

## 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:

**Richard Li (Mr Li), born 28 August 1952,**  
**c/o Level 3, 112 Wellington Parade, East Melbourne, Victoria**

AND

**Sino Investment Services Pty Ltd ACN 006 643 152 (SIS)**  
**Level 3, 112 Wellington Parade, East Melbourne, Victoria**

### 1. DEFINITIONS

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

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

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

**AFSL** means Australian Financial Services Licence numbered 246936;

**ASIC** means the Australian Securities and Investments Commission;

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

**Australian Financial Services Licence** has the meaning given to that term by Division 2 of Part 7.1 of Chapter 7 of the Act;

**Client** means any or all of the clients of SIS that had provided money to SIS to be held on trust and as deposited into the Client Trust Accounts;

**Client Trust Accounts** means any bank accounts held in the name of SIS to which funds of Clients were deposited;

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

**EU** means this enforceable undertaking;

**Financial Service** has the meaning given to that term by Division 4 of Part 7.1 of Chapter 7 of the Act;

**Financial Service Business** has the meaning given to that term by section 761 of the Act; and

**Financial Product** has the meaning given to that term by Division 3 of Part 7.1 of Chapter 7 of the Act.

1.2 Unless otherwise stated, the singular includes the plural and vice versa.

## 2. BACKGROUND

### 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.

### SIS

2.2 SIS was registered as a corporation on 2 October 1986 and was granted the AFSL on 5 January 2004.

2.3 Since 26 September 2008, SIS has held the AFSL authorising it to carry on a Financial Services Business, amongst other things, to deal in a Financial Product by applying for, acquiring, varying or disposing of a Financial Product on behalf of another person in respect of deposit and payment products limited to basic deposit products. This allowed SIS to be involved in the management (including the deposit and withdrawal) of client funds held in a bank account with an Australian bank.

### Mr Li

2.4 Mr Li has, at all material times, been:

- (a) the sole director of SIS;
- (b) an authorised representative to provide a Financial Service on behalf of SIS as defined by section 761A of the Act; and
- (c) the manager who was responsible for managing SIS's Financial Services Business in respect of the AFSL.

2.5 GoConnect Ltd is a public company, listed on the Australian Stock Exchange, of which Mr Li has been the Chairman and Managing Director since 2 October 2002.

### 3. ASIC ENQUIRIES AND DESCRIPTION OF CONDUCT

- 3.1 The financial year for SIS ends on 30 June of each year.
- 3.2 Under section 989B of the Act, SIS was required, in respect of each financial year, to:
  - (a) prepare a true and fair profit and loss statement and balance sheet (**Financial Statements**);
  - (b) lodge the Financial Statements with ASIC before 30 September of the relevant year; and
  - (c) lodge with ASIC an auditor's report with the Financial Statements containing the information and matters required by the Corporations Regulations.
- 3.3 As at the Acceptance Date, SIS has not lodged the Financial Statements and the auditor's report for the financial years ended 30 June 2013, 30 June 2014 and 30 June 2015.
- 3.4 Pursuant to section 1274(11) of the Act, ASIC served on SIS a notice requiring SIS to lodge with ASIC, within 14 days of the service of the notice, the Financial Statements and the auditor's report for the financial year ended 30 June 2013.
- 3.5 SIS has not complied with this notice and ASIC may apply to a court for an order directing SIS to lodge with ASIC the Financial Statements and the auditor's report for the financial years ended 30 June 2013. However, SIS has engaged its Auditor to audit the Financial Statements and provide an audit report for the financial years ending 30 June 2013, 30 June 2014 and 30 June 2015.
- 3.6 So as to comply with section 981B of the Act, SIS paid Client money into Client Trust Accounts.
- 3.7 As provided by section 981H of the Act, money in the Client Trust Accounts is held in trust by SIS for the benefit of the relevant Client.
- 3.8 ASIC's investigation and enquiries found that there was a deficiency of cash held in the Client Trust Accounts of SIS amounting to \$355,114 as at 31 December 2014.
- 3.9 ASIC enquiries also revealed that the deficiency in cash of \$355,144 was mainly comprised of negative balances in two Client Trust Accounts, namely:
  - (a) GoConnect Ltd with a negative balance of \$330,730.32; and
  - (b) A Client with a negative balance of \$26,085.53.

