

Review of insolvency engagements questionnaire

Introduction

This questionnaire is to be used for formal insolvency engagements under the Corporations Act and Bankruptcy Act. The questionnaire is based on the requirements of APES 330 *Insolvency Services* (Revised November 2011), a mandatory professional standard effective 1 April 2012.

In formal insolvency engagements the appointee is the “owner” of the file. Accordingly, no client authority is required. Also, a member who has accepted a formal appointment is not required to provide an engagement document in accordance with APES 305 *Terms of Engagement*.

Responses should be marked “Y”, “N” or “N/A” as the case may be. If the member is in breach of a particular professional standard or regulation, further explanation should be provided by way of note.

Privacy

In this Privacy Statement, “Personal Information” has the same meaning as in the Privacy Act 1988 (*Cth*).

CPA Australia is committed to protecting the privacy and security of the Personal Information which it holds about you.

The Personal Information which you provide us with in this Questionnaire will be used by CPA Australia to process your Quality Review; and may be used for aggregated statistics for monitoring and research. This information may be viewed by the CPA Australia Board Quality Review Advisory Committee and also the Financial Reporting Council and any other Regulatory authority.

If you do not provide us with this Personal Information, we may not be able to process your review.

CPA Australia may disclose the Personal Information which you provide us with in this Questionnaire to the reviewers.

You have the right to access any Personal Information which CPA Australia holds about you, subject to the exceptions in the Privacy Act 1988 (*Cth*). You may also request the correction of information which is inaccurate. Access and/or correction requests can be made at your local CPA Australia office.

For more information on CPA Australia's Privacy Policy, visit our website at cpaaustralia.com.au

Professional Membership

1. Is there evidence that the member being reviewed is also a member of the Insolvency Practitioners Association of Australia (IPAA)?
- ☐ Yes ☐ No
- Note: If you have answered "Yes" to the above please advise the member that CPA Australia will be notifying the IPAA that the member has undergone a review once their review is completed. For further information on this please advise the member to contact the IPAA.*

Type of engagement

2. What type of engagement does the file relate to?
- Note: Please place the appropriate letter from the below list into the below box that corresponds with the type of file(s) being reviewed (i.e. a = Official Liquidation, b = Provisional Liquidation, etc).*
- Type of engagement files to be reviewed:

Corporations Act Appointments

- a. Official Liquidation
- b. Provisional Liquidation
- c. Creditors' Voluntary Liquidation
- d. Members' Voluntary Liquidation*
- e. Voluntary Administration
- f. Deed of Company Arrangement
- g. Controllership – Private Appointment
- h. Controllership – Court Appointment
- i. Scheme of Arrangement

Bankruptcy Act / Individual Appointments

- j. Bankruptcy
- k. Personal Insolvency Agreement
- l. Section 73 Composition
- m. Part IX
- n. Controllership – Private Appointment
- o. Controllership – Court Appointment
- p. Other (please list)

*APES 330 does not apply to appointments for a members' voluntary liquidation.

Appointment Authority

3. Has the formal notice /deed /Court order been properly executed?

Fundamental responsibilities

4. Is there any evidence on the file that the member has not observed and complied with Section 100 Introduction and Fundamental Principles of the Code (APES 110), including public interest obligations, and relevant law? (APES 330.3.1 and 330.3.2)

Note: If you answered 'Yes' to the above, the member is in breach of APES 330.3.1, APES 330.3.2 and APES 110.100.

Comments

Planning

5. Is there any evidence on the file that the member has advised an insolvent entity (or, if the entity is a company, its directors) on how to cause assets to be unavailable in an administration or to otherwise avoid the consequences of the insolvency? (APES 330.3.3)

Note: If you answered 'Yes' to the above, the member is in breach of APES 330.3.3.

Comments

6. Prior to accepting the engagement, did the member ensure that the member had the capacity and had access to the necessary resources to conduct the proposed administration in an effective and efficient manner? (APES 330.3.5)

Note: If you answered 'No' to the above, the member is in breach of APES 330.3.5.

Comments							

7. Has the member maintained professional competence, taken due care and acted in a timely manner in the performance of the member's work in accordance with Section 130 *Professional Competence and Due Care of the Code* (**APES 110**)? (**APES 330.3.6**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.3.6**.

