

# ENFORCEABLE UNDERTAKING

## AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Section 93AA *Australian Securities & Investments Commission Act 2001*

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

**Hebe Computers Pty Ltd ACN 004 885 796 ("the Company")**  
181-187 Plenty Road  
PRESTON  
VIC. 3072

And its directors:

**Raymond George Berry ("BERRY")**  
99 Old Eltham Road  
Lower Plenty  
Victoria. 3093

and

**John Stephen Wright ("WRIGHT")**  
54 Darebin Street,  
Heidelberg  
Victoria. 3084

And

**Ian Graeme Murray ("Murray")**  
130 Raglan Street,  
Wallan  
Victoria. 3756



And

**Herman & Berry (a partnership)**  
Carrying on business at  
181-187 Plenty Road  
Preston  
Victoria. 3072

**Background**

1. **Hebe Computers Pty Ltd ACN 004 885 796 ("the Company")** is an Australian proprietary company limited by shares. Berry, Wright and Murray (collectively referred to as "the Directors") are and were, at all times material, the only directors of the Company.
2. At all times material Berry and Wright ("collectively referred to as the Partners") were members of a partnership known as Herman and Berry ("the partnership"). The Partnership is, and at all material times was, engaged in the business of providing the services of an accountancy practice.
3. During the period 1 July 1998 to 1 July 2002 ("the relevant period") the Partners and the Company invited investors to contribute money into various contributory mortgage funds ("the mortgage funds").
4. The mortgage funds were administered by the Partners. The Partners received 5% of the gross interest paid to each of the mortgage funds by the borrowers as remuneration. The Company was the named mortgagee for each of the mortgage funds and held all the rights and interests of a mortgagee on trust for the contributors to the mortgage funds. The Company received no remuneration and maintained no accounts in relation to the mortgage funds.
5. ASIC has formed the view, and the Company and the Directors and the Partners, acknowledge that:
  - 5.1. The mortgage funds operated by the Partners and the Company constitute managed investment schemes that, as from 1 July 1998, were required to be registered as managed investment schemes under subsection 601ED(1) of the *Corporations Law* and the *Corporations Act 2001* ("the Act"), and that the said mortgage funds were not so registered; and
  - 5.2. The Partners and the Company have, since 1 July 1998, operated the said mortgage funds in contravention of sub-section 601ED(5) of the *Corporations Law* and the *Act*.
6. The Partners and the Company have now ceased the operation of all but three of the mortgage funds. Details of these remaining funds are as follows:-
  - 6.1. Secured property – 484 William Street, Melbourne; borrower/mortgagor – MSE Investments Pty Ltd; total sum secured - \$550,000;
  - 6.2. Secured property – 313-331 High Street, Kew; borrowers/mortgagors – Scaniar Pty Ltd and Nomis Properties Pty Ltd; sum secured - \$4,050,000;
  - 6.3. Secured property – 20 Urwin Street, Templestowe; borrower/mortgagor – P. Heslop; total sum secured - \$465,000;
  - 6.4. Secured property – 28-32 Manningham Road, West Bulleen; borrower/mortgagor – Amplus Gaerwen Nominees Pty Ltd; total sum secured - \$455,000;

("the remaining mortgage funds").

7. ASIC is concerned that, because the remaining mortgage funds are not registered as a managed investment scheme and do not comply with relevant provisions of the *Act* relating to managed investment schemes, the contributors' interests are not adequately protected.
8. The Partners and the Company are neither licensed to act as a responsible entity nor are they otherwise qualified to operate a managed investment scheme.
9. Section 1324 of the *Act* relevantly provides that where a person has engaged or is engaged in conduct that constituted or constitutes a contravention of the *Act*, ASIC may seek an injunction restraining the person from engaging in that conduct and requiring that person to do any act or thing. Pursuant to section 601EE of the *Act* ASIC may apply to the Court to wind up a managed investment scheme that is operated in contravention of sub-section 601ED(5) of the *Act*.
10. The Company, the Partners and the Directors acknowledge the concerns of ASIC as set out in paragraphs 5, 7 and 8 above and have offered the undertakings (as applicable) set out in paragraphs 11 and 11.1 to 11.5 inclusive hereof. ASIC has agreed to accept the commitments set out in this enforceable undertaking as an alternative to the actions referred to in paragraph 9 above.

## Undertakings

11. Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* ("the ASIC Act"), the Company, and each of the Partners and each of the Directors provide the undertakings set out below.
  - 11.1 The Company, and each of the Partners and each of the Directors will not operate a managed investment scheme that is required to be registered under section 601ED of the *Act* unless:
    - (a) the scheme is so registered; or
    - (b) in the case of the remaining mortgage funds, the actions of the Company, the Partners and the Directors constitute a step or steps in the winding up of the said funds, or any of them, within the meaning of s.601ED(6)(b) of the *Act*.
  - 11.2 The Company and the Partners shall immediately commence to wind up the remaining mortgage funds. The said funds shall be entirely wound up, and all mortgages fully discharged, or alternatively transferred, by no later than 21 March 2003.
  - 11.3 Upon completing the wind up of each of the remaining mortgage funds the Company and the Partners shall immediately notify ASIC and provide to ASIC a copy of the discharge or transfer of mortgage applicable to the said mortgage fund

together with a statement of account which sets out details of the receipt and payment of all monies in connection with the said wind up.

- 11.4 The Partners and the Directors shall jointly and severally indemnify each of the contributors in the remaining mortgage funds against all losses, charges, liabilities, damages, claims, costs, fees and expenses whatsoever and howsoever incurred in consequence of, or in connection with, the operation and or wind up of the said mortgage funds.
- 11.5 The Company and the Partners shall not receive any further remuneration nor recover any expense, cost, fee or outlay incurred in connection with the operation, administration or wind up of the remaining mortgage funds. The Company and the Partners hereby relinquish all claims and entitlements to any such remuneration and to the recovery of any such expense, cost, fee, or outlay.

### Acknowledgements

- 12 The Company and the Directors acknowledge that ASIC:
- 12.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
  - 12.2 may from time to time publicly refer to this undertaking; and
  - 12.3 will make this undertaking available for public inspection.
- 13 The Company and the Directors acknowledge that this undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this undertaking.
14. The Company and the Directors acknowledge that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.
15. The Company and the Directors acknowledge that this undertaking has no operative force until accepted by ASIC.

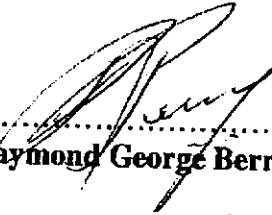
The Common Seal of Hebe Computers )  
Pty Ltd )  
ACN 004 885 796 was duly )  
affixed to this undertaking on the ..... )  
day of December 2002 in the presence of: )

*[Handwritten Signature]*

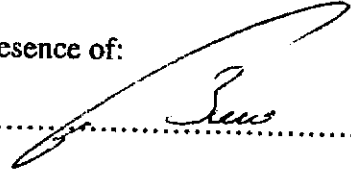


Director/Secretary

..... *RAYMOND GEORGE BERRY* .....  
Print Name

Signed by: .....  .....  
**Raymond George Berry**

In the presence of:

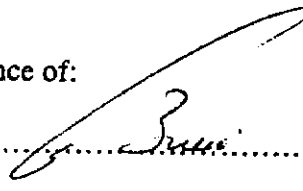
.....  .....  
Witness

..... *LUCIANO ANTONIO BUCELLO CPA* .....  
Print Name

Signed by: .....  .....  
**John Stephen Wright**

and

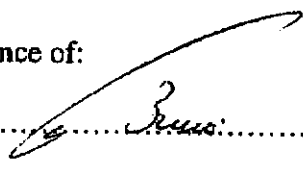
In the presence of:

.....  .....  
Witness

..... *LUCIANO ANTONIO BUCELLO CPA* .....  
Print Name

Signed by: .....  .....  
**Ian Graeme Murray**

In the presence of:

.....  .....  
Witness

..... *LUCIANO ANTONIO BUCELLO CPA* .....  
Printed Name

Accepted by the Australian Securities )  
and Investments Commission pursuant )  
to the ASIC Act section 93AA by its )  
duly authorised delegate: )



13/1/03