

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Arthur John Forrest

Chartered Accountant

Suite 803, 109 Pitt Street

SYDNEY NSW 2000

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);

CALDB means the Companies Auditors and Liquidators Disciplinary Board;

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

Corporations Regulations means the Corporations Regulations 2001 (Cth);
and

ICAA means the Institute of Chartered Accountants in Australia.

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 Forrest

- 2.2.1 Mr Forrest was registered as a liquidator (registration number 4806) under the Corporations Act or corresponding previous legislation on 12 August 1983.
- 2.2.2 Mr Forrest previously traded in the multidisciplinary practice of Griffiths Forrest and Greer ("GFG") up until 24 December 2008 when the practice was sold to Kelly & Partners, whereupon Mr Forrest worked for Kelly + Partners North Sydney Pty Ltd until 25 March 2010.
- 2.2.3 Mr Forrest has since early January 2012 practised under the style Arthur Forrest Chartered Accountant abn 81 122 412 556. From 1 July 2012, Mr Forrest has also practised as Arthur Forrest Accounting Pty Ltd ACN 000 861 692.
- 2.3.4 Mr Forrest is a member of the ICAA.

2.3 ASIC's review and views

- 2.3.1 As part of ASIC's Liquidator Compliance Program, ASIC conducted a review of Mr Forrest's external administrations. Some of these external administrations required the appointed external administrator to be a registered liquidator under the Corporations Act.
- 2.3.2 As a result of the review referred to in paragraph 2.3.1, ASIC has formed the view that Mr Forrest in relation to his conduct of his external administrations 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 by:
 - a) failing to comply with the requirement to lodge Forms 524- Presentation of Accounts and Statement pursuant to section 539 and 432 of the Corporations Act;
 - b) failing to comply with the requirement to hold annual meetings of creditors and members or lodge a report with ASIC pursuant to section 508 of the Corporations Act;

- c) failing to have remuneration approved pursuant to section 499 of the Corporations Act; and
- d) unnecessary delays in the finalisation of external administrations.

2.3.3 ASIC notes that Mr Forrest has attended to the finalisation of those external administrations that require the external administrator to be a registered liquidator under the Corporations Act.

2.4 Acknowledgment by Mr Forrest of ASIC's views

2.4.1 Mr Forrest acknowledges ASIC's views set out in paragraph 2.3.2 and that they are reasonably held, and has offered, and ASIC has agreed to accept, undertakings in terms of Section 3 below.

3. Undertakings

3.1.1 Under s93AA of the ASIC Act, Mr Forrest 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 Forrest will within 7 days after acceptance by ASIC of this enforceable undertaking, submit pursuant to s1290 of the Corporations Act a duly completed Form 905A accompanied by the prescribed fee of \$36, requesting ASIC to cancel his registration as a liquidator;
- b) Mr Forrest will not, after cancellation of his registration as a liquidator pursuant to paragraph 3 a) above, ever perform any duty or function which requires the person performing such duty or function to be registered as a liquidator under the Corporations Act; and
- c) Mr Forrest 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.

4. Acknowledgements

4.1.1 Mr Forrest acknowledges that ASIC:

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

4.1.2 Further, Mr Forrest 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 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;
- c) that ASIC had reason to be concerned as to the alleged facts and has offered the undertakings contained in paragraph 3 above;
- d) that this enforceable undertaking has no operative force until accepted by ASIC; and
- e) that ASIC may, 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.

4.1.3 Mr Forrest and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

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.


.....
Arthur Forrest

Dated: 1st November 2012

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

.....*George Stogdale*.....

George Stogdale

Delegate of Australian Securities and Investments Commission

Dated: 14 November 2012

