IN THE MATTER of an Application by the Australian Securities and Investments Commission to the Companies Auditors and Liquidators Disciplinary Board pursuant to Section 1292 of the Corporations Act 2001

MATTER NO: 01/VIC16

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Applicant

STAN TRAIANEDES
Respondent

DECISION of the Board to exercise its powers under section 1292 of the Corporations Act. Notice of this decision will be given to the Respondent under sub-section 1296(1)(a) of the Corporations Act and a copy of that notice will be lodged with ASIC under sub-section 1296(1)(b) of the Corporations Act. This decision includes the **DECISION** of the Board on costs under section 223 of the Australian Securities and Investments Commission Act 2001 and the **DECISION** of the Board on publicity under section 1296(1B) of the Corporations Act 2001.

12 December 2016

Panel:

Maria McCrossin (Panel Chairperson)

Robert Ferguson

Karen O'Flynn

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DECISION AND REASONS

Introduction and relevant background

1. This is an application under section 1292 of the Corporations Act 2001 ("**the Act**") lodged on 18 April 2016 with the Companies Auditors and Liquidators Disciplinary Board ("**the Board**") by the Australian Securities and Investments Commission ("**ASIC**") for the Respondent Mr Stan Traianedes ("**Mr Traianedes**") a registered liquidator, to be dealt with under section 1292 of **the Act**. This application was heard by a panel of **the Board** comprising accounting member Robert Ferguson, business member Karen O'Flynn and the chairperson Maria McCrossin ("**the Panel**") duly convened pursuant to sub-section 210A(4) of the Australian Securities and Investments Commission Act 2001 ("**ASIC Act**").

2. **Mr Traianedes** has been a registered liquidator pursuant to section 1282 of **the Act** since 17 March 2004. At the relevant time, **Mr Traianedes**' principal place of practice was S & Z Insolvency and Forensic ("**S & Z Insolvency**"), Level 5, 369 Royal Parade, Parkville Victoria. **Mr Traianedes** is a member of the Australian Restructuring Insolvency and Turnaround Practitioners Association ("**ARITA**") (formerly known as the Insolvency Practitioners Association of Australia ("**IPA**") and of CPA Australia ("**CPA**"). He is a sole practitioner.

3. The basis of the initial application was set out in a Statement of Facts and Contentions ("**SOFAC**"). The **SOFAC** alleged that **Mr Traianedes** had failed to carry out or perform adequately or properly the duties of a liquidator under sub-section 1292(2)(d(i) of **the Act** in the factual context pleaded in 35 separate contentions with respect to the creditors' voluntary liquidations of Farr Enterprises Pty Ltd ("**Farr Enterprises**")[1], B K Diesel Pty Ltd ("**BK Diesel**")[2] and Dura (Australia) Constructions Pty Ltd ("**Dura**")[3] and a further contention that **Mr Traianedes** was not a fit and proper person to remain registered as liquidator. By his **Response** dated 22 June 2016 ("**Response**"), **Mr Traianedes** admitted a substantial portion, but not all, of the factual matters alleged by **ASIC** in the **SOFAC**, and also admitted that in certain respects he had failed to carry out or perform adequately and properly his duties as a liquidator in relation to each of the relevant entities. **Mr Traianedes** also denied that in a number of other respects alleged by **ASIC** he had failed to carry out or perform adequately and properly the duties of a liquidator.

4. Following discussions between **ASIC** and **Mr Traianedes**, the parties came to an agreement by which **Mr Traianedes** admitted some further allegations and contentions in the **SOFAC** and **ASIC** withdrew a number of allegations and contentions in the **SOFAC**. Prior to the commencement of the hearing the parties reached agreement concerning the facts as finally recorded in a revised Statement of Agreed Facts and Contentions ("**SAFC**") tendered as an exhibit with **the Board**. As part of the **SAFC** the parties also submitted proposed **consent orders** ("**consent orders**") for **the Board's** consideration. The result of the parties' agreement evidenced by the **SAFC** was that on the basis of the

