

IS: Insolvency Services

NZICA Professional and Ethical Standards

WARNING

A new licensed insolvency practitioners' regime took effect in New Zealand on 1 September 2020. This new regime is set out in the Insolvency Practitioners Regulation Act 2019 (IPRA).

Under this new regime, all individuals who take new statutory insolvency appointments from 1 September 2020 must have a licence. It is an offence to take new statutory insolvency appointments without a licence.

Solvent company liquidations are not statutory insolvency appointments. However, these appointments can only be undertaken by individuals who are either a licensed insolvency practitioner, a lawyer or a qualified statutory accountant (QSA). A QSA includes a member who is a chartered accountant and holds a certificate of public practice.

Members should refer to the IPRA and/or the CA ANZ website for further information.

Amendments to the Companies Act 1993 and Receivership Act 1993 accompanied the new licensed insolvency practitioners' regime in the form of the Insolvency Practitioners Regulation (Amendments) Act 2019.



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Application Date: Engagements or appointments entered into on or after 1 November 2021 (early adoption permitted)

1. Scope and application

Authority and effective date

- 1.1 The New Zealand Regulatory Board (NZRB) of the New Zealand Institute of Chartered Accountants (NZICA) has issued IS: Insolvency services, which is effective for *engagements* or *appointments* entered into on or after 1 November 2021. Early adoption is permitted. This standard replaces the extant standard IES: Insolvency Engagements (issued 03/11).

Member Obligations

- R1.2 ***Members in public practice*¹ shall comply with this standard when they provide *insolvency services* (which includes both *formal insolvency services* and *informal insolvency services*) to the extent that they are not prevented from doing so by specific requirements of laws and regulations.²**
- R1.3 ***Members in public practice* shall take reasonable steps to ensure that all persons associated with the *member*, either working under their supervision or acting as their agent, comply with this standard when they assist the *member* to provide *insolvency services*.**

Overview

- 1.4 This standard sets the professional and ethical standards for *members in public practice* involved in the provision of *insolvency services*.
- 1.5 The requirements of this standard, designated with the letter “R” and denoted in **bold-type**, impose obligations. These requirements are preceded or followed by application material designated with the letter “A” and in normal type, that provides context, explanations, and other guidance relating to matters relevant to the provision of *insolvency services*.
- 1.6 Terms that have been defined for the purposes of this standard are defined in the Glossary to this standard and denoted in the body of this standard in *italics*.
- 1.7 This standard should be read in conjunction with the *code* and other NZICA *professional standards* and any laws and regulations that may apply to the provision of *insolvency services*. All references to the *code* and NZICA *professional standards* are references to the *code* and those NZICA *professional standards* as amended from time to time. Further, for the avoidance of doubt, where used in this standard, the phrase ‘laws and regulations’ includes all laws or regulations that are currently applicable, whether they have arisen from statute, common law or otherwise.

¹ Terms denoted in italics are defined in the Glossary to this standard. ***Members* should ensure that they familiarise themselves with the defined terms to ensure appropriate interpretation of this standard.**

² Note: Laws and regulations include Chartered Accountants Australia and New Zealand (CA ANZ) Constitution, By-laws and Regulations and the NZICA Act 1996, NZICA Rules and Professional Standards.

Important Note: Complying with laws and regulations

1.8 This standard is confined to the professional and ethical aspects of the provision of *insolvency services* as distinct from any responsibilities that may be imposed on *members in public practice* by laws and regulations.

Appendix 1 provides a list of laws and regulations that may affect the provision of *insolvency services* by *members in public practice*.

The list at Appendix 1 is not exhaustive and *members in public practice* are responsible for determining how laws and regulations apply to the *insolvency services* they provide and then complying with them, including, but not limited to:

- Obtaining, maintaining and complying with the conditions of any licence or other designation required to accept an *appointment* or otherwise provide specific *insolvency services* including any prescribed minimum standards and continuing professional development required for that licence or designation;
- Ensuring that the *member* is not disqualified from accepting the *appointment*, where applicable;
- Providing any mandated disclosures to the public, *creditors*, the *approving body*, the client or an appropriate authority, as required, including any mandated consent and certification or notices, interest statements or reports or any duty to report misconduct or other serious problems; and
- Complying with any mandated obligations or duties to the creditors, the *approving body*, the client, a replacement *insolvency practitioner* or an appropriate authority.

R1.9 ***Members shall comply with all applicable laws and regulations in providing insolvency services.***

R1.10 ***In the event of any conflict between a member's obligations under laws and regulations and the requirements of this standard or the code then, to the extent the member is unable to reasonably avoid or otherwise mitigate that conflict, the member shall give priority to compliance with laws and regulations.***

Important Note: Complying with the Code

1.11A The *code* sets out the standards of behaviour and approach to *professional activities* expected by *members* in meeting their responsibility to act in the *public interest*.

R1.12 ***Members in public practice shall comply with the code in providing insolvency services. Where the insolvency service is a formal insolvency service, references in the code to the client shall be read as references to creditors and/or the approving body, as appropriate and/or relevant.***

R1.13 ***In complying with this standard, members shall be guided not merely by the words but also by the spirit of this standard and the code.***

R1.14 ***In the event of any conflict between a member's obligations under any pronouncements issued by other professional organisations and the requirements of this standard or the code then, to the extent the member is unable to reasonably avoid or otherwise mitigate that conflict, the member shall give priority to compliance with this standard or the code, as applicable.***

Other

- 1.15 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 companies or organisations, whether incorporated or not.

2. Fundamental obligations

Complying with the Code

- 2.1 *Members* have a responsibility to act in the *public interest*.

Part 1 of the *code* establishes the five fundamental principles to be complied with by *members*. It also includes a conceptual framework that sets out the approach to be taken to identify, evaluate and address threats to compliance with the fundamental principles.

The five fundamental principles are:

- Integrity;
- Objectivity;
- Professional competence and due care;
- Confidentiality; and
- Professional behaviour.

This part of the standard provides **additional** requirements and guidance material applicable to *members' public interest* obligations, the fundamental principles and *insolvency services*.

Public Interest

- R2.2 ***A member in public practice shall not advise an insolvent entity or its associates on how to structure its affairs to cause assets to be unavailable in a formal insolvency service or to otherwise avoid the consequences of a formal insolvency service.***
- 2.2A1 Paragraph R2.2 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* or from providing *informal insolvency services* to an insolvent *entity* or its *associates* in respect to the most prudent strategy to restore the insolvent *entity* to a solvent position, protect the insolvent *entity's* assets or otherwise maximise the return for all creditors (i.e. informal mechanisms).
- 2.2 A2 What informal mechanisms can be used to deal with insolvent or near-insolvent situations has been considered by the Courts. *Members in public practice* should keep abreast of developments in case law and obtain their own expert advice whenever there is any question regarding the appropriateness of their *professional services* to an insolvent *entity*.

Independence

- 2.3A For additional requirements and guidance material regarding *independence* – see Part 5.

Professional competence and due care

- R2.4 **A member in public practice shall take all reasonable steps to ensure that the insolvency service is accepted, planned, performed and documented in an efficient and effective manner.**

Guidance on matters to consider when determining whether insolvency services are provided in an efficient and effective manner is provided in Appendix 2.

