

# Subsequent Procedures Implementation Review Team ASP Sub-Track

Meeting #20

Applicant Support Program

11 July 2024, 18:00-19:00 UTC



# Objectives & Agenda

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Objectives: review proposed plan to publish v3 of ASP Handbook; and review agenda items with ASP-IRT to inform updates to the ASP Handbook

## Agenda:

1. Present proposed plans for ASP-IRT meetings for v3 Handbook
2. Potential updates to 51% ownership or control by an entity that would not meet Financial Need criterion
3. Proposed expansion of SubPro Implementation Guidance 17.17
4. Proposed Handbook language on Extended Evaluation for ASP (outcome of supplemental rec 32.1)

# Proposed Plans: Upcoming ASP-IRT Meetings

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- **Monday 15-Jul-2024 - 17:00-18:00 UTC**
  - a. Continued discussion from 11 July 2024, if applicable
  - b. Present updated resolved dependencies and relevant language updates
- **Tuesday 16-Jul-2024 - 14:00-15:00 UTC**
  - a. (continued) Present updated resolved dependencies and relevant language updates

*[v3 ASP Handbook shared with ASP-IRT in advance of next meetings; questions and comments to be raised live on-calls to reduce delays in publishing v3]*

- **Tuesday 30-Jul-2024 - 14:00-15:00 UTC**
  - a. v3 Handbook review
- **Thursday 1-Aug-2024 - 18:00-19:00 UTC**
  - a. v3 Handbook review

# Financial Need

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[Excerpted from Handbook]

To be eligible for consideration, the applying entity cannot, in any of the past two years, have reported:

- In excess of USD \$5M revenue per annum from all sources as reported in their annual profit and loss statement
- In excess of USD \$5M Cash and Cash Equivalents (CCE) as reported in their financial year end balance sheets
- The applying entity may not be **[51%]** or more owned or controlled by an entity that does not meet the above criteria.

Discussion Questions:

- From ASP-IRT: Why isn't it lower than 50% or not more than 25%?
- For reference from [2012 AGB](#) (p. 101): “(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).”
  - Note difference of disclosure vs. disqualification.

# SubPro Implementation Guidance 17.17

**Implementation Guidance 17.17:** If the applicant getting Applicant Support prevails in an auction, there should be restrictions placed on the applicant from assigning the Registry Agreement, and/or from any Change of Control for a period of no less than three (3) years. This restriction seeks to prevent gaming of the Applicant Support Program whereby an applicant transfers its ownership of a registry to a third party in exchange for any form of financial gain. However, assignments that become necessary for the following reasons shall be permitted:

- Assignments due to the TLD being unable to meet its financial obligations and unable to secure financing or restructure operations to carry out operations in the short-term
- Assignments due to death or retirement of a majority shareholder
- Assignments due to EBERO
- Assignments to affiliates or subsidiaries
- Assignments required by competition authorities

All assignments after such time shall be governed under the then-current Registry Agreement standard provisions; provided that any Assignment or Change of Control after the third (3rd) year, but prior to the seventh (7th) year, shall require the applicant to repay the full amount of financial support received through the ASP Program, including application fees and any bid credit, multiplier, or related benefits, plus an additional ten percent (10%).

Proposal to apply restriction to all supported applicants that become ROs, not just those that prevail in auction.

## SubPro Supplemental Recommendation 32.1

The GNSO Council recommends that as set forth in Annex F, where feasible and implementable, ICANN establish a mechanism that allows specific parties to, on a limited and one-time basis: (i) challenge evaluation results for which Extended Evaluation is unavailable, or (ii) appeal formal objection results, where such evaluation results or dispute resolution results appear to be inconsistent with the Applicant Guidebook. The new substantive challenge/appeal mechanism is not a substitute or replacement for the accountability mechanisms in the ICANN Bylaws that may be invoked to determine whether ICANN staff or Board violated the Bylaws by making or not making a certain decision. Implementation of this mechanism must not conflict with, be inconsistent with, or impinge access to accountability mechanisms under the ICANN Bylaws.

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## Extended Evaluation

ASP applicants that do not pass the Phase 2 evaluation may request an extended evaluation. During extended evaluation, the SARP may seek clarification or additional information from ASP applicants to determine final evaluation results. ASP applicants in extended evaluation may lose their place in the queue and will have 21 calendar days to respond. If those responses do not satisfy the Phase 2 eligibility requirements, the applicant will not qualify for support.

# Extended Evaluations - Considerations

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## Discussion Questions:

- Should Extended Evaluation apply to all Phase 2 evaluation categories?
  - For example, should something more straightforward like Financial Need not be eligible for re-evaluation?
- Should Extended Evaluation impact an applicant's place in the queue for processing applications?
  - For example, in the scenario that we are close to the available number of support slots (45), is it fair for other qualified applicants to be put on a waiting list while an applicant goes through Extended Evaluation?