

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:

Simon Andrew Peter Green
formerly of Pitcher Partners Brisbane

which was dissolved on 28 November 2008.

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).

ASA means the Australian Auditing Standards in force from time to time pursuant to section 336 of the *Corporations Act*.

AAS means the Australian Accounting Standards.

ABC means ABC Learning Centres Limited (ACN 079 736 664).

ABC Group means ABC together with its controlled entities.

CALDB means the Companies Auditors and Liquidators Disciplinary Board.

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

ICAA means Institute of Chartered Accountants in Australia.

Mr Green means Simon Andrew Peter Green date of birth 11 February 1964.

2. ASIC'S ROLE

2.1 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 is also responsible for the registration of company auditors under Part 9.2 of the Corporations Act.

2.3 Auditors registered under Part 9.2 of the Corporations Act must satisfy specified educational and practical experience standards and be otherwise a fit and proper person to be registered as an auditor and, in forming an opinion about whether financial statements audited by them comply with AAS and present a true and fair view, must comply with ASA and Professional Conduct Standards as promulgated by the ICAA.

- 2.4 ASIC is empowered to bring disciplinary proceedings pursuant to section 1292(1) of the Corporations Act in the CALDB against registered company auditors who have failed to adequately and properly carry out the duties of an auditor, or are otherwise not fit and proper persons to remain registered as auditors.

3. BACKGROUND

- 3.1 Mr Green is a registered company auditor pursuant to section 1280 of the Corporations Act. Mr Green first obtained his registration as an auditor on 29 October 2004 and holds audit registration number 280751.
- 3.2 Mr Green is a member of the ICAA and is a chartered accountant. In his role as a registered company auditor, Mr Green is required to comply with the ASA that are formulated by the Auditing and Assurance Standards Board. Mr Green is also required to ensure that financial statements audited by him comply with the AAS issued by the Australian Accounting Standards Board.
- 3.3 At all material times relevant to the audit of ABC for the financial year ended 30 June 2007 ("**2007 Audit**") and until 28 November 2008, Mr Green was a partner of the Brisbane partnership of Pitcher Partners Brisbane (known prior to 1 October 2003 as Douglas Heck & Burrell) ("**Pitcher Partners**"), a firm of chartered accountants and business advisors and consultants. Pitcher Partners Brisbane ceased operation in November 2008.
- 3.4 ABC was a company whose main business was the provision of formal childcare services and education. ABC was listed on the Australian Stock Exchange on 31 March 2001.
- 3.5 Pitcher Partners audited the financial reports of ABC for the financial years ended 30 June 2001 to 30 June 2007 inclusive (the years ended 30 June 2001 to 30 June 2003 as Douglas Heck & Burrell).
- 3.6 In their role as statutory company auditor for ABC, Pitcher Partners prepared and issued an unqualified statutory audit report on ABC's financial statements for the year ended 30 June 2007 ("**2007 Financial Report**"). This document was dated 27 August 2007 and signed by Mr Green.
- 3.7 Pitcher Partners advised ABC that it intended to resign as its auditor after completion of its responsibilities for the year ended 30 June 2007. Pitcher Partners subsequently obtained ASIC's consent and the resignation became effective on 22 November 2007.
- 3.8 On 6 November 2008, administrators were appointed to ABC and receivers and managers to ABC and the ABC Group.
- 3.9 On 2 June 2010, the creditors of ABC resolved to wind up the ABC Group and appointed liquidators.

4. ASIC'S INVESTIGATION AND VIEWS

- 4.1 On 8 November 2008 ASIC commenced an investigation into the collapse of ABC. In the course of this investigation, ASIC came to consider the appropriateness of Mr Green having issued an unqualified statutory audit report for the 2007 Financial Report.
- 4.2 As a result of its investigation ASIC has formed the view that in respect of the 2007 Audit, Mr Green failed to carry out or perform adequately and properly the duties of an auditor within the meaning of section 1292(1)(d)(i) of the Corporations Act, as a result of the matters described in paragraphs 4.3 to 4.16 below.

Revenue Fees Received – RMC

- 4.3 A majority of ABC childcare centres were run by external third parties, known as Regional Management Companies ("RMCs"), pursuant to franchise agreements with ABC. The franchise agreements provided for fees to be paid to ABC by the RMCs based on the revenue earned by each child care centre. RMC Administration Pty Ltd advised ABC monthly of the amount of the licence fee that should be invoiced by ABC to the RMCs.
- 4.4 A significant amount of the total revenue shown in the 2007 Financial Report was attributed to fees received from RMCs. However, the statutory accounting records of RMC Administration Pty Ltd show that the fees received from RMC included significant amounts that did not relate to revenue earned from child care centres.
- 4.5 Had Mr Green obtained sufficient appropriate audit evidence Mr Green should not have accepted the amount of fees received from RMCs as reported in the 2007 Financial Report. This failure resulted in a significantly material overstatement of the revenue of ABC in the 2007 Financial Report.

Revenue – Fee Guarantee

- 4.6 Payments described as "fee guarantees" in agreements between an ABC subsidiary and a developer company were included in the 2007 Financial Report as revenue. The agreements provided that in relation to each newly constructed child care centre:
- (a) the ABC subsidiary was to pay to the Developer a development fee; and
 - (b) the Developer was to pay to the ABC subsidiary a fee guarantee.
- 4.7 There is insufficient appropriate audit evidence upon which to base an audit opinion that the fee guarantee payments were correctly accounted for as revenue.
- 4.8 ASIC's view is that fee guarantees referable to those agreements were incorrectly accounted for by ABC, leading to a significantly material overstatement of the revenue of ABC in the 2007 Financial Report.

Revenue Fees in advance – 123 Careers Pty Ltd / RMC Fees

- 4.9 There is insufficient appropriate audit evidence from the audit file evidencing that Mr Green had documented all appropriate investigations, completed all appropriate assessments and analyses, communicated appropriately with management on significant issues, made all appropriate and necessary enquiries and checks and ensured that the appropriate accounting treatment was applied in relation to payments made by Childcare Services Recruitment Pty Ltd (which became 123 Careers Pty Ltd) to RMCs. ASIC's view is that this led to a significantly material overstatement of revenue in the 2007 Financial Report.

Misleading Presentation of Revenue

- 4.10 There is insufficient appropriate audit evidence upon which to base an audit opinion with regard to the presentation of revenue recorded from the rendering of services from the operation of the business as the provider of childcare services. ASIC's view is that revenue from the rendering of services was incorrectly disclosed and misleading to users of the 2007 Financial Report.

Going Concern

- 4.11 There is insufficient appropriate audit evidence upon which to conclude as to the appropriateness of the going concern basis of accounting underlying the preparation of the 2007 Financial Report.

Fraud Testing

- 4.12 There is insufficient appropriate audit evidence on the audit file evidencing that Mr Green documented all appropriate investigations, completed all appropriate assessments and analyses, communicated appropriately with management on significant issues and undertook all appropriate and necessary enquiries, checks and testing in relation to the risk of fraud.

Response to Assessed Risk

- 4.13 There is insufficient evidence on the audit file evidencing that Mr Green obtained sufficient appropriate audit evidence regarding the existence of risks as assessed including fraud risk and obtaining audit assurance with respect to wages, salaries expenses and employee benefits.

Related Party Disclosures

- 4.14 There is insufficient evidence on the audit file evidencing that Mr Green obtained sufficient appropriate audit evidence regarding the identification and disclosure of related parties and related party transactions.

Audit Evidence

- 4.15 There is insufficient evidence on the audit file evidencing that Mr Green obtained sufficient appropriate audit evidence and completed all appropriate assessments and analyses regarding:

- (a) Revenue and profit;
- (b) Fixed assets;
- (c) Wages;
- (d) External confirmations; and
- (e) Subsequent events.

Professional Judgment, Professional Scepticism

4.16 There is insufficient appropriate audit evidence on the audit file evidencing that Mr Green applied an adequate level of professional judgment and professional scepticism, and obtained reasonable assurance that the 2007 Financial Report was free from material misstatement and complied with all relevant ASA and requirements.

5. ACKNOWLEDGEMENT OF CONCERNS

5.1 Mr Green acknowledges ASIC's views and that they are reasonably held, and has offered, and ASIC has agreed to accept, undertakings in terms of Section 6 below.

6. UNDERTAKINGS

6.1 Under section 93AA of the ASIC Act, Mr Green has offered, and ASIC has agreed to accept as an alternative to ASIC making an application to the CALDB for an order pursuant to section 1292 of the Corporations Act the undertakings set out in paragraphs 6.2 to 6.10 below.

