



017029052

**ENFORCEABLE UNDERTAKING****SECTION 93AA****AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001**

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

**YARRAVIEW PTY LTD ACN 060 185 015**

c/- Cornwall Stodart  
Level 10, 114 William Street  
MELBOURNE VICTORIA 3067  
("Yarraview")

**SHALINI PTY LTD ACN 052 470 041**

c/- Cornwall Stodart  
Level 10, 114 William Street  
MELBOURNE VICTORIA 3067  
("Shalini")

**HOADEN PTY LTD ACN 060 486 580**

c/- Cornwall Stodart  
Level 10, 114 William Street  
MELBOURNE VICTORIA 3067  
("Hoaden")

**ADASAM NOMINEES PTY LTD ACN 005 109 508**

c/- Cornwall Stodart  
ABBOTSFORD VICTORIA 3067  
("Adasam")

**CARLO JACKY TARANTO**

c/- Cornwall Stodart  
Level 10, 114 William Street  
MELBOURNE VICTORIA 3122  
("Taranto")



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**DEFINITIONS**

1. The following definitions apply in this undertaking, except where indicated or where the context otherwise requires.

**Administrators** means George Georges and Peter Damien McCluskey of level 25, 140 William Street, Melbourne in the State of Victoria.

**Business Day** means a weekday on which banks are open in Melbourne, Australia.

**Coogi Group** means the following companies:

- (a) Coogi Nominees Pty Ltd ACN 005 267 158 ("Nominees");

- (b) Coogi Holdings Pty Ltd ACN 091 080 581 ("Holdings");
- (c) CA Manufacturing Pty Ltd ACN 091 080 894 ("Manufacturing");
- (d) Coogi Australia Pty Ltd ACN 091 081 113 ("Australia");
- (e) Coogi Australia Retail Pty Ltd ACN 091 080 750 ("Retail");
- (f) Coogi IP Pty Ltd ACN 060 149 902 ("Coogi IP");
- (g) Coogi Connections Pty Ltd ACN 005 309 571 ("Connections");
- (h) Coogi Casa Pty Ltd ACN 004 930 518 ("Casa").

**Disbursement Date** has the meaning set out in clause 1.1 of the Deed Poll.

**Deed Poll** means the deed poll by Yarraview, Shalini, Hoaden, Adasam and Taranto in favour of the Administrators and the Coogi Group dated 30 August 2002.

**Deed Proposal** has the meaning set out in clause 1.1 of the Deed Poll.

**Employee Entitlements** means the entitlements for which the Employees would be entitled to prove in priority as debts or claims against a company or companies in the Coogi Group pursuant to section 556 of the *Corporations Act* 2001 (Cth) had the relevant company in the Coogi Group been wound up pursuant to Part 5.6 of the *Corporations Act* 2001 (Cth).

**Employees** means each person who was an employee of any of the companies in the Coogi Group as at 3 July 2002.

**Second Meeting of Creditors** means the meeting of creditors of each company in the Coogi Group to be held pursuant to section 439A of the *Corporations Act* 2001 (Cth) or any adjournment of such meeting.

**Shalini Assets** has the meaning set out in clause 1.1 of the Deed Poll and includes the Top Up Fund.

**Top Up Fund** has the meaning set out in clause 1.1 of the Deed Poll and means an amount out of the net proceeds of sale of the property known as 21 Coppin Grove Hawthorn.

**Unsecured Creditors** means each entity that was a creditor of any of the companies in the Coogi Group with a claim arising on or before 3 July 2002 whose claim remains outstanding, excluding Yarraview, Shalini, Hoaden and Adasam.

## **BACKGROUND**

2. On 3 July 2002, Taranto was the sole director and controlling shareholder of the Coogi Group.

3. On 3 July 2002, Taranto passed a resolution for each of Nominees, Holdings, Manufacturing, Australia, Retail and Coogi IP, to the effect that:
  - (a) in Taranto's opinion as at 3 July 2002, the company the subject of the resolution was insolvent or likely to become insolvent at some future time;
  - (b) an administrator be appointed pursuant to section 436A of the *Corporations Act 2001* to the company the subject of the resolution.
4. On 3 July 2002, the Administrators were appointed as joint and several administrators of Nominees, Holdings, Manufacturing, Australia, Retail and Coogi IP.
5. On 5 July 2002, Taranto passed a resolution regarding Connections, to the effect that:
  - (a) in Taranto's opinion as at 5 July 2002, Connections was insolvent or likely to become insolvent at some future time;
  - (b) an administrator be appointed pursuant to section 436A of the *Corporations Act 2001* to Connections.
6. On 5 July 2002, the Administrators were appointed as joint and several administrators of Connections.
7. As at the date of this undertaking, the Coogi Group, excluding Casa, continues to operate under voluntary administration.

#### CONCERNS OF ASIC

8. On 7 August 2002, ASIC commenced an investigation pursuant to section 13 of the *Australian Securities and Investments Commission Act 2001* in relation to the reasons and basis for the appointment of the Administrators to the Coogi Group.
9. Taranto is the sole director and controlling shareholder of Yarraview, Shalini, Hoaden and Adasam.
10. Shalini has sold its major asset, a property known as 21 Coppin Grove, Hawthorn, settlement of which is due to occur on Monday 2 September 2002.
11. ASIC is aware that at the date of this undertaking, Shalini owes a debt to the Coogi Group.
12. ASIC is concerned that Yarraview, Shalini, Hoaden and Adasam have or intend to file proofs of debt as secured and/or unsecured creditors in the administration of the Coogi Group.
13. ASIC is concerned that there may be insufficient assets in the Coogi Group to pay the Employee entitlements and the claims of Unsecured Creditors of the

Coogi Group, if Yarraview, Shalini, Hoaden and Adasam prove their debts and claim as secured and/or unsecured creditors.

#### ASIC INTENTION TO MAKE COURT APPLICATION

14. On or about 26 August 2002, ASIC gave notice to the Administrators of its intention to make an application to the Court on or before 2 September 2002, for the appointment of a provisional liquidator to Shalini, and for orders to freeze certain monies intended to pass to Shalini on settlement of the sale of the Coppin Grove property, on 2 September 2002, or in the alternative, for the appointment of a liquidator to Shalini ("**ASIC Proposed Application**").
15. On 28 August 2002, ASIC received notice that Yarraview, Shalini, Hoaden, Adasam and Taranto had made a proposal to the Administrators in relation to the holding and potential use of certain assets of Shalini for the benefit of the Coogi Group.
16. On 30 August 2002, Yarraview, Shalini, Hoaden, Adasam and Taranto executed the Deed Poll.
17. Of relevance to ASIC's intention to file the ASIC Proposed Application, Yarraview, Shalini, Hoaden, Adasam and Taranto have covenanted:
  - (a) By clause 4 of the Deed Poll, that Shalini will irrevocably authorise and direct its solicitors to hold the Shalini Assets until the Disbursement Date;
  - (b) By clause 3.1 of the Deed Poll, that, from the date of the Deed Poll:
    - (i) all debts or claims of Yarraview and Shalini will be treated as unsecured for the purposes of any distribution to creditors of the Coogi Group; and
    - (ii) all debts or claims of Yarraview, Shalini, Hoaden and Adasam will be subordinated to:
      - A. the properly incurred remuneration and expenses of the Administrators;
      - B. the Employee Entitlements; and
      - C. the debts or claims of the Unsecured Creditors to the extent necessary to ensure that the Unsecured Creditors receive aggregate dividends of up to 50 cents in the dollar for each dollar of any properly admitted proof of debt or claim against a company in the Coogi Group.
  - (c) by clause 3.2 of the Deed Poll, that clause 3.1 of the Deed Poll will be of no force or effect if the creditors of each company in the Coogi Group at the Second Meeting of Creditors do not accept the Deed Proposal to be made in accordance with the Deed Poll.



