

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001 (Cth) ("ASIC Act")

The commitments in this undertaking are offered to the Australian Securities and Investments Commission under Section 93AA of the ASIC Act by:

EXPORT GROWTH FINANCE PTY LIMITED ACN 082 576 716
of Lower Ground Floor
8 Cliff Street
MILSONS POINT NSW 2061

AND

WARWICK RAYMOND YOUNG
of 9 Highbridge Road
KILLARA NSW 2071

AND

SHELDON WARWICK YOUNG
of 17 Maitland Street
KILLARA NSW 2071

AUSTRALIAN SECURITIES
& INVESTMENTS COMMISSION



017029151

AND

JOHN MICHAEL WHITFIELD
of 6 Alexandra Street
DRUMMOYNE NSW 2047

AND

THAKOR LAL MORAR
of 88 Watkins Road
BAULKHAM HILLS NSW 2153

1. Definitions

- 1.1 "AAL" means Australian Aloe Limited ACN 082 577 026.
- 1.2 "AAM" means Australian Aloe Marketing Limited ACN 082 577 106, formerly known as Aloe Management & Marketing Limited ACN 082 577 106.
- 1.3 "Act" means the *Corporations Act 2001*.
- 1.4 "ASIC" means the Australian Securities and Investments Commission.
- 1.5 "ASIC Act" means the *Australian Securities and Investments Commission Act 2001 (Cth)*.
- 1.6 "Bank Account" means the bank account into which Export paid the Relevant Investors funds pursuant to the order made in the Proceedings on 7 November 2003.
- 1.7 "Capital" means Capital Finance Management Limited holding IBC number 1888207 in the British Virgin Islands.
- 1.8 "Costs" means ASIC's costs of and incidental to the Proceedings and of executing and preparing this undertaking fixed in the amount of \$10,000.00.
- 1.9 "Court Order" means the Consent Order agreed to by the parties to the Proceedings, which appears as Annexure D to this undertaking.
- 1.10 "Export" means Export Growth Finance Pty Limited ACN 082 576 716.
- 1.11 "Demand" means the demand Export caused its solicitors, Parity Lawyers to issue to Relevant Investors on or about 17 September 2003, to repay the balance of their Loans.
- 1.12 "Directors" means Warwick Raymond Young, Sheldon Warwick Young, John Michael Whitfield and Tony Morar.
- 1.13 "License Agreement" means the License Agreement (as amended) contained in the Prospectus.
- 1.14 "Licensed Interest" means the right to market and sell aloe vera products manufactured or processed by AAL, which right arose upon the acquisition of a parcel of 2,000 "A" class shares in AAL.
- 1.15 "Loan Agreement" means a Loan Indemnity Agreement & Loan Agreement entered into between an investor in the Project, Export and AAM to fund the investor's Year 1 obligation under the Management Agreement and part of the Year 1 License Fee.

- 1.16 "Loan" means the amount of \$13,500.00 per Licensed Interest advanced to a Relevant Investor under a Loan Agreement.
- 1.17 "Management Agreement" means the Management Agreement contained in the Prospectus.
- 1.18 "Order" means the Consent Order agreed to by the parties to the Proceedings, which appears as Annexure A to this undertaking.
- 1.19 "Precondition Amount" means the indemnity fee of \$400.00 per Licensed Interest and prepayment of the first year's interest on a Loan and the initial principal repayment on a Loan in accordance with the Loan Agreement.
- 1.20 "Proceedings" means the proceedings commenced by ASIC against Export in the Supreme Court of Queensland by Claim no 9124 of 2003.
- 1.21 "Project" means the investment scheme known as the Australian Aloe Project operated by AAL and promoted by AAL and AAM pursuant to the Prospectus.
- 1.22 "Prospectus" means the prospectus dated 28 May 1998 and the supplementary prospectus dated 19 May 1999 issued in relation to the Project.
- 1.23 "Relevant Investor" means each investor in the Project who:
- 1.23.1 entered into a Loan Agreement;
 - 1.23.2 prepaid the Precondition Amount in accordance with their Loan Agreement; and
 - 1.23.3 is not:
 - 1.23.3.1 a director of Export;
 - 1.23.3.2 a spouse or de facto spouse of a director of Export;
 - 1.23.3.3 a parent or child of a director of Export; or
 - 1.23.3.4 a body corporate one of whose directors is a director of Export or a spouse, de facto spouse, parent or child of a director of Export;
 - 1.23.3.5 a body corporate one of whose shareholders is a director of Export or a spouse, de facto spouse, parent or child of a director of Export or a body corporate associated with such a person.
- 1.24 "TPA" means the *Trade Practices Act 1974 (Cth)*.