[1] Farr Enterprises Pty Ltd ACN 128 287 972 (deregistered)
[2] BK Diesel Pty Ltd ACN 117 733 712 (deregistered)
[3] Dura (Australia) Constructions Pty Ltd ACN 004 284 191 (in liquidation)

facts agreed and disclosed in the **SAFC**, **Mr Traianedes** admitted he had failed to carry out or perform adequately and properly the duties of a liquidator in respect of the matters the subject of contentions 4, 8, 10, 12, 13 15, 18, 19, 21, 23, 28, 29, 30, 31, 32, 33, 34 and 35. **ASIC** did not press the remaining contentions in the **SOFAC** namely 1, 2, 3, 5, 6, 7, 9, 11, 14, 16, 17, 20, 22, 24, 25, 26 and 27. One effect of the agreement reached between the parties was that **ASIC** did not press the allegation that **Mr Traianedes** was not a fit and proper person to remain registered but maintained with respect to all contentions pressed the allegation that he had failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

5. Notwithstanding the parties' agreement as to facts and proposed orders, **the Board's** jurisdiction only arises under section 1292 of **the Act** if it is satisfied of certain matters set out in that section and where, in the exercise of its discretion, it considers that particular orders are appropriate. Relevantly, sub-section 1292(2) of **the Act** provides:

> "*(2) **The Board** may, if it is satisfied on an application by **ASIC** for a person who is registered as a liquidator to be dealt with under this section that, before, at or after the commencement of this section:*
>
> *...*
>
> *(d) that the person has failed, whether in or outside this jurisdiction, 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;*
>
> *by order, cancel, or suspend for a specified period, the registration of the person as a liquidator.*"

6. **The Panel** must therefore be satisfied that the allegations pressed by ASIC establish that **Mr Traianedes** has failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

7. The hearing took place in Melbourne on 4, 19 and 20 October 2016. Mr Paul Liondas of counsel appeared for **ASIC** and Mr Carl Moller of counsel, appeared for **Mr Traianedes**.

8. This decision deals with:

   (a) The principles relating to **the Board's** consideration of agreed facts and consent orders.

(b) **The Panel**'s findings with respect to each of the contentions pressed, and whether **the Board** is satisfied that a relevant failure within sub-section 1292(2)(d)(i) of **the Act** has been established.

(c) The question of whether the **consent orders** proposed are an appropriate sanction in this matter.

(d) **The Board's** orders.

Principles relating to the Board's consideration of agreed facts and consent orders

9. With respect to this question**, ASIC** directed **the Panel** to the summary of relevant principles governing the power to make consent orders on the basis of agreed facts that was set forth and accepted by **the Board** in its decision in *Topp*[4] as follows:

*"(a) the Board needs to be "**satisfied**" of relevant matters in s 1292 before its discretion to make orders arose (see the opening words of s 1292(2);*

(b) the material which may produce that satisfaction may include a statement of agreed facts and admissions by the parties (ASIC v Rich (2004) 50 ACSR 500, per White J at [15]);

(c) in most cases, it is appropriate to allow and even encourage parties to simplify litigation by making admissions (cf Dean-Willcocks Pty Ltd v Cmr of Taxation (No 2) (2004) 49 ACSR 325 at [28] per Austin J);

(d) however, the Board's ability to proceed upon the basis of agreed facts may however depend on the circumstances. The Board may well be "satisfied" where agreed facts involve an admission of a straightforward act. But where the agreed facts relate to conduct which is more nuanced or complex, or where the "agreed facts" relate to conclusions of mixed fact and law, it may be more difficult for the parties to proceed by way of "agreed facts" and consent orders (cf Legal Services Commissioner v Rushford [2012] VSC 632, and the decision of the Board in ASIC v Walker (CALDB 06/VIC07 22 December 2008 at para [7.1(c)]);

(e) as to the form of orders sought by consent, the Board must not make orders unless satisfied that they are appropriate. The decision as to the form of orders could not be delegated to the parties, which would occur if the Board adopted an agreed form of consent orders without giving genuine consideration to what the Board should do (cf Re One Tel (in liq); ASIC v Rich (2003) 44 ACSR 682 per Bryson J at [27]; The Prothonotary of the Supreme Court of New South Wales v Ritchard (New South Wales Court of Appeal, 31 July 1987, unreported) and Legal Services Commissioner v Rushford [2012] VSC 632));

