

ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD LIMITED

**APES 330 Insolvency Services
1st Taskforce Meeting**

MINUTES

**29 July 2021, Thursday
10.03 a.m. – 10.46 a.m.**

Videoconference

1. Present and Apologies

Present:

Mr Channa Wijesinghe (Chairman), Ms Robyn Erskine, Ms Julie Williams, Ms Kim Arnold, Ms Karen McWilliams, Mr Stephen Longley, Ms Kristen Beadle and Ms Jill Lawrence.

In Attendance:

Mr Craig Farrow (Board Member), Mr Jon Reid and Ms Rachael Tiong.

2. Background to the proposed amendments

The Chairman thanked the Taskforce members for their attendance to consider proposed revisions to APES 330 *Insolvency Services* (APES 330). The Chairman noted that APESB Technical Staff had engaged with ASIC, ARITA and Robyn Erskine on the development of the proposed exposure draft prior to this meeting. The proposed revisions to APES 330 include a section specific to Restructuring Practitioners to address new obligations resulting from the Federal Government's insolvency reforms in 2020.

3. Proposed revisions relating to Restructuring Practitioners

(a) Amended definitions for Appointment and Approving Body and a new definition for Restructuring Practitioner

The Taskforce were supportive of the amended definitions and new definition. In addition, the Taskforce discussed whether to include AFSA within the definition of Approving Body, and it was agreed that this definition should be updated to have such a reference.

(b) New section 10 of APES 330 for Restructuring Practitioners

- *Definition of Independence from APES 330/the Code*

The Taskforce were supportive of using the Independence definition derived from APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, with additional text referring to legal precedents established by Australian Courts and referring to Appendix 1. It was noted that the definition of Independence from the Code is based on different concepts than the ARITA definition of independence that uses the 'double might' test.

The Taskforce were also supportive of the proposed changes to Appendix 1 to clarify that the cases therein do not apply to Restructuring Practitioners but for such appointments to consider relevant cases as they occur and become applicable.

The Taskforce discussed the importance of insolvency practitioners understanding their obligations under the Code, which could take greater prominence in Section 1 of APES 330 and that Section 3 of APES 330 sets out various obligations from the Code.

- *Paragraph 10.7 and resignation if threats later determined*

The Taskforce agreed with the approach in proposed paragraph 10.7 where threats to Independence are determined after the Appointment, that the Restructuring Practitioner shall address the threat by resigning from the Appointment.

- *Does creditor approval of the plan constitute an Approving Body*

The Taskforce discussed proposed paragraph 10.20 and agreed that creditor approval of the plan constitutes an Approving Body.

- *Receipt of monies and paragraph 10.26*

The Taskforce members were supportive of paragraph 10.26 remaining as drafted.

The Taskforce discussed that funds should be held on trust, but there should be no obligation to establish a separate bank account during the restructuring phase as Restructuring Practitioners can only draw the fixed fees upon completion of the Appointment. It was noted that in most instances, there would not be other transactions during restructuring. However, in circumstances where other transactions are required, a separate bank account would need to be established.

- *Contingent Fees and Restructuring Practitioners*

The Taskforce discussed that it would be uncommon for Restructuring Practitioners to have contingent fees. However, it is possible in relation to proceedings, for example, the Restructuring Practitioner being assigned the right for proceedings in relation to a company asset with a contingent fee dependent on the success of the proceedings. It was noted that contingent fees are not prohibited, therefore the Taskforce were supportive of including provisions for contingent fees in Section 10. Technical Staff will draft relevant paragraphs based on those in Section 4 on Contingent Fees adjusted for Restructuring Practitioners.

c) DIRRI requirements relocated to Section 5 to avoid duplication

The Taskforce were supportive of relocating DIRRI requirements to Section 5.

The Taskforce discussed whether there was a risk that Restructuring Practitioners will only focus on Section 10 and not read the standard in its entirety. The Taskforce agreed this could be addressed through education and awareness of proposed Appendix 4, which sets out the sections of APES 330 applicable to Restructuring Practitioners.

d) Amendments to Appendix 1 regarding Restructuring Practitioners

The Taskforce were supportive of the proposed amendments to Appendix 1.

e) New Appendix 4 on the application of APES 330 to Restructuring Practitioners

The Taskforce were supportive of the proposed new Appendix 4.

4. Other Proposed Revisions

- a) Proposed paragraph 4.14 to address APESB Issues Register matter regarding paragraph 4.12(c)(iv)

The Taskforce were supportive of the proposed paragraph 4.14 to address the issue where there is a close relationship between firms and financiers, and this change will address any interpretation that the extant paragraph 4.12(c)(iv) inadvertently prevents arm's length finance relationships.

- b) Proposed updates to Appendix 2 template DIRRI

The Taskforce discussed the proposed Appendix 2 and it was noted it does not fully reflect the updated ARITA DIRRI. Technical Staff will revise the Appendix 2 template to better align with the ARITA DIRRI.

5. Any other matters and way forward

The Taskforce agreed with the following proposed way forward for Technical Staff to:

- include paragraphs addressing contingent fees for Restructuring Practitioners, update the definition of Approving Body in relation to AFSA and amend Appendix 2 to better align with the ARITA DIRRI;
- discuss the above changes with ARITA and then circulate an updated version of the proposed APES 330 Exposure Draft to Taskforce members for any further comments and editorials;
- provide and discuss an updated version of the proposed APES 330 Exposure Draft with ASIC; and
- present the proposed APES 330 Exposure Draft at the September 2021 Board Meeting for the Board's review and approval to issue it for public comment.

5. Close of Meeting

The meeting was closed at 10.46 a.m.