



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 by:

Dimitri Amargianitakis

8/55-61 Old Northern Road, Baulkham Hills NSW 2150

1. Definitions

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

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

AFSL means an Australian Financial Services Licence.

AICD means the Australian Institute of Company Directors.

Akis & Associates means Akis & Associates Pty Ltd ACN 003 489 530 (in Liquidation).

Akis Financial Services Unit Trust means Akis Financial Services Unit Trust ABN 91 412 655 419.

Amargianitakis means Dimitri Amargianitakis of 8/55-61 Old Northern Road, Baulkham Hills NSW 2150.

ASIC means the Australian Securities and Investments Commission.

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

Commencement Date means the date of acceptance of this enforceable undertaking by ASIC.

Company Directors Course means the course offered by the AICD titled "Company Directors Course" (or its successor course).

Examination Certificate means the certificate evidencing the award provided by the Australian Institute of Company Directors upon successful completion of the Company Directors Course assignment and examination or other document evidencing the successful completion of any other course approved by ASIC.

ICA Group means various entities associated with ICA (South Australia) Pty Ltd (in Liquidation) ACN 062 706 192.

Period of this Undertaking means the period from the Commencement Date to the later date of the following two events:

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- (i) The provision by Amargianitakis to ASIC of the Examination Certificate; and
- (ii) The expiration of eighteen (18) months after the Commencement Date.

Vista Capital means Vista Capital Pty Ltd ACN 055 709 709.

Vista Capital 2010 Financial Statements means the Financial Statements for the year ended 30 June 2010 for Vista Capital as Trustee for the Akis Financial Service Unit Trust signed by Amargianitakis and dated 16 November 2010.

Undertaking means this enforceable undertaking.

- 1.2 Except so far as the contrary intention appears in this Undertaking the interpretation provisions in Part 1.2 of the Act and Part 2, Division 2, Subdivision B of the ASIC Act apply for the purposes of this Undertaking as if those provisions were provisions of this Undertaking.

2. Background

ASIC's Role

- 2.1 Under section 1(2)(b) 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.

Amargianitakis

- 2.2 Amargianitakis was an officer of six (6) corporations that have been wound up:

- (a) Vista Capital Pty Limited ACN 055 709 709;
- (b) Demtery Pty Limited ACN 108 437 065;
- (c) Vista Capital Developments Pty Limited ACN 077 585 534;
- (d) Vista Maris Pty Limited ACN 116 945 325;
- (e) Vista Capital Solutions Pty Limited ACN 123 841 967; and
- (f) Vistakis Pty Limited ACN 132 986 826.

- 2.3 A report from a liquidator has been lodged with ASIC under subsection 533(1) of the Act in respect of each of the companies listed in paragraph 2.2 reporting that each of the companies may be unable to pay its unsecured creditors more than 50 cents in the dollar.

Vista Capital

- 2.4 Amargianitakis was a director of Vista Capital between 2 April 1992 and 16 November 2011. Vista Capital was wound up on 17 August 2011 with an estimated deficiency of \$54,195,130. The Liquidator has estimated that the return to creditors will be 0 cents in the dollar.
- 2.5 Vista Capital was, amongst other things, the trustee of the Akis Financial Services Unit



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Trust. It was primarily involved in mezzanine finance and mortgage lending and raised funds for these activities by borrowing funds mainly from clients connected with the accounting practice, Akis & Associates, of which Amargianitakis was a director between 27 April 1998 and 20 October 2011. The funds were raised pursuant to a Deed of Loan between Vista Capital and each investor. The rate of interest Vista Capital promised to pay investors pursuant to the terms of the Deeds of Loan was above market rates. Despite being in the business of providing financial services, Vista Capital never held an AFSL, nor was it a representative of an AFSL holder.

- 2.6 Vista capital lent the funds raised from the accounting clients of Akis & Associates to various parties, one of which was the ICA Group. The loan to the ICA Group was Vista Capital's largest loan to an unrelated party. The funds lent to the ICA Group ranked behind the interests of registered charge holders. On 28 May 2010 a Voluntary Administrator was appointed to the ICA Group.
- 2.7 On 7 June 2010 Amargianitakis submitted a Proof of Debt to the Voluntary Administrator of the ICA Group claiming that the ICA Group owed Vista Capital the amount of \$18,679,613.41. In a Second Report to Creditors dated 24 June 2010 the Voluntary Administrator noted that after payment of secured facilities in favour of first ranking registered charge holder, it was extremely unlikely that there would be any surplus upon realisation of the financed assets.

3. Details of conduct

The accounting conduct

- 3.1 Amargianitakis signed the Vista Capital 2010 Financial Statements. The financial statements recorded the loan of approximately \$18 million from Vista Capital to the ICA Group as fully recoverable. At the time Amargianitakis signed the financial statements he was aware that it was extremely unlikely that the loan of approximately \$18 million to the ICA Group would be recovered as the creditors of the ICA Group had been notified by the Liquidator of this fact.
- 3.2 The inclusion of the loan to the ICA Group at its full value had a material effect on the stated financial position of Vista Capital as at 30 June 2010. Had the loan been written down to \$nil, at 30 June 2010 Vista Capital would have recorded a surplus of liabilities over assets of \$18,165,560 instead of net assets of \$514,053.

