

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 Roger Coad
Ticcidew Insolvency
55 Carrington Street
NEDLANDS WA 6009

1. Dictionary

1.1. Unless the contrary intention appears:

Acceptance Date means the date of acceptance by ASIC of this enforceable undertaking;

APES 330 means APES 330, Insolvency Services, the *Code of Ethics for Professional Accountants* issued by the Accounting Professional & Ethical Standards Board Limited;

ARITA means the Australian Restructuring Insolvency & Turnaround Association (formerly the Insolvency Practitioners Association of Australia);

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);

External Administrations means the external administrations listed in Schedule A;

Mr Coad means Simon Roger Coad; and

Review means a review conducted by ASIC on 14 and 15 August 2013 of the External Administrations pursuant to a notice issued under s30 of the ASIC Act on 30 July 2013.

1.2. 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 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.

2.1.2. 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 section 1292(2)(d) in the CALDB against registered liquidators who have failed to adequately and properly carry out:

- (a) the duties of a liquidator; or
- (b) 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 person to remain registered as a liquidator.

2.2. Details of Mr Coad

2.2.1. Mr Coad was registered under the predecessor legislation to the Corporations Act (registration number 15767) on 30 August 1991.

2.2.2. Mr Coad currently practices under the name 'Ticcidew Insolvency'.

2.2.3. Mr Coad is a member of The Institute of Public Accountants and ARITA.

2.3. ASIC's Review

2.3.1. As part of ASIC's Liquidator Compliance Program, ASIC conducted the Review and also inspected its public database in respect of all of Mr Coad's incomplete external administrations, including the External Administrations.

2.4. ASIC's Concerns

2.4.1. As a result of the Review, ASIC is concerned that Mr Coad, in conducting the External Administrations, failed to carry out or perform adequately and properly the duties of a liquidator and/or duties or functions required by an Australian law to be carried out or performed by a registered liquidator in that there were instances where he:

- (a) failed to exercise his powers and discharge his duties with the degree of care and diligence as required by s180 by:
 - i) continuing to act as administrator of a deed of company arrangement in circumstances when unbeknownst to him, the deed of company arrangement had terminated; and
 - ii) not paying a dividend in a timely manner consequent to its declaration;

- (b) failed to comply with s448C and s532 by not documenting, or possibly not conducting, a pre-appointment independence review;
- (c) failed to comply with s436DA and s506A by not providing a compliant declaration of independence, relevant relationships and indemnities to creditors or it not being clear whether the declarations were tabled at meetings of creditors;
- (d) failed to comply with s438A, s531 and s533 by either not undertaking proper investigations or not adequately documenting investigations into the company's affairs;
- (e) failed to comply with s497 by not providing sufficient notice to creditors or advertising within prescribed time frames;
- (f) failed to comply with s438D and s533 by not lodging reports with ASIC despite having identified possible misconduct;
- (g) failed to comply with s449E(7) and s499(7) by:
 - i) not providing creditors with remuneration reports or compliant remuneration reports for prospective remuneration;
 - ii) resolutions presented at meetings of creditors not matching those contained in remuneration reports provided to creditors; and
 - iii) drawing remuneration when not entitled as a consequence of not complying with s449E(7) and s499(7);
- (h) failed to comply with s445J and s539 by not lodging Forms 524 – Presentation of Accounts and Statement;
- (i) failed to comply with s508 by not holding annual meetings of creditors or lodging annual reports with ASIC in lieu of holding such meetings;
- (j) failed to comply with s537 by not lodging Forms 506 updating his address when he moved premises;
- (k) failed to comply with s531 by not maintaining proper books and records; and
- (l) did not have appropriate operational procedures to conduct external administrations as required by ASIC's Regulatory Guide 186 External administration: Liquidator registrations, in particular RG 186.20, 186.61 and 186.114.

2.4.2. ASIC notes that not each and every one of the concerns referred to in paragraph 2.4.1 above featured in the conduct of each of the External Administrations.

2.4.3. ASIC also notes that since ASIC communicated to Mr Coad its concerns, Mr Coad, as at 27 March 2014, has taken the following steps:

- (a) implemented a peer review process, including engaging the services of an interstate registered liquidator to undertake such peer reviews;
- (b) joined an insolvency discussion group and arranged to attend internal training held by a leading insolvency firm;
- (c) updated conflict checklists and Declaration of Independence, Relevant Relationships and Indemnities templates and procedures;
- (d) updated general checklists and templates and implemented a process of constant revision;
- (e) upgraded practice management software and installed specialist insolvency case management software with training;
- (f) executed an agreement with a national insurance broker to provide automatic insurance cover for all future appointments;
- (g) updated and expanded investigation procedures checklists and undertaking training;
- (h) improved access to library resources;
- (i) arranged access to checklists and templates from other leading insolvency firms;
- (j) engaged a registered liquidator and a university graduate on a part-time basis to provide assistance; and
- (k) finalised a number of aged external administrations.

2.4.4. ASIC further notes that Mr Coad, during and after the Review, and in the course of negotiating this enforceable undertaking, fully engaged and co-operated with ASIC at all times.