2. Background

- 2.1 From about 1998, AAL and AAM promoted the sale of interests in the Project.
- 2.2 Pursuant to the Prospectus:
 - 2.2.1 AAL offered "A" class shares in itself for sale;
 - 2.2.2 the purpose of the capital raising was to enable AAL to acquire, expand and carry on a business which produced and marketed aloe vera products;
 - 2.2.3 each parcel of 2,000 "A" class shares in AAL entitled an investor to a Licensed Interest by which the investor was licensed to market and sell the range of AAL's products. The terms of the licence were contained in a License Agreement;
 - 2.2.4 each investor who purchased a parcel of 2,000 "A" class shares in AAL, could appoint AAM to manage their Licensed Interest in accordance with the terms of the Management Agreement;
 - 2.2.5 each investor was invited to finance their Licensed Interest by means of a finance package offered by Export. The finance package was available to those investors who entered into a Management Agreement in relation to their Licensed Interest.
- 2.2 The Prospectus stated that an investor who took up the finance package could enter into a Loan Agreement, which would "insure" them against the failure of their Licensed Interest to generate sufficient income and profits to make principal and interest payments in respect of their Loans.
- 2.3 Between 28 May 1998 and 30 June 1999, investors purchased 2,532 parcels of 2,000 "A" class shares.
- 2.4 The Prospectus and other written information provided to the Relevant Investors, including the Loan Agreement, contained statements in relation to the Loan Agreement providing Relevant Investors protection against future payments of principal and interest in respect of their Loans.
- 2.5 AAL was placed into voluntary administration on 7 May 2003.
- 2.6 On 3 June 2003, AAL was placed into liquidation by a resolution of its creditors.
- 2.7 On or about 17 September 2003, Export caused the Demand to be issued.
- 2.8 Export has received at least \$253,916.74 from some Relevant Investors who have paid the amounts (in part or full) demanded pursuant to the Demand.
- 2.9 A number of complaints from Relevant Investors were received by ASIC in relation to the Demand.

- 2.10 ASIC is the consumer protection regulator of the financial services industry and is responsible for the monitoring and promoting of consumer and market integrity in the Australian financial system.
- 2.11 ASIC is concerned that:
- 2.11.1 Export has engaged in misleading and deceptive conduct by making or authorising statements to be made in the Prospectus to the effect that Relevant Investors who entered into a Loan Agreement would not be personally liable for their Loan once they had paid the Precondition Amount; or alternatively
- 2.11.2 on the proper construction of the Loan Agreement, Relevant Investors are not personally liable to repay the balances of their Loans from the Defendant and Export has engaged in misleading or deceptive conduct by making the Demand.
- 2.12 Export does not agree with ASIC's concerns set out in clause 2.11 of this undertaking.
- 2.13 On 14 October 2003, ASIC commenced the Proceedings seeking:
- 2.13.1 declarations that Export contravened:
- 2.13.1.1 section 728 of the Act; and/or
- 2.13.1.2 section 1041H of the Act; and/or
- 2.13.1.3 section 12DA of the ASIC Act; and/or
- 2.13.1.4 section 80 of the TPA Act;
- 2.13.2 An order that Export write to the Relevant Investors withdrawing the Demand;
- 2.13.3 An order that Export repay to the Relevant Investors any amounts paid by them to Export in accordance with the Demand;
- 2.13.4 An order that Export not demand, solicit or accept repayment of the Relevant Investors' Loans.
- 2.14 Since 16 October 2003, Export has been restrained by order of the Court from:
- 2.14.1 demanding or further demanding the repayment of Loans made to Relevant Investors; and
- 2.14.2 disposing of or in any way dealing with any moneys paid to it or on its behalf by the Relevant Investors on account of the repayment of their Loans.