(f) where the parties propose orders that are within a permissible range, the Board should not reject the proposed orders merely because it would have been disposed to make different orders. However, the Board may

[4] ***ASIC** v Alan Godfrey Topp* (Decision of the Board dated 15 April 2014, Matter No 06/NSW13) ("*Topp*") at paragraph [8]

consider that additional evidence is required and if the parties do not provide it, the Board may not be satisfied that the proposed orders are appropriate (ASIC v Rich (2004) 50 ACSR 500, per White J at [80]);

(g) the fact that the parties join in proposing a discretionary order to be made by consent is a consideration favouring a discretionary decision to make it. This is a particularly powerful consideration when ASIC, which for relevant purposes, is a guardian of the relevant public interest, has consented Re One Tel (in liq); ASIC v Rich (2003) 44 ACSR 682 at [27];

(h) the Board can only make orders of the type provided for in s 1292 of, in particular s 1292(2) and 1292(9). In the case of undertakings, such undertakings must be in a form which makes them readily enforceable (cf ASIC v Edwards (2004) 51 ACSR 320, per Barrett J)."

10. **ASIC** further referred to the recent decision of the High Court in *Fair Work*[5]. In that decision the High Court confirmed that in civil penalty proceedings as in civil proceedings there is generally very considerable scope for parties to agree facts and to agree an appropriate remedy and for the court to be persuaded that it is an appropriate remedy[6]. The High Court stated:

> "*Subject to the court being sufficiently persuaded by the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances thus revealed, it is consistent with principle and, for the reasons identified in Allied Mills*[7]*, highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty*[8]."

11. Consistent with the relevant principles and authority set out above we have proceeded in this matter on the basis that **the Board** may make consent orders on the basis of an agreed statement of facts provided by the parties so long as:

    (a) **the Board** is *satisfied* of a relevant matter in sub-section 1292(2)(d)(i) of **the Act** so that its discretion to make orders arises[9]; and

    (b) it is satisfied that the consent orders proposed are an appropriate sanction.

12. Our first task therefore is to consider whether we are satisfied that **Mr Traianedes** has failed to carry out or perform adequately and properly, the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**. We have considered this question with respect to each contention by reference to the agreed facts in the SAFC. We have set out those facts in annotated form in respect of each of the three creditors' voluntary liquidations the subject of these proceedings and noted our findings on each of the contentions pressed.

13. In undertaking the task of deciding whether we are satisfied that a relevant matter has arisen under sub-section 1292(2)(d)(i) **the Panel** has had regard to

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[5] *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 326 ALR 476 *("Fair Work")*
[6] *Fair Work* Ibid footnote 5 at para [57]
[7] *Trade Practices Commission v Allied Mills* (1981) 37 ALR 256 at [259]
[8] *Fair Work* Ibid footnote 5 at para [58]
[9] See the opening words of sub-section 1292(2) of the Act

the relevant authorities[10] providing guidance as to the role we are to perform in exercising **the Board's** jurisdiction. In accordance with that guidance we have assessed **Mr Traianedes'** performance of his duties by reference to the benchmark of professional standards as evidenced by or reflected in the relevant codes and standards (in this matter the Accounting Professional and Ethical Standards Board ("**APES**") and the IPA Code[11] ("**IPA Code**") as it then was) and to relevant common law and statutory duties with which registered liquidators were, at the relevant time, required to comply in professional practice.

Agreed facts - Farr Enterprises

14. The following relevant facts were agreed by the parties:

(a) **Farr Enterprises** was registered on 1 November 2007. At all relevant times, Anthony Farrugia ("**Mr Farrugia**") was the sole director, secretary and shareholder of **Farr Enterprises**. **Farr Enterprises** was at all relevant times the trustee of the Farr Enterprises Trust ("**Trust**"). **Farr Enterprises** owned and operated a business trading as Routley's Bakery & Café (Ascot Vale) ("**Bakery Business**"). An asset owned by **Farr Enterprises** was a car purchased in June 2009 for $27,000 with registration number XCQ542. On or about 22 October 2010, Joseph Paul Caluzzi ("**Mr Caluzzi**") was appointed as the registered agent of **Farr Enterprises**. From around this time, **Mr Caluzzi** acted as **Farr Enterprises**' accountant.