- 2.5A For additional requirements and guidance material regarding:
- Professional appointments – see Part 3;
 - Appointment or engagement performance – see Part 6; and
 - Documentation and quality control – see Part 7.

Confidentiality

- R2.6 **Where a member in public practice intends to discharge their professional obligation to disclose information to facilitate the proper performance of the insolvency service, the member shall ensure that there is no breach of a fiduciary relationship or duty. Where the member is in doubt as to whether a fiduciary relationship or duty will be breached, the member shall obtain independent legal advice.**

Professional behaviour

Transitioning appointments or engagements

- R2.7 **When dealing with other insolvency practitioners in transitioning appointments or engagements or where there are parallel appointments or engagements, a member in public practice shall be professional and co-operative, without compromising the member's obligations in their own appointment or engagement.**

Marketing activities

- R2.8 **A member in public practice shall not use an advertisement placed in respect of a formal insolvency service to market the member's professional services.**
- R2.9 **A member in public practice shall not include logos, slogans, claims about the member's firm or other promotional material in statutory advertisements in respect of a formal insolvency service.**
- 2.9A *A member in public practice might include the firm's logo in non-statutory advertisements in respect of a formal insolvency service, provided the logo does not take prominence in the advertisement.*

3. Relationship between the member and the firm

Complying with the Code

- 3.1 Part 2 of the *code* applies the fundamental principles and the conceptual framework to a range of facts and circumstances that members may encounter when performing *professional activities* pursuant to the *member's* relationship with the *member's firm*.

The *code* requires *members in public practice* to apply Part 2, to the extent applicable, to their facts and circumstances when providing *insolvency services*.

4. Members in public practice

Complying with the Code

- 4.1 Part 3 of the *code* applies the fundamental principles and the conceptual framework to a range of facts and circumstances that *members in public practice* may encounter when performing *professional services*, including:

- Conflicts of interest;
- Professional appointments;
- Second opinions;
- Fees and other types of remuneration;
- Inducements, including gifts and hospitality;
- Custody of client assets; and
- Responding to non-compliance with laws and regulations.

This part of the standard provides **additional** requirements and guidance material applicable to the topics addressed in Part 3 of the *code* and *insolvency services*.

Professional appointments

Considerations particular to insolvency services

- R4.2 **Prior to accepting an *appointment* or *engagement*, a member in public practice shall determine whether there are any reasons for not accepting the *appointment* or *engagement*.**
- R4.3 **In making the determination required by paragraph R4.2, the member in public practice shall (amongst other things):**
- a) **ensure that the member has or can readily obtain the technical knowledge and practical experience in relation to the nature of the proposed *insolvency service* (including type of industry, size of the *appointment* or *engagement*, and type of *appointment* or *engagement*);**

- b) ensure that the *member* will be able to comply with the *technical and professional standards* and laws and regulations applicable to the *appointment or engagement*;
- c) ensure that the *member* has the capacity and has access to the necessary resources (including sufficient trained and experienced staff) to conduct the proposed *insolvency service* in an effective and efficient manner; and
- d) except where the *insolvency service* is an *appointment* made by the Court or by creditors, or a liquidation commenced by resolution of the shareholders, make reasonable inquiries about the identity of the *entity* appointing or engaging the *member* in accordance with the requirements of PS-1 Quality Control in relation to the acceptance and continuance of client relationships and specific *engagements*.

Where a *member in public practice* is considering accepting an *appointment*, the *appointment* is an *engagement* for the purposes of PS-1 Quality Control.

- 4.3A Reasonable enquiries described in paragraph R4.3(d) should include meeting with and/or obtaining appropriate documents to confirm the identity of the *entity* appointing or engaging the *member in public practice*.

Terms of Engagement

- 4.4A A *member in public practice* who has accepted an *appointment* is not required to provide an engagement document. Instead, *members in public practice* will have confirmed that they are able to comply with relevant *technical and professional standards* and laws and regulations in respect to the *appointment* and provided written consent and certification to act before commencement of the *appointment*.

Terms of Engagement – informal insolvency services

- R4.5 **A *member in public practice* who intends to accept an *engagement* for *insolvency services* that is not an *appointment* shall document, communicate to and agree with the client, the terms of the *engagement* prior to the provision of *insolvency services*. The terms of the *engagement* shall be tailored to the nature of the *insolvency services* to be provided. The *member* shall also document, communicate to and agree with the client, any subsequent changes to those terms.**

- 4.5A The *engagement* document should record and confirm (amongst other things):
- a) The *member's* acceptance of the *engagement*;
 - b) The objective(s) of the *insolvency engagement*;
 - c) The extent of the *member's* responsibilities to the appointer and others, if any;
 - d) The nature and extent of any reporting;
 - e) The basis on which the *member* shall be remunerated; and
 - f) That the *member* will not act in a management or governance role.

It is important that the matters set out above be tailored to the nature of the insolvency issues under review. Item (f) is particularly important to avoid any implication that the *member* is carrying on a business while the *entity* is insolvent.

Replacing another appointee – formal insolvency services

- R4.6 **Where a *member in public practice* is requested to consent to their *appointment* to replace another *practitioner* who has commenced the *formal insolvency service*, and the *member* intends to agree to the request, the *member* shall:**
- a) Give reasonable notice to the other *practitioner* being not less than one business day prior to the meeting where creditors will consider whether to replace the other *practitioner* (except when the request is received within one business day before that meeting);
 - b) Not make, or encourage other people to make, negative statements about the other *practitioner* that are not statements of facts;
 - c) Not solicit proxies directly or indirectly and shall act, and be seen to act, in the creditors' interests;
 - d) Provide to the other *practitioner* a *Declaration of Independence, Relevant Relationships and Indemnities* (DIRRI) to be tabled at the meeting of creditors that contains the information required by paragraph R5.16 and details of the *member's* relationship with the *entity* nominating the *member* for the *appointment*; and
 - e) Disclose to creditors, at the meeting of creditors, the basis (including rates where applicable) on which the *member* proposes to charge *professional fees*.

- R4.7 **Where a *member in public practice* has commenced a *formal insolvency service* and another *practitioner* has been requested to replace the *member*, the *member* shall:**
- a) Not make, or encourage other people to make, negative statements about the other *practitioner* that are not statements of facts;
 - b) Provide the other *practitioner* the opportunity to address the meeting (regardless of method) where the creditors decide whether to replace the *member* before any vote on the replacement occurs.

