

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this enforceable undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

Peter George BURTON

of Level 2, 57 Grosvenor Street

NETURAL BAY NSW 2089

1 Definitions

- 1.1 In addition to terms defined elsewhere in this enforceable undertaking, the following definitions are used:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

CALDB means the Companies Auditors and Liquidators Disciplinary Board.

CAANZ means Chartered Accountants Australia and New Zealand.

Corporations Act means the *Corporations Act 2001* (Cth).

Corporations Regulations means the *Corporations Regulations 2001* (Cth).

DIRRI means a declaration of independence, relevant relationships and indemnities as defined in s60 of the Corporations Act.

Home Team means Home Team Constructions Pty Ltd (Deregistered) ACN 003 316 327.

Maximum means Maximum Engineering Pty Ltd (Deregistered) ACN 137 729 796.

Mr Burton means Mr Peter George Burton.

Planet Cake No.1 means ACN 073 219 208 Pty Ltd (formerly Planet Cake Pty Ltd) (Deregistered) ACN 073 219 208.

Planet Cake No.2 means Confectionery Plus Pty Ltd (Deregistered) ACN 161 440 268.

- 1.2 Unless otherwise indicated, all references to sections are references to sections of the Corporations Act and all references to regulations are references to the Corporations Regulations.



2 Background

2.1 ASIC's role

- (a) Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- (b) Part 9.2 of the Corporations Act charges ASIC with responsibility for registering liquidators and official liquidators and for maintaining a register of liquidators and a register of official liquidators.
- (c) ASIC is empowered to bring disciplinary proceedings in the CALDB pursuant to s1292(2)(d) against a registered liquidator who has failed to carry out or perform adequately and properly:
 - (i) the duties of a liquidator; or
 - (ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator,or is otherwise not a fit and proper person to remain registered as a liquidator.
In this enforceable undertaking, (i) and (ii) above are "the duties and functions of a liquidator".
- (d) ASIC is also empowered to commence proceedings under s536 in the Court (as defined in s58AA).

2.2 Details of Mr Burton

- (a) Mr Burton was registered as a liquidator under the Corporations Act on 13 December 1991 and as an official liquidator on 20 May 1998. His registration numbers are 15592 and 178993 respectively.
- (b) Mr Burton practised as a liquidator as a partner in the firm Burton Glenn Allen of level 2, 57 Grosvenor Street, Neutral Bay, NSW and did so from 1997 up to December 2015.
- (c) Mr Burton resigned from CAANZ in March 2016.

2.3 Review of Mr Burton's conduct

As part of ASIC's Liquidator Compliance Program, ASIC undertook a review of:

- (i) Mr Burton's conduct; and
- (ii) its public database,

in respect of the external administrations listed in Schedule A.



3 ASIC's views concerning the conduct of Mr Burton

3.1 As a result of ASIC's review referred to in paragraph 2.3, ASIC's view is that Mr Burton failed to adequately and properly discharge the duties and functions of a liquidator during his conduct of the external administrations listed in Schedule A in that he:

- (a) failed to exercise his powers and discharge his duties with the degree of care and diligence required by s180 by:
 - i. failing to take steps to protect and secure assets in a timely manner in compliance with s438A or s478, namely failing to realise assets properly (Home Team, Maximum, Planet Cake No.1 and Planet Cake No.2) and failing to pursue recovery of directors' loans (Maximum and Planet Cake No.2);
 - ii. failing to obtain an independent valuation (Maximum); and
 - iii. completing proxies on behalf of creditors in breach of regulation 5.6.31 (Planet Cake No.1).
- (b) failed to conduct, or alternatively properly document, a pre-appointment independence review to ensure compliance with s448C (Maximum, Planet Cake No.1, Planet Cake No.2 and Home Team);
- (c) failed to comply with s436DA(2) by:
 - i. not disclosing all pre-appointment communications and meetings with relevant persons or entities (as specified in s60) in the DIRRIs (Home Team, Maximum, Planet Cake No.1 and Planet Cake No.2); and/or
 - ii. not disclosing in a DIRRI the existence of an indemnity (Home Team);
- (d) failed to comply with s438C(3) by either:
 - i. failing to issue letters to directors (and their associates) requesting books and records (Home Team, Maximum and Planet Cake No.2); and/or
 - ii. failing to properly document the requests (Home Team, Maximum and Planet Cake No.2);
- (e) failed to comply with s438A, s437A(1) s531 and regulations 5.6.01 and 5.6.02 (Home Team, Maximum, Planet Cake No.1 and Planet Cake No. 2) by:
 - i. failing to undertake adequate and proper investigations; and/or
 - ii. failing to document the investigations undertaken;
- (f) failed to comply with s439A(4)(a) & regulations 5.3A.02 by not providing an adequate report to creditors (Maximum, Planet Cake No.1 and Planet Cake No.2);
- (g) failed to comply with s438D(1) and s533(1) by lodging reports with ASIC without identifying possible misconduct, in circumstances where the possible



