

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:

Brian Hugh ALLEN

of Level 2, 57 Grosvenor Street

NETURAL BAY NSW 2089

1 Definitions

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

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

CALDB means the Companies Auditors and Liquidators Disciplinary Board.

CAANZ means Chartered Accountants Australia and New Zealand.

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

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

DIRRI means a declaration of independence, relevant relationships and indemnities as defined in s60 of the Corporations Act.

Home Team means Home Team Constructions Pty Ltd (Deregistered) ACN 003 316 327.

Maximum means Maximum Engineering Pty Ltd (Deregistered) ACN 137 729 796;

Mr Allen means Mr Brian Hugh Allen.

Planet Cake No.1 means ACN 073 219 208 Pty Ltd (formerly Planet Cake Pty Ltd) (Deregistered) ACN 073 219 208.

- 1.2 Unless otherwise indicated, all references to sections are references to sections of the Corporations Act and all references to regulations are references to the Corporations Regulations.



2 Background

2.1 ASIC's role

- (a) 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.
- (b) 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.
- (c) ASIC is empowered to bring disciplinary proceedings in the CALDB pursuant to s1292(2)(d) against a registered liquidator who has failed to carry out or perform adequately and properly:
 - (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,or is otherwise not a fit and proper person to remain registered as a liquidator.

In this enforceable undertaking, (i) and (ii) above are "the duties and functions of a liquidator".
- (d) ASIC is also empowered to commence proceedings under s536 in the Court (as defined in s58AA).

2.2 Details of Mr Allen

- (a) Mr Allen was registered as a liquidator under the Corporations Act on 25 March 1992 and as an official liquidator on 22 May 1998. His registration numbers were 15620 and 178724 respectively.
- (b) Mr Allen practised as a partner in the firm Burton Glenn Allen of level 2, 57 Grosvenor Street, Neutral Bay, NSW and did so from 1997 up to 30 June 2014.
- (c) Mr Allen lodged with ASIC a Form 905A on 16 March 2015 requesting cancellation of his registration as an official and registered liquidator.
- (d) Mr Allen ceased to be a registered and official liquidator on 15 February 2016, when ASIC cancelled the aforesaid registrations.
- (e) Mr Allen resigned from CAANZ in July 2014.

2.3 Review of Mr Allen's conduct

As part of ASIC's Liquidator Compliance Program, ASIC undertook a review of:



- (i) Mr Allen's conduct; and
- (ii) its public database,

in respect of the external administrations conducted by Mr Allen listed in Schedule A.

3 ASIC's views concerning the conduct of Mr Allen

- 3.1 As a result of ASIC's review referred to in paragraph 2.3, its view is that Mr Allen failed to adequately and properly discharge the duties and functions of a liquidator during his conduct of the external administrations listed in Schedule A in that he:
- (a) failed to exercise his powers and discharge his duties with the degree of care and diligence required by s180 by:
 - i. failing to take steps to protect and secure assets in a timely manner in compliance with s438A or s478, namely failing to realise assets properly (Home Team, Maximum and Planet Cake No.1) and failing to pursue recovery of directors' loans (Maximum);
 - ii. failing to obtain an independent valuation (Maximum); and/or
 - iii. completing proxies on behalf of creditors in breach of regulation 5.6.31 (Planet Cake No.1);
 - (b) failed to conduct, or alternatively properly document, a pre-appointment independence review to ensure compliance with s448C;
 - (c) failed to comply with s436DA(2) by:
 - i. not disclosing all pre-appointment communications and meetings with relevant persons or entities (as specified in s60) in the DIRRIs (Home Team, Maximum and Planet Cake No. 1); and/or
 - ii. not disclosing in a DIRRI the existence of an indemnity (Home Team);
 - (d) failed to comply with s438C(3) by:
 - i. failing to issue letters to directors (and their associates) requesting books and records (Home Team and Maximum); and/or
 - ii. failing to properly document the requests (Home Team and Maximum);
 - (e) failed to comply with s438A, s437A(1) s531 and regulations 5.6.01 and 5.6.02 (Home Team, Maximum and Planet Cake No.1) by:
 - i. failing to undertake adequate and proper investigations; and/or
 - ii. failing to document the investigations undertaken;
 - (f) failed to comply with s439A(4)(a) and regulation 5.3A.02 by not providing an adequate report to creditors (Maximum and Planet Cake No.1);

- (g) failed to comply with s438D(1) and s533(1) by lodging reports with ASIC without identifying possible misconduct, in circumstances where the possible misconduct had previously been reported to creditors (Home Team, Maximum and Planet Cake No.1);
- (h) failed to comply with s508 and regulation 5.6.27 by not holding annual meetings of creditors or not lodging annual reports with ASIC (Maximum and Home Team);
- (i) in relation to remuneration, failed to comply with s449E(1), s449E(7)(b), s499(7) and s499(3) by:
 - i. not providing creditors with an adequate report to enable them to make an informed assessment in relation to the reasonableness of the proposed remuneration (Home Team, Maximum and Planet Cake No.1); and/or
 - ii. drawing remuneration in circumstances where Mr Allen was not entitled to do so because the resolution approving that remuneration was passed by creditors who did not receive an adequate report (Maximum and Planet Cake No.1); and/or
 - iii. drawing remuneration in circumstances where Mr Allen was not entitled to do so because the creditors did not approve the remuneration (Home Team and the external administrations listed in Schedule B);
- (j) failed to comply with s538(1)(a) and regulation 5.6.06 by not opening a separate liquidator's bank account (Home Team, Maximum and Planet Cake No.1);
- (k) failed to comply with regulation 5.6.13 by not completing a statement in writing in accordance with Form 530 (Home Team, Maximum and Planet Cake No.1); and
- (l) failed to comply with s531 and regulation 5.6.01 by not maintaining proper books and records of the external administrations (Home Team, Maximum and Planet Cake No.1).