Appointment or engagement continuance

- R4.8 **Where a *member in public practice*, after accepting an *appointment* or *engagement*, discovers that they are unable to perform the *appointment* or *engagement* in accordance with this standard, the *member in public practice* shall advise relevant stakeholders of the circumstances, and:**
- a) where the inability to perform the *appointment* or *engagement* is not related to a conflict of interest, breach of *independence* or non-compliance with laws and regulations, with the *approving body* or client's consent, if necessary, seek further professional advice from

**other members in public practice specialising in insolvency services;
or**

- b) resign from the *appointment or engagement* and, if required by laws and regulations, the appointment documents or the terms of engagement, appoint or facilitate the *appointment or engagement* of a replacement.**

Disputes with clients – informal insolvency services

- R4.9 **If a member in public practice, who has accepted an *engagement* for *insolvency services* that is not an *appointment*, finds themselves in a dispute with a client in relation to the level of fees charged, the quality of the *professional services* provided or some other aspect of their dealings with the client, the member shall actively attempt to resolve the dispute in a timely manner.**

Fees and other types of remuneration

Fair and reasonable professional fees and expenses

- R4.10 **A member in public practice shall only be entitled to charge or claim, as appropriate, fair and reasonable *professional fees and expenses* in respect of *professional services* performed or to be performed for an *insolvency service*, taking into account, without limitation, the actual work undertaken, the complexity of the *appointment* and the result achieved.**
- 4.10A1 The concept of what is fair and reasonable *professional fees and expenses* in the context of *formal insolvency services* is regularly considered by the Courts. *Members in public practice* should keep abreast of developments in case law and obtain their own legal advice whenever there is any question regarding whether their *professional fees and expenses* are fair and reasonable.
- 4.10A2 Fair and reasonable *professional fees* in the context of *insolvency services* should represent the value of the services to the creditors and/or shareholders (as applicable). In respect of *formal insolvency services*, creditors and shareholders (or, where the *appointment* is a non-court appointed receivership, the appointing creditor) only receive value where they are charged for work that is:
- a) Directly connected with the *formal insolvency service*; and
 - b) Performed in accordance with all laws and regulations and appropriate *technical and professional standards*.
- 4.10A3 Categories of time that are not considered fair and reasonable include:
- a) Work beyond the scope of the *appointment* and/or power of the *appointee*;
 - b) Work done negligently;
 - c) Unnecessary work (covering decisions to carry out the work and over servicing);
 - d) Work by people with inappropriate seniority; and
 - e) Work at inappropriate rates (for example, non-market rates).

- 4.10A4 *A member in public practice* should conduct regular reviews of any work-in-progress to ensure that all time charged to the *insolvency service* is fair and reasonable.
- 4.10A5 *A member in public practice* might claim fair and reasonable costs of record keeping and the seeking of approval or determination of charges or claims for *professional fees and expenses*.
- 4.10A6 A key aspect of ensuring that fair and reasonable *professional fees and expenses* are claimed for *professional services* performed for an *insolvency service* is to ensure any work is completed in an efficient and effective manner.

Further guidance on matters to consider when determining whether *insolvency services* are provided in an efficient and effective manner is provided in Appendix 2.

R4.11 ***A member in public practice shall not claim or charge professional fees and expenses for time spent in relation to:***

- **complaints about the *member* or the conduct of a particular *insolvency service*; or**
- **regulator monitoring, practice reviews, peer reviews or investigations;**

subject to any order of the Court or finding of any regulator.

Contingent Fees

R4.12 ***A member in public practice shall not enter into an arrangement to receive a contingent fee for insolvency services if that arrangement:***

- a) **Impairs the *member's independence* (where required) or objectivity;**
- b) **Subject to paragraph 4.12A2, results in the receipt of a *contingent fee* for performing professional work that the *member* is required to complete under the relevant laws and regulations governing an *appointment*;**
- c) **Is inconsistent with the fiduciary obligations of the *member*; or**
- d) **Results in the perception that the *member* is acting in the *member's* interests, rather than in the best interests of the creditors or appointer, as applicable.**

4.12A1 Paragraph R4.12 does not apply where *member in public practice* charges on a time and cost basis at fair market rates and the only “contingent” factor in the arrangement is whether or not sufficient assets will be realised for the *member* to be ultimately paid.

4.12A2 Paragraph R4.12(b) does not apply where specialist sale advice is required by the *member in public practice* in respect to an *appointment* and it is provided by a suitably qualified *partner* of the *member's firm* or *network firm* on terms that are consistent with fair market rates that would otherwise be charged by a suitably qualified independent third party.

R4.13 **When considering whether a proposed *contingent fee* arrangement in a particular *appointment* meets the requirements of paragraph R4.12, a *member in public practice* shall consider the following:**

- a) Funds available in relation to the *appointment*;
- b) Funding from alternative sources;
- c) The costs of the alternative sources of funds in comparison to the *contingent fee* arrangement;
- d) The risk associated with the tasks to be undertaken for the *contingent fee*;
- e) The appropriateness of the quantum of the proposed *contingent fee* in relation to the nature of the *formal insolvency service* and the risk associated with the task to be undertaken; and
- f) Whether the achievement of the outcome will be reviewed by an independent third party in situations where that achievement cannot be verified by relevant stakeholders.

R4.14 Where a *member in public practice* enters into an arrangement to receive a *contingent fee* for *formal insolvency services*, the *member* shall disclose the following information to the *approving body*, or where there is no *approving body*, the creditors:

- a) Details of the arrangement including the nature of the contingency, how achievement of the contingency will be assessed and whether this achievement will be reviewed by a third party;
- b) The *member's professional fees* in the event the contingency is or is not achieved;
- c) When the *member's professional fees* are expected to be drawn; and
- d) Why the arrangement to receive a *contingent fee* is in the best interest of the creditors.

Where an *approving body* exists, the *member* shall also obtain approval for the arrangement to receive a *contingent fee* prior to the commencement of the *professional services* for which the *contingent fee* is to be charged.

Referral fees and commissions

R4.15 A *member in public practice* shall not accept or pay referral fees, commissions or similar benefits in connection with *insolvency services*.

Invoices and estimates - Informal insolvency services

R4.16 A *member in public practice* shall invoice the client for *informal insolvency services* in a timely manner in accordance with the terms of the *engagement*. The invoice shall provide sufficient detail for the client to ascertain the nature of the services performed and the basis of the fee charged.

R4.17 A *member in public practice* shall proactively, and in a timely manner, communicate with the client where the *member* is likely to exceed any quotes or estimates previously provided to the client for *informal insolvency services* and agree with the client the course of action to be taken. These communications and agreements shall be documented.

Fees and expenses - Formal insolvency services

- R4.18 ***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, a network firm or a third party in respect to an appointment. Where the member, the member's firm or a network firm provides other professional services to an appointment, the fees in respect of those services shall be claimed as professional fees.***
- R4.19 ***A member in public practice shall use the member's commercial judgement when incurring expenses for the appointment, adopting the perspective of, and acting with the same care as, a reasonable person.***
- R4.20 ***Subject to paragraph 4.20A2, a member in public practice who has accepted an appointment shall obtain approval from the Court when the member makes a claim in respect of professional fees for any pre-appointment advice performed in respect of an appointment, unless the appointment is a transitioning appointment and laws and regulations allow the claim relating to the pre-appointment advice.***
- 4.20A1 For the avoidance of doubt, *pre-appointment advice* in this context does not include a separate *engagement* for *informal insolvency services* or other *professional services*. Instead, any unpaid *professional fees* in respect to this work will usually constitute an unsecured claim against the *entity* if it subsequently enters into a liquidation.
- Members* might be precluded from accepting the *appointment* where this prior advice has been provided– see Part 5
- 4.20A2 Paragraph R4.20 does not apply where the *appointment* is a non-court appointed receivership, the *appointment* of administrators by a general security agreement holder, or the *appointment* of a trustee or provisional trustee of a personal creditor compromise proposal or a supervisor of debt repayment order under Part 5 of the Insolvency Act 2006, and the contractual arrangement between the parties means the *member* is entitled to recover *professional fees* for its *pre-appointment advice*.
- R4.21 ***Subject to paragraph 4.21A, 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 unless the appointment is a transitioning appointment and laws and regulations allow the claim in respect to the pre-appointment expenses.***
- 4.21A Paragraph R4.21 does not apply where the *appointment* is a non-court appointed receivership, the *appointment* of administrators by a general security agreement holder, or the *appointment* of a trustee or provisional trustee of a personal creditor compromise proposal or a supervisor of debt repayment order under Part 5 of the Insolvency Act 2006, and the contractual arrangement between the parties means the *member* is entitled to recover *expenses* incurred prior to *appointment*.