misconduct had previously been reported to creditors (Home Team, Maximum, Planet Cake No.1, and Planet Cake No.2);

- (h) failed to comply with s508 and regulation 5.6.27 by not holding annual meetings of creditors or not lodging annual reports with ASIC (Maximum and Home Team);
- (i) in relation to remuneration failed to comply with s449E(1), s449E(7)(b), s499(3) and s499(7) by:
 - i. not providing creditors with an adequate report to enable them to make an informed assessment in relation to the reasonableness of the proposed remuneration (Home Team, Maximum, Planet Cake No.1 and Planet Cake No.2);
 - ii. drawing remuneration in circumstances where Mr Burton was not entitled to do so because the resolution approving that remuneration was passed by creditors who did not receive an adequate report (Maximum, Planet Cake No.1 and Planet Cake No.2); and/or
 - iii. drawing remuneration in circumstances where Mr Burton was not entitled to do so because the creditors did not approve the remuneration (Home Team and the external administrations listed in Schedule B);
- (j) failed to comply with s538(1)(a) and regulation 5.6.06 by not opening a separate liquidator's bank account (Home Team, Maximum, Planet Cake No.1 and Planet Cake No.2);
- (k) failed to comply with regulation 5.6.13 by not completing a statement in writing in accordance with Form 530 (Home Team, Maximum, Planet Cake No.1 and Planet Cake No.2); and
- (l) failed to comply with s531 and regulation 5.6.01 by not maintaining proper books and records of the external administrations (Home Team, Maximum, Planet Cake No.1 and Planet Cake No.2).

3.2 Acknowledgement of ASIC's views

Mr Burton:

- (a) acknowledges that ASIC's views detailed in paragraph 3.1 above are reasonably held; and
- (b) has offered, and ASIC has agreed to accept, the undertakings in Section 4 below.

4 Undertakings

- 4.1 Under s93AA of the ASIC Act, Mr Burton has offered, and ASIC has agreed to accept, the undertakings set out in paras 4.2 and 4.3 as an alternative to ASIC making



an application in respect of his conduct of the external administrations listed in Schedules A and B to:

- (a) CALDB for an order under s1292(2) for the cancellation or suspension of Mr Burton's registration as a registered or official liquidator; or
 - (b) the Court under s536.
- 4.2 Mr Burton will, within 7 days after acceptance by ASIC of this enforceable undertaking, submit pursuant to s1290 a duly completed Form 905A, together with the prescribed fee of \$38, requesting cancellation of his registration as an official and registered liquidator.
- 4.3 Mr Burton undertakes not to re-apply for registration as a registered or official liquidator for a period of five years after the date of cancellation of his registration under this enforceable undertaking.