3.2 Acknowledgement of ASIC's views

Mr Allen:

- (a) acknowledges that ASIC's views detailed in paragraph 3.1 above are reasonably held; and
- (b) has offered, and ASIC has agreed to accept, the undertaking in Section 4 below.

4 Undertaking

- 4.1 Under s93AA of the ASIC Act, Mr Allen has offered, and ASIC has agreed to accept as an alternative to ASIC making an application to the Court under s536 the following undertaking:

Mr Allen undertakes not to re-apply for registration as a registered liquidator for a period of five (5) years from the date of this enforceable undertaking.

5 Acknowledgements

- 5.1 Mr Allen acknowledges that ASIC:

- (a) may issue a media release on execution of this enforceable undertaking 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 enforceable undertaking and/or to Mr Allen's compliance or non-compliance with this enforceable undertaking;
- (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; and
- (d) may include a reference to this enforceable undertaking in particulars that ASIC may consider appropriate to include in ASIC's Register of Liquidators and Register of Official Liquidators that ASIC maintains pursuant to s1286.


- 5.2 Further, Mr Allen acknowledges that:

- (a) ASIC's acceptance of this enforceable undertaking does not affect ASIC's powers to investigate, conduct surveillance or pursue a criminal prosecution nor its powers to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's views set out in this enforceable undertaking or arising from his 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 his future conduct;

- 5.3 Mr Allen and ASIC acknowledge that this enforceable undertaking has no operative force until accepted by ASIC, and that the date of the enforceable undertaking is the date on which it is accepted by ASIC.



Signed:



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Brian Hugh Allen

Dated: 19 May 2016

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



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George Stogdale

Delegate of Australian Securities and Investments Commission

Dated: 24 May 2016



Schedule A

External Administrations

| ACN | Company Name | External Administration Appointment | Date Of Appointment | Date Ceased |
|--------------------|---------------------------------------------------|------------------------------------------------------------|----------------------------|-------------------------|
| 073 219 208 | ACN 073 219 208 Pty Ltd (Planet Cake No. 1) | Voluntary Administration Creditors Voluntary Liquidator | 24/12/2012 8/02/2013 | 8/02/2013 31/10/2013 |
| 137 729 796 | Maximum Engineering Pty Ltd (Maximum) | Voluntary Administration Creditors Voluntary Liquidator | 15/07/2013 19/08/2013 | 19/08/2013 9/03/2015 |
| 003 316 327 | Home Team Constructions Pty Ltd (Home Team) | Voluntary Administration Creditors Voluntary Liquidator | 1/12/2011 17/01/2012 | 17/01/2012 9/08/2013 |



Schedule B

External administrations

| ACN | Company Name | External Administration Appointment | Date Of Appointment | Date Ceased |
|--------------------|---------------------------------|------------------------------------------------------------|----------------------------|--------------------------|
| 125 932 292 | MPO Consulting Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 25/06/2013 30/07/2013 | 30/07/2013 18/09/2013 |
| 081 320 265 | Craft Books Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 18/06/2013 23/07/2013 | 23/07/2013 17/12/2014 |
| 138 449 877 | Coders Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 18/04/2013 24/05/2013 | 24/05/2013 19/12/2013 |
| 001 834 608 | Project Promotions Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 14/03/2013 30/04/2013 | 30/04/2013 23/08/2013 |
| 106 972 105 | Vista Bakery Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 17/12/2012 1/02/2013 | 1/02/2013 19/07/2013 |
| 113 013 817 | Cesura Partners Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 24/10/2012 28/11/2012 | 28/11/2012 28/06/2013 |
| 122 878 362 | Civcomm Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 31/08/2012 8/10/2012 | 8/10/2012 17/06/2013 |
| 123 617 603 | Aries Corporate Imaging Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 29/08/2012 4/10/2012 | 4/10/2012 15/11/2013 |
| 113 228 354 | Alpha Security Services Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 27/08/2012 2/10/2012 | 2/10/2012 21/06/2013 |
| 110 377 396 | Rist Solutions Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 23/08/2012 27/09/2012 | 27/09/2012 27/02/2013 |
| 135 223 755 | Aim Composites Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 12/06/2012 17/07/2012 | 17/07/2012 29/11/2013 |
| 081 320 318 | Tasc Capital Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 5/03/2012 18/04/2012 | 18/04/2012 26/10/2013 |
| 118 975 438 | Manufacturing Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 23/02/2012 29/03/2012 | 29/03/2012 19/11/2012 |
| 136 414 214 | ST Marys Engineering Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 7/02/2012 13/03/2012 | 13/03/2012 12/07/2012 |

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|--------------------|---------------------------------------------------|------------------------------------------------------------|--------------------------|--------------------------|
| 146 233 025 | A.C.N. 146 233 025 Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 12/12/2011 25/01/2012 | 25/01/2012 22/06/2012 |
| 137 208 505 | Fay Capital Investments Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 7/12/2011 23/01/2012 | 23/01/2012 19/07/2012 |
| 058 224 025 | Sig Electrical Services Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 29/08/2011 4/10/2011 | 4/10/2011 5/04/2012 |
| 140 413 145 | Pet Resorts of Australia (Terrigal) Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 29/06/2011 3/08/2011 | 3/08/2011 4/11/2011 |
| 142 050 388 | Pet Resorts of Australia (Dural) Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 29/06/2011 3/08/2011 | 3/08/2011 4/11/2011 |
| 000 698 224 | Larnook Pty Ltd | Voluntary Administration Creditors Voluntary Liquidator | 16/08/2010 20/09/2010 | 20/09/2010 7/10/2011 |