(b) In early 2011 **Mr Farrugia** informed **Mr Caluzzi** that he wished to sell the **Bakery Business**. He also informed him that **Farr Enterprises** had an unpaid tax (GST) liability of at least $150,000. **Mr Caluzzi** advised **Mr Farrugia** that if **Farr Enterprises** wanted to sell the business, it may be possible to put **Farr Enterprises** into liquidation and avoid paying the outstanding tax liability.

(c) Following this discussion **Mr Caluzzi** arranged a meeting between **Mr Farrugia**, himself and **Mr Traianedes**. That meeting took place on 24 May 2011 at **Mr Farrugia's** house in Ascot Vale ("**24 May Meeting**"). The meeting commenced at about 7pm, and lasted for between one and two hours. Two matters discussed at the **24 May Meeting** were the potential sale of **Farr Enterprises'** business and the financial position of **Farr Enterprises**, including its substantial outstanding tax debt.

(d) **Mr Traianedes** admits that as a result of the discussions at the **24 May Meeting** he was aware that **Messrs Farrugia and Caluzzi** had understood or hoped that the liquidation of **Farr Enterprises** would be a means by which it could avoid paying its outstanding tax liability. However, **Mr Traianedes** had explained to them at the meeting that that

[10] *Albarran v Members of the Companies Auditors and Liquidators Board* (2007) 231 CLR 350; [2007] HCA 23 at [18-24]; Campbell J in *Re Vouris; Epromotions Australia Pty Ltd v Relectronic-Remech Pty Ltd (in liq)* (2003) 177 FLR 289; (2003) 47 ACSR 155 at [103], Branson J in *Goodman v Australian Securities and Investments Commission*(2004) 50 ACSR 1 at [26] and Tamberlin J in *Dean-Willcocks v Companies Auditors and Liquidators Disciplinary Board* (2006) 59 ACSR 698) at [24].
[11] **IPA Code** of Professional Practice for Insolvency Practitioners – Second edition January 2011

was not the purpose of a liquidation of the company and he believed that they understood this as a result of his explanation.

*Sale of the **Bakery Business***

(e) Shortly after **the 24 May Meeting**, **Mr Farrugia** spoke with Rod Stumbles ("**Mr Stumbles**"), a solicitor from Lewis Holdway Lawyers who had been retained by **Farr Enterprises** in early June 2011 in relation to the sale of the **Bakery Business**.

(f) On or around 28 June 2011, **Farr Enterprises** entered into an agreement to sell the **Bakery Business** to Toancois Pty Ltd for $430,000. Under the agreement, the completion date for the sale was 20 July 2011.

(g) On 30 June 2011, Lewis Holdway Lawyers received $43,000 into their trust account, being the deposit for the sale of the **Bakery Business**. On 1 August 2011, the sale of the **Bakery Business** settled. On or shortly after this date, the remainder of the purchase price ($387,000) was paid into the trust account of Lewis Holdway Lawyers.

(h) Between the **24 May Meeting** and settlement of the sale of the **Bakery Business**, **Mr Traianedes** communicated with **Mr Farrugia** a number of times, and with his wife Nadia Farrugia ("**Mrs Farrugia**") at least once. Those communications, included discussions between **Mr Traianedes** and **Mr and Mrs Farrugia** about progress of the sale of the **Bakery Business** and in particular they communicated their frustration over issues that had arisen in the sale process and concern over the fees being charged by Lewis Holdway Lawyers.

(i) Specifically, the communications included the following:

(i) in June 2011, a telephone call from **Mr Traianedes** to **Mr Farrugia** after Lewis Holdway Lawyers had informed **Mr Traianedes** that they had been engaged by **Farr Enterprises** in relation to the sale of the **Bakery Business**;

(ii) on 21 July 2011, a long telephone conversation between **Messrs Traianedes and Farrugia** in relation to the progress of the sale of the **Bakery Business** and **Mr Farrugia's** concerns about the legal costs being charged; and

(iii) on around 27 July 2011, a telephone conversation with **Mrs Farrugia** (after **Mr Farrugia** had been hospitalised) in relation to the progress of the sale of the **Bakery Business**.

