

QIBA.

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 **Leighton Holdings Limited** ACN 004 482 982, 472 Pacific Highway, St. Leonards, NSW 2065.

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

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

Associated entities has the same meaning as provided by section 50AAA of the Corporations Act;

ASX means Australian Securities Exchange Limited, a licensed market operator within the terms of its Australian market licence;

ASX Listing Rules means the listing rules of the ASX that deal with the admission and removal of entities from the ASX official list, and the activities and conduct of entities included on that list;

Corporations Act means the Corporations Act 2001 (Cth);

Infringement Notices means the infringement notices issued under Part 9.4AA of the Corporations Act to Leighton dated 16 March 2012;

Leighton means Leighton Holdings Limited ACN 004 482 982, a listed disclosing entity as defined by section 111AL of the Corporations Act, the ordinary shares of which are listed on the ASX, and includes Leighton associated entities.

2. Background

2.1 ASIC's role

2.1.1 Under section 1 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.

2.2 ASIC's investigation and views

2.2.1 On 14 February 2011, Leighton issued an announcement to ASX titled "Leighton reports \$217m profit and record \$45.6bn of work in hand at half year" in which Leighton stated that "For the 2010/11 financial year, the Group expects to report a full year revenue of almost \$20bn and net profit after tax of around \$480m. The final result and full year dividend are however subject to market and operating conditions, including weather, for the remainder of this financial year."

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- 2.2.2 On 11 April 2011, Leighton issued an announcement to the ASX titled "Leighton to downgrade profit forecast for 2010/11" in which Leighton stated that "The Leighton Group now expects to report a loss of \$427 million for the financial year versus its previous guidance of a profit of \$480 million after tax. The revision is primarily due to write-backs of expected profit on the Airport Link project in Queensland and the Victorian Desalination Project, and an impairment of Leighton's investment in the Habtoor Leighton group (HLG)" (*the Announcement*).
- 2.2.3 On 1 July 2011, ASIC commenced an investigation pursuant to section 13(1) of the ASIC Act into a possible breach by Leighton of section 674 of the Corporations Act in relation to the matters referred to in the Announcement (*the Investigation*).
- 2.2.4 Section 674(2) of the Corporations Act establishes an obligation on listed disclosing entities to provide information to market operators.
- 2.2.5 A listed disclosing entity is subject to this obligation if provisions of the ASX Listing Rules apply to the entity, and require it to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market.
- 2.2.6 Subject to exceptions, ASX Listing rule 3.1 requires a company to immediately notify the ASX of any information concerning it, of which it is or becomes aware, which a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- 2.2.7 As a result of the Investigation:
- 2.2.7.1 ASIC has issued, and Leighton has complied with three Infringement Notices. Details of the alleged contraventions are contained in each Infringement Notice; and
- 2.2.7.2 ASIC has formed the view that Leighton's continuous disclosure systems and policies may not operate to ensure that information that is material to the price or value of Leighton's securities is disclosed promptly to market operators, and the ASX in particular.
- 2.3 **Acknowledgement of concerns**
- 2.3.1 Leighton acknowledges ASIC's views and has offered an enforceable undertaking in the terms of part 3, below.
- 2.3.2 ASIC acknowledges that Leighton has co-operated with ASIC in relation to the Investigation and has worked constructively with ASIC in relation to this enforceable undertaking.

3. Undertakings

- 3.1 Under section 93AA of the ASIC Act, Leighton has offered, and ASIC has agreed to accept, the following undertakings:
- 3.1.1 Leighton will, within 30 days from the date of this enforceable undertaking, provide to ASIC a list of at least two appropriate external consultants who are independent of Leighton and its associated entities and the officers of Leighton and their associated entities, and the proposed terms of reference for the appointment of the appropriate external consultant to be approved by ASIC.
 - 3.1.2 ASIC will, within 20 days from the date of receiving from Leighton the list of appropriate external consultants and the proposed terms of reference, approve an appropriate external consultant for engagement by Leighton (**External Consultant**) and the terms of reference for the appointment of the External Consultant.
 - 3.1.3 Leighton will, within ten days of receiving the approval from ASIC, engage the External Consultant on the terms of reference reasonably approved by ASIC.
 - 3.1.4 The terms of reference for the External Consultant must include instructions to:
 - 3.1.4.1 review Leighton's policies and procedures for dealing with its continuous disclosure obligations under ASX Listing Rule 3.1 and section 674 of the Corporations Act (Disclosure Obligations), including its policies and procedures designed to prevent possible breaches of the Disclosure Obligations (**Disclosure Policies and Procedures**);
 - 3.1.4.2 recommend amendments to the Disclosure Policies and Procedures that are:
 - 3.1.4.2.1 consistent with industry best practice for a company of the size and kind of Leighton, and
 - 3.1.4.2.2 reasonably required to ensure Leighton meets the Disclosure Obligations (**Recommendations**);
 - 3.1.4.3 recommend a timeframe within which it would be reasonable for Leighton to implement each amendment recommended under subparagraph 3.1.4.2 (**Timeframe**);
 - 3.1.4.4 prepare a report within three months of his or her engagement containing the Recommendations (**First Report**); and
 - 3.1.4.5 no later than the earlier of six months from the date of the First Report or the Timeframe for implementation by Leighton of the Recommendations, the External Consultant is to assess the implementation and effectiveness of the Recommendations by Leighton and prepare a further report (**Second Report**).
 - 3.1.5 For a period of three years from the date of the enforceable undertaking, the External Consultant (or, by agreement with ASIC, an alternative independent consultant) is to carry out an annual review of, and is to produce a written report

about, Leighton's compliance with the revised Disclosure Policies and Procedures (*Annual Review Report*).

3.1.6 Leighton will:

- 3.1.6.1 Provide all reasonable assistance to the External Consultant, including permitting the External Consultant to have access to books, interview officers and employees of Leighton and its associated entities, and give the External Consultant any information, assistance or explanation reasonably requested;
- 3.1.6.2 provide to ASIC a copy of the External Consultant's First Report, Second Report and Annual Review Report within seven days of receiving them from the External Consultant;
- 3.1.6.3 implement each of the Recommendations within the Timeframe, subject to any amendment or extension agreed by ASIC;
- 3.1.6.4 following its implementation of the Recommendations referred to under subparagraph 3.1.4.2, provide to ASIC:
 - 3.1.6.4.1 a copy of its revised Disclosure Policies and Procedures; and
 - 3.1.6.4.2 a statutory declaration by an officer of Leighton declaring that the revised Disclosure Policies and Procedures have been adopted by resolution of the directors of Leighton.

3.1.7 Leighton will pay the costs of its compliance with this enforceable undertaking.

4. Acknowledgments

4.1 Leighton acknowledges that ASIC:

- 4.1.1 may issue a media release on the execution of this undertaking referring to its terms and to the views of ASIC which led to its execution;
- 4.1.2 may from time to time publicly refer to this undertaking; and
- 4.1.3 will make this undertaking available for public inspection.

4.2 Leighton acknowledges that ASIC's acceptance of this 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 the matters set out in this enforceable undertaking and the Infringement Notices, or arising from future conduct.

4.3 Leighton acknowledges that 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 the Infringement Notices.

4.4 ASIC acknowledges that nothing in this enforceable undertaking constitutes an admission by Leighton, its associated entities, its present or former directors, officers, employees or consultants to ASIC or any other person.

4.5 Leighton acknowledges that this undertaking has no operative force until accepted by ASIC, and Leighton and ASIC each acknowledge that the operative date of this enforceable undertaking is the date on which it is accepted by ASIC.

5. Notification

5.1 The address for providing ASIC with any document or notification required by the enforceable undertaking is:

Kate O'Rourke
Senior Executive Leader, Corporations
Australian Investments and Securities Commission
GPO Box 9827
SYDNEY NSW 2001

5.2 The address for providing Leighton with any document or notification required by the enforceable undertaking is:

Company Secretary
Leighton Holdings Limited
472 Pacific Highway
St. Leonards, NSW 2065

EXECUTED by LEIGHTON HOLDINGS LIMITED)
in accordance with section 127(1) of the)
Corporations Act 2001 (Cth)



H. Gordon Tyrwhitt
Hamish Gordon Tyrwhitt
Director
Vanessa R. Rees
Director/Company Secretary Vanessa R. Rees

Accepted by the Australian Securities and Investments Commission under section 93AA of the ASIC Act by its duly authorised delegate:

Christopher Savundra

Christopher Savundra
Delegate of the Australian Securities and Investments Commission
Date 16TH MARCH 2012