Comments							

8. When dealing with other practitioners in transitioning appointments or where there were parallel appointments, did the member act professionally and co-operatively, without compromising the member's obligations in the member's appointment? (**APES 330.3.7**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.3.7**.

Comments							

9. Where the insolvency service required the consideration of matters that are outside the professional expertise of the member, did the member seek expert assistance or advice from a suitably qualified third party, or decline the insolvency service? Where the member relied on the advice of a third party, did the member disclose in any reports or other relevant communications the name and qualifications of the third party and the areas in which third party advice had been obtained? (**APES 330.3.8**)

Note: This obligation does not extend to legal advice where disclosure may result in a waiver of legal professional privilege. Subject to this exclusion if you answered '**No**' to either of the above, the member is in breach of **APES 330.3.8**.

Comments

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10. Where the member planned to use the work of a suitably qualified third party, is there evidence that the member assessed the professional competence and objectivity of that third party, the appropriateness and reasonableness of the work performed, and the professional fees charged? (**APES 330.3.10**)?

Note: If you answered '**No**' to the above, the member is in breach of **APES 330.3.10**.

Comments

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11. Has the member taken all reasonable steps to communicate with entities affected by an administration in a timely and clear manner as to the insolvency processes and the rights and obligations of the entities? (**APES 330.3.11**) This may include:

- + Evidence to indicate the member reported to the creditors / appointee / other stakeholders on a timely basis
- + Reports are lodged under Section 439 (A)(4) of the Corporations Act which they comply with necessary requirements
- + Ensuring that estimates of likely dividends are not unreasonable and do not imply greater accuracy than in fact exists
- + Reports to creditors refer to the nature and level of investigation undertaken
- + The nature and level of the investigation described in the reports supported by the working paper file

Note: If you answered **'No'** to the above, the member is in breach of **APES 330.3.11**.

Comments

12. Has the member used confidential information, acquired in the course of the administration, for any purpose other than the proper performance of that insolvency service? **(APES 330.3.13)**

Note: If you answered **'Yes'** to the above, the member is in breach of **APES 330.3.13**.

Comments

13. Has the member complied with Section 250 Marketing Professional Services of the Code **(APES 110)? (APES 330.3.14)**

Note: If you answered **'No'** to the above, the member is in breach of **APES 330.3.14**.

Comments

14. Has the member used an advertisement in respect of the administration to market the member's professional services?
(APES 330.3.15)

Note: If you answered 'Yes' to the above, the member is in breach of APES 330.3.15.

Comments

15. Has the member used slogans, logos, claims about the members firm, or other promotional material in statutory advertisements? (APES 330.3.16)

Note: If you answered 'Yes' to the above, the member is in breach of APES 330.3.16.

Comments

Professional independence

16. Subject to paragraph APES 330.4.2, has the member maintained independence when accepting an appointment or conducting the administration? (APES 330.4.1)

Note: If you answered 'No' to the above, the member is in breach of APES 330.4.1.

Comments

17. Did the member identify, evaluate, and address threats to the independence of the member, prior to accepting the appointment?

Where the member identified a threat, did the member accept the appointment because:

- + The threat was trivial and inconsequential;
- + The threat arose in circumstances or relationships that are permitted by **APES 330**; or
- + The member obtained court approval? (**APES 330.4.2**)

Note: If you answered ‘**No**’ to the above, the member is in breach of **APES 330.4.2**.

Comments

18. When conducting the administration, did the member:

- + Act impartially in the discharge of the member’s duties and responsibilities; and
- + Ensure that the member’s personal interests did not conflict with the member’s duty to the creditors? (**APES 330.4.3**)

Note: If you answered ‘**No**’ to the above, the member is in breach of **APES 330.4.3**.

Comments

19. When seeking to identify relationships with an insolvent entity, did the member take reasonable steps to identify and evaluate any threats the member had reason to believe were created by the firm's or network firms' interests and relationships with the insolvent entity or its related entities? (**APES 330.4.4**) The following matters should be considered when identifying relevant network firms:

- (a) the geographical regions or countries in which the insolvent entity or its related entities operate; and
- (b) relationships with the directors or officers of the insolvent entity or its related entities.