(j) Between the **24 May Meeting** and settlement of the sale of the business, **Mr Traianedes** communicated with **Mr Stumbles** a number of times. During those communications, **Messrs Traianedes and Stumbles** discussed the progress of the sale of the **Bakery Business** and **Mr Farrugia's** concerns about the legal costs being charged by Lewis Holdway Lawyers. The communications included the following:

(i) on 21 July 2011, a telephone call from **Mr Traianedes** to **Mr Stumbles** in relation to the progress of the sale of the **Bakery Business**;

(ii) on 21 July 2011, emails between **Mr Traianedes** and **Mr Stumbles** about **Mr Traianedes'** conversation with **Mr Farrugia** regarding the progress of the sale of the **Bakery Business**, and the legal costs being charged. In his email to **Mr Stumbles**, **Mr Traianedes** noted that he had had a "*long discussion*" with **Mr Farrugia**. He noted that he (**Mr Traianedes**) had told **Mr Farrugia** that it was **Mr Stumbles** view that the sale would now proceed quickly;

(iii) on 27 July 2011, an email from **Mr Traianedes** to **Mr Stumbles** in relation to the sale of the **Bakery Business** and referring to a recent telephone discussion that he had had with **Mrs Farrugia** about the sale; and

(iv) on 27 July 2011 a further conversation between **Mr Traianedes** and **Mr Stumbles** in which **Mr Stumbles** told **Mr Traianedes** that **the contract** had not been signed, that he expected **the contract** would be signed within a week or two and, that without a signed contract there was no basis to sue the prospective purchaser and legal action could derail the sale process.

(k) Between the **24 May Meeting** and settlement of the sale of the **bakery Business**, **Mr Traianedes** also communicated with **Mr Caluzzi** in relation to the pending sale. The communications included telephone discussions in which **Messrs Caluzzi and Traianedes** discussed information being requested by Lewis Holdway Lawyers in relation to the sale of the business and **Mr Farrugia's** concerns about the legal fees being charged.

(l) On 2 and 3 August 2011, Lewis Holdway Lawyers transferred a total of $409,451.40 from their trust account into an account in the name of **Mr Farrugia** at the Commonwealth Bank. **Mr Traianedes** says he was not aware at the time of those transfers having been made.

(m) On 4 August 2011, **Mr Traianedes** sent an email to **Mr Caluzzi** in which he updated **Mr Caluzzi** in relation to **Farr Enterprises'** sale of the **Bakery Business**. The email stated: "*I understand that the business has been sold and settlement is happening*." **Mr Traianedes** says that he only knew that the business had been sold because of what **Mrs Farrugia** and **Mr Stumbles** had told him and that he did not know whether **the contract** had been signed, what the price under **the contract** was, or when (or if) settlement was to occur.

*Appointment of **Mr Traianedes** as liquidator of **Farr Enterprises***

(n) On or before 10 August 2011, **Mr Traianedes** prepared all of the necessary documents to commence the liquidation of **Farr Enterprises**.

On 19 August 2011, **Mr Traianedes** was appointed liquidator of **Farr Enterprises**.

Conduct of the Liquidation

(o) On 19 August 2011, **Mr Traianedes** wrote to the Deputy Commissioner of Taxation advising of his appointment as liquidator and asking whether the Commissioner was "*aware of the extent of any taxation liabilities owed by the company to the Australian Taxation Office*".

(p) On 19 August 2011, **Mr Traianedes** prepared and signed a Declaration of Independence, Relevant Relationships and Indemnities ("**DIRRI**"). Further details regarding the content of **DIRRI** are set out in paragraph 16 hereof.

(q) **Mr Farrugia** signed:

(i) a summary of affairs; and

(ii) a report as to affairs.

each dated 22 August 2011. Each of these documents was prepared by **Mr Traianedes** based on information provided to him by **Mr Caluzzi**, who was the accountant for **Farr Enterprises**. Both documents stated that there were unsecured creditors in the amount of $177,491. The report as to affairs stated that the unsecured creditors were as follows:

1)	Australian Taxation Office ("**ATO**")	$150,000
2)	**Mr Caluzzi**	$7,491
3)	**Mr Farrugia**	$20,000

(r) On or around 22 August 2011 **Mr Traianedes** sent a letter to the creditors of **Farr Enterprises** giving notice that a meeting of the creditors would be held on 31 August 2011 and enclosing the DIRRI.