2.5. Acknowledgement and Admission by Mr Coad of ASIC's Concerns

2.5.1. Mr Coad acknowledges that ASIC's concerns detailed in paragraph 2.4.1 above are reasonably held and, in doing so, admits that in respect of his conduct of the External Administrations, he failed to carry out or perform adequately and properly the duties of a liquidator and/or duties or functions required by an Australian law to be carried out or performed by a registered liquidator.

3. Undertakings

3.1. Under section 93AA of the ASIC Act, Mr Coad has offered, and ASIC has agreed to accept as an alternative to ASIC making an application to the CALDB for an order under section 1292(2), the following undertakings:

3.1.1. Mr Coad will within one month from the Acceptance Date lodge all outstanding lodgements relating to the External Administrations;

- 3.1.2. Mr Coad will engage (his engagement is acknowledged), at his own expense, Mr Barry Cook, or another liquidator approved by ASIC, if Mr Cook is (or at any time becomes) unavailable. Mr Cook is to undertake a Quality Review (QR) in the sense of a 'Peer Review' of Mr Coad's practice, systems and procedures generally. Mr Coad will require Mr Cook to produce a report of his findings (**First QR Report**);
- 3.1.3. Mr Coad will implement any recommendations contained in the First QR Report within three months of receiving the report and will notify ASIC in writing of the recommendations and what he did to implement them;
- 3.1.4. Mr Coad will also engage Mr Cook to undertake a further QR of his practice, systems and procedures generally, including a review of two recent insolvent external administrations. Mr Coad will require Mr Cook to produce a further report of his findings (**Second QR Report**) six months from the commencement of the QR referred to in paragraph 3.1.2 above;
- 3.1.5. Mr Coad will require Mr Cook to, within eight months from the date of the First QR Report, provide ASIC and Mr Coad with the Second QR Report. The Second QR Report shall detail Mr Coad's compliance and any non-compliance, as the case may be, with the Corporations Act (including its Regulations), his duties and obligations imposed by common law, ASIC's Regulatory Guides, the ARITA Code of Professional Practice and APES 330 regarding the following matters:
- (a) independence and disclosure;
 - (b) remuneration;
 - (c) reporting to ASIC;
 - (d) reporting to Creditors;
 - (e) investigations;
 - (f) documentation; and
 - (g) supervision, systems and procedures;
- 3.1.6. Mr Coad will provide to Mr Cook copies of all correspondence that has passed between ASIC and Mr Coad regarding ASIC's Liquidator Compliance Program for the purposes of the QR and further QR;
- 3.1.7. Within one month from the Acceptance Date, Mr Coad will satisfy all of the late lodgement fees due to ASIC;
- 3.1.8. As part of Mr Cook's engagement, Mr Coad shall consent to Mr Cook discussing, on a confidential basis with ASIC, any QR Report or correspondence, if required;
- 3.1.9. Mr Coad will provide all documents (including each QR Report) and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking;
and

3.1.10. Mr Coad will undertake an additional 20 hours Continuing Professional Development (CPD) relating to insolvency practice and practice management training during the period of this enforceable undertaking in addition to the mandatory CPD requirements imposed upon him as a consequence of him being a member of The Institute of Public Accountants and ARITA, whether or not Mr Coad is or remains a member.

4. Acknowledgements

4.1. Mr Coad Acknowledgements

4.1.1. Mr Coad acknowledges that ASIC:

- (a) will issue a media release after the Acceptance Date referring to the terms of this enforceable undertaking and to the concerns 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.

4.1.2. Further, Mr Coad 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 set out in paragraph 2.4.1 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.

4.1.3. Mr Coad 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(4) of the ASIC Act requiring him to comply with the terms of this enforceable undertaking.

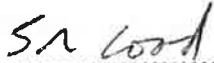
4.1.4. Mr Coad acknowledges that ASIC may, pursuant to section 127(4)(d) of the ASIC Act, refer documentation relating to the Review that led to ASIC's acceptance of this enforceable undertaking to relevant prescribed professional disciplinary bodies.

4.1.5. Mr Coad 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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Simon Roger Coad

Dated: 15 April 2014

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



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George Stogdale

Dated: 28 April 2014

SCHEDULE A
EXTERNAL ADMINISTRATIONS REVIEWED

1. Everbold Holdings Pty Ltd ACN 110 935 423 which:
 - (a) entered voluntary administration on 4 November 2011 (Mr Coad was appointed as the administrator);
 - (b) became subject to a deed of company arrangement on 29 February 2013 (Mr Coad was appointed as the deed administrator); and
 - (c) ceased to be subject to a deed of company arrangement on 29 April 2013.

2. Top Dog Steel Pty Ltd (In Liquidation) ACN 122 524 270 which:
 - (a) entered creditors' voluntary liquidation on 15 August 2012 (Mr Coad was appointed as the liquidator).

3. Zeugma Electrical & Communication Services Pty Ltd (In Liquidation) ACN [131 167 452] which:
 - (a) entered voluntary administration on 14 March 2012 (Mr Coad was appointed as the administrator); and
 - (b) entered creditors' voluntary liquidation on 30 April 2012 (Mr Coad was appointed as the liquidator).