The AFSL conduct

- 3.3 Vista Capital was required to hold an AFSL for the following reasons:
- (a) Vista Capital offered financial products to investors, namely, debentures, which were in the form of the Deeds of Loans signed by Amargianitakis;
 - (b) Vista Capital made recommendations to investors that were intended to influence them to enter into the Deeds of Loan;
 - (c) As a result of this recommendation, investors entered into the Deeds of Loan;
 - (d) These recommendations amounted to providing financial product advice within the meaning of s766B of the Act. None of the exemptions in s766B of the Act applied at the time;

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- (e) Providing financial product advice is the provision of a financial service (s766A(1)(a) of the Act);
- (f) Vista Capital was in the business of providing financial services because it regularly and repeatedly provided financial product advice;
- (g) The financial services business was carried on in Australia; and
- (h) None of the exemptions in s911A(2) of the Act or r7.6.01(1) of the *Corporations Regulations 2001* applied to Vista Capital.

4. ASIC's investigation

4.1 Investigation

Pursuant to Division 1 of Part 3 of the ASIC Act, ASIC is investigating suspected contraventions of the Act by Amargianitakis (the **Investigation**).

5. ASIC's concerns

- 5.1 As a result of the Investigation, ASIC is concerned that Amargianitakis has been an officer of two (2) or more corporations that were wound up while he was an officer, or within 12 months of him ceasing to be an officer, and in respect of which a liquidator lodged a report with ASIC advising each corporation's inability to pay its debts.
- 5.2 Further, ASIC is concerned that Amargianitakis failed to exercise his powers and discharge his duty as an officer of a corporation with the degree of care and diligence required of a director in respect of the:
 - (a) accounting conduct referred to in paragraphs 3.1 and 3.2 of this Undertaking, in that he did not ensure that Vista Capital's 2010 Financial Statements correctly recorded and explained Vista Capital's transactions, financial position and performance; and
 - (b) AFSL conduct referred to in paragraph 3.3 of this Undertaking in that he did not ensure that Vista Capital held an AFSL when it was required to do so.

6. Acknowledgement of concerns

- 6.1 Amargianitakis acknowledges ASIC's concerns and that they are reasonably held.

7. Undertakings

- 7.1 Under section 93AA of the ASIC Act, Amargianitakis has offered the undertakings in sections 7.2 to 7.3 of this Undertaking and ASIC has agreed to accept those undertakings as an alternative to taking administrative proceedings to disqualify Amargianitakis from managing corporations arising out of the conduct the subject of the concerns set out in section 5 of this Undertaking.

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- 7.2 For the period of this Undertaking Amargianitakis undertakes not to take part in the management of any corporation. This includes, but is not limited to:
- (a) Consenting to being appointed as a director or secretary of any corporation;
 - (b) Acting as an officer of a corporation, including making or participating in making, decisions that affect the whole, or a substantial part, of the business of any corporation, or otherwise act in any capacity to affect significantly the corporation's financial standing;
 - (c) Exercising any of the powers of a director of a corporation;
 - (d) Communicating instructions or wishes to a director of a corporation:
 - (i) knowing that the directors are accustomed to act in accordance with those instructions or wishes; or
 - (ii) intending that the directors will act in accordance with those instructions or wishes;
 - (e) Operating any bank accounts for or on behalf of a corporation.
- 7.3 Amargianitakis undertakes to enrol in the Company Directors Course offered by the AICD, or such other course approved by ASIC in writing, and obtain an Education Certificate.

Costs of compliance

- 7.4 Amargianitakis will pay the costs of his compliance with this Undertaking, including all costs associated with the training and education referred to in paragraph 7.3.

8. Contact Officers

- 8.1 For the purpose of this Undertaking the contact person at ASIC is the Senior Executive, Corporations & Corporate Governance Enforcement.

9. Acknowledgments

9.1 Amargianitakis' acknowledgment

- (a) Amargianitakis acknowledges that ASIC:
 - (i) may issue a media release on execution of this Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - (ii) may from time to time publicly refer to this Undertaking;
 - (iii) will make this Undertaking available for public inspection; and
 - (iv) that in relation to the Education Certificate provided to ASIC pursuant to this Undertaking, ASIC:


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- (A) may issue a media release referring to the content of the Education Certificate;
 - (B) may from time to time publicly refer to the Education Certificate; and
 - (C) will make available for public inspection a copy of the text of the Education Certificate, or a copy of the text of a statement that refers to the content of the Education Certificate.
- (b) Amargianitakis acknowledges that this Undertaking has no operative force until accepted by ASIC, and Amargianitakis and ASIC acknowledge that the date of the Undertaking is the date on which it is accepted by ASIC.
- (c) ASIC and Amargianitakis acknowledge that this Undertaking ends at the later date of the following two events:
- (i) The provision by Amargianitakis of the Education Certificate to the Senior Executive, Corporations & Corporate Governance Enforcement, ASIC; and
 - (ii) The expiration of eighteen (18) months after the Commencement Date.
- (d) Amargianitakis acknowledges that:
- (i) ASIC's acceptance of this Undertaking does not affect ASIC's power to investigate, conduct surveillance, pursue a criminal prosecution or its power to lay charges in relation to any contravention of the law by Amargianitakis, whether the subject of ASIC's concerns in this Undertaking or arising from separate or future conduct;
 - (ii) ASIC's acceptance of this Undertaking does not affect ASIC's power to seek a pecuniary civil order against Amargianitakis, whether the subject of ASIC's concerns in this Undertaking or arising from separate or future conduct;
 - (iii) ASIC's acceptance of this Undertaking does not affect ASIC's power to make a banning order or to disqualify Amargianitakis from providing Financial Services under s920A of the Act; and
 - (iv) 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.

Executed by Dimitri Amargianitakis


Dimitri Amargianitakis

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

12 November 2014