(s) On 24 August 2011, **Mr Traianedes** wrote to the Commonwealth Bank advising of his appointment as liquidator and requesting that the balance of **Farr Enterprises**' account with the bank be forwarded to him.

(t) On 26 August 2011, the Deputy Commissioner of Taxation wrote to **Mr Traianedes** ("**the ATO letter**") in response to the letter he had sent to the **ATO** on 19 August 2011 (referred to in sub-paragraph 13(o) hereof). **The ATO letter** stated that **Farr Enterprises** may be liable to pay superannuation guarantee charges in respect of unpaid employee entitlements and enclosed a form to be completed by **Mr Traianedes**.

(u) On 29 August 2011, **Mr Traianedes** completed and signed the form and sent it to the **ATO**. The form had two parts. Part A was to be completed if it was "*likely that a dividend will be payable for the debts of the employer*" and a superannuation guarantee shortfall exists. Part B was to be completed if "*a dividend will not be payable*" or the employer has

satisfied the superannuation guarantee requirements. Part B had two options, and stated that the relevant option should be circled:

(i) "*1. No funds are available to satisfy this debt*" ;

(ii) "*2. The employer has satisfied its obligations under SGAA 1991*".

(v) **Mr Traianedes** completed Part B of the form and thereby advised the **ATO** that a dividend was not likely, and circled the option on the form that stated "*No funds are available to satisfy this debt*".

(w) On 26 August 2011, the **ATO** sent a further letter to **Mr Traianedes** in relation to **Farr Enterprises**' outstanding liability in respect of BAS amounts (i.e. GST). The letter:

(i) attached a formal proof of debt in the amount of $5,474.48 for the running account balance deficit debt in respect of BAS amounts as at 19 August 2011;

(ii) in respect of the debt of $5,474.48, said: "*To enable us to identify any portion of our debt which may be uncollectable, please complete the attached dividend expectation advice at 'Attachment 1'. We would appreciate your response within 30 days, by returning the completed attachment*";

(iii) listed in Attachment 2 the outstanding lodgement obligations of **Farr Enterprises**, and advised that an amended proof of debt may be lodged when the full extent of **Farr Enterprises**' liability was established.

(x) On 29 August 2011, **Mr Traianedes** completed and signed Attachment 1 to the **ATO** letter. Attachment 1 required **Mr Traianedes** to indicate whether, in respect of the debt of $5,474.78:

(i) payment in full was expected;

(ii) a partial dividend was expected;

(iii) no dividend was likely; or

(iv) it was unclear whether there would be a dividend paid.

(y) **Mr Traianedes** completed Attachment 1 and ticked the box next to the text "*No dividend likely*", thereby advising the Deputy Commissioner of Taxation that no dividend was likely. **Mr Traianedes** says that at the time of completing the form he did not know whether – as a matter of fact – the business had been sold, and he did not at that time have funds available to pay the debt. He did not undertake further enquiries in relation to the issue before completing the form.

Meeting of creditors

(z) On 31 August 2011, the first meeting of creditors took place. The meeting had to be adjourned. On 6 September 2011, the adjourned meeting of creditors was held. **Messrs Farrugia, Caluzzi and Traianedes** were present.

(aa) At the 6 September 2011 meeting, the creditors resolved that:

(i) **Mr Traianedes**' accrued remuneration be fixed in the sum of $3,011 (excl GST);

(ii) **Mr Traianedes**' prospective remuneration be capped at $7,000 (excl GST); and

(iii) **Mr Traianedes** be required to seek further approval from creditors, or the Court, for any remuneration claimed beyond the capped amount referred to in subparagraph (ii) hereof.