Information for approving body / creditors – Formal insolvency services

- R4.22 ***Where a member in public practice accepts an appointment, a member in public practice shall provide sufficient information to the approving body or where there is no approving body, the creditors to allow them to make an***

informed assessment as to whether the proposed basis of computing *professional fees* is fair and reasonable and shall include:

- a) If on a time basis, the scale rates that will be used including general levels and experience of staff at each level, and when payment will be drawn;
- b) If on a fixed fee basis, the fee, the services to be provided on this basis, how any out of scope services will be agreed and charged and when payment will be drawn;
- c) If including a contingent fee, the details required by paragraph R4.14;
- d) Advice that, if an *upfront payment* is to be received, the amount paid may not satisfy the full costs of the *formal insolvency service* and if an amount above the *upfront payment* is required, it may be paid from the assets of the *appointment*.

R4.23 **If the *member in public practice* provides an estimate of the cost in the information provided under paragraph R4.22, it shall be in writing clearly detailing any variables which may affect the estimate.**

4.23A *Members in public practice* should clearly articulate the assumptions made in computing an estimate so that, if they are subsequently required to charge a higher fee because those assumptions are incorrect and that higher fee is later subject to challenge in the Courts, the *member* can show that the higher fee is fair and reasonable.

R4.24 **Where a *member in public practice* has commenced an *appointment*, the *member* shall provide sufficient information to the *approving body* (if any) and the creditors so as to allow the *approving body* and/or creditors, to make an informed assessment as to whether the *professional fees* and *expenses* charged are fair and reasonable. This disclosure shall be made in the first statutory report (if *professional fees* and *expenses* have been charged prior to that date), at least every six months thereafter, and as otherwise required by laws and regulations or terms of the *appointment*. This disclosure shall:**

- a) Provide details of how the *professional fees* are computed including the basis of calculation and, if on a time basis, description of work performed and by staff type, hours worked and rates charged;
- b) Compare the *professional fees* sought or disclosed to any estimate previously provided to the *approving body* or other *entity* and if it differs provide an explanation of the reason for the variance;
- c) Advise the total of *professional fees* previously determined and whether the *member* may be seeking additional *professional fees* in the future;
- d) Provide details of *expenses* paid from the *appointment*, including:
 - i. Where *expenses* are paid for *professional services* that have not been provided by the *firm*, the amount paid by category;

- ii. For *expenses* charged directly by the *firm*, the basis of calculation of those *expenses* including any profit or advantage; and
- iii. The amount paid;
- e) Provide a summary of receipts and payments to and from the *appointment* bank account or the separate bank account in which funds relating to this *appointment* are maintained and identified; and
- f) Provide a reconciliation to any prior prospective *professional fee* approvals or disclosures, as appropriate, including actual *professional fees* to estimated *professional fees*, tasks undertaken and tasks that remain to be completed.

4.24A A prospective *professional fee* approval will arise where, under laws and regulations or the terms of the *appointment*, the *member in public practice* requires approval for the quantum of their *professional fees* and *expenses* and seeks the pre-approval of the quantum (not just their rates) for time and cost based remuneration determined in advance of the work to be performed. The claim will subsequently be calculated on a time and cost basis for actual work performed without further approval of the *approving body*. Paragraphs R4.29 and R4.30 apply to these approvals.

Upfront payments – Formal insolvency services

R4.25 Where a *member in public practice* receives an *upfront payment* in respect of a proposed *formal insolvency service*, the *member* shall ensure:

- a) The monies are held in trust;
- b) There are no conditions on the conduct or outcome of the *formal insolvency service* attached to the monies;
- c) Full disclosure is made to creditors in the *DIRRI*;
- d) Approval of *professional fees* is obtained prior to them being paid to the *appointee* (if required) or, if no approval is required, the *professional fees* are drawn in accordance with the terms and conditions on which the *upfront payment* was received; and
- e) The monies are accounted for as funds of the *formal insolvency service*.

4.25A For guidance regarding how monies received in respect to a *formal insolvency service* should be administered – see paragraph 4.35A1.

Costs paid by another entity – Formal insolvency services

R4.26 Where a *member in public practice* has accepted an *appointment*, other than as a non-court appointed receiver, and receives money from an *entity*, other than from the assets of the insolvent *entity*, to meet the costs of the *formal insolvency service*, the *member* shall:

- a) pay the funds into the *appointment* bank account or the separate bank account in which funds relating to the *appointment* are maintained and identified; and
- b) except where prejudicial to the outcome of the *appointment*, disclose the receipt of this money to the *approving body* or where there is no *approving body*, the creditors; and
- c) advise the other *entity* that the funds have been applied in accordance with the agreed terms and conditions of the funding.

Formal insolvency services - Drawing of professional fees and expenses

- R4.27 ***A member in public practice shall only draw professional fees in respect to a formal insolvency service in accordance with the proper resolution, order, or authority from the approving body or, where there is no approving body, in accordance with the information provided to the creditors in accordance with paragraph R4.22.***
- R4.28 ***Where a member in public practice has entered into a fixed fee arrangement in respect of professional fees, the member shall only draw the fixed fee at the end of the formal insolvency service or in amounts and at milestones agreed with the approving body or, where there is no approving body, in accordance with the information provided to the creditors in accordance with paragraph R4.22.***
- R4.29 ***Where a member in public practice seeks approval from the approving body for the payment of prospective professional fees and expenses charged directly by the firm, the member shall specify the maximum amount of the professional fees and applicable expenses that may be drawn before further approval is required from the approving body. The member shall only draw on these prospective professional fees and expenses progressively as the work is completed.***
- R4.30 ***Where a member in public practice has prospective professional fees approved in accordance with paragraph 4.29, 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, order or authority passed by the approving body. If a specific formula was not incorporated into the resolution, order or authority, then the member shall only charge a revised scale of rates by obtaining further approval from the approving body.***

Inducements, including gifts and hospitality

- R4.31 ***A member in public practice shall not provide or accept any inducement to secure an appointment or engagement. An inducement includes:***
- a) Monetary or non-monetary benefits (not including reasonable and appropriate gifts and hospitality – refer paragraph 4.31A), other than a fee properly charged as part of the *appointment* or *engagement*;
 - b) Spotter fees;

- c) **Agreements that work in the *insolvency service* will be given to a referrer; or**
- d) **Any other such arrangements that restrict the proper exercise of the member's judgement and duties.**

4.31A Section 340 of the *code* provides requirements and guidance material for evaluating the appropriateness of gifts and hospitality and any other *inducement* not covered by paragraph R4.31.