- 2.15 Tony Morar resigned as a director of Export on 19 August 2004 and has ceased to have any involvement in the management of Export.
- 2.16 Export and ASIC have engaged in settlement negotiations in relation to the Proceedings, during which Export has informed ASIC that:
- 2.16.1 Export has obtained an advance from Capital for AUD\$17,500,000.00 to pay overseas marketing fees associated with the Project to Kingscross Holdings Limited; and
- 2.16.2 security for the advance from Capital was an assignment by Export to Capital of Export's receivable debts, which debts include all Loans made by Export to Relevant Investors up to an aggregate not exceeding AUD\$15,000,000.00.
- 2.16 Export and ASIC have agreed to settle the proceedings, without admission of liability, by:
- 2.16.1 Export, and the Directors giving and ASIC accepting the undertakings and terms and conditions set out in this document; and
- 2.16.2 ASIC consenting to and filing the Court Order in the Proceedings, upon Export and the Directors performing the undertakings set out in subparagraphs 3.1 to 3.7 inclusive of this document.

3. Undertakings

- 3.1 Upon ASIC accepting this undertaking, Export and ASIC will consent to and file the Order in the Proceedings.
- 3.2 In the event that Export fails to pay any sum that it is required to pay under clauses 3.3.2 and 3.3.3 of the undertaking, the Directors joint and severally undertake to pay the amount of such shortfall within 90 days of acceptance of this undertaking.
- 3.3 Within 7 days of the Order being filed in the Proceedings:
- 3.3.1 Export will send to all the Relevant Investors by pre-paid post, a letter in the form of Annexure B to this undertaking; and
- 3.3.2 Export will repay any amount received from a Relevant Investor by Export under the Demand to that Relevant Investor from the Bank Account, if not in full, on a pro rata basis; and
- 3.3.3 Pay the Costs to ASIC.
- 3.4 Within 14 days of ASIC accepting this undertaking, Export will report to ASIC in relation to the repayments to Relevant Investors in accordance with

clause 3.3.2, providing the particulars of the repayments which are set out in Annexure C to this undertaking.

- 3.5 Within 90 days of the acceptance of this undertaking, the Directors will:
- 3.5.1 pay to a Relevant Investor, the amount of any shortfall between the amount paid out of the Bank Account under clause 3.3.2 and the amount received by Export from that Relevant Investor under the Demand; and
 - 3.5.2 pay the Costs to ASIC.
- 3.6 Within 30 days of the Order being filed in the Proceedings, Export will report to ASIC in relation to the receipt of payments made to the Relevant Investors in accordance with clause 3.3.2, by providing particulars of the date on which the payment to each Relevant Investor was debited from the Bank Account.
- 3.7 Within 120 days of the Order being filed in the Proceedings, Export and the Directors will report to ASIC in relation to the receipt of payments made to the Relevant Investors in accordance with clauses 3.3.2 and 3.5.1, by providing particulars of the date on which the payment to each Relevant Investor was debited from the bank account from which they were paid.
- 3.8 Export will not demand, solicit or accept repayment from Relevant Investors under the Loan Agreements.
- 3.9 ASIC will not be liable for Export or the Directors' costs associated with the preparation and execution of this document.
- 3.10 Upon receiving 48 hours written request from ASIC, Export and the Directors will provide ASIC officers with access to such books and records as ASIC may reasonably require so as to enable ASIC to determine whether or not Export and the Directors have complied with this undertaking.
- 3.11 Upon Export and the Directors satisfying ASIC that the payments required to be made under clauses 3.3.2 and 3.5 above have been made, Export and ASIC will consent to and file the Court Order in the Proceedings.
- 3.10 Export and the Directors acknowledge that by a letter dated 15 March 2004, Capital has abandoned any rights it may have to recover any amount from investors in the Project under the Loan Agreements.
- 3.11 In the event that Capital makes any demand and/or accepts any payment from investors under the Loan Agreements, the Directors and Export jointly and severally agree and undertake to indemnify investors for any funds paid to Capital and/or its agents under the demand and the investors reasonable legal costs incidental to the demand.
4. **Warranty**

- 4.1 Export, and the Directors warrant that no other person or entity, other than Capital, has an interest in the Loans.
- 4.2 Export, and the Directors warrant that they have not entered into any agreement or done any act, which would have a material adverse effect on their ability to perform their obligations under this undertaking.
- 4.3 Export, and the Directors warrant that there is no direct or indirect connection or association between Export and/or the Directors on the one hand and Capital on the other hand.
- 4.4 Export, and the Directors, warrant that Export is duly incorporated in Australia, with the full power and authority to enter into this undertaking and perform the obligations set out in this agreement.

