

18 February 2019

Australian Restructuring Insolvency & Turnaround Association (ARITA)
Level 5, 191 Clarence Street
SYDNEY NSW 2000
Via email: SpecialistTeam@arita.com.au

Dear Sir/Madam

Draft of 4th Edition of the ARITA Code of Professional Practice

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide feedback on the draft of the 4th Edition of the ARITA Code of Professional Practice. We have focused our feedback on key areas where we consider we can add the most value. Appendix A provides our detailed submission and Appendix B provides more information about Chartered Accountants Australia and New Zealand.

Key points

- We support and recognise the importance of the Code in setting high standards for the Insolvency Profession.
- We consider that some of the 'principles' within the Code of Ethics would be more appropriately classified as application guidance. We have also suggested some amendments to the more complex clauses to increase their clarity and understanding.
- We recommend that the ARITA Code of Ethics and Code of Professional Practice: Advisory Services are cross referenced to the APES 110 Code of Ethics in the same way that the Code of Professional Practice: Insolvency Services has been cross referenced to APES 330.
- We have also identified some clauses which we consider duplicate the intent of other clauses and where definitions may require clarification.

Should you have any queries concerning the matters discussed above or wish to discuss them in further detail, please contact Karen McWilliams via email at karen.mcwilliams@charteredaccountantsanz.com or phone (612) 8078 5451.

Yours sincerely,



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Appendix A

General Comments

We support and recognise the importance of the Code, not just in setting high standards for the Insolvency Profession, but in supporting practical and functional guidance for how restructuring, insolvency and turnaround work is undertaken.

We recognise that significant work has been undertaken to align the Code of Professional Practice: Insolvency Services with the proposed draft APES 330 and that it contains specific references to clauses from the proposed draft APES 330. We recommend that references are also made within ARITA's Code of Ethics and the Code of Professional Practice: Advisory Services to issued standards, such as APES 110, to help simplify compliance and provide greater clarity for those members who must adhere to both.

Code of Ethics

Definitions:

We consider the definitions of Objectivity and Impartiality outlined in the principles of the Code to be confusing. The dictionary definition of Objectivity refers to 'not being influenced by personal feelings/opinions', which forms part of the Impartiality principle in the Code. Likewise, Impartiality includes 'unbiased' in its dictionary definition, which is included as part of Objectivity in the code. We recommend these definitions are reviewed, combined and, where possible, aligned with APES 330 para 4.7 and APES 110 Objectivity.

Subjectivity:

Some of our members have expressed concern in relation to areas that are viewed as subjective. In particular we note:

- Clause 3.1 Integrity states that "Members must adhere to high moral and ethical principles". This particular statement is considered to be subjective as morals will be different for every individual. We suggest an alternative statement such as "adhering to high ethical principles" which is clear and concise.
- Clause 3.9 Reporting of unethical conduct – we are concerned that potential confusion may arise as there is no clear outline of requirements for members under the ARITA code and other obligations, such as confidentiality and NOCLAR. We suggest that other requirements including NOCLAR are referred to in this section to provide greater clarity. We also note that potential issues may arise when taking action against non-members reported under this clause.

Additionally, Clause 3.9 may contradict clause 3.18 Use of information, which requires that a member must not use information for any purpose other than the purpose it was properly obtained for. Including an exception in either clause 3.9 or 3.18 would allow members to break this requirement if unethical behaviour is identified.

Duplication:

We note that Clause 3.10 'Dealings with other members' is fundamentally the same as 3.5 Professionalism. We recommend that 3.10 is removed from the code as it is duplicative, and we do not consider this to be an ethical principle.

Further, we note that Clause 3.8 'No discrimination' is already incorporated within 3.1 Integrity and is also a requirement under Australia's anti-discrimination law. We suggest that this is removed from the code as it is already incorporated as a principle and is an overarching Australian law.

Fundamental principles vs application:

We note that there is no clear distinction between the fundamental principles and guidance on its application within the draft code. We consider Clauses 3.1 to 3.7 to be the fundamental ethical principles of the code and Clauses 3.8 to 3.19 to represent application and implementation guidance linked to these

principles. For example, Clause 3.11 Restrictions on illegal or unethical advice “A member must not provide advice which would cause an Entity to undertake a course of action which is illegal or unethical” and Clause 3.16 “A member must promote high ethical standards” are actions required to uphold the Integrity principle. We recommend distinguishing between principles and application guidance (similar to that outlined in APES 110).

Code of Professional Practice: Insolvency Services

Some of our members have expressed concern around the purpose and practicality of some clauses and have called for further clarification. For instance:

- Clause 3.7(b) notes that the Member must notify the court, some of our members have questioned why they would need to notify the court and its practicality, for example who would bear this cost.
- Clause 3.13(a) could be reworded as follows ‘engagement of the Member, or the Member’s Firm, by a third party, who is not an Associate or Related Entity of the insolvent Entity, to investigate...’ as it is not clear from the current wording as to when the ‘engaging by the third party’ took place.
- Clause 3.15(a) could be amended from ‘provided Professional Services’ to state ‘previously provided any Professional Services’ to clarify that the Professional Services would have previously taken place and relate to any Services, not just Insolvency Services. Additionally, we note that Professional Services is defined as ‘all work undertaken by a Member’. Clause 3.15(a) indicates that a definition of Professional Services in relation to the Member’s Firm is required, as we understand the interpretation would extend to Professional Services such as audit and assurance, which may not typically be work performed by an ARITA Member.
- Clause 3.26 states that “with respect to the disclosure of indemnities contained in paragraph 3.25(k), a Member is not required to disclose confidential arrangements, unless disclosure is required by the Corporations Act or Bankruptcy Act. The purpose of this clause is unclear, and we question whether this clause contradicts Clause 3.25(k).
- We recommend incorporating clarification to assist in determining limited scope, limited time and limited fees in accordance with Clause 3.17(a) for the code of professional practice: insolvency services. For example, that ‘A member should take into account the size of the member’s firm, the size of the insolvent entity and the nature of the Professional Service performed when considering compliance with 3.17(a).’

Code of Professional Practice: Advisory Services

As noted above, to simplify compliance we recommend cross referencing to other relevant codes. We recommend that Clause 3.12 and 3.13 (and others that may be identified) are cross referenced to APES 305 Terms of Engagement and aligned, where possible, for consistency. We further recommend that Clause 3.20 includes a reference to APES 110 incorporating the self-interest threat if the firm also engages in assurance/audit services for a client.

We highlight in Clause 3.14 that “Any changes to the Terms of Engagement to provide Advisory Services should be confirmed in writing with the Client”. Our members have expressed concern that “Any changes” to the terms of engagement could be very broad, for example this could include the change of a junior team member on the engagement. We suggest ARITA consider amending it to refer to “significant changes”.

We consider Clause 3.23 to be confusing and recommend that it be amended from “acquiring equity in a client, or purchasing assets of a client” to “acquiring equity in that client, or purchasing assets of that client” to clarify its intent.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.