

AGENDA PAPER

Item Number: 5
Date of Meeting: 28 August 2020
Subject: Insolvency Services Update

Action required For discussion For noting For information

Purpose

To:

- update the Board on matters impacting APES 330 *Insolvency Services* (APES 330); and
- seek the Board's approval to include these matters on the APESB Issues Register.

Background

A [revised APES 330](#) was issued in August 2019 with significant changes set out in the [Basis for Conclusions](#) and summarised as:

- Additional guidance on independence considerations in a new Appendix 1;
- Enhancements to requirements for the (Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) and inclusion of a template DIRRI in a new Appendix 2;
- Additional guidance on necessary and proper professional fees and expenses in a new Appendix 3; and
- Updates and cross-references to the restructured Code and alignment to other revised APESB pronouncements and the ARITA Code of Professional Practice (ARITA CoPP).

Matters for Consideration

Technical Staff met with ARITA during June and July 2020 and identified the following matters that will require amendments to APES 330 in the future.

Relationships with financiers

It has also come to the attention of Technical Staff that a new provision in the revised APES 330 and the ARITA CoPP could be interpreted more widely than originally intended.

Paragraph 4.12(c)(iv) of the revised APES 330 reads:

A Member in Public Practice shall not accept an Appointment, where the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises have, or have had, any of the following relationships:

(c) a material business relationship, including the holding of a material Financial Interest, whether directly or indirectly in or jointly in the previous two years with:

(iv) an Entity that has provided finance to the insolvent Entity.

As per [Agenda Item 4](#) and [Item 12 of Agenda Item 4\(c\)](#) of the June 2019 Board meeting, additional subparagraphs 4.12(a)(iv) and 4.12(c)(iv) were added to APES 330 to capture potential relationships and situations where members in public practice accept appointments from financiers where the relationship is not at arm's length and creates independence threats.

However, subparagraph 4.12(c)(iv) of APES 330 could unintentionally be interpreted to prevent the acceptance of an appointment over an insolvent entity where any professional service has been provided (if "a material business relationship") to a financier of that insolvent entity, which could be an arm's length bank/financier or business that has provided credit to other entities (depending on the nature of the terms with creditors).

Technical Staff note that the provision of professional services is addressed in other provisions in APES 330 including, but not limited to, paragraphs 4.3 to 4.5 and 4.16 to 4.18.

ARITA propose to issue a FAQ in relation to the above matter which is being considered at the ARITA Board meeting on 18 August 2020.

Amendments to the DIRRI

ARTIA is updating the DIRRI with additional guidance and to make it more accessible to stakeholders which is also being considered at the ARITA Board meeting on 18 August 2020.

The ARITA CoPP will also be amended accordingly at the next scheduled revision.

Way Forward

Technical Staff propose:

- to add the matters relating to subparagraph 4.12(c)(iv) of APES 330 and the DIRRI to the APESB Issues Register;
- monitor progress and liaise with ARITA in respect of the updated the DIRRI; and
- prepare an exposure draft to amend APES 330 to cover these matters for consideration at the APESB November 2020 Board meeting.

Recommendations

The Board:

- note the update on APES 330; and
- approve the inclusion of the matters impacting APES 330 on the APESB's Issues Register.

Materials presented

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