Dealings with property and other assets

No profit or advantage

R4.32 **None of the *related parties* shall derive a profit or advantage or pecuniary interest from an *insolvency service*, including through the sale or purchase of property or other assets of an *insolvency service*, unless permitted by law, regulations or with prior approval of the Court.**

R4.33 **A *firm* which provides *insolvency services* shall establish policies and procedures which prohibit the *firm* and the relevant *related parties* from purchasing assets or deriving a benefit from dealing with any assets, including property, which comes under the control of a *Partner* or employee due to the *appointment* or *engagement*, unless permitted by law, regulations or with prior approval of the Court.**

R4.34 **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 *insolvency service* to the *member's firm* or the relevant *related parties*, unless permitted by law, regulations or with prior approval of the Court.**

4.34A Paragraphs 4.32 and 4.34 do not apply where the *member* has accepted an *appointment* or an *engagement* in respect of a retail operation, and the assets are available for sale to the public and no special treatment or preference over and above that granted to the public is offered to the *related parties*.

Monies administered in respect to an appointment

R4.35 ***Members in public practice* shall ensure that funds administered in respect to an *appointment* are not placed in a *firm* bank account other than the *firm's* trust account.**

4.35A1 *Members in public practice* should take all reasonable steps to apply the principles of PS-2 Client Monies to funds administered in respect to an *appointment* including, but not limited to, funds being maintained and identified in a separate bank account or trust account.

4.35A2 *Members in public practice* might invest funds administered in respect to the *appointment* that are not required for the time being to meet claims against the *entity* as permitted by laws and regulations.³ However, it is important to ensure funds are not held any longer than is reasonably necessary to discharge the purposes for which the monies are held.

³ For example, section 256A of the Companies Act 1993

5. Professional independence

Overview

- 5.1 Subject to paragraph 5.2, the requirements of section 5 of this standard do not apply to:
- a) Receivers who are appointed by a secured creditor and have a contractual relationship with the appointer;
 - b) A *solvent liquidation*; or
 - c) An *informal insolvency service*.
- 5.2 Paragraph 5.1 does not remove a *member in public practice's* obligations to comply with the relevant laws and regulations in respect to the *appointment* or *engagement* (for example, qualification criteria; interests statement) or with subsection 112 (Objectivity) of the *code*.

General requirement

- R5.3 **Subject to Court approval, a *member in public practice* accepting an *appointment* or conducting a *formal insolvency service*, other than a service described in paragraph 5.1 above, shall maintain *independence*.**

Applying the conceptual framework

- R5.4 **Prior to accepting an *appointment*, a *member in public practice* shall apply the *conceptual framework* in the *code* to identify, evaluate and address threats to the *independence of the member*. Where a *member* is unable to eliminate the threats or use safeguards to reduce the threats to an *acceptable level*, the *member* shall not accept the *appointment* except where the *member* obtains Court approval.**
- 5.4A Laws and regulations contain certain qualification criteria designed to ensure the objectivity of *insolvency practitioners*.⁴ This standard requires *members* to both comply with those laws and regulations and apply the *conceptual framework* (i.e. look beyond those specific laws and regulations) to confirm their *independence* prior to accepting an *appointment*.

Interests and relationships

- R5.5 **In evaluating the *member in public practice's* *independence*, the *member* shall take reasonable steps to identify relationships between the insolvent *entity*, including its *associates*, its *influential employees or advisors* and creditors, and the *member*, including their *immediate and close family*, *firm* (including *partners* and *managerial employees in the member's office*), and *network firm* (including *partners*).**
- 5.5A Relationships that might compromise a *member's* *independence* include:
- a) An *immediate or close family* relationship;
 - b) A close personal relationship;

⁴ For example, section 280 of the Companies Act 1993 (as amended by the Insolvency Practitioners Regulation (Amendments) Act 2019)

- c) A business relationship including the provision of *professional services* or holding of a *financial interest* (whether directly or indirectly in or jointly);
- d) A loan or guarantee provided; and/or
- e) Employment with the insolvent *entity* as an *influential employee*.

R5.6 **The member in public practice shall consider the following matters when identifying relevant *network firms*:**

- a) **The geographical regions or countries in which the insolvent *entity* and its *associates* operate; and**
- b) **Relationships with the directors or officers of the insolvent *entity* and its *associates*.**

5.6A Further guidance on *networks* and *network firms* can be found in paragraphs 400.50 A1 – 400.54 A1 of the *code*.

Appointments where threats cannot be eliminated or reduced to an acceptable level

R5.7 **A member in public practice shall not accept an *appointment*, where the relationship between the *member*, including their *immediate and close family*, *member's firm* (including *partners* and *managerial employees* in the *member's office*), and *network firm* (including *partners*) and the insolvent *entity*, including its *associates* and its *influential employees or advisors*, is, or has been, any of the following relationships:**

- a) **An *immediate or close family* relationship;**
- b) **A material business relationship, other than the provision of prior *professional services* to which paragraph R5.9 applies, including holding of a material *financial interest* (whether directly or indirectly in or jointly), in the previous two years;**
- c) **A material loan or material guarantee provided in the previous two years; or**
- d) **Employment with the insolvent *entity* as an *influential employee* or advisor in the preceding two years.**

R5.7A If the *member in public practice* takes reasonable steps to identify the relationships in paragraph R5.5 prior to commencing the *formal insolvency service* and does not identify any such relationships, and promptly complies with paragraph R5.19(b) where the *member* subsequently identifies a relationship that puts the *member* in breach of paragraph R5.7, the *member* is not considered in breach of paragraph R5.7.

R5.8 **A member in public practice shall not accept an *appointment*, where the relationship between the *member*, including their *immediate and close family*, *firm* (including *partners* and *managerial employees* in the *member's office*) and *network firm* (including *partners*), and an *entity* that has provided finance to the insolvent *entity*, or an *associate* of that *entity*, is or has been any of the following relationships:**

- a) **An *immediate or close family* relationship;**

- b) A material business relationship, other than the provision of prior professional services to which paragraph R5.9 applies (or prior professional services unrelated to the insolvent entity), including holding of a material financial interest (whether directly or indirectly in or jointly), in the previous two years;**

5.8A If the *member in public practice* takes reasonable steps to identify the relationships in paragraph R5.5 prior to commencing the *formal insolvency service* and does not identify any such relationships, and promptly complies with paragraph R5.19(b) where the *member* subsequently identifies a relationship that puts the *member* in breach of paragraph R5.8, the *member* is not considered in breach of paragraph R5.8.