- 3.10 A transaction listing in respect of the GoConnect Client Trust Account balance showed, that between October 2013 and November 2014, 75 withdrawals had been made from the Client Trust Accounts amounting to \$962,018.07 ("**the GoConnect Withdrawals**") and 23 deposits to the Client Trust Accounts amounting to \$631,287.75.
- 3.11 Furthermore, there was a single withdrawal of \$26,085.53 from the Client Trust Accounts on 27 June 2014 ("**the June Withdrawal**").
- 3.12 Corporations Regulation 7.8.02(1) provides, amongst other things, that payments may be made out of an account maintained for section 981B of the Act, in any of the following circumstances:
- (a) making a payment to, or in accordance with the written direction of, a person entitled to the money;
  - (b) defraying brokerage and other proper charges;
  - (c) paying to the financial services licensee money to which the financial services licensee is entitled;
  - (d) making a payment of money due to an insurer in connection with a contract of insurance;
  - (e) making a payment that is otherwise authorised by law;
  - (f) paying to the financial services licensee money to which the financial services licensee is entitled pursuant to the market integrity rules or the operating rules of a licensed market.
- 3.13 There was no consent, either written or verbal, given by the respective Client in respect of any of the GoConnect Withdrawals or the June Withdrawal.
- 3.14 Further, none of the circumstances as set out in Regulation 7.8.02(1) (b) to (f), and referred to above at paragraph 3.122 (b) to (f), that may have allowed the GoConnect Withdrawals or the June Withdrawal to be made out of the Client Trust Accounts were present.
- 3.15 The GoConnect Withdrawals and the June Withdrawal were authorised by Mr Li as the sole director of SIS.
- 3.16 SIS has since:
- (a) deposited sufficient funds into the relevant Client Trust Accounts to cover the cash deficiency described above in paragraphs 3.8 to 3.11; and
  - (b) repaid to some of the Clients the entire balance of that Client's money held in the respective Client Trust Account.

#### **4. ASIC's INVESTIGATION**

4.1 Pursuant to Division 1 of Part 3 of the ASIC Act, ASIC is investigating SIS and Mr Li.

#### **5. ASIC'S VIEWS CONCERNING THE CONDUCT**

5.1 As a result of the matters in paragraphs 3.1 to 3.15 above, ASIC is concerned that SIS may have failed to comply with its obligations by failing to:

- (a) ensure that the money provided to SIS by the relevant Client was held in trust for the benefit of that Client, contrary to SIS's obligations as a trustee of the money in the Client Trust Account;
- (b) ensure that written consent was obtained from the relevant Client in respect of the GoConnect Withdrawals and the June Withdrawal from the Client Trust Accounts and contrary to Corporations Regulation 7.8.02(1)(a);
- (c) ensure that the Financial Statements of SIS for the financial years ended 30 June 2013, 30 June 2014 and 30 June 2015 were audited and lodged with ASIC and contrary to section 989B of the Act;
- (d) comply with the general obligations that is required by a financial services licensee under section 912A of the Act; and
- (e) notify ASIC as soon as practicable (or in any case within 10 business days after becoming aware) of the breach by SIS of its obligations under section 912A of the Act and contrary to section 912D(1)(b) of the Act.

5.2 Furthermore, ASIC is concerned that Mr Li, as the responsible manager for the AFSL and an authorised representative for the AFSL, failed to perform his responsibilities and duties and was involved in the failures of SIS as set out above in paragraph 5.1(a) to (e).

#### **6. ACKNOWLEDGMENT OF ASIC'S VIEWS**

6.1 SIS and Mr Li acknowledge:

- (a) ASIC's concerns set out in paragraphs 5.1 to 5.2;
- (b) that those concerns are reasonably held;
- (c) that, due to the absence of a formal trust deed being in place with each of the Clients, SIS and Mr Li misunderstood that the Client funds were to be held in trust for the benefit of Clients. They

were not aware of the legal effect of section 981H of the Act or Corporations Regulation 7.8.02(1); and

- (d) that they must each comply with the requirements of this EU as they pertain to them, in order to address ASIC's concerns as set out in paragraph 5.1 to 5.2.

## 7. UNDERTAKINGS

7.1 Under section 93AA of the ASIC Act, SIS and Mr Li have offered, and ASIC has agreed to accept as an alternative to ASIC exercising its powers under sections 915C, 920A, 983A, 983D and 1274(11) of the Act, the following undertakings:

7.2 SIS and Mr Li each undertake:

- (a) within 30 days of the Acceptance Date, to use their best endeavours to locate each Client who has yet to be paid and if located, to pay that Client the entire balance of that Client's money held in the respective Client Trust Account as at the Acceptance Date (**Client Repayments**);
- (b) to provide all documents and information requested by ASIC from time to time for the purpose of assessing their compliance with the terms of this EU; and
- (c) to be jointly and severally liable for the Client Repayments in accordance with paragraph 7.2(a) of this EU.

