



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

John William Ashton
433 Logan Road, Stones Corner, Queensland 4120

1. BACKGROUND

1.1. ASIC's role

- 1.1.1. ASIC is, pursuant to section 1 of the *Australian Securities and Investments Commission Act 2001* (Cth) ("ASIC Act"), 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.
- 1.1.2. ASIC is also responsible for the registration of company auditors. Registered auditors must satisfy specified educational and practical experience standards, and in forming an opinion about whether financial statements audited by them comply with the Australian Accounting Standards and present a true and fair view, must comply with Australian Auditing Standards and Professional Conduct Standards.
- 1.1.3. ASIC is empowered to bring disciplinary proceedings in the Companies Auditors and Liquidators Disciplinary Board ("the Board") against auditors who have failed to properly carry out the duties of an auditor.

1.2. Role of Mr Ashton

- 1.2.1. John William Ashton ("Mr Ashton") is a registered company auditor pursuant to section 1280 of the *Corporations Act 2001* (Cth) ("the Act"). Mr Ashton first obtained his registration as an auditor on 28 October 1987 and holds audit registration number 10537.
- 1.2.2. Mr Ashton is a member of the Institute of Chartered Accountants in Australia ("ICAA") and is a chartered accountant. In his role as a registered company auditor, Mr Ashton is required to comply with the Australian Auditing Standards ("AUS").
- 1.2.3. At the time of the conduct that is the subject of ASIC's concerns set out at paragraph 2 of this enforceable undertaking, Mr Ashton was a partner at Hanrick Curran, which is located at Level 9, 324 Queen Street, Brisbane, Queensland.
- 1.2.4. Hanrick Curran was the appointed auditor for the following companies for the financial year ended 30 June 2006:

- 1.2.4.1. Property Developers Fund Limited (in liquidation) ACN 109 263 354 ("PDFL");
- 1.2.4.2. Investin Secure Developments Limited (in liquidation) ACN 113 804 505 ("ISDL");
- 1.2.4.3. Paladin Acquisition Fund Limited ACN 116 478 025 ("PAFL"). This company continues to operate;
- 1.2.4.4. Paladin Property Fund Limited ACN 116 473 164 ("PPFL"). This company continues to operate; and
- 1.2.4.5. Now Finance Limited ACN 115 979 803 ("Now Finance"). This company continues to operate.

(collectively, "the Companies").

- 1.2.5. The principal activity of the Companies was the provision of private finance, particularly to property development projects. The Companies have a common connection through Diversified Funds Management Limited ("DFML"), an Australian Financial Services Licensee, in that at least one director of each of the Companies was, at the relevant time, an authorised representative of DFML.
- 1.2.6. Mr Ashton was the lead auditor who conducted each of the audits of the Companies for the year ended 30 June 2006 ("the Audits"). Mr Ashton was the signing partner of the independent audit reports issued in respect of the Companies' Financial Reports and the registered company auditor who was primarily responsible to Hanrick Curran for the conduct of the Audits.
- 1.2.7. As the lead auditor who conducted the Audits, Mr Ashton was required by section 307A of the Act to ensure that the Audits were conducted in accordance with the Australian Auditing Standards.

2. ASIC'S CONCERNS

- 2.1. Following an investigation conducted by ASIC into Mr Ashton's conduct of the Audits pursuant to section 13(1) of the ASIC Act, ASIC identified a number of concerns in respect of the audit process, and contends that Mr Ashton acted in breach of various auditing standards in the conduct of the Audits.
- 2.2. **PDFL**
 - 2.2.1. On 31 October 2006, Mr Ashton issued an unmodified audit opinion in respect of his audit ("PDFL Audit") of the PDFL financial statements for the year ended 30 June 2006 ("PDFL Financial Statements").
 - 2.2.2. PDFL was placed in voluntary administration on 24 November 2006 and in liquidation by court order on 8 May 2007.
 - 2.2.3. In carrying out the PDFL Audit, ASIC contends that Mr Ashton failed to ensure that:

- 2.2.3.1. sufficient appropriate audit evidence was obtained as to the appropriateness of the PDFL Financial Statements being prepared on a going concern basis, or alternatively failed to ensure that such evidence was documented;
- 2.2.3.2. a qualified audit opinion was expressed in the PDFL Independent Audit Report on the basis that there was doubt that PDFL would continue as a going concern, or alternatively that an "Emphasis of Matter" paragraph was included in the Audit Report on the basis of lack of disclosure of matters relating to going concern in the PDFL Financial Report; and
- 2.2.3.3. sufficient appropriate audit evidence was obtained with respect to the value and collectability of certain loans made by PDFL, or alternatively failed to ensure that such evidence was documented.