Prior professional services

R5.9 **A member in public practice shall not accept an appointment where the member, the member's firm or a network firm (including the member's prior firm or network firm) has, during the prior two years provided a professional service to the insolvent entity, except, subject to paragraph R5.10, where the professional service provided was a prior appointment or informal insolvency service, to the insolvent entity, its creditors or shareholders.**

R5.10 **A member in public practice shall not accept an appointment where the member, the member's firm, a network firm or their partners have provided professional services to the insolvent entity or any other entity which:**

- a) **Have the reasonable potential to lead to litigation claims against the member or the member's firm by the insolvent entity, a creditor and/or a shareholder of the insolvent entity; or**
- b) **Were related to the structuring of assets of the insolvent entity in order to cause assets to be unavailable in a formal insolvency service or to otherwise avoid the consequences of a formal insolvency service, even if that advice was provided at a time when the entity was solvent.**

Pre-appointment advice

R5.11 **Where the insolvent entity is a company, a member in public practice shall not provide pre-appointment advice to both the company and its directors in their personal capacity.**

R5.12 **Where 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 that is controlled by that individual or that the individual is a director or an officer of.**

5.13A The requirements of paragraphs R5.11 and R5.12 do not prohibit a *member in public practice* from providing general information on the insolvency process and the consequences of insolvency to all the relevant parties. General information is limited to information which is not specific to the particular facts and circumstances affecting the recipient of the general information and does not include factual information that the recipient of the general information would not otherwise be entitled to see.

Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

- R5.14 **A member in public practice shall provide a *DIRRI* in respect of a *formal insolvency service*, other than a service described in paragraph 5.1 above. The member shall provide the *DIRRI* in the first communication to the creditors and table it at the first meeting of the creditors (if one is held).**
- R5.15 **A member in public practice shall adequately describe all known relationships, except trivial and inconsequential relationships, in the *DIRRI* that may be relevant to a creditor in assessing the member's independence.**
- 5.15A1 The *DIRRI* may take any suitable form that is signed and dated and meets the requirements of paragraph R5.15 and may include an interests statement as required by applicable laws and regulations⁵.
- 5.15A2 A relationship is trivial and inconsequential if it is insignificant, remote or coincidental.
- R5.16 **The *DIRRI* shall include:**
- **a declaration of *independence* including a statement that the member in public practice has undertaken an evaluation of the significant threats to independence and the member has determined that the member is independent for the purposes of accepting the appointment in accordance with relevant laws and regulations and this standard;**
 - **a declaration of the circumstances giving rise to the appointment including (amongst other things):**
 - **details of the referring entity, if any (including relationship to the insolvent entity);**
 - **any discussions that have already taken place with the insolvent entity or their associates; and**
 - **the member's reason for believing why these circumstances do not result in a conflict of interest or duty;**
 - **a declaration of all the known relationships described in paragraph R5.5 and the member's reason for believing why these relationships, if any, do not result in a conflict of interest or duty; and**
 - **a declaration of indemnities and *upfront payments* including:**
 - **identity of the payer (name and relationship with the insolvent entity);**
 - **extent and nature;**
 - **statement of where the funds are held; and**
 - **how and when funds will be applied (including any conditions imposed on the use of the funds).**
- 5.16A In setting out the relationships described in paragraph R5.15, the member should describe (amongst other things and in addition to why the relationship does not result in a conflict of

⁵ For example, section 239APA of the Companies Act 1993

interest); the nature of the relationship; the period of the relationship; and any *professional fees* associated with the relationship.

R5.17 **Where a *member in public practice* accepts an *appointment* with one or more other *practitioners*, all *appointees* shall sign the *DIRRI* prior to its issue. Where this requirement is not possible and a *DIRRI* is required to be issued before all *appointees* are able to sign it, the *members* shall:**

- a) Provide an explanation in the *DIRRI* as to why all *appointees* were not able to sign it; and
- b) Complete and sign a replacement *DIRRI* as soon as possible thereafter and provide it to creditors in the next communication.

R5.18 **Where a *member in public practice* becomes aware that the *DIRRI* is out of date or inaccurate, the *member* shall update the *DIRRI* and provide it to the creditors with the next communication and table it at the next meeting of the creditors or the *approving body* (if any).**

5.18A A *member in public practice* should note that disclosure of matters in a *DIRRI*, and the tabling of the *DIRRI* at a meeting of creditors, will not prevent a finding that a *member* has breached the requirements of this standard or any relevant law or regulation by the *professional body*, a regulator or a Court.

Identification of threat after commencement of appointment

R5.19 **When a *member in public practice* identifies circumstances or relationships that give rise to a threat to *independence* after the commencement of a *formal insolvency service*, the *member* shall evaluate the threat and:**

- a) Where the threat to the *independence* of the *member* 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 continue performing the *formal insolvency service* and update the *DIRRI* and send it to all the creditors; or
- 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:
 - apply to the Court to continue the *appointment*, or for the *appointment* of a special purpose *appointee*, or resign from the *appointment*; and
 - notify all creditors and appropriate regulatory authority of the following:
 - The nature of the threat;
 - The key facts and circumstances;
 - Reasons why the circumstances or relationships giving rise to the threat were not identified prior to acceptance of the *appointment*;
 - The potential impact on the *independence* of the *member*;
 - The status of the *appointment*;

- **The costs of ceasing and transferring the *appointment*;**
- ***Professional fees and expenses* billed and any outstanding amounts; and**
- **How the threat will be addressed**

6. Engagement performance

Planning and performance

- R6.1 **A *member in public practice* shall plan and perform the *insolvency service* with an appropriately inquiring mind.**
- R6.2 **A *member in public practice* shall take all reasonable steps to communicate, in a clear and timely manner, with all *entities* affected by a *formal insolvency service* about the insolvency processes and the rights and obligations of the *entities* including any statutory time limits to be met and the consequences of not meeting those time limits.**
- R6.3 **Subject to paragraph R1.14, in undertaking an *insolvency service*, a *member in public practice* shall consider any guidance issued by the *professional body*, other professional organisations (where appropriate) and appropriate regulatory authorities.**

Use of experts

- R6.4 **Where an *insolvency service* requires the consideration of matters that are outside the professional expertise of a *member in public practice*, the *member* shall obtain expert assistance or advice from a suitably qualified third party or decline to provide the *insolvency service*. Where the *member* formally engages a third party to provide advice and relies on that advice, the *member* shall disclose in relevant reports or communications the areas in which third party advice has been obtained and that the *member* has relied on that advice except where the advice is legal advice and disclosure may result in a waiver of legal professional privilege.**
- 6.4A Relevant reports or communications are those reports or communications that include a reference to the subject matter for which expert assistance or advice has been obtained.
- R6.5 **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, and whether the work performed,⁶ and the fees charged are reasonable and appropriate.**

⁶ ISA (NZ) 620 *Using the Work of an Auditor's Expert* contains useful guidance on evaluating the adequacy of an expert's work in a professional engagement.

Outsourcing

- 6.6A If work in an *appointment* is outsourced, the *member in public practice's* obligations under this standard remain the same as if the *member* or the *member's* staff had performed the work.