7.3 SIS undertakes that:

- (a) within 1 business day of the Acceptance Date, it will:
  - i. revoke the authorisation of its only current authorised representative of SIS, Mr Li;
  - ii. lodge with ASIC:
    - a. an application to cancel the AFSL in accordance with section 915B(3)(d) of the Act, together with payment for the prescribed fee of \$38; and
    - b. a written notice in accordance with section 916F(3) of the Act revoking the authorisation of its only current authorised representative of SIS, Mr Li;
- (b) within 60 days of the Acceptance Date, SIS will lodge with ASIC the Financial Statements and the auditor's report for SIS for the financial years ended 30 June 2013, 30 June 2014 and 30 June 2015 and pay any prescribed lodgement and late lodgement fees to ASIC;
- (c) for a period of ten years from the Acceptance Date, SIS will not:

- i. carry on a Financial Services Business;
  - ii. hold out that it holds an Australian Financial Services License or is an authorised representative of an Australian Financial Services Licence Holder;
  - iii. provide a Financial Service;
  - iv. apply to ASIC under section 911A of the Act for an Australian Financial Services Licence; or
  - v. become an authorised representative of an Australian Financial Services Licence holder;
- (d) within 2 business days of the Acceptance Date or within 2 business days of locating a client whichever is the latter, SIS will send to Clients a copy of this EU by post or email; and.
- (e) In the event that SIS or Mr Li are unable to locate a Client so as to pay the entire balance of the Client's money to the Client as required by paragraph 7.2(a) above, SIS will maintain the Client's money in trust until such time as the Client's money can be repaid and SIS will comply with the terms of the trust, the law and any Court orders concerning the Client money.

7.4 Mr Li undertakes that:

- (a) he will use all reasonable endeavours and provide all necessary assistance to ensure that SIS complies with all of the undertakings described in paragraph 7.2 and 7.3 above;
- (b) for a period of ten years from the Acceptance Date, he will not:
  - i. carry on a Financial Services Business;
  - ii. hold out that he holds an Australian Financial Services License or is an authorised representative of an Australian Financial Services Licence Holder;
  - iii. provide a Financial Service;
  - iv. apply to ASIC under section 911A of the Act for an Australian Financial Services Licence; or
  - v. become an authorised representative of an Australian Financial Services Licence holder;
- (c) within 45 days of the Acceptance Date, he will provide ASIC with a statutory declaration signed by him:
  - i. stating whether SIS and/or he has repaid in full the Client Repayments and complied with the undertaking referred to in paragraph 7.2(a) of this EU;



- ii. annexing certified copies of documents recording the Client Repayments, including but not limited to, bank or other financial institution statements, copies of cheques, receipts of electronic transfer and acknowledgements or receipts from Clients that the Client Repayments has been received;
- iii. stating any Clients that have not been paid and providing detail of the efforts made by SIS and Mr Li to contact the Client and why they have not been contacted, including annexing copies of documents sent to the Client and annexing documentation recording the details of the trust account to be maintained by SIS for the Client; and
- iv. stating those Clients that SIS has sent a copy of this EU to in compliance with paragraph 7.3(d) of this EU.

## 8. COMPLIANCE COSTS

- 8.1 SIS and Mr Li will pay the costs of their compliance with this EU.

## 9. ACKNOWLEDGEMENTS

- 9.1 SIS and Mr Li acknowledge that ASIC:

- (a) may issue a media release on execution of this EU referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this EU;
- (c) will report publicly on whether the undertakings given by SIS and Mr Li in this EU have been complied with; and
- (d) will make this EU available for public inspection.

- 9.2 Further SIS and Mr Li acknowledge that:

- (a) ASIC's acceptance of this EU does not affect ASIC's power to investigate, conduct surveillance, pursue a criminal prosecution, or seek a pecuniary civil order in relation to any contravention, including those the subject of ASIC's concerns in this EU or arising from future conduct; and
- (b) this EU in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this EU or arising from future conduct.


- 9.3 Finally, SIS and Mr Li acknowledge that this EU has no operative force until accepted by ASIC, SIS and Li and all three parties acknowledge that the date of the EU is the date on which it is accepted by ASIC.

## 10. NOTIFICATION

10.1 The address for providing ASIC with any document or notification required by this EU is:

The Senior Manager  
Corporations and Corporate Governance Enforcement  
Australia Securities and Investments Commission  
GPO Box 9827  
MELBOURNE VIC 3001

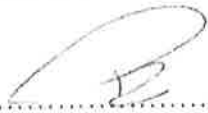
EXECUTED by **RICHARD LI** )

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**Richard Li**


Dated: 18/2/16 .....

EXECUTED by **SINO INVESTMENT  
SERVICES PTY LTD** in accordance with  
s127(1) of the *Corporations Act 2001*

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Signature of Director – **Richard Li**

Dated: 18/2/16 .....

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Signature of Company Secretary –  
**LiangLiang Liu**

Dated: 18/02/2016 .....

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

  
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**Tim Mullaly**  
Delegate of Australian Securities and Investments Commission

Dated: 19/2/2016 .....