

## ENFORCEABLE UNDERTAKING

### SECTION 93AA

#### AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION ACT

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

**Mayfield Insurance Brokers Pty Ltd ACN 004 594 049**  
**303 Main Street**  
**MORNINGTON VIC 3931**

and

**John David Hornidge**  
**Unit 2**  
**24 Hill Street**  
**TOORAK VIC 3142**

(collectively "the parties")

#### **1. BACKGROUND**

- 1.1 Since 1 July 1996, Mayfield Insurance Brokers Pty Ltd ("the company") has been registered under the *Insurance (Agents and Brokers) Act* ("LABA") as an insurance broker in relation to general insurance business and holds the registration number 30530.
- 1.2 John David Hornidge ("Mr Hornidge") is a director of the company.
- 1.3 The company maintains an Insurance Broking Account ("IBA") within the meaning of *LABA*.
- 1.4 The company has produced accounts audited by an approved auditor for the financial years ending 30 June 1997, 30 June 1998 and 30 June 1999. The auditor of these accounts reported, *inter alia*, that:
  - (a) at 30 June 1997 the IBA had a deficiency of \$124,864;
  - (b) the amount of \$90,000 was transferred from the office account maintained by the company to the IBA on 30 June 1997 and then transferred from the IBA back to the office account on 1 July 1997;
  - (c) at 30 June 1998 the IBA had a deficiency of \$218,421; and
  - (d) at 30 June 1999 the IBA had a deficiency of \$261,623.

- 1.5 At 31 December 1999 the IBA had a deficiency of approximately \$244,405.
- 1.6 ASIC has undertaken an investigation into the activities of the company in relation to suspected contraventions of sections 232(2) and 232(4) of the *Corporations Law* and sections 26(1)(a), 26(3) and 27(2) of *IBA*.
- 1.7 As a result of its investigation, ASIC has formed the view that the company has repeatedly contravened section 26(3) of *IBA* since 1 July 1996.
- 1.8 ASIC has the power under section 25(1A) of *IBA* to suspend or cancel the registration of the company as a general insurance broker.

## 2. CONCERNS OF ASIC

- 2.1 The company has been operating the IBA with a deficiency in contravention of section 26(3) of *IBA*. There are insufficient funds in the IBA to make payments to all of the persons entitled to receive payments from that account.
- 2.2 There is a risk to the insurers with whom the company places insurance business that the company will be unable to pay the amounts due to them from the IBA.
- 2.3 There is a risk to the insureds who place insurance business through the company that:
  - (a) the company may be unable to pay any amount due to them from the IBA; and
  - (b) if the company is unable to pay the amounts due to the insurers with whom the company places business, the insurers may take steps to recover those amounts from the insureds.
- 2.4 The company has admitted that by operating the IBA with a deficiency, it has repeatedly contravened section 26(3) of *IBA*.

## 3. UNDERTAKINGS

The parties give the following enforceable undertakings to ASIC pursuant to section 93AA of the *Australian Securities and Investments Commission Act*.

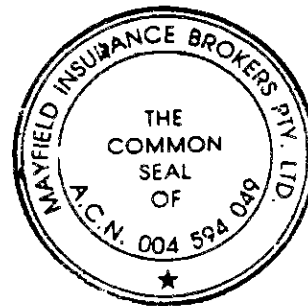
- 3.1 The company undertakes that it will deposit \$100,000 into the IBA on or before 18 February 2000.
- 3.2 The company undertakes that it will repay the entire balance of the deficiency outstanding in the IBA on or before 31 March 2000.