Joint appointments

- R6.7 **Where a *member in public practice* accepts a joint *appointment*, all *appointees* are equally responsible for all decisions made on the joint *appointment*, even where one *appointee* takes a lead role in respect of the *appointment*.**
- 6.7A A *member in public practice* who accepts a joint *appointment* should ensure that their *firm* establishes policies and procedures that ensure all *appointees* are knowledgeable about the conduct of the *formal insolvency service*.

Reporting

- R6.8 **A *member in public practice* shall report to the creditors, client, appropriate authority, or other person as required by relevant laws and regulation or terms of engagement, giving appropriate disclosure of all material matters. Any report issued by the *member* shall clearly state the extent of the *member's* responsibility for the accuracy and completeness of the information therein.**
- 6.8A1 A *member in public practice* should report regularly, to ensure that appropriate parties remain properly informed on the progress of the *insolvency service*. Unless laws and regulations otherwise require, a *member* is not obliged to disclose commercially sensitive information which might prejudice the outcome of the *insolvency service*.
- 6.8A2 When reporting to creditors, a *member in public practice* should ensure that estimates on likely distributions are presented in such a manner as to avoid any implication of greater accuracy than in fact exists. A *member* should satisfy themselves that the estimates are not unreasonable in the particular circumstances.
- 6.8A3 The extent of the *member in public practice's* responsibility for the accuracy of any report issued by the *member* should be clearly stated in the report. A *member* should not imply in any statement that an audit or review has been performed where such an *engagement* has not been performed.

7. Documentation and quality control

- R7.1 **A *member in public practice* shall comply with the requirements of PS-1 Quality Control. Where a *member in public practice* has accepted an *appointment*, the *appointment* is an *engagement* for the purposes of PS-1 Quality Control.**
- R7.2 **A *member in public practice* shall prepare working papers on a timely basis in accordance with this Standard that appropriately document the work performed. The documentation prepared by the *member* shall:**
- i. **Provide an appropriate record of the procedures performed for the *insolvency service* that is sufficient to enable an experienced *member in public practice* who performs *insolvency services* to understand the nature,**

timing and extent of the procedures performed including sufficient detail on the manner of realisation of assets (including matters considered, discussions had and decisions made), where relevant, and other matters considered and major decisions made;

- ii. Identify threats to *independence* and/or objectivity, as applicable, and how they have been evaluated and addressed; and**
- iii. Demonstrate that the *insolvency service* was carried out in accordance with relevant laws and regulations, this Standard and other applicable *technical and professional standards*, including policies and procedures established in accordance with PS-1 Quality Control.**

7.2A A *member in public practice* might destroy the working papers referred to in paragraph 7.2 in accordance with the requirements of the relevant laws and regulations.

R7.3 A *member in public practice* shall establish and adhere to documented procedures for each type of *formal insolvency service* that the *member* accepts to ensure compliance with statutory timeframes.

Glossary

Defined terms are shown in the body of the standard in *italics*.

For the purpose of this standard:

Acceptable level means a level at which a *member in public practice* using the reasonable and informed third party test (as defined in the *Code*) would likely conclude that the *member* complies with the fundamental principles (as defined in the *Code*).

Appointee means a *member in public practice* who accepts an *appointment*.

Appointment means the appointment of a *member in public practice* as:

- a) A receiver as defined in the Receivership Act 1993;
- b) A liquidator or interim liquidator under the Companies Act 1993;
- c) A voluntary administrator or deed administrator under Part 15A of the Companies Act 1993;
- d) An administrator, supervisor, monitoring accountant or similar role pursuant to an appointment arising under Part 14 or Part 15 of the Companies Act 1993;
- e) A trustee or provisional trustee of a personal creditor compromise proposal or a supervisor of debt repayment order under Part 5 of the Insolvency Act 2006;
- f) An Appointee of an Insolvent Deceased Estate under Part 6 of the Insolvency Act 2006;
- g) A statutory manager under the Corporations (Investigation and Management) Act 1989, Part 4 of the Insurance (Prudential Supervision) Act 2010 or section 117 of the Reserve Bank of New Zealand Act 1989; and
- h) A manager, controller or supervisor of an insolvent *entity* or of an *entity* that is likely to become insolvent under any other laws or regulations.

Approving Body means the body with the authority to approve *professional fees* (in the case of the High Court – both the method of calculation and the amount of fees) or a course of conduct. Depending on the type of *appointment* this *approving body* may be creditors, an appointer, the High Court, or other *entity* as required by law, or there may be no *approving body*.

Further guidance on the *approving body* for common *appointments* is provided in Appendix 3.

Associate means:

- a) For *appointments* to companies or their assets, a person or *entity* referred to in section 298 (1) of the Companies Act 1993; and
- b) For personal insolvency administrations, a relative (as defined by the Insolvency Act 2006) of the person subject to the administration, or the spouse or life partner or dependent of a relative, and any *entity* with which the person subject to the administration or any of the persons previously mentioned are associated.

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

Code means *NZICA Code of Ethics* issued by the New Zealand Regulatory Board of the New Zealand Institute of Chartered Accountants.

Conceptual framework means the framework described in section 120 of the *Code*.

Contingent Fee means a fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the 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.

DIRRI means a Declaration of Independence, Relevant Relationships and Indemnities.

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*.

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

Expenses means the financial outlays incurred or paid by a *member in public practice* to carry out a *formal insolvency service*. This term includes costs and disbursements.

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 interest and derivatives directly related to such interest.

Firm means:

- a) A sole practitioner, partnership, or corporation undertaking *professional services*;
- b) An *entity* that controls such parties, through ownership, management or other means; and
- c) An *entity* controlled by such parties, through ownership, management or other means.

Formal insolvency service means an *appointment* under the Receiverships Act 1993; Companies Act 1993; Insolvency Act 2006; Corporations (Investigation and Management) Act 1989; Insurance (Prudential Supervision) Act 2010; Reserve Bank of New Zealand Act 1989; or any other laws or regulations or by the Court.

Immediate Family means a spouse (or equivalent) or dependent.

Independence comprises:

- a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional skepticism.
- b) Independence of appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party (as defined in the *Code*) would be likely to conclude that a *member's* or a *firm's*, or a *Partner's*, employees, agents, consultant's, or contractor's integrity, objectivity or professional skepticism, has been compromised.

Inducement means an object, situation or action that is used as a means to influence another individual's behaviour, but not necessarily with intent to improperly influence that individual's behaviour.

Influential employee or advisor means an employee or advisor of the insolvent *entity* who is in a position to exert direct and significant influence over the insolvent *entity*.

Informal insolvency service means an *insolvency service* which is not a *formal insolvency service*.⁷

Insolvency Services means *professional services* provided by a *member in public practice* to an *entity* that is currently insolvent or is likely to become insolvent in the near future and services in relation to a *solvent liquidation*. The service may be a *formal insolvency service* or an *informal insolvency service*.

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

Member⁸ means an individual who is a member of the New Zealand Institute of Chartered Accountants in accordance with the New Zealand Institute of Chartered Accountants Rules.

Member in public practice means a *member*, irrespective of functional classification (for example, audit, tax or consulting) in a *firm* that provides *professional services* or otherwise provides *professional services* to the public. This term is also used to refer to a *firm of members in public practice*.