Note: If you answered 'No' to the above, the member is in breach of **APES 330.4.4**.

Comments

Receipts and Payments

20. Subject to paragraph **APES 330.4.8**, has the member accepted an appointment, other than to act as a controller, where the member, the member's firm, a network firm or their partners or those managerial employees in the office in which the member practices have, or have had, any of the following relationships:

- (i) A close or immediate family relationship with, or a close personal relationship with, or a material business relationship (including the holding of a material financial interest) whether directly or indirectly in or joint with, or a material loan to or from or material guarantee to or from:
 - + The insolvent entity;
 - + A director or officer of the insolvent entity; or
 - + An employee of or adviser to the insolvent entity who is in a position to exert direct and significant influence over the insolvent entity?

- (ii) Employment with the insolvent entity in the preceding two years, in a position to exert direct and significant influence over the insolvent entity? (**APES 330.4.7**)

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Note: If you answered 'Yes' to the above, the member is in breach of **APES 330.4.7**.

Comments

21. In respect of prior relationships reflecting material business, loans or guarantees (see **APES 330.4.7**), did the member evaluate any threats a prior relationship was likely to create to the member's independence? In performing this assessment, did the member determine whether a reasonable person considering all of the facts and circumstances would conclude that there were significant threats to the member's independence posed by a prior relationship? (**APES 330.4.8**) Factors to consider include the:

- + nature of the prior relationship;
- + time elapsed since the relationship ended; and
- + reasons for the termination of the relationship.

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Note: If you answered 'No' to either of the above, the member is in breach of **APES 330.4.8**.

Comments

22. Where the member, in a capacity other than as an appointee, had a controlling interest in, or the ability to influence, a business operating in the same, or principally the same market as the insolvent entity, did the member evaluate the significance of any threats to independence and, when necessary, apply safeguards to eliminate the threats or reduce them to an acceptable level? Where there were no safeguards that could eliminate the threats or reduce them to an acceptable level, did the member decline the appointment? (**APES 330.4.9**)

Note: If you answered '**No**' to either of the above, the member is in breach of **APES 330.4.9**.

Comments

23. Has the member accepted the appointment, other than to act as a controller, where the member or the member's firm, or a network firm has during the prior two years provided a professional service to the insolvent entity, unless the professional service is considered immaterial or is referred to in **APES 330.4.5**? (**APES 330.4.10**)

Note: If you answered '**Yes**' to the above, the member is in breach of **APES 330.4.10**.

Comments

24. Where the member considered accepting an appointment and two or more firms or network firms had merged in the preceding two years, did the member evaluate any relationships that the member was aware of or ought reasonably to be aware of which the insolvent entity had with the firm, previous firm(s) or network firm(s) in the preceding two years in accordance with the requirements of **APES 330**? (**APES 330.4.12**)

Note: If you answered '**No**' to the above, the member is in breach of **APES 330.4.12**.

Comments

25. Where the member considered accepting an appointment and had moved firms in the preceding two years, did the member evaluate any relationships that the member was aware of or ought reasonably to be aware of which the insolvent entity had with the previous firm or its network firms during the time that the member was a partner? Where there were prior relationships, did the member disclose the relationships in the Declaration of Independence, Relevant Relationships and Indemnities? Where the prior relationships posed significant threats to independence and there were no safeguards that could eliminate the threats or reduce them to an acceptable level, did the member decline the appointment? **(APES 330.4.13)**

Note: If you answered '**No**' to any of the above, the member is in breach of **APES 330.4.13**.

Comments

26. If the insolvent entity is a company, did the member provided pre-appointment advice to both the insolvent entity and its directors in their personal capacity? **(APES 330.4.14)**

Note: If you answered '**Yes**' to the above, the member is in breach of **APES 330.4.14**. The threat to independence created by such situations is deemed to be so significant that no safeguard could reduce the threat to an acceptable level. These requirements do not prohibit a member from providing general information on the insolvency process and the consequences of insolvency to both the entity and its directors in their personal capacity **(APES 330.4.15)**.