- 3.3 The company undertakes that it will not make any payment from the IBA to the company or on behalf of the company in excess of the commission on insurance business placed by it to which it is entitled.
- 3.4 The company undertakes that from 31 March 2000 there will at no time be a deficiency in the IBA.
- 3.5 The company undertakes:
- (a) to engage an auditor, at the expense of the company, for the purpose of conducting audits of the IBA as stipulated in sub-paragraph 3.5 (c) hereof in addition to the audit of accounts required by *LABA*;
  - (b) that the auditor shall not be appointed by the company until:
    - (i) the company has notified ASIC, in writing, of the name and address of the auditor; and
    - (ii) ASIC has consented, in writing, to the appointment of the auditor;
  - (c) the auditor shall conduct an audit of the IBA for the three months ending 31 March 2000, 30 June 2000, 30 September 2000, 31 December 2000, 31 March 2001, 30 June 2001, 30 September 2001 and 31 December 2001; and
  - (d) the auditor shall provide ASIC with audited accounts and an audit report within 1 month of each audit period stipulated in sub-paragraph 3.5 (c) hereof.
- 3.6 The company undertakes that if any audit report provided to ASIC reports that the company has at any time since 31 March 2000 operated the IBA with a deficiency or in contravention of a provision of *LABA*, the company:
- (a) will make an application to ASIC seeking the cancellation of its registration as an insurance broker;
  - (b) will not apply to be registered as an insurance broker under *LABA*; and
  - (c) will not act as an insurance intermediary within the meaning of *LABA*.
- 3.7 Mr Hornidge undertakes that if any audit report provided to ASIC reports that the company has at any time since 31 March 2000 operated the IBA with a deficiency or in contravention of *LABA*, Mr Hornidge and any entity related to or associated with Mr Hornidge:
- (a) will not apply to be registered as an insurance broker under *LABA*; and
  - (b) will not act as an insurance intermediary with the meaning of *LABA*.
- 3.8 The parties undertake to provide ASIC with all information and assistance that it requests in connection with or arising out of any actions taken in connection with this undertaking.

**4. ACKNOWLEDGMENTS**

- 4.1 The parties acknowledge that they have had the opportunity to obtain legal advice in relation to the content and effect of this enforceable undertaking.
- 4.2 The company acknowledges that the responsible officers who sign this enforceable undertaking have full authority to sign and enter into the undertaking on behalf of the company.
- 4.3 The parties acknowledge that ASIC:
  - (i) will make this enforceable undertaking available for public inspection,
  - (ii) may issue a media release on the execution of this enforceable undertaking referring to such terms that ASIC determines and which led to the execution of the enforceable undertaking; and
  - (iii) may from time to time publicly refer to this enforceable undertaking.
- 4.4 The parties acknowledge that entering into this enforceable undertaking in no way derogates from the rights and remedies available to any person arising from any conduct described in this enforceable undertaking.
- 4.5 The parties further acknowledge that entering into this enforceable undertaking in no way derogates from the rights of ASIC relating to or arising from any conduct described in this enforceable undertaking.
- 4.6 The parties acknowledge that this enforceable undertaking has no operative force until accepted by ASIC.

The Common Seal of MAYFIELD  
INSURANCE BROKERS PTY LTD )  
ACN 004 594 049 was affixed to )  
this undertaking in the presence of )



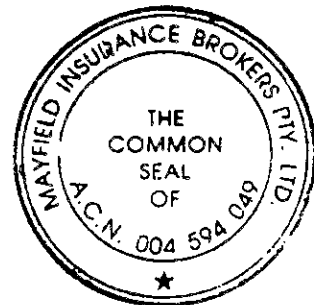
  
Director

\_\_\_\_\_  
Director

  
Name (Print)

\_\_\_\_\_  
Name (Print)

Signed by JOHN DAVID  
HORNIDGE in the )  
presence of )



*John David Hornidge*  
Signature

C M HORNIDGE  
Name (Print)

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION PURSUANT TO SECTION 93AA OF THE AUSTRALIAN  
SECURITIES AND INVESTMENTS COMMISSION ACT BY ITS DULY  
AUTHORISED DELEGATE

*Alfred James Orchard*

Name *ALFRED JAMES ORCHARD*

Position *DIRECTOR ENFORCEMENT (VICTORIA)*

This *21<sup>st</sup>* day of *February* 2000