18. Yarraview, Shalini, Hoaden, Adasam and Taranto have agreed to offer this undertaking to ASIC in return for which ASIC has provided to Yarraview, Shalini, Hoaden, Adasam and Taranto a letter indicating that its present intention is that it will desist from making the ASIC Proposed Application.

### UNDERTAKINGS

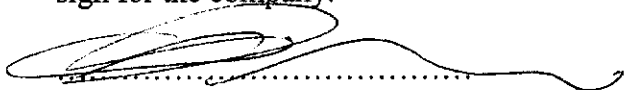
19. Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001*, Yarraview, Shalini, Hoaden, Adasam and Taranto hereby undertake:
- (a) That Shalini will cause the Top Up Fund to be paid into the trust account of its solicitors (the identity of such solicitors to be determined by clauses 4.1 and 4.2 of the Deed Poll) and be held in accordance with the terms of clause 4.1 of the Deed Poll;
  - (b) to do all things necessary or desirable to ensure compliance with and to give full effect to the terms of:
    - (i) clause 3 of the Deed Poll; and
    - (ii) clause 4 of the Deed Poll,
  - (c) to provide notice, of no less than three Business Days, to ASIC of any event or action, within the knowledge of Yarraview, Shalini, Hoaden, Adasam or Taranto, which may activate the Disbursement Date, except to the extent that such event or action is caused, taken or directed by the Administrators.

### ACKNOWLEDGEMENTS

20. Yarraview, Shalini, Hoaden and Adasam acknowledge that the responsible officers who sign this undertaking have full authority to sign and enter into the undertaking on behalf of those companies.
21. Yarraview, Shalini, Hoaden, Adasam and Taranto acknowledge that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
  - (b) may from time to time publicly refer to this undertaking;
  - (c) will make this undertaking available for public inspection.
22. Yarraview, Shalini, Hoaden, Adasam and Taranto acknowledge that ASIC's acceptance of this undertaking does not affect ASIC's continuing investigation, which is outlined in paragraph 8 above.
23. Yarraview, Shalini, Hoaden, Adasam and Taranto acknowledge that this undertaking has no operative force until accepted by ASIC.



**EXECUTED** by **Yarraview Pty Ltd ACN 060 185 015** by being signed by the person who is authorised under its Constitution to sign for the company.

  
.....  
Carlo Jacky Taranto Sole Director/Secretary

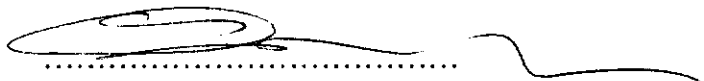
**EXECUTED** by **Shalini Pty Ltd ACN 052 470 041** by being signed by the person who is authorised under its Constitution to sign for the company

  
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Carlo Jacky Taranto Sole Director/Secretary

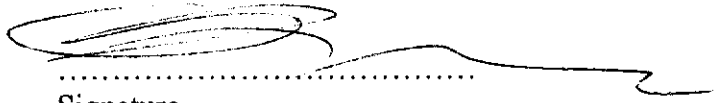
**EXECUTED** by **Hoaden Pty Ltd ACN 060 486 580** by being signed by the person who is authorised under its Constitution to sign for the company

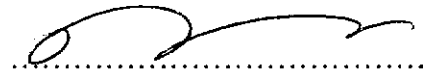
  
.....  
Carlo Jacky Taranto Sole Director/Secretary

**EXECUTED** by **Adasam Nominees Pty Ltd ACN 005 109 508** by being signed by the person who is authorised under its Constitution to sign for the company

  
.....  
Carlo Jacky Taranto Sole Director/Secretary

Signed by **Carlos Jacky TARANTO** in  
the presence of:


  
.....  
Signature

  
.....  
Signature

*Edna Cecilia Hernandez*  
.....  
Name (printed)

*10/114 Collins St Melbourne,*  
.....  
Address

**ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION PURSUANT TO ASIC ACT S 93AA BY ITS DULY  
AUTHORISED DELEGATE:**

  
.....  
Alfred Jamie Orchard  
Director, Enforcement South-West

This 30<sup>th</sup> day of August, 2002.