Network means a larger structure:

- a) That is aimed at cooperation; and
- b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or significant part of professional resources.

Network Firm means a *firm* or *entity* that belongs to a *network*.

Office means a distinct sub-group, whether organised on geographical or practice lines.

Partner means any individual with authority to bind the *firm* with respect to the performance of *professional services*.

Practitioner means an *entity* (including a *member in public practice*) providing *professional services* (including an *insolvency service*).

Pre-appointment advice means any professional advice, whether giving an opinion or not, provided prior to an *appointment* to an insolvent *entity*, its creditors or, if the insolvent *entity* is a company, to its directors, including advice given to advisors to the insolvent *entity* or its directors.

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

⁷ An informal insolvency service may include advice to business entities or creditors of businesses (including investigating accountant reports) on business strategies so as to avoid insolvency, how to best organise a business to achieve and maintain viability or to reorganise/restructure a business, and advice of a similar nature.

⁸ An insolvency *practitioner* who is licensed by NZICA but is not a *member* of NZICA is also required to comply with this standard as if they were a *member*. This is in accordance with the Practitioner Compliance Agreement the insolvency *practitioner* entered into with NZICA.

And, for the avoidance of doubt, includes *insolvency services*.

Professional body includes the New Zealand Institute of Chartered Accountants and Chartered Accountants Australia and New Zealand.

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*.⁹

Professional services means *professional activities* performed for clients.

Professional standards means professional and ethical standards issued by the New Zealand Regulatory Board of the New Zealand Institute of Chartered Accountants.

Public interest means the collective well-being of the community and institutions the profession serves.

Related parties means:

- a *member in public practice*;
- the *member's firm*;
- a *network firm*;
- the *partners* or employees of the *member's firm* or *network firm*;
- the *immediate* and *close families*, or controlled or associated *entities* of the *member*, the *firm's* or *network firms' partners* and employees; or
- if any of the persons listed above are beneficiaries or settlors of a trust, a trustee of that trust.

Referring Entity means an *entity* that has introduced or referred a *member in public practice* to an *entity* seeking specialist insolvency advice that may result in *appointment*.

Solvent liquidation means the liquidation of any *entity* that satisfies the requirements of section 243(8) and section 243(9) of the Companies Act 1993 (modified as necessary for entities that are not companies).

Technical and professional standards means the standards issued by the New Zealand Institute of Chartered Accountants, the External Reporting Board, the New Zealand Auditing and Assurance Standards Board, the New Zealand Accounting Standards Board and any other standards or authoritative guidance applicable to the task or *engagement* or *appointment*.

Upfront payment means any payment to an *appointee* prior to the *appointment* for the purposes of meeting *professional fees* and/or *expenses* of the *appointee*.

⁹ *Professional fees* are also referred to as remuneration in the context of *insolvency services*.

Conformity with International Pronouncements

None of the International Federation of Accountants (IFAC) international standards boards has issued a pronouncement equivalent to IS.

The Australian Accounting Professional and Ethical Standards Board (APESB) has issued APES 330: *Insolvency Services* which is similar to IS but designed to interact with other APESB pronouncements and to ensure compliance with Australian laws and regulations. Differences between IS and APES 330 include:

- a) IS provides for both formal and informal insolvency services, whereas APES 330 provides for insolvency appointments under legislation. IS, therefore, provides (amongst other things) requirements for agreeing the scope and basis of appointments for informal insolvency services;
- b) IS excludes comment on expert witness services;
- c) IS refers to NZICA pronouncements, New Zealand laws and regulations and other matters applicable to the New Zealand environment and contains material that elaborates on those New Zealand specific requirements whereas APES 330 refers to APESB pronouncements, Australian laws and regulations and other matters applicable to the Australian environment and contains material that elaborates on those Australian specific requirements;
- d) APES 330 includes more specific requirements for the contents of a DIRRI than IS. APES 330 also includes a prescribed format for the DIRRI. IS does not include a prescribed format; and
- e) IS includes material regarding reporting. APES 330 does not include equivalent material.

Appendix 1

Examples of legislation that may affect Insolvency Practitioners

The information in this Appendix is for information only and does not form part of the standard.

The following statutes, as amended from time to time, and as supplemented by accompanying regulations, are among those laws often relevant to performance of *insolvency services*.

- Companies Act 1993.
- Companies Act 1993 Liquidation Regulations 1994.
- Companies (Maximum Priority Amount) Order 2018.
- Companies (Reporting by Insolvency Practitioners) Regulations 2020.
- Companies (Voluntary Administration) Regulations 2007.
- Companies (COVID-19 – Business Debt Hibernation) Regulations 2020.
- Corporations (Investigations and Management) Act 1989.
- Insolvency Act 2006.
- Insolvency (Personal Insolvency) Regulations 2007.
- Insolvency (Maximum Priority Amount) Order 2018.
- Insolvency (Cross-border) Act 2006.
- Insolvency Practitioners Regulation Act 2019.
- Insolvency Practitioners Regulations 2020.
- Personal Property Securities Act 1999.
- Receiverships Act 1993.

Appendix 2

Efficient and effective manner

This Appendix contains additional information on matters to consider when determining how to perform the *insolvency services* in the most efficient and effective manner.

Member in public practice should use their commercial and professional judgement to determine how to perform the *insolvency service* in an efficient and effective manner and might consider:

- a) the complexity of the *insolvency services* (including, where applicable, the complexity of the corporate structure);
- b) the level of expertise required to complete the necessary tasks as part of the *insolvency service*;
- c) the availability of sufficient trained and experienced staff to complete the *insolvency service*;
- d) the remuneration rates for staff that apply to the *insolvency service* (including, where relevant, consideration of different rates applicable in different locations);
- e) the resources required to complete the *insolvency service* and each relevant task;
- f) the actual amount of funding available to complete the *insolvency service* and any potential sources of funding that may be available for investigations;
- g) the degree of litigation expected to be necessary to complete the *insolvency service*;
- h) the urgency for tasks to be completed;
- i) the location of the *insolvency service* and any travel required;
- j) the specialised nature of the *insolvency service* (if any); and
- k) the most cost-effective allocation of tasks.

Appendix 3

Approving body

The information in this Appendix is for information only and does not form part of the standard.

Members should ensure that they properly identify the appropriate *approving body* for their specific *appointment* and obtain their own legal advice when they are unclear.

Appointment	Approving body	
	Commencement	On-going
Receiver – deed or agreement	Appointer	Appointer, if required by the deed or agreement
Receiver - Court	Court	Court
Liquidator – shareholder (or equivalent) appointed	Shareholders (or equivalent)	None – disclosure only
Liquidator – Court	Court	Court
Liquidator – other	Appointer	None – disclosure only
Part 14 or 15 appointments	Appointer	Depends on appointment – may be creditors (or committee thereof) or the Court
Voluntary administration	None – disclosure only	None – disclosure only
Deed Administrator	None – disclosure only	None, unless otherwise agreed under the deed of company arrangement
Trustee of personal creditor compromise	Appointer	Depends on appointment – may be creditors (or committee thereof) or the Court
Statutory management or similar	None – disclosure only	None – disclosure only