5 Acknowledgements

- 5.1 Mr Burton acknowledges that ASIC:
- (a) may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - (b) may from time to time publicly refer to this enforceable undertaking and/or to Mr Burton's compliance or non-compliance with this enforceable undertaking;
 - (c) will make this enforceable undertaking available for public inspection, and, in particular, will record the enforceable undertaking on the Register of Enforceable Undertakings maintained by ASIC; and
 - (d) may include a reference to the enforceable undertaking in particulars that ASIC may consider appropriate to include in ASIC's Register of Liquidators and Register of Official Liquidators that ASIC maintains pursuant to s1286.
- 5.2 Further, Mr Burton acknowledges that:
- (a) ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's views set out in this enforceable undertaking or arising from his future conduct; and
 - (b) this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this enforceable undertaking or arising from his future conduct.
- 5.3 Mr Burton and ASIC acknowledge that this enforceable undertaking has no operative force until accepted by ASIC and that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

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Signed:



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Peter George Burton

Dated: May 2016

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:



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George Stogdale

Delegate of Australian Securities and Investments Commission

Dated: 24 May 2016

Schedule A

External Administrations

ACN	Company Name	External Administration Appointment	Date Of Appointment	Date Ceased
073 219 208	ACN 073 219 208 Pty Ltd (Planet Cake No. 1)	Voluntary Administration Creditors Voluntary Liquidator	24/12/2012 8/02/2013	8/02/2013 31/10/2013
161 440 268	Confectionery Plus Pty Ltd (Planet Cake No.2)	Voluntary Administration Creditors Voluntary Liquidator	3/07/2014 7/08/2014	7/08/2014 16/02/2015
137 729 796	Maximum Engineering Pty Ltd (Maximum)	Voluntary Administration Creditors Voluntary Liquidator	15/07/2013 19/08/2013	19/08/2013 8/05/2015
003 316 327	Home Team Constructions Pty Ltd (Home Team)	Voluntary Administration Creditors Voluntary Liquidator	1/12/2011 17/01/2012	17/01/2012 9/08/2013



Schedule B

External administrations

ACN	Company Name	External Administration Appointment	Date Of Appointment	Date Ceased
125 932 292	MPO Consulting Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	25/06/2013 30/07/2013	30/07/2013 18/09/2013
081 320 265	Craft Books Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	18/06/2013 23/07/2013	23/07/2013 17/12/2014
138 449 877	Coders Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	18/04/2013 24/05/2013	24/05/2013 19/12/2013
001 834 608	Project Promotions Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	14/03/2013 30/04/2013	30/04/2013 23/08/2013
106 972 105	Vista Bakery Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	17/12/2012 1/02/2013	1/02/2013 19/07/2013
113 013 817	Cesura Partners Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	24/10/2012 28/11/2012	28/11/2012 28/06/2013
122 878 362	Civcomm Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	31/08/2012 8/10/2012	8/10/2012 17/06/2013
123 617 603	Aries Corporate Imaging Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	29/08/2012 4/10/2012	4/10/2012 15/11/2013
113 228 354	Alpha Security Services Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	27/08/2012 2/10/2012	2/10/2012 21/06/2013
110 377 396	Rist Solutions Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	23/08/2012 27/09/2012	27/09/2012 27/02/2013
135 223 755	Aim Composites Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	12/06/2012 17/07/2012	17/07/2012 29/11/2013
081 320 318	Tasc Capital Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	5/03/2012 18/04/2012	18/04/2012 26/10/2013
118 975 438	Manufacturing Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	23/02/2012 29/03/2012	29/03/2012 19/11/2012
136 414 214	ST Marys Engineering Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	7/02/2012 13/03/2012	13/03/2012 12/07/2012



146 233 025	A.C.N. 146 233 025 Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	12/12/2011 25/01/2012	25/01/2012 22/06/2012
137 208 505	Fay Capital Investments Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	7/12/2011 23/01/2012	23/01/2012 19/07/2012
058 224 025	Sig Electrical Services Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	29/08/2011 4/10/2011	4/10/2011 5/04/2012
140 413 145	Pet Resorts of Australia (Terrigal) Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	29/06/2011 3/08/2011	3/08/2011 4/11/2011
142 050 388	Pet Resorts of Australia (Dural) Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	29/06/2011 3/08/2011	3/08/2011 4/11/2011
000 698 224	Larnook Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	16/08/2010 20/09/2010	20/09/2010 7/10/2011
166 679 803	A.C.N 166 679 803 Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	22/05/2015 26/06/2015	26/06/2015 24/08/2015