5. Acknowledgements

- 5.1 Export and the Directors acknowledge and agree that the Relevant Investors are not personally liable to repay the balance of their Loans under any circumstances.
- 5.2 Export and the Directors acknowledge and agree that ASIC:
- 5.2.1 may from time to time publicly refer to this undertaking;
 - 5.2.2 may issue a media release on the execution of the undertaking referring to the terms of the undertaking and the concerns of ASIC which led to its execution;
 - 5.2.3 will make a copy of the executed undertaking available on a public register.
- 5.3 Export and the Directors acknowledge that:
- 5.3.1 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking;
 - 5.3.2 ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from past or future conduct, including the conduct described in this undertaking or the subject of the Proceedings, or to pursue a criminal prosecution or its powers to lay charges or seek a pecuniary civil order or to pursue civil remedies including banning order in relation to past or future conduct including the conduct described in this undertaking or the subject of the Proceedings;
 - 5.3.3 this undertaking has no operative force until accepted by ASIC.

6. Miscellaneous

- 6.1 Export and the Directors will do all acts reasonably necessary to ensure compliance with this undertaking and refrain from doing any acts, which are inconsistent with the terms and objectives of this undertaking. For the purposes of this clause, a reference to Export and the Directors includes a reference to a subsidiary, associate, related party, contractor, employee, servant, agent or a person or body acting on the instructions of Export and/or the Directors.
- 6.2 Without limiting the generality of the previous paragraph, a reference to acts, which are inconsistent with the terms and objectives of this undertaking includes publishing or making any statement which is derogatory of, denigrates or trivialises the terms, objectives or any other aspect of this undertaking.

ANNEXURE A

SUPREME COURT OF QUEENSLAND

**REGISTRY: Brisbane
NUMBER: S9124 of 2003**

PLAINTIFF:

**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION**

AND

DEFENDANT:

**EXPORT GROWTH FINANCE PTY LTD
(ACN 082 576 716)**

ORDER

Before: Registrar

Dated:

Consent is given to the registrar making an order in the following terms:

1. **Orders 1(b) and 2 of the Order made in these proceedings by Justice McMurdo on 7 November 2003 be stayed.**

Signed:

**Description of signatory: Shaun Ansell
Special Counsel for Plaintiff
Dated:**

Signed:

**Description of signatory: Solicitor for Defendant
Dated:**

ANNEXURE B

[INSERT NAME AND
ADDRESS OF RELEVANT
INVESTOR]

[INSERT DATE]

Dear Sir/Madam

**Australian Aloe Vera Project ("Project")
Loan from Export Growth Finance Pty Limited ACN 082 576 716 ("Export")**

You may be aware that the Australian Securities and Investments Commission ("ASIC") commenced proceedings against Export in October 2003 and obtained orders restraining Export from:

- a) demanding or further demanding the repayment of loans made to Relevant Investors; and
- b) disposing of or in any way dealing with any moneys paid to it or on its behalf by the Relevant Investors on account of the repayment of their Loans

ASIC, Export and its directors have been engaged in negotiations in an effort to reach a settlement in relation to the proceedings. During those negotiations, Export advised ASIC that Export had assigned its book debts, including the amount of the loans made to investors in relation to the Project, to a third party, Capital Finance Management Limited ("Capital"). Capital is duly incorporated in the British Virgin Islands.

The negotiations have brought about a settlement of the proceedings commenced by ASIC. The full terms of the settlement are set out in the copy of the Enforceable Undertaking, which is enclosed for your information.

Pursuant to the Enforceable Undertaking:

1. Export immediately withdraws the demand it caused its solicitors, Parity Lawyers to make of Relevant Investors on or about 17 September 2003 ("Demand").
2. Export will repay those Relevant Investors who made payments to it under the Demand on a pro rata basis from the bank account into which it was ordered to pay the funds on 7 November 2003, within 7 days of ASIC accepting the Enforceable Undertaking.
3. The directors of Export will pay any shortfall between the amount paid to Export by a Relevant Investor under the Demand and the amount paid from the bank account referred to in paragraph 2 above, within 90 days of acceptance of the Enforceable Undertaking.