(bb) **Mr Traianedes** did not at any time obtain approval for remuneration beyond the sum of $10,011 fixed at the creditors' meeting on 6 September 2011. In this regard:

(i) On 9 November 2012, **Mr Traianedes** had sent a notice of meeting to creditors. Included as an agenda item was a resolution for consideration regarding **Mr Traianedes**' accrued and prospective remuneration. The notice of meeting attached a remuneration report which stated that a remuneration claim would be made for an amount in excess of the approved amount of $10,011;

(ii) the meeting of creditors was convened for 18 November 2012, but a quorum was not present and the meeting was adjourned;

(iii) the meeting was not subsequently convened and no further approval for remuneration (beyond the $10,011 previously fixed) was passed by creditors; and

(iv) no meeting of creditors could be convened since by 18 November 2012, **Mr Farrugia** had paid out all of the creditors of **Farr Enterprises** in full.

Further Events

(cc) On or shortly before 14 September 2011, **Mr Farrugia** sought advice from Minter Ellison. On around 14 September 2011, a company called Farr Group Pty Ltd ("**Farr Group**") was registered and appointed as the new trustee of the **Trust** in place of **Farr Enterprises**. On around 8 or 9 March 2012, **Farr Group** lodged with the **ATO** the outstanding business activity statements for the **Trust** and paid the outstanding tax liability of the **Trust**, being the amount of $137,821, to the Deputy Commissioner of Taxation.

Remuneration and Receipts

(dd) Between 1 September 2011 and 20 June 2012, **Mr Traianedes**, through **S & Z Insolvency**, issued invoices to **Mr Farrugia** for $16,500 (incl GST) for work performed as liquidator of **Farr Enterprises**.

(ee) The invoices, and the date that they were paid by **Mr Farrugia**, were as follows:

(i) invoice dated 1 September 2011 in the amount of $4,654.10 (incl GST) paid on 14 October 2011;

(ii) invoice dated 5 October 2011 in the amount of $4,541.90 (incl GST) paid on 14 October 2011;

(iii) invoice dated 1 November 2011 in the amount of $3,989.70 (incl GST) paid on 3 November 2011;

(iv) invoice dated 24 January 2012 in the amount of $1,265 (incl GST) paid on 2 February 2012;

(v) invoice dated 20 March 2012 in the amount of $1,893.10 (incl GST), paid on 3 May 2012; and

(vi) invoice dated 20 June 2012 in the amount of $156.20 (incl GST) (which does not appear to have been paid).

(ff) On 23 February 2012 and 27 August 2012, **Mr Traianedes** lodged with **ASIC** Forms 524 *"Presentation of accounts and statement"* for the period 19 August 2011 to 18 February 2012 and 19 February 2012 to 18 August 2012 respectively. The forms required **Mr Traianedes** to state the amount of "*Remuneration paid to you during the period for which this account is made up"*, and the *"Remuneration paid to you from the date of your appointment to the date to which this account is made up*". **Mr Traianedes** wrote "*nil*" in response to both of these items on each of the forms, thereby representing that no remuneration had been paid to him in respect of the liquidation since the date of his appointment.

(gg) Between 18 February 2013 and 30 January 2015, **Mr Traianedes** completed and lodged with **ASIC** a further five Forms 524 with respect to **Farr Enterprises** dated 18 February 2013, 20 August 2013, 19 February 2014, 20 August 2014, and 2 February 2015. In each of those Form 524 accounts, **Mr Traianedes** stated that he had received "*nil*" remuneration from the date of his appointment to the date on which the account was made up.

Overview of Contentions maintained in relation to Farr Enterprises (Contentions 4, 8, 10, 12 and 13)

15. The five contentions maintained against **Mr Traianedes** with respect to the liquidation of **Farr Enterprises** were that **Mr Traianedes** failed, within the meaning of sub-section 1292(2)(d)(i) of **the Act**, to carry out or perform adequately and properly the duties of a liquidator insofar as he:

    (a) Provided an inadequate **DIRRI** to creditors (because it did not disclose his pre-appointment meetings and other contact with the director and others involved with the company), in circumstances where he was negligent as to whether proper disclosure was made (Contention 4).

    (b) Sent misleading communications to a creditor, the **ATO**, by completing forms in which he advised that no dividend was likely when a dividend was in fact likely, in circumstances where he was negligent as to whether the forms were false or misleading (Contention 8).

    (c) Improperly drew remuneration beyond that which was approved by creditors (Contention 10).