Comments

27. Has the member accepted the appointment where the member, the member's firm, a network firm or their partners have provided a professional service to the insolvent entity or any other entity which:

- + Has a reasonable potential to lead to litigation claims against the member or the member's firm by a stakeholder of the administration;
- + Is material to the administration; or
- + Was related to the structuring of assets of the insolvent entity in order to avoid the consequences of insolvency, even if that advice was provided at a time when the entity was solvent? **(APES 330.4.16)**

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Note: If you answered 'Yes' to the above, the member is in breach of **APES 330.4.16**.

Comments

28. Is there any evidence on the file that the member has provided any inducement to any entity to secure the appointment for the member or to secure or prevent the appointment or nomination of another person? **(APES 330.4.17)**

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Note: If you answered 'Yes' to the above, the member is in breach of **APES 330.4.17**.

Comments

29. Has the member accepted an appointment or performed an administration that involves:

- + Referral or other commissions, or monetary or non-monetary benefits;
- + Spotter's fees;
- + Understandings or requirements that work in the administration will be given to a referrer; or
- + Any other such arrangements that restrict the proper exercise of the member's judgement and duties?
(APES 330.4.18)

Note: If you answered 'Yes' to the above, the member is in breach of APES 330.4.18.

Comments

30. Has the member provided a Declaration of Independence and Relevant Relationships and Indemnities in respect of the insolvency service (excluding an appointment as a controller)? Did the member provide the Declaration in the first communication to the creditors and table it at the first meeting of the creditors? (APES 330.4.19)

Note: If you answered 'No' to either of the above, the member is in breach of APES 330.4.19.

Comments

31. Did the member include the following in the *Declaration of Independence and Relevant Relationships and Indemnities*:
- + a declaration that the member has undertaken an evaluation of the significance of any threats to independence and that the member determined that the member is independent for the purpose of accepting the appointment in accordance with the requirements of the relevant legislation and **APES 330**;
 - + a declaration setting out the circumstances of the appointment including the number of meetings with the insolvent entity or its advisors and the period over which pre-appointment advice was provided, a summary of the nature of the issues discussed, the amount of any professional fees received for the pre-appointment advice and an explanation as to why such pre-appointment advice does not result in a conflict of interest or duty;
 - + a declaration setting out all relationships the member or the member's firm, a network firm or their partners or those managerial employees in the office in which the member practices, have had in the preceding two years with:
 - the insolvent entity;
 - if the insolvent entity is a company – an associate of the company;
 - if the insolvent entity is an individual:
 - an immediate or close family member of the individual;
 - a spouse or dependant of an immediate or close family member of the individual; or
 - any entity with which the individual or any of the persons noted above are associated;
 - a former appointee of the insolvent entity; and
 - a person who has a charge over the whole or substantially the whole of the insolvent entity's property and other assets;

and the reasons why these relationships, if any, do not result in a conflict of interest or duty;

 - + a declaration of prior professional services provided in the preceding two years to the insolvent entity by the member, the member's firm, a network firm or their partners, including the nature of the professional services, when the professional service was provided, the period over which the professional service was provided, the professional fees paid and the reasons why the professional services does not result in a conflict of interest or duty;
 - + a declaration that there are no other known prior professional services or other relationships that require disclosure; and
 - + a declaration of indemnities (other than statutory indemnities) and upfront payments, including the identity of each indemnifier or provider of an upfront payment (name and relationship with the insolvent entity) and the extent and nature of each indemnity or upfront payment, a statement as to where the funds are being held, when and how the funds will be applied and that there are no other indemnities or upfront payments to be disclosed?
(APES 330.4.20)

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Note: If you answered 'No' to the above, the member is in breach of **APES 330.4.20**.

Comments

32. Where more than one member was appointed to an insolvent entity, did all appointees sign the *Declaration of Independence, Relevant Relationships and Indemnities* prior to its issue? Where this was not possible and a *Declaration of Independence, Relevant Relationships and Indemnities* was issued before all appointees signed it, did the member:
- + Provide an explanation in the *Declaration of Independence, Relevant Relationships and Indemnities* as to why all appointees were not able to sign it; and
 - + Sign a replacement *Declaration of Independence, Relevant Relationships and Indemnities* as soon as possible and ensure that it was provided to creditors? (**APES 330.4.21**)

Note: If you answered 'No' to either of the above, the member is in breach of **APES 330.4.21**.