ANNEXURE B

4. Export has agreed that the loans made to Relevant Investors in relation to the Project are void and unenforceable against any Relevant Investor.
5. Export has undertaken not to demand, solicit or accept repayment of any loan from a Relevant Investor in relation to the Project.
6. In the event that Capital makes any demand upon investors in the Project, who entered into a Loan Agreement & Loan Indemnity Agreement, Export and its Directors joint and severally indemnify investors for any amount they are required to pay Capital, including the investor's reasonable legal costs associated with Capital's demand.
6. A Relevant Investor is an investor in the Project who:
 - a) entered into a Loan Agreement & Loan Indemnity Agreement;
 - b) prepaid the once off fee of \$400.00 per Licensed Interest and the first year's interest and initial principal repayment on a loan in accordance with the Loan Agreement & Loan Indemnity Agreement;
 - c) is not:
 - (i) a director of Export;
 - (ii) a spouse or de facto spouse of a director of Export;
 - (iii) a parent or child of a director of Export;
 - (iv) a body corporate one of whose directors is also a director of Export or a spouse, de facto spouse, parent or child of a director of Export;
 - (v) a body corporate one of whose shareholders is a director of Export or a spouse, de facto spouse, parent or child of a director of Export or a body corporate associated with such a person; or
 - (vi) a borrower who has failed to make the initial principal repayment as set out in paragraph 5(b) above.

If you should have any queries in relation to the terms of the settlement, you may telephone the ASIC info line on 1300 300 630.

Yours faithfully

Director
Export Growth Finance Pty Limited

ANNEXURE C

Particulars of repayments to Relevant Investor

| Date of repayment | Relevant Investor's name and address | Amount repaid | Method of repayment |
|--------------------------|---|----------------------|----------------------------|
| | | | |

ANNEXURE D

SUPREME COURT OF QUEENSLAND

**REGISTRY: Brisbane
NUMBER: S9124 of 2003**

PLAINTIFF:

**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION**

AND

DEFENDANT:

**EXPORT GROWTH FINANCE PTY LTD
(ACN 082 576 716)**

ORDER

Before: Registrar

Dated:

Initiating document: Application filed 14 October 2003

Consent is given to the registrar making an order in the following terms:

- 1. These proceedings be dismissed.**

Signed:

**Description of signatory: Shaun Ansell
Special Counsel for Plaintiff
Dated:**

Signed:

**Description of signatory: Solicitor for Defendant
Dated:**

7. Notices

7.1 Any notice or demand under this document must be given in writing and delivered to the party concerned by pre paid post or facsimile transmission at the following address:

7.1.1 Export Growth Finance Limited and each of the Directors
c/- Lower Ground Floor
8 Cliff Street
MILSONS POINT NSW 2061
Facsimile no: (02) 9957 3488

7.1.2 Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4001
Facsimile no: (07) 3867 4790

8. Counterparts

8.1 This document:

8.1.1 may be executed in any number of counterparts;

8.1.2 will not be effective until signed by all parties hereto; and

8.1.3 all of those counterparts taken together shall constitute on and the same document.

The Common seal of
EXPORT GROWTH FINANCE
Pty Limited ACN 082 576 716
was affixed in the presence of:



[Signature]
.....
Director/Secretary
Dated: 24/3/05

[Signature]
.....

SIGNED by WARWICK RAYMOND
YOUNG in the presence of:

[Signature] 24/3/05
.....
Witness
Dated:

[Signature]
.....
Warwick Raymond Young

SIGNED by SHELDON WARWICK
YOUNG in the presence of:

Melanie Young
.....
Witness
Dated: 24/3/05

[Signature]
.....
Sheldon Warwick Young

SIGNED by JOHN MICHAEL
WHITFIELD in the presence of:

Carina Reynolds
.....
Witness
Dated: 24.3.05

[Signature]
.....
John Michael Whitfield

SIGNED by THAKOR LAL
MORAR in the presence of:

.....
Witness
Dated:

.....
Thakor Lal Morar

ACCEPTED by the AUSTRALIAN
SECURITIES AND INVESTMENTS
COMMISSION pursuant to Section 93AA
of the ASIC Act by its duly authorised
Delegate

Mal Stewart
.....
Dated: 8 April 2005

SIGNED by SHELDON WARWICK
YOUNG in the presence of:

.....
Witness
Dated:

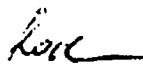
.....
Sheldon Warwick Young

SIGNED by JOHN MICHAEL
WHITFIELD in the presence of:

.....
Witness
Dated:

.....
John Michael Whitfield

SIGNED by THAKOR LAL
MORAR in the presence of:


.....
Witness
Dated: 23 MARCH 2005


.....
Thakor Lal Morar

ACCEPTED by the AUSTRALIAN
SECURITIES AND INVESTMENTS
COMMISSION pursuant to Section 93AA
of the ASIC Act by its duly authorised
Delegate

.....
Dated: