

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:

Ian Lawrence Struthers

I L Struthers & Associates

Suite 1806, Level 18

109 Pitt Street

SYDNEY NSW 2000

1. Dictionary

i) Unless the contrary intention appears:

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);

ICAA means The Institute of Chartered Accountants in Australia;

Mr Struthers means Ian Lawrence Struthers; and

Review means a desktop review conducted by ASIC in respect of Mr Struthers' compliance with Division 1 of Part 2D.1 and Parts 5.3A, 5.4B, 5.5 and 5.6 of the Corporations Act and Parts 5.3A and 5.6 of the Corporations Regulations with respect to the 45 external administrations, listed in Annexure A, of which Mr Struthers was the appointed external administrator.

ii) Unless otherwise indicated, all references to sections are references to sections of the Corporations Act.

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 for maintaining a register of liquidators.
- 2.1.3 ASIC is empowered to bring disciplinary proceedings pursuant to s1292(2) 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; orare otherwise not fit and proper persons to remain registered as a liquidator.

2.2 Details of Mr Struthers

- 2.2.1 Mr Struthers was registered as a liquidator (registration number 4676) on 11 February 1983 under the Corporations Act or corresponding previous legislation. Since then, he has accepted appointments as external administrator from time to time.
- 2.2.2 Mr Struthers was registered as an Official Liquidator (registration number 4987) on 10 November 1986. Since then, he has accepted appointments as Official Liquidator from time to time.
- 2.2.3 Mr Struthers currently practises under the name I L Struthers & Associates.
- 2.2.4 Mr Struthers is a member of The Institute of Chartered Accountants in Australia.

2.3 ASIC's Review

- 2.3.1 As part of ASIC's Liquidator Compliance Program, ASIC conducted the Review.
- 2.3.2 As part of the Review, ASIC also inspected its public database and internal records in respect of the 45 external administrations the subject of the Review.

2.4 ASIC's views

- 2.4.1 As a result of the Review, ASIC is of the view that Mr Struthers, in conducting external administrations the subject of the Review, 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 in that he:

- a) with respect to remuneration, in relation to:
- i) 16 external administrations, did not provide remuneration reports to creditors as required under s449E(7) and in 13 of those external administrations, Mr Struthers drew a total of \$120,500 (GST exclusive). As a result, the remuneration in question was not validly determined as required under s449E(1);
 - ii) 1 external administration, provided creditors with a remuneration report that did not include the cost associated with each major task as required under s449E(7)(a)(iii). The remuneration report only provided total remuneration claimed. As a result, the remuneration in question of \$10,000 was not validly determined as required under s449E(1);
 - iii) 2 external administrations, drew remuneration exceeding the \$5,000 maximum (per external administration) allowed under s499(3A). In those 2 external administrations, Mr Struthers has overdrawn a total of \$12,000; and
 - iv) 2 external administrations, provided creditors with a remuneration report that did not include the costs associated with each major task as required under s499(7)(a)(iii). In those 2 external administrations, Mr Struthers has drawn a total of \$14,000. As a result, the remuneration in question was not validly fixed as required under s499(3).
- b) with respect to lodgement of accounts in relation to:
- i) 20 external administrations, may have breached s1308(2) and/or s1308(4) by having lodged liquidator's accounts (Forms 524) pursuant to s539 that were not accurate. All Forms 524 recorded nil receipts and payments when Mr Struthers had in fact received and paid out monies in each of those external administrations;
- c) with respect to the liquidator's general account in relation to:
- i) 20 external administrations, failed to open an account to be known as the liquidator's general account as required by Regulation 5.6.06(1)(a) of the Corporations Regulations. As a result, monies on account of remuneration due to Mr Struthers totalling \$144,800 were banked into Mr Struthers' "office working account" and not paid into a "liquidator's general account" for each of the 20 external administrations;
- d) with respect to reporting to ASIC:

- i) failed to lodge 22 Forms 524 (Account of Receipts and Payments) pursuant to s438E, s445J and s539 in respect of 11 external administrations;
- ii) failed to lodge as required by Regulations 5.6.27(3) and 5.6.27(7)(a) of the Corporations Regulations, 21 minutes of meetings of creditors held pursuant to s497 in respect of 21 external administrations;
- iii) failed to lodge as required by Regulations 5.6.27 and (7)(b) of the Corporations Regulations, 5 minutes of meetings of creditors held pursuant to s436E and s439A in respect of 3 external administrations;
- iv) failed to lodge 13 notices to creditors pursuant to s497(2)(c) in respect of 13 external administrations;
- v) failed to comply with the requirement to either hold an annual meeting of creditors and members or lodge an annual report with ASIC pursuant to s508(1)(b)(ii), 23 s508(1)(b)(ii) reports with ASIC, in respect of 23 external administrations; and
- vi) failed to lodge reports pursuant to s533 in respect of 30 external administrations.