Comments

33. If circumstances or relationships giving rise to a threat to independence were identified after the commencement of the administration, did the member evaluate that threat and:
- (a) continue performing the administration if the member determined that the threat would not have precluded the member from accepting the appointment had the threat been identified prior to the commencement of the appointment?. If so, did the member amend the *Declaration of Independence and Relevant Relationships and Indemnities* 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, notify the court, all creditors and regulatory authorities as appropriate 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 administration;
- + the costs of ceasing and transferring the appointment; and
- + professional fees and expenses billed and any outstanding amounts; and

(c) in the circumstances described in paragraph (b) above, apply to the court to either continue or resign from the appointment? (**APES 330.4.22**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.4.22**.

Comments

34. If the member became aware that the Declaration of Independence and Relevant Relationships and Indemnities was out of date or inaccurate, did the member update the Declaration and provide it to the creditors or the committee with the next communication and table it at the next meeting of the creditors of the committee? (**APES 330.4.23**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.4.23**.

Comments

35. If the member was requested by an insolvent entity, its directors or its creditors to consent to an appointment to replace another person who had commenced the administration, and the member intended to agree to the request, did the member:
- (a) give reasonable notice to the other person being not less than one business day prior to the meeting of creditors, except when the request was received within one business day before that meeting;
 - (b) not solicit proxies directly or indirectly and act, and be seen to act, in the creditors' interests;
 - (c) provide a *Declaration of Independence and Relevant Relationships and Indemnities* containing the information required by **APES 330.4.20** at the meeting where the creditors decided whether to replace the other person; and
 - (d) disclose to the creditors the basis on which the member proposed to charge professional fees and details of the member's relationship with the entity nominating the member for the appointment? (**APES 330.4.24**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.4.24**.

Comments

Dealings with property and other assets

36. Is there any evidence that the firm, a network firm, their partners and employees, and the close and immediate families, controlled and associated entities of the firm's and network firm's partners and employees, acquired or derived a benefit from dealing with any assets including property which came under the control of a partner or employee due to the appointment, without obtaining the prior approval of the court? (**APES 330.6.1**)

Note: If you answered 'Yes' to the above, the member is in breach of **APES 330.6.1**. The member's firm must establish policies and procedures to prevent such occurrences.

Comments

37. Has the member purchased property or other assets of the administration without obtaining prior approval of the court?
(APES 330.6.2)

Note: If you answered 'Yes' to the above, the member is in breach of **APES 330.6.2**. The member will not be in breach where the member has accepted an appointment in respect of a retail operation under administration, and the assets are available for sale to the general public and no special treatment or preference over and above that granted to the general public is offered (**APES 330.6.4**).

Comments

38. Has the member taken all reasonable steps to ensure that the member has not knowingly sold property or other assets of the administration to the member's firm, a network firm, their partners or its employees, or to the immediate and close families, controlled or associated entities of the member, the firm's or network firm's partners and employees without obtaining prior approval of the court? (**APES 330.6.3**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.6.3**. The member will not be in breach where the member has accepted an appointment in respect of a retail operation under administration, and the assets are available for sale to the general public and no special treatment or preference over and above that granted to the general public is offered (**APES 330.6.4**).

Comments

Expert witness obligations

39. If the member acted as an expert witness during the course of the administration, did the member comply with the following:

- (a) the paramount duty to the court which overrides any other duty;
- (b) a duty to assist the court on matters relevant to the member's area of expertise in an objective manner; and

- (c) a duty to make it clear to the court when a particular question or issue falls outside the member's expertise?
(APES 330.7.1)

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Note: If you answered 'No' to the above, the member is in breach of APES 330.7.1.

Comments

40. Subject to any legal requirements or restrictions, if the member acted as an expert witness during the course of the administration, did the member clearly communicate in a witness report issued by the member:
- (a) the scope of work performed by the member;
 - (b) any limitations on the scope of work performed;
 - (c) details of the member's training, study and experience that are relevant to the matters on which the member provided expert evidence;
 - (d) the relationships, if any, the member, the member's firm, or a network firm has with any of the parties to the proceedings that may create a threat or a perceived threat to the member's obligation to comply with the fundamental principles of the Code (APES 110) or the member's paramount duty to the court, and any appropriate safeguards implemented;
 - (e) the extent, if any, of reliance by the member on the work of others;
 - (f) the opinions formed by the member;
 - (g) whether an opinion was provisional rather than concluded, and, if so, the reasons why a concluded opinion had not been formed;
 - (h) the significant facts upon which the opinions were based;
 - (i) the significant assumptions upon which the opinions were based and the reasons why the member made those assumptions;
 - (j) if the member considered that an opinion of the member may be misleading because a significant assumption was likely to mislead, then a statement to that effect and an explanation of why the assumption was likely to mislead;
 - (k) where applicable, that the member's opinion is subject to the veracity of another person's report upon which the member's witness report was based;
 - (l) the reasoning by which the member formed the opinions, including an explanation of any method employed and the reasons why that method was chosen;
 - (m) a list of all documents and sources of information relied upon in the preparation of the witness report; and
 - (n) any restrictions on the use of the witness report? (APES 330.7.3)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.7.3**.

Comments

Professional fees and expenses

41. Was the member remunerated for performing the administration by way of professional fees in accordance with Section 240 *Fees and other Types of Remuneration* of the Code (**APES 110**), subject to the limitations in **APES 330.4.18**? (**APES 330.8.1**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.1**. **APES 330.4.18** relates to referral or other commissions, other benefits, spotter's fees, etc.

Comments

42. Has the member only claimed professional fees and expenses in respect of professional services performed or to be performed for the administration which are necessary and proper? (**APES 330.8.2**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.2**. The term 'necessary' means professional work that is directly connected with the administration and is performed in accordance with the duties of the appointment and professional standards (**APES 330.8.3**). The term 'proper' means professional work that is performed in an effective and efficient manner in an administration (**APES 330.8.4**).

Comments

43. Has the member claimed 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 to the administration? **(APES 330.8.5)**

Note: If you answered ‘**No**’ to the above, the member is in breach of **APES 330.8.5**. Fees in respect of professional services, other than insolvency services, are claimed as professional fees.

Comments

44. Has the member used commercial judgement, adopting the perspective of, and acting with the same care as, a reasonable person when incurring expenses for the administration? **(APES 330.8.6)**

Note: If you answered ‘**No**’ to the above, the member is in breach of **APES 330.8.6**.

Comments

45. Where the member accepted the appointment, other than as a controller or a trustee, did the member obtain court approval when the member made a claim in respect of professional fees for any pre-appointment work performed in respect of the appointment? (**APES 330.8.7**)

Note: If you answered '**No**' to the above, the member is in breach of **APES 330.8.7**.

Comments

46. Is there evidence on file that the member entered into an arrangement to receive a contingent fee for insolvency services if that arrangement:

- + Impaired the member's independence;
- + Resulted in the receipt of a contingent fee for performing professional work that the member was required to complete under the relevant legislation governing an appointment;
- + Was inconsistent with the fiduciary obligations of the member; or
- + Resulted in the perception that the member was acting in the member's interests, rather than in the best interests of the creditors? (**APES 330.8.8**)

Note: If you answered '**Yes**' to the above, the member is in breach of **APES 330.8.8**.

Comments

47. When considering whether a proposed contingent fee arrangement in a particular administration meets the requirements of **APES 330.8.8**, did the member consider the following:

- + funds available to the administration;
- + funding from alternative sources such as creditors or a litigation funder;
- + the costs of the alternative sources of funds in comparison to the contingent fee arrangement;
- + the risk associated with the tasks to be undertaken for the contingent fee; and
- + the appropriateness of the amount of the proposed contingent fee in relation to the nature of the administration and the risk associated with the task to be undertaken? (**APES 330.8.9**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.9**

Comments

48. Where the member has entered into an arrangement to receive a contingent fee for insolvency services, has the member obtained approval from the approving body prior to commencement of professional services after having disclosed the following information:

- + details of the arrangement including the nature of the contingency and how achievement of the contingency would be assessed;
- + the member's remuneration in the event the contingency was or was not achieved;
- + when the member's remuneration was expected to be drawn; and
- + except in the case of an appointment as a controller, why the arrangement to receive a contingent fee was in the best interest of the creditors? (**APES 330.8.10**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.10**.