2.3. ISDL

- 2.3.1. On 25 August 2006, Mr Ashton issued an unmodified audit opinion in respect of his audit ("ISDL Audit") of the ISDL financial statements for the year ended 30 June 2006 ("ISDL Financial Statements").
- 2.3.2. ISDL was placed in voluntary administration on 25 July 2007 and entered a deed of company arrangement on 10 September 2007. The Deed was terminated on 2 April 2009, at which time ISDL was placed in voluntary liquidation by its members.
- 2.3.3. In carrying out the ISDL Audit, ASIC contends that Mr Ashton failed to ensure that:
 - 2.3.3.1. sufficient appropriate audit evidence was obtained as to the appropriateness of the ISDL Financial Statements being prepared on a going concern basis, or alternatively failed to ensure that such evidence was documented;
 - 2.3.3.2. a qualified audit opinion was expressed in the ISDL Independent Audit Report on the basis that there was doubt that ISDL would continue as a going concern, or alternatively that an "Emphasis of Matter" paragraph was included in the Audit Report on the basis of lack of disclosure of matters relating to going concern in the ISDL Financial Report;
 - 2.3.3.3. sufficient appropriate audit evidence was obtained with respect to doubtful debts and the carrying value of the financial assets in the Balance Sheet in the ISDL Financial Statements, or alternatively failed to ensure that such evidence was documented;
 - 2.3.3.4. sufficient appropriate audit evidence was obtained with respect to confirming that properties pledged as security for loans by director-related entities were owned by those entities and that ISDL's rights of security had been registered over the property titles concerned,

or alternatively failed to ensure that such evidence was documented;

2.3.3.5. the risk resulting from the existence of related parties and related-party transactions was considered when planning and performing the ISDL Audit; and

2.3.3.6. appropriate assertions were used to form a basis for the assessment of risks of material misstatement and the design and performance of further audit procedures, with reference to the existence of related parties and related-party transactions.

2.4. PAFL

2.4.1. On 30 November 2006, Mr Ashton issued an unmodified audit opinion in respect of his audit ("**PAFL Audit**") of the PAFL financial statements for the year ended 30 June 2006 ("**PAFL Financial Statements**").

2.4.2. In carrying out the PAFL Audit, ASIC contends that Mr Ashton failed to ensure that:

2.4.2.1. sufficient appropriate audit evidence was obtained with respect to assessing the capacity of director-related entities to meet their loan obligations under certain loan agreements, or alternatively failed to ensure that such evidence was documented;

2.4.2.2. the risk resulting from the existence of related parties and related-party transactions was considered when planning and performing the PAFL Audit; and

2.4.2.3. appropriate assertions were used to form a basis for the assessment of risks of material misstatement and the design and performance of further audit procedures, with reference to the existence of related parties and related-party transactions.

2.5. PPFL

2.5.1. On 30 November 2006, Mr Ashton issued an unmodified audit opinion in respect of his audit ("**PPFL Audit**") of the PPFL financial statements for the year ended 30 June 2006 ("**PPFL Financial Statements**").

2.5.2. In carrying out the PPFL Audit, ASIC contends that Mr Ashton failed to ensure that:

2.5.2.1. sufficient appropriate audit evidence was obtained with respect to assessing the capacity of director-related entities to meet their loan obligations under certain loan agreements, or alternatively failed to ensure that such evidence was documented;

2.5.2.2. the risk resulting from the existence of related parties and related-party transactions was considered when planning and performing the PPFL Audit; and

- 2.5.2.3. appropriate assertions were used to form a basis for the assessment of risks of material misstatement and the design and performance of further audit procedures, with reference to the existence of related parties and related-party transactions.

2.6. Now Finance

- 2.6.1. On 9 October 2006, Mr Ashton issued an unmodified audit opinion in respect of his audit ("Now Finance Audit") of the financial statements for Now Finance for the year ended 30 June 2006 ("Now Finance Financial Statements").
- 2.6.2. In carrying out the Now Finance Audit, ASIC contends that Mr Ashton failed to ensure that:
 - 2.6.2.1. sufficient appropriate audit evidence was obtained, or alternatively failed to ensure that such evidence was documented, with respect to assessing the capacity of a director-related entity to meet its obligations under a deed which assigned the benefit of certain third-party loans from the director-related entity to Now Finance and required the director-related entity to meet any shortfall in the repayment of those loans, notwithstanding there had been no default or apparent potential default under the deed;
 - 2.6.2.2. the risk resulting from the existence of related parties and related-party transactions was considered when planning and performing the Now Finance Audit; and
 - 2.6.2.3. appropriate assertions were used to form a basis for the assessment of risks of material misstatement and the design and performance of further audit procedures, with reference to the existence of related parties and related-party transactions.

3. ACKNOWLEDGEMENT OF CONCERNS

- 3.1. Whilst Mr Ashton does not agree with ASIC's contentions, he acknowledges ASIC's concerns and has offered, and ASIC has agreed to accept, the commitments in this enforceable undertaking as an alternative to ASIC making an application to the Board for an order under section 1292 of the Act.

4. UNDERTAKINGS


- 4.1. Under section 93AA of the ASIC Act, Mr Ashton has offered, and ASIC has agreed to accept, the following undertakings:
 - 4.1.1. Mr Ashton undertakes that for a period of 18 months from the date of acceptance of this enforceable undertaking by ASIC ("period of suspension"), he will not perform the role of lead auditor or review auditor for any audits or reviews that are required under the Act.

- 4.1.2. Mr Ashton undertakes that, for each of the first four (4) occasions on which Mr Ashton is engaged to conduct an audit under the Act after the end of the period of suspension, he will appoint a reviewing auditor, approved in advance by ASIC, to review the conduct of each of those audits and will procure the reviewing auditor to provide a statement to ASIC as to whether, in the reviewing auditor's opinion, each of the audits in question have been conducted in all material respects in accordance with established Australian Auditing Standards and in accordance with the Audit Manual of the firm at which Mr Ashton is practising effective as at the date of the audit in question.
- 4.1.3. Mr Ashton undertakes to complete, in addition to the minimum of 120 hours of training and development over a three year period required by the ICAA, at least an additional 20 hours of technical external audit training during the period of suspension, and to provide to ASIC, in writing at the end of the period of suspension, details of all such training and development undertaken.
- 4.1.4. Mr Ashton undertakes to pay an amount of \$16,000 towards the costs incurred by ASIC in conducting its investigation, paid in the following instalments:
 - 4.1.4.1. \$10,000 within five (5) business days of the date of this enforceable undertaking;
 - 4.1.4.2. A further \$3,000 three (3) months from the date of this enforceable undertaking; and
 - 4.1.4.3. A further \$3,000 six (6) months from the date of this enforceable undertaking.
- 4.1.5. Mr Ashton undertakes to pay the costs of compliance with this enforceable undertaking.

5. ACKNOWLEDGEMENTS

- 5.1. Mr Ashton acknowledges that ASIC:
 - 5.1.1. 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;
 - 5.1.2. may from time to time publicly refer to this enforceable undertaking; and
 - 5.1.3. will make this enforceable undertaking available for public inspection.
- 5.2. Further Mr Ashton acknowledges that:
 - 5.2.1. 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 concerns in this undertaking or arising from future conduct; and

- 5.2.2. 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 undertaking or arising from future conduct.
- 5.3. Mr Ashton acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraphs 4.1.1 to 4.1.5 above.
- 5.4. Mr Ashton acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and Mr Ashton and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.


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JOHN WILLIAM ASHTON

Registered auditor number 10537

Dated: 16 June 2010

Accepted by the Australian Securities and Investments Commission pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* (Cth) by its duly authorised delegate.


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GLEN UNICOMB

Delegate of the Australian Securities and Investments Commission

Dated: 22 June 2010