2.4.2 ASIC notes that since ASIC communicated to Mr Struthers its views, Mr Struthers, as at 10 December 2012, has taken the following steps:

- i) finalised 25 external administrations;
- ii) lodged outstanding Forms 524 (Account of Receipts and Payments) pursuant to s438E, s445J and s539;
- iii) lodged minutes of 21 meetings of creditors held pursuant to s497 in respect of 21 external administrations;
- iv) lodged minutes of 2 meetings of creditors held pursuant to s436E and 439A in respect of 2 external administrations;
- v) lodged 12 notices pursuant to s497(2)(c) in respect of 12 external administrations;
- vi) lodged annual reports to creditors pursuant to s508(1)(b)(ii) in respect of 17 external administrations; and
- vii) lodged 27 reports pursuant to s533 in respect of 27 external administrations.

2.5 Acknowledgement and admission by Mr Struthers of ASIC's views

Mr Struthers acknowledges that ASIC's views detailed in paragraph 2.4.1 are reasonably held and, in doing so, admits that in respect of his conduct of the 45 external administrations the subject of the Review, 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

3.1 Under s93AA of the ASIC Act, Mr Struthers 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), the following undertakings:

- a) Mr Struthers will, within a period of 3 months from the date of acceptance by ASIC of this enforceable undertaking, submit pursuant to s1290, a duly completed Form 905A accompanied by the prescribed fee of \$36, requesting ASIC to cancel his registration as a liquidator;
- b) Mr Struthers will, within the 3 month period referred to in paragraph 3.1 a) above, file applications in the Supreme Court of New South Wales and Federal Court of Australia, Sydney Registry, to be replaced as external administrator of all external administrations of which he is the appointed external administrator and which will not have been finalised within the said 3 month period, the replacement external administrator being a registered liquidator who has been approved in writing by ASIC;
- c) Mr Struthers will not re-apply for registration as a liquidator for a period of at least 3 years after cancellation of his registration pursuant to paragraph 3.1 a) above;
- d) Mr Struthers will not, after cancellation of his registration as a liquidator pursuant to paragraph 3.1 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 unless he is registered as a liquidator under the Corporations Act;
- e) Mr Struthers will not, in the event that he amalgamates or merges his practice with an insolvency practitioner or a firm of insolvency practitioners, perform any work in relation to the external administrations referred to in paragraph 3.1 b) above where he was replaced as the appointed external administrator; and
- f) Mr Struthers 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 Mr Struthers acknowledges that ASIC:

- a) will issue a media release after acceptance by ASIC 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, and in particular will record the enforceable undertaking on the Register of Enforceable Undertakings maintained by ASIC.

4.2 Further, Mr Struthers 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 views set out in paragraph 2.4 of 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 accepted by ASIC.

4.3 Mr Struthers 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 Struthers acknowledges 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.

4.5 Mr Struthers 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.



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Ian Lawrence Struthers

Dated: 17 February 2013

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



.....
George Stogdale

Delegate of Australian Securities and Investments Commission

Dated: 20 February 2013

Annexure A

ACN	Company Name
115 592 786	CMC Ventures Pty Limited
114 617 917	Professional, Precise & Punctual Painting, Decorating and Maintenance Pty Limited
116 524 915	Goldfinger Aviation Pty Limited
119 662 163	Cheeky Monkeys Play House Pty Limited
083 633 505	Strapatore Holdings Pty Limited
072 512 862	Axiome24 Pty Limited
118 411 233	Gravity Max Pty Limited
115 464 367	Amancha Pty Limited
083 860 315	Ultimate Internet Pty Limited
092 447 115	Bathgate Restaurants Pty Limited
130 270 469	Gravity Media Pty Limited
121 054 466	Meet Me Dating Pty Limited
125 784 358	Second Chance Management Pty Limited
087 053 852	TJ Mann & Associates Pty Limited
118 402 547	The Promise (Australia) Pty Limited
107 804 562	Forster Development Group Pty Limited
112 174 188	The Australian Swimwear Company Pty Ltd
105 097 489	Aloming Pty Ltd
103 073 785	RPM Electronics Pty Ltd
064 838 302	Worldtel Corporation Pty Ltd
093 519 049	Malik Media Pty Limited

105 597 091	World Tel (Aust) Pty Ltd
126 026 131	Magrid Recruitment Pty Ltd
003 915 295	One Sing Trading Pty Ltd
119 963 263	RDE Contracting Pty Ltd
096 007 902	Asset Credential Mortgage Pty Ltd
079 010 030	Innovative Steel Detailing Pty Ltd
105 288 971	Echocash Pty Ltd
102 701 495	Highfields Country and Toowoomba Real Estate Pty Ltd
107 814 077	Chic & Shabby Pty Ltd
131 824 032	North Coast Recycling Centre Pty Ltd
105 853 790	Ascari Holdings Pty Ltd
001 446 528	Hagobu Pty Ltd
104 751 377	VI Express Pty Ltd
102 321 531	Paramount Plasterers (QLD) Pty Ltd
096 180 433	Sheer envy Pty. Ltd.
106 484 619	Sustainable Synergies Pty Ltd
113 396 071	Forcol Pty Ltd
095 004 078	Skoups Enterprises Pty Ltd
122 100 805	Safestaff Pty Ltd
064 019 405	Aifcoal Pty Limited
002 459 092	Suzie Thomas Publishing Pty Ltd
134 929 089	Os Rigging Pty Ltd
143 063 754	Sydney Mobile Plumbing Pty Ltd
114 474 663	AMNG Pty Ltd