Comments

49. After accepting the appointment, other than as a controller, did the member provide the following information in the first communication to the creditors:

- + the methods that may be used to calculate professional fees;
- + the basis upon which professional fees would be charged for the administration; and
- + why the member considered that the chosen method was suitable for the administration? **(APES 330.8.11)**

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.11**.

Comments

50. Except in the case of an appointment as a controller, where the basis upon which professional fees for the administration is time based, has the member provided the creditors with the following additional information:

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

If subsequent to providing the best estimate of the costs of the administration there was significant change to that estimate, has the member provided a new estimate to the creditors together with an explanation of the variance? **(APES 330.8.12)**

Note: If you answered 'No' to the above, the member is in breach of 330.8.12.

Comments

51. Where the member accepted the appointment, other than as a controller, and sought approval for professional fees from the approving body, did the member provide sufficient information so as to allow the approving body to make an informed assessment as to whether the remuneration was reasonable, including:

- + providing details of how the professional fees were computed;
- + providing a description of the professional services performed, or to be performed, broken down into broad categories, and the costs associated with each category;
- + stating the terms of the approval sought from the approving body;
- + advising the total of professional fees previously determined and whether the member would seek approval for additional professional fees in the future;
- + advising when the professional fees would be drawn; and
- + providing a summary of receipts and payments to and from the administration bank account? **(APES 330.8.13)**

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.13**.

Comments

52. Has the member only drawn professional fees once the proper resolution, order, or authority has been obtained from the approving body and in accordance with the terms of approval? **(APES 330.8.14)**

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.14**.

Comments							

53. Where the member has entered into a fixed fee arrangement in respect of professional fees, has the member drawn the fixed fee at the conclusion of the administration or in amounts and at milestones specified by the approving body? **(APES 330.8.15)**

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.15**.

Comments							

54. Where the member sought approval for the payment of prospective professional fees from the approving body, did the member specify the maximum amount of the professional fees that may be drawn before requiring further approval from the approving body? Did the member draw on this prospective professional fee progressively as the work was completed? **(APES 330.8.16)**

Note: If you answered 'No' to either of the above, the member is in breach of **APES 330.8.16**.

Comments							

55. Where the member received monies prior to acceptance of the appointment to meet the costs of the proposed administration, did the member ensure that:

- (a) The monies were held on trust;
- (b) There were no conditions on the conduct or outcome of the administration attached to the monies;
- (c) Full disclosure was made to creditors in the *Declaration of Independence and Relevant Relationships and Indemnities*; and
- (d) Approval of professional fees was obtained prior to them being withdrawn from the trust account? (**APES 330.8.17**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.8.17**.

Comments

Documentation and quality control

56. Has the member complied with the requirements of **APES 320** *Quality Control for Firms*? (**APES 330.9.1**)

Note: If you answered 'No' to the above, the member is in breach of **APES 330.9.1** and **APES 320**.

Comments

57. Has the member prepared working papers in accordance with **APES 330** that appropriately document the work performed, including aspects of the insolvency service that have been provided in writing? Does the documentation prepared by the member:
- (a) provide a sufficient and appropriate record of the procedures performed for the insolvency service;
 - (b) identify threats to independence, and how they have been evaluated and addressed including safeguards applied; and
 - (c) demonstrate that the insolvency service was carried out in accordance with **APES 330** and other applicable professional standards, including policies and procedures established in accordance with **APES 320** *Quality Control for Firms*, and any applicable ethical, legal and regulatory requirements?

Note: If you answered ‘**No**’ to either of the above, the member is in breach of **APES 330.9.2**. The member may destroy the working papers referred to in **APES 330.9.2** in accordance with the requirements of the Corporations Act 2001 or Bankruptcy Act 1966 (**APES 330.9.3**).

Comments

Overall findings:

Breaches of mandatory requirements identified:
Positive feedback to be conveyed to the member(s) in the Reviewer's Summary – Other Matters Report:
Deficiencies in the quality control system that will be noted in the Reviewer's Summary – Other Matters Report with suggestions for improvement: