



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this enforceable undertaking are offered to ASIC by:

Peter Ngan

formerly of Ngan & Co but now at Jirsch Sutherland

Level 4, 55 Hunter Street

SYDNEY NSW 2000

1. Dictionary

Unless the contrary intention appears:

ASIC means the Australian Securities and Investments Commission;

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth);

CALDB means the Companies Auditors and Liquidators Disciplinary Board;

Corporations Act means the *Corporations Act 2001* (Cth);

CPE means Continuing Professional Education;

DOCA means Deed of Company Arrangement under the Corporations Act;

ICAA means the Institute of Chartered Accountants in Australia;

IPA means the Insolvency Practitioners Association;

JS means Jirsch Sutherland;

Mr Ngan means Peter Ngan;

Reviewer means an independent registered liquidator approved by ASIC in writing prior to the person's engagement by Mr Ngan after at least 7 days written notice is to be given to ASIC by Mr Ngan before he proposes to engage that person to review his external administration appointments as detailed in paragraph 3 h);

Suspension Period means the period of 30 months (or the period of 30 months as extended hereafter) commencing on the date ASIC accepts this enforceable undertaking, provided that if the CPE referred to in paragraph 3 c) is not completed during the Suspension Period of 30 months, then the Suspension Period continues until such time as the CPE is completed;

24 external administrations means the 24 external administrations listed in Schedule A; and

24 external administration files means all the working files of Mr Ngan relating to his conduct of the 24 external administrations.

2. Background

2.1 ASIC's role

2.1.1 Under s1 of the ASIC Act, ASIC is 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.

2.1.2. Part 9.2 of the Corporations Act charges ASIC with responsibility for registering liquidators and official liquidators and for maintaining a register of liquidators and a register of official liquidators.

2.1.3 ASIC is empowered to bring disciplinary proceedings pursuant to s1292(2) of the Corporations Act in the CALDB against registered liquidators who have failed to adequately and properly carry out:

- i) the duties of a liquidator; or
- ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator; or

are otherwise not fit and proper persons to remain registered as a liquidator.

2.2 Details of Mr Ngan

2.2.1 Mr Ngan was registered as a liquidator (registration number 164927) and an official liquidator (registration number 219312) under the Corporations Act or corresponding previous legislation on 21 August 1996 and 6 August 2002, respectively.

2.2.2 From 7 May 1998 up to 30 April 2011, Mr Ngan practised under the name Ngan & Co and accepted appointments as external administrator individually and jointly from time to time. On 1 May 2011, Mr Ngan joined the corporate recovery practice of JS. Since joining JS, Mr Ngan has not accepted any appointments as external administrator individually or together with other registered liquidators.

2.2.3 Mr Ngan is a member of the ICAA.

2.3 ASIC's investigation

2.3.1 As part of ASIC's Liquidator Compliance Program, ASIC conducted a review of 24 external administrations of which Mr Ngan was the appointed external administrator.

2.3.2 ASIC inspected the 24 external administration files produced by Mr Ngan pursuant to the three notices to produce documents issued under s30 of the ASIC Act dated 12 April 2010, 21 April 2010 and 11 June 2010 respectively.

2.4 ASIC's concerns

2.4.1 As a result of the review referred to in paragraph 2.3, ASIC is concerned that Mr Ngan, in relation to his conduct of the 24 external administrations referred to in paragraph 2.3, failed to carry out or perform adequately and properly the duties of a liquidator and/or any of the duties or functions required by an Australian law to be carried out or performed by a registered liquidator through:

