14** Statutory advertisements should not include Firm slogans, claims about the Firm, logos or other promotional materials.

### Professional Independence

**4.1** A Member in Public Practice shall determine whether there are threats to the Independence of the Member, prior to accepting an Appointment. A Member shall be aware that no threat to the Independence of the Member in respect of an appointment<sup>17</sup>, other than a situation specifically provided for in this Standard or a<sup>16</sup> trivial or inconsequential threat, can be safeguarded against.

**4.2** A threat to the Independence of a Member in Public Practice does not arise:

- (a) by reason only of the Engagement of the Member or the Member's Firm to investigate, monitor or advise on the affairs of the insolvent Entity on behalf of a third party, as long as the Professional Service is to that third party; or
- (b) by reason only of the transition of the Appointment of a Member from one type of insolvency Administration to another under the legislation, subject to the terms of that legislation.<sup>18</sup> For example, a transition from an Appointment of a Member from that of an administrator to voluntary liquidator under the *Corporations Act 2001*, subject to the rights of creditors to appoint another liquidator under section 499(2A) of the Act; or<sup>18</sup>
- (c) by reason only of the Appointment of a Member as Controller of an insolvent Entity of which that Member or another Partner of the Member's Firm has been a Controller under a different debenture or where the Appointment has been made by the court; or
- (d) where, prior to the Appointment, the Member provided pre-appointment advice to the insolvent Entity which was limited to:
  - the financial situation of the insolvent Entity;
  - the solvency of the insolvent Entity;
  - the consequences of insolvency for the insolvent entity<sup>T</sup>;
  - alternative courses of action available to the Entity; or
  - advice to the insolvent Entity and not to the directors in their personal capacity.

**4.3** Where there are threats to the Independence of a Member in Public Practice who wishes to accept an Appointment or continue to act in an Appointment, then the Member shall obtain court approval to do so.

## Insolvency Services

---

- 4.4 A Member in Public Practice shall not accept an Appointment, other than to act as a Controller, where the Member or the Member's Firm has during the previous two years provided a Professional Service to the insolvent Entity, excluding a Professional Service that is immaterial or a Professional Service referred to in paragraph 4.2<sup>18,19,20</sup>.
- 4.5 A prior Professional Service is immaterial if it:
- was of limited scope;
  - will not be subject to review by the Member during the course of the Appointment;
  - will not affect the Member's ability to comply with the statutory and fiduciary obligations associated with the Appointment; and
  - does not create threats to the Member's ability to comply with the fundamental principles of the Code when performing the duties of the Appointment.
- 4.6 A Member in Public Practice shall not provide advice to both an insolvent Entity and the insolvent Entity's directors in their personal capacity<sup>22</sup> as this would create an unacceptable threat to the Independence of the Member.
- 4.7 A Member in Public Practice shall not accept an Appointment where the Member or the Member's Firm has provided a Professional Service which:
- has reasonable potential to lead to litigation claims against the Member or the Member's firm by a stakeholder of the Administration;
  - is material to the Administration; or
  - was related to the structuring of assets in order to avoid the consequences of insolvency.
- 4.8 A Member in Public Practice shall not accept an Appointment, other than to act as a Controller, where the Member, the Member's Firm or the Firm's Managerial Employees have, or have had, any of the following relationships.<sup>24</sup>
- (a) a Close or Immediate Family relationship with the insolvent Entity or a director or officer of the insolvent Entity, or with an employee or adviser of the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity;
  - (b) a close personal relationship with the insolvent Entity or a director or officer of the insolvent Entity, or with an employee or adviser of the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity;
  - (c) a business relationship involving the holding of a material Financial Interest, whether directly, indirectly or jointly with the insolvent Entity, a director or officer of the insolvent Entity, or with an employee or adviser of the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity;
  - (d) a material loan from, or material guarantee to or from, the insolvent Entity or a director or officer of the insolvent Entity, or with an employee or adviser of the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity; or
  - (e) employment with the insolvent Entity, in a position to exert direct and significant influence over the insolvent Entity.

Deleted: within the previous two years

## Insolvency Services

4.9 A Member in Public Practice shall not provide any Inducement to any Entity to secure an Appointment for the Member or to secure or<sup>T</sup> prevent the Appointment or nomination of another person.

4.10 A Member in Public Practice shall not accept an Appointment or perform an Administration<sup>26</sup> that involves<sup>T</sup> payment or receipt of<sup>41</sup>:

Deleted: is conditional upon

- (a) referral commissions, monetary or non-monetary benefits;
- (b) spotter's fees;
- (c) commissions or<sup>41</sup> recurring commissions;
- (d) understandings or requirements that work in the Administration will be given to the referrer; or
- (e) any other such arrangements that restrict the proper exercise of the Member's judgement and duties.

4.11 A Member in Public Practice shall provide a *Declaration of Independence and Relevant Relationships and Indemnities* in respect of Insolvency Services (excluding Appointments as Controller). The Member shall provide the *Declaration* in the first communication to the creditors<sup>9</sup> and table it at the first meeting of the creditors<sup>9</sup>.

Deleted: Approving Body

Deleted: Approving Body

4.12 A Member in Public Practice shall include the following in the *Declaration of Independence and Relevant Relationships and Indemnities*:

- a declaration of Independence which includes an assessment of any threats or perceived threats to Independence and how the Member determined that the Member is independent;
- a declaration setting out prior personal or business relationships of the Member or the Member's Firm has had in the preceding two years with the insolvent entity, an associate 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's property, and the reasons why these relationships do not result in a conflict of interest or duty<sup>28</sup>;
- a declaration of any Professional Services that had been provided to the insolvent entity, including the nature of the Professional Services and the reasons why those prior Professional Services do not pose a conflict of interest to the work to be performed or duty<sup>28</sup> under the proposed Appointment;
- a declaration that there are no other known prior Professional Services or other relationships that require disclosure<sup>28</sup>; and
- a declaration of indemnities (other than statutory indemnities) which discloses the identity of each indemnifier and the extent and nature of each indemnity, including any indemnities in respect of the Member's Professional Fees or Expenses<sup>T</sup>.

Deleted: liquidator

Deleted: a declaration setting out any prior business relationships referred to in paragraph 4.8 (c) and (d) which are immaterial or any relationships with a person who has a charge over the whole or a substantial portion of the insolvent Entity's property, and the reasons why these relationships do not pose a conflict of interest to the work to be performed under the proposed Appointment

Deleted: referred to in paragraph 4.4<sup>28</sup>

Deleted:

Deleted: 4.5 which are immaterial

Deleted: and

Deleted: continue performing the Administration<sup>30,31</sup>

4.13 Where there is a threat or a perceived threat to Independence which arises after the commencement of an Administration, a Member in Public Practice shall:

- a) where the threat to the Independence of the Member is one that would not have precluded the Member from accepting the Appointment, continue performing the Administration<sup>30,31</sup>. The

## Insolvency Services

- Member shall amend the *Declaration of Independence and Relevant Relationships and Indemnities* and send it to all<sup>T</sup> the creditors<sup>9</sup>;
- b) where the threat to the Independence of the Member is one that would have precluded the Member from accepting the Appointment, summarise the following and deliver the summary to the court, all creditors and regulatory authorities as appropriate:
- the nature of the threat;
  - the key facts and origin;
  - reasons why the threat was not detected prior to acceptance of the Appointment;
  - the potential impact on Independence;
  - the status of the Administration;
  - the costs of stepping down and transferring the Appointment; and
  - Professional Fees and Expenses billed and any outstanding amounts; and
- c) in the circumstances described in paragraph 4.13 (b), apply to the court to either continue or resign from the Appointment.

Deleted: Approving Body

Deleted: summarise the following and deliver the summary to the Approving Body and regulatory authorities as appropriate,

- 4.14 Where a Member in Public Practice becomes aware that the *Declaration of Independence and Relevant Relationships and Indemnities* is out of date or contains an error, the Member shall update the *Declaration* and provide it to the creditors or the committee<sup>9</sup> with the next communication and table it at the next meeting of the creditors or the committee<sup>9</sup>.

Deleted: Approving Body

Deleted: Approving Body

- 4.15 Where a Member in Public Practice is requested by an insolvent Entity, its directors or its creditors to consent to an Appointment in competition with another person who has commenced the Administration:
- (a) the Member shall give reasonable notice which is not less than one day (except when the request is received on the same day)<sup>T</sup>, to the other person, where the Member intends to accept the Appointment;
- (b) the Member shall not solicit proxies directly or indirectly and shall act, and be seen to act, in the creditors' interests;
- (c) the Member shall provide a *Declaration of Independence and Relevant Relationships and Indemnities* in accordance with paragraph 4.12<sup>33</sup> at the meeting where the creditors<sup>9</sup> decide whether to replace the other person; and
- (d) the Member shall disclose to the creditors<sup>9</sup> the basis that the Member proposes to charge Professional Fees and details of the Member's relationship with the insolvent Entity, director or creditor nominating the Member.

Deleted: Approving Body

Deleted: s

Deleted: Approving Body

- 4.16 A Member in Public Practice should be aware that disclosure of matters in a *Declaration of Independence and Relevant Relationships and Indemnities*, and the tabling of such *Declaration* at a meeting of creditors, will not prevent a finding that a Member has breached the requirements of paragraphs 4.4, 4.7, 4.8 or 4.10 of this Standard<sup>T</sup>.

## Insolvency Services

### 5. Professional Engagement matters

- 5.1 A Member in Public Practice who has accepted an Appointment is not required to provide an engagement document in accordance with APES 305 *Terms of Engagement*.

### 6. Dealings with property

- 6.1 A Firm which provides Insolvency Services shall establish policies and procedures which prohibit the Firm, its Partners or its employees, ~~the Member's~~ Close or Immediate Families, or controlled or associated Entities from acquiring any property or deriving a benefit from dealing with property which comes under the control of the Member due to an Appointment, without ~~obtaining~~<sup>36</sup> the prior approval of the ~~court~~<sup>T</sup>.

Deleted: their

Deleted: Approving Body

- 6.2 ~~Subject to paragraph 6.3, a~~ Member in Public Practice, the Member's Firm or Firm's employees, ~~the Member's Close or Immediate Families,~~<sup>35</sup> shall not acquire any property nor derive a benefit from dealing with property which comes under the control of the Member due to an Appointment, without ~~obtaining~~<sup>36</sup> the prior approval of the ~~court~~<sup>T</sup>.

Deleted: A

Deleted: Approving Body

- ~~6.3 Paragraph 6.2 does not apply to a Member in Public Practice, Member's Firm or Firm employees and the Member's Close or Immediate Families, where the Member has accepted an Appointment in respect of a retail operation under Administration, and the assets are available for sale to the general public and no special treatment or preference over and above that granted to the general public is offered~~<sup>37</sup>.

### 7. Expert Witness obligations

- 7.1 A Member in Public Practice who during the course of an Administration acts as an Expert Witness shall comply with the following:

- (a) the paramount duty to the court which overrides any other duty;
- (b) a duty to assist the court on matters relevant to the Member's area of expertise in an objective<sup>38</sup> manner; ~~and~~
- ~~(c) a duty to make it clear to the court when a particular question or issue falls outside the Member's expertise.~~

Deleted: and unbiased

Deleted: <#>a duty not to be an advocate; and¶

Formatted: Bullets and Numbering

- 7.2 A Member in Public Practice who during the course of an Administration acts as an Expert Witness should comply with evidentiary and procedural requirements relating to Expert Witnesses.

- 7.3 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<sup>40</sup> issued by the Member:

Deleted: any report

- (a) the scope of work performed by the Member;
- (b) any limitations on the scope of work performed;
- (c) details of the Member's training, study and experience that are relevant to the matters on which the Member is providing expert evidence;
- (d) the relationships, if any, the Member or the Member's 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

## Insolvency Services

---

principles of the Code or the Member's paramount duty to the court, and any appropriate safeguards implemented;

- (e) the extent, if any, of reliance by the Member on the work of others;
- (f) the opinions formed by the Member;
- (g) whether an opinion is provisional rather than concluded, and, if so, the reasons why a concluded opinion has not been formed;
- (h) the significant facts upon which the opinions are based;
- (i) the significant assumptions upon which the opinions are based;
- (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;
- (k) where applicable, that the Member's opinion is subject to the veracity of another person's report upon which the Member's report is based;
- (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;
- (m) a list of all documents and sources of information relied upon in the preparation of the report; and
- (n) any restrictions on the use of the report.

## Professional Fees and Expenses

- 8.1 Subject to paragraph 4.10, a Member in Public Practice performing an Administration shall be remunerated for such service by way of Professional Fees computed in accordance with Section 240 *Fees and other Types of Remuneration* of the Code.
- 8.2 A Member in Public Practice shall only claim Professional Fees and Expenses in respect of Professional Services performed or to be performed for an Administration, which are necessary and proper<sup>42</sup>.
- 8.3 The term 'necessary' in paragraph 8.2 means professional work that is:
- directly connected with the Administration; and
  - performed in accordance with the duties of the Appointment and Professional Standards.
- 8.4 A Member in Public Practice shall claim as Professional Fees, and not as Expenses, any fees for Insolvency Services provided by the Member, the Member's Firm or a third party to an Administration. Where the Member or the Member's Firm provides Professional Services, other than Insolvency Services, the fees in respect of those services shall be claimed as Professional Fees.<sup>44</sup>
- 8.5 In incurring Expenses, a Member in Public Practice shall use the Member's commercial judgement, adopting the perspective of, and acting with the same care as, a reasonable person.

Deleted: Professional

## Insolvency Services

8.6 A Member in Public Practice shall obtain court approval when the Member makes a claim in respect of Professional Fees for any pre-appointment work performed in respect of an Appointment.

8.7 A Member in Public Practice shall not enter into a Contingent Fee arrangement or receive a Contingent Fee for Insolvency Services as that arrangement would place the Member in a position of conflict and impair the Members independence .

8.8 In limited circumstances, for example when funds are not available in the liquidation to pursue litigation and a Member in Public Practice is prepared to assume the risk of litigation, the Member may consider entering a Contingent Fee arrangement. In these circumstances, the Member shall disclose the following to the creditors or committee and obtain their approval prior to commencement of professional work:

- Details of the Contingent Fee arrangement including the nature of the contingency and how the achievement of the contingency will be assessed;
- The Member's remuneration in the event the contingency is or is not achieved;
- Why the Contingent Fee arrangement is in the best interest of the creditors; and
- When the Member's remuneration is expected to be drawn.<sup>T</sup>

8.9 A Member in Public Practice shall provide the following information in the first communication to all creditors<sup>T</sup>:

- the methods that can be used to calculate Professional Fees;
- the basis upon which Professional Fees will be charged for the Insolvency Service; and
- why the Member considers that the chosen method is suitable for the Insolvency Service.

Deleted: the Approving Body

8.10 Where the basis upon which Professional Fees for the Administration will be charged in accordance with paragraph 8.9<sup>T</sup> is time based, a Member in Public Practice shall provide all creditors<sup>T</sup> with the following additional information:

- the scale of rates that will be used; and
- a best estimate of the costs of the Administration to completion, or to a specified milestone.

Deleted: the Approving Body

If subsequent to providing the best estimate of the costs of the Administration, there is significant change to the basis of that estimate,<sup>46</sup> the Member shall provide a new estimate to the approving Body together with an explanation of the variance.

Deleted: a material variation

8.11 A Member in Public Practice seeking approval for Professional Fees from the Approving Body shall provide sufficient information to the Approving Body so as to allow that body to make an informed assessment as to whether the remuneration is reasonable, and shall:

Deleted: 9

- provide details of how the Professional Fees were computed;

Deleted: decision

## Insolvency Services

---

- provide a description of the Professional Services performed, or to be performed, broken down into broad categories, and the costs associated with each category;
- state the terms of the approval sought from the Approving Body;
- advise the total of Professional Fees previously determined and whether they will be seeking approval of additional Professional Fees in the future;
- advise when the Professional Fees will be drawn; and
- provide a summary of receipts and payments to and from the Administration bank account.

8.12 A Member in Public Practice shall only draw Professional Fees once the proper resolution, order, or authority has been obtained from the Approving Body and in accordance with the terms of approval.

Deleted: 10

8.13 Where a Member in Public Practice has entered into a fixed fee arrangement in respect of Professional Fees, the Member shall draw the fixed fee at the conclusion of the Administration or in amounts and at milestones specified by the Approving Body.

Deleted: 11

8.14 Where a Member in Public Practice seeks approval for the payment of prospective Professional Fees from the Approving Body, the Member shall specify the maximum amount of the Professional Fees that may be drawn before requiring further approval from the Approving Body. The Member shall draw on this prospective Professional Fee progressively as the work is completed.

Deleted: 12

8.15 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 establish the following safeguards:

Deleted: 13

- (a) the monies are held on trust;
- (b) there are no conditions on the conduct or outcome of the Administration attached to the monies;
- (c) full disclosure is made to creditors in the *Declaration of Independence and Relevant Relationships and Indemnities*; and
- (d) approval of Professional Fees is obtained prior to them being withdrawn from the trust account.

## 9 Documentation and quality control

9.1 A Member in Public Practice shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the Insolvency Service that have been provided in writing. The documentation prepared by the Member shall:

- (a) provide a sufficient and appropriate record of the procedures performed for the Insolvency Service;
- (b) identify potential threats to Independence, how they have been addressed including appropriate safeguards; and
- (c) demonstrate that the Insolvency Service was carried out in accordance with this Standard and all other applicable Professional Standards, including policies and procedures established in

## **Insolvency Services**

---

accordance with *APES 320 Quality Control for Firms*, and any applicable ethical, legal and regulatory requirements.

### ***Conformity with International Pronouncements***

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES 330.