6.2 Mr Green will, for a period of five years ("period of suspension") commencing on the date of acceptance by ASIC of this enforceable undertaking, not perform any duty or function which requires registration as an auditor under the Corporations Act and, for the avoidance of any doubt, this includes acting as a review auditor as defined in section 324AF(2) of the Corporations Act.

6.3 Mr Green will submit the first five audits conducted by him following the period of suspension that are required to be conducted by a registered company auditor under the Corporations Act, within fourteen days of completion of the relevant audit, for review by a registered company auditor approved by ASIC, such auditor to provide a statement in writing whether in that person's opinion the relevant audit in question has been conducted in accordance with Australian Auditing Standards as at the date of the relevant audit.

6.4 Mr Green will provide the statement referred to in paragraph 6.3 above to ASIC within fourteen days of completion of a review, which must occur within sixty days of referral to the reviewer.

6.5 During the period of suspension, prior to Mr Green being engaged by a potential client, either directly or via an employer, to perform any audit and/or review work outside of what only a registered company auditor can perform, Mr Green:

- i) if he is in an employer/employee relationship, will provide the employer with a copy of this enforceable undertaking at the commencement of the employer/employee relationship; or

- ii) if he is not in an employer/employee relationship, will advise any contractor, before he enters into a contractual relationship with the contractor, and the contractor's proposed client, or any potential client, as the case may be, that he cannot, due to an enforceable undertaking entered into by him with ASIC, do any audit or review work that only a registered company auditor can perform, and if requested, provide a copy of this enforceable undertaking to such contractor and/or client, as the case may be.

6.6 If after acceptance by ASIC of this enforceable undertaking, Mr Green is engaged during the period of suspension to perform any audit and/or review work under the Corporations Act outside of what only a registered company auditor can perform, Mr Green will provide to ASIC a written report:

- i) within seven days of being engaged to perform such work that provides details of the work he has been engaged to perform without specifying the entity or entities to which the work relates but which details the nature (eg proprietary company, public company, publicly listed company, etc) of the entity or entities to which the work relates as well as the nature of the industry or industries (eg retail, construction, aviation, etc) that the entity or entities is/are involved in; and
- ii) at three monthly intervals, during the period of suspension, the first to be provided three months after the date of the report referred to in paragraph 6.6 i) above, that details the audit and/or review work;
 - a) he has performed in the previous three months; and
 - b) he anticipates performing in the next three months;

without specifying the entity or entities to which the work relates but which details the nature (eg proprietary company, public company, publicly listed company, etc) of the entity or entities to which the work relates as well as the nature of the industry or industries (eg retail, construction, aviation, etc) that the entity or entities is/are involved in.

6.7 Whether or not Mr Green remains a member of the ICAA during the period of suspension, Mr Green will undertake the mandatory requirements of the ICAA during the period of suspension and will, in addition to such mandatory requirements, participate in an additional fifteen hours continuing professional education on audit related matters including auditing and accounting standards, in each twelve month period during the period of suspension, noting that in respect of the fourth and fifth years of the period of suspension, a pro rata amount of the mandatory requirements of the ICAA may be undertaken during those two years.

6.8 Within fourteen days after the conclusion of the period of suspension, Mr Green will provide ASIC with a statutory declaration that attests that he has not engaged in any activities during the period of suspension that require registration as an auditor under the Corporations Act and that he has fully complied with the undertakings contained in paragraphs 6.2, 6.5 and 6.7 above.

6.9 Mr Green undertakes to provide all documents and information as requested by ASIC from time to time to enable ASIC to assess his compliance with the terms of this enforceable undertaking with 14 days of receiving the request.

6.10 Mr Green will pay the costs of compliance with this enforceable undertaking.

7. ACKNOWLEDGMENTS

7.1 Mr Green 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.

7.2 Further, Mr Green acknowledges that:

- (a) ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to:
 - (i) 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 background section of this enforceable undertaking or arising from future conduct;
 - (ii) refer details of its views to the ICAA; and
- (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.

7.4 Mr Green 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 section 93AA of the *ASIC Act* requiring him to comply with the terms of this enforceable undertaking.

7.5 Mr Green acknowledges that this enforceable undertaking has no operative force until accepted by ASIC.

7.6 Any written notification to ASIC pursuant to this enforceable undertaking is to be provided to the Senior Executive Leader, Financial Reporting and Audit.



.....
SIMON ANDREW PETER GREEN
Registered Auditor No. 280751

Dated 30 July 2012

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


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Signature

Christopher Savundra
Name

Dated 6TH AUGUST 2012
~~July 2012~~