- a) failure to identify, secure and deal appropriately with assets, including:
 - i) limited evidence of relevant searches or sufficient enquiries;
 - ii) failure to maximise debtor recoveries;
 - iii) failure to secure and preserve cash at bank;
 - iv) failure to realise maximum value for assets; and
 - v) failure to manage risk; and/or
- b) an apparent lack of independence including:
 - i) failure to disclose prior relationships as required by s436DA and s506A of the Corporations Act; and
 - ii) failure to disclose indemnities received as required by s436DA of the Corporations Act; and/or
- c) failure to adequately report to creditors, as required by s439A, and/or meet all the requirements of s438A and s497 of the Corporations Act; and/or
- d) not reporting to ASIC as required by s533 and s438D of the Corporations Act or providing reports that were deficient in their content; and/or
- e) incomplete or inadequate investigations as required by s438A of the Corporations Act; and/or
- f) inappropriate remuneration practices and time reporting procedures contrary to s449E, s473, s499(3), s499(7) and s499(3A) of the Corporations Act; and/or
- g) inadequate maintenance of books as required by s531 of the Corporations Act; and/or
- h) unnecessarily delaying finalisation of external administrations; and/or
- i) failure to comply with various other statutory requirements.

2.4.2 ASIC notes that:

- a) not each and every one of the concerns referred to in paragraph 2.4.1 above featured in the conduct of each of the 24 external administrations referred to in paragraph 2.3.1; and
- b) it is not aware of any evidence that the conduct involves any fraud, dishonesty or resulted in Mr Ngan receiving improper benefit.

2.5 Admission by Mr Ngan of ASIC's concerns

Mr Ngan acknowledges and accepts ASIC's concerns detailed in paragraph 2.4.1 and in doing so, admits that in respect of his conduct of the 24 external administrations referred to in paragraph 2.3.1, he failed to carry out or perform adequately and properly the duties of a liquidator and/or any of the duties or functions required by an Australian law to be carried out or performed by a registered liquidator.

3. Undertakings

Under s93AA of the ASIC Act, Mr Ngan has offered, and ASIC has agreed to accept as an alternative to ASIC making an application to the CALDB for an order under s1292(2) of the Corporations Act, the following undertakings:

- a) Mr Ngan will, within 7 days after ASIC accepts this enforceable undertaking, file an application in the Supreme Court of New South Wales to be replaced as external administrator of all external administrations of which he is the appointed external administrator as at the date ASIC accepts this enforceable undertaking;
- b) Mr Ngan will not, during the Suspension Period, perform any duty or function which requires the person performing such duty or function to be registered as a liquidator under the Corporations Act;
- c) Mr Ngan will not perform any work in relation to the external administrations referred to in paragraph 3 a) above where he was replaced as the appointed external administrator;
- d) Mr Ngan will provide to ASIC within 7 days of ASIC accepting this enforceable undertaking, a written report that details what work he anticipates undertaking in the next 6 months and thereafter, at 6 monthly intervals, a written report that details the work he has performed in the past 6 months, identifies the name and ACN of each of the external administrations he performed work on (if any), and what work he anticipates undertaking in the next 6 months;
- e) Mr Ngan will undertake an additional 75 hours CPE pertaining to insolvency practice and practice management training during the

Suspension Period that is in addition to the mandatory CPE requirements imposed upon him as a consequence of him being a member of the ICAA whether or not Mr Ngan remains a member;

- f) within 14 days after the conclusion of the Suspension Period, Mr Ngan will provide ASIC with a statutory declaration that attests that he has not engaged in any activities during the Suspension Period that require registration as a liquidator under the Corporations Act and that he has fully complied with the undertaking contained in paragraph 3 e) above;
- g) Mr Ngan will provide all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking within fourteen days of receiving the request;
- h) Mr Ngan undertakes that for the first 4 creditors' voluntary liquidations that he accepts following the end of the Suspension Period where he has primary carriage of those liquidations, he will procure a Reviewer to review those liquidations;
- i) Mr Ngan undertakes that for the first 2 voluntary administrations that he accepts following the end of the Suspension Period where he has primary carriage of those voluntary administrations and where the voluntary administrations involve the assessment of the merits and the administration of the operative terms of a DOCA, he will procure a Reviewer to review those voluntary administrations;
- j) Mr Ngan undertakes that the terms of engagement of the Reviewer will include that:
 - A. each review is to occur at 6 monthly intervals the first being completed 6 months from the date of the appointment of Mr Ngan as external administrator and the final review being completed within 1 month of the finalisation of each external administration; and
 - B. the Reviewer is to provide a report to ASIC, within 1 month of each 6 month interval referred to in paragraph 3 j) A above, which includes a summary of the key tasks that ought to have been undertaken by Mr Ngan and what was actually undertaken by Mr Ngan during the period under review and a statement as to whether or not the work undertaken by Mr Ngan in respect of each of the key tasks reviewed was of an adequate standard and compliant with:
 - the Corporations Act and Corporations Regulations;
 - duties and obligations imposed by the general law;
 - the IPA's published Code of Professional Practice; and

- the internal practice, procedural and compliance materials adopted by Mr Ngan; and
- C. a copy of the Reviewer's working papers and key documents reviewed are to be annexed to the report; and
- k) Mr Ngan will pay the costs of his own compliance with this enforceable undertaking. For the removal of any doubt, Mr Ngan will bear the costs of the requirements contained in paragraphs 3 h), i) and j).

4. Acknowledgements

4.1 Mr Ngan acknowledges that ASIC:

- (a) will 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;
- (b) will make this enforceable undertaking available for public inspection;
- (c) may from time to time publicly refer to this enforceable undertaking.

4.2 Further Mr Ngan acknowledges that:

- (a) 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 enforceable undertaking or arising from future conduct;
- (b) 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 enforceable undertaking or arising from future conduct; and
- (c) this enforceable undertaking has no operative force until ASIC accepts it.

4.3 Mr Ngan acknowledges that, should ASIC form the view that he has failed to comply with this enforceable undertaking, ASIC may take additional action including (without limitation) seeking court orders under s93AA of the ASIC Act requiring him to comply with the terms of this enforceable undertaking.

4.4 Mr Ngan acknowledges that ASIC will, pursuant to s127(4)(d) of the ASIC Act, refer documentation relating to the investigation that led to ASIC's acceptance of this enforceable undertaking, to relevant prescribed professional disciplinary bodies.

4.5 Mr Ngan and ASIC acknowledge that the date of the enforceable undertaking is the date on which ASIC accepts it.

5. Notifications to ASIC

Any written notification to ASIC pursuant to this enforceable undertaking is to be provided to:

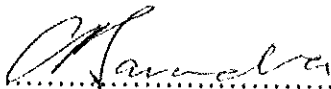
The Senior Executive Leader, Insolvency Practitioners Team
ASIC
Level 5, 100 Market Street
SYDNEY NSW 2000.



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Peter Ngan

Dated: 21 December 2011

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:



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Christopher Savundra

Delegate of Australian Securities and Investments Commission

Dated: ~~December 2011~~ 17 January 2012 *CS*

Schedule A

White Reed Trading Pty Ltd ACN 071 158 104
Galapone Pty Ltd ACN 003 346 030
Sepa Waste Water Treatment Pty Ltd ACN 106 878 380
Mobile Concrete Pty Ltd ACN 066 855 409
Wilson Marketing, Advertising and Promotions Pty Limited ACN 003 531 888
A.C.J. Investments Pty Ltd ACN 110 080 110
Reel Trans Pty Ltd ACN 097 106 922
Gocube Pty Ltd ACN 112 470 050
Maskpack Pty Ltd ACN 069 961 351
York IT Services Pty Ltd ACN 097 325 203
Nanna's House Pty Ltd ACN 112 835 837
Australasian Administrative Commercial Fund Pty Ltd ACN 104 973 323
Belway Pty Limited ACN 074 106 013
ACN 002 131 017 Pty Ltd ACN 002 131 017
Belmont (NSW) Pty Ltd ACN 118 313 269
Concept 2001 Pty Ltd ACN 069 370 350
Fefer Business Investment Pty Ltd ACN 122 387 937
Lighting Enterprises Pty Ltd ACN 074 858 101
Mobile Concrete Online Pty Ltd ACN 117 169 605
Deno's Holdings Pty Ltd ACN 083 851 674
Hydraulic Cranes (Sydney) Pty Ltd ACN 111 739 041
Joseph Kazzi Construction Pty Ltd ACN 100 435 130
G & I Import Export Pty Ltd ACN 097 026 698
Absolute Quality Constructions Pty Ltd ACN 070 832 450