    (d) Lodged with **ASIC** accounts, pursuant to sub-section 539 of **the Act**, in which he stated that he had not received any remuneration in relation to the liquidation of **Farr Enterprises** when in fact he had received remuneration, in circumstances where he failed to exercise proper care to ensure that each communication was not false or misleading (Contention 12).

    (e) Failed to properly investigate the affairs of **Farr Enterprises**, contrary to his duties of care and diligence as required under sub-section 180(1) of **the Act**, at common law and by **APES 110**[12], by failing to conduct searches for motor vehicles (Contention 13).

Contention 4 – Failing to make proper DIRRI disclosures

16. The relevant agreed facts in relation to Contention 4 were that:

    (a) On March 01 2011 **ASIC** had written to **Mr Traianedes** regarding its concerns with respect to a **DIRRI** he had provided to creditors in relation to another liquidation (Mogil Pty Ltd);

    (b) **ASIC's** letter to **Mr Traianedes** had stated:

    "*We consider that pre-appointment dealings with directors of the Company, the Company's accountant or other advisors are types of relationships that might be relevant and material to creditors when considering and making an informed assessment of the registered liquidator's independence.*"

[12] Compiled **APES** 110 Code of Ethics for Professional Accountants December 2011 ("**APES 110**")

(c) **ASIC** further stated in this letter that in the **DIRRI** prepared by **Mr Traianedes** with respect to Mogil Pty Ltd, **Mr Traianedes** should also have adequately disclosed the reasons why **Mr Traianedes** believed the relevant relationships with the director and the company's accountant did not result in him having a conflict of interest or duty.

(d) The Farr Enterprises DIRRI ("**Farr Enterprises DIRRI")** sent to creditors on 22 August 2011 did not disclose or make reference to any details regarding the communications we have set out in sub-paragraphs 14(c), (d), (e), (h), (i), (j), (k), and (m) hereof ("**relevant communications**") namely:

(i) **Mr Traianedes**' meeting with the director of **Farr Enterprises** (**Mr Farrugia**) and the registered tax agent of **Farr Enterprises** (**Mr Caluzzi**) on 24 May 2011;

(ii) the discussions and communications in relation to **Farr Enterprises** that took place between 24 May 2011 and 19 August 2011 between **Mr Traianedes** and the director of **Farr Enterprises, Mr Farrugia**, the wife of its director, **Mrs Farrugia**, its solicitor, **Mr Stumbles** and its accountant **Mr Caluzzi**.

(e) **The Farr Enterprises DIRRI** did not contain an explanation of why the relationship between **Mr Traianedes** and **Farr Enterprises** (by reason of his dealings with **Farr Enterprises**' director, the wife of the director, accountant and solicitor), did not result in a conflict of interest or duty.

17. **Mr Traianedes** has admitted that in failing to disclose or make reference to the **relevant communications** in the **Farr Enterprises DIRRI** nor include an explanation of his prior relationship with the **Farr Enterprises**' director, the **Farr Enterprises** director's wife and its accountant and solicitor, he did not meet the accepted professional standards and failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**. **Mr Traianedes** said that his failure to make the relevant disclosures in the **Farr Enterprises DIRRI** occurred because he had failed to update his template and precedent documents to reflect the relevant standards.

18. The **IPA Code** required a practitioner at the relevant time, in respect of all corporate insolvency appointments, to provide to creditors a **DIRRI** which, *inter alia*, disclosed:[13]

(a) the circumstances in which they had any contact with the company prior to the appointment;

(b) the number of meetings with the company, officers of the company and/or its advisors prior to the appointment;

(c) a summary of the general nature of the issues discussed;

[13] **IPA Code**, Ibid footnote 11 at section 6.8.1B. Section 506A of the Act also requires a liquidator to provide a declaration of relevant relationships to the creditors before convening a meeting of creditors.

(d) the amount of remuneration received;

(e) an explanation of why the relationship does not result in a conflict of interest or duty.

19. Sub-section 506A(2) of **the Act** which was operative at the relevant time provides:

(2) Before convening the meeting, the liquidator must make a declaration of relevant relationships.

20. Sub-section 60(2) of **the Act,** also operative at the relevant time provides:

*"In this Act, a **declaration of relevant relationships**, in relation to a liquidator of a company, means a written declaration:*

(a) stating whether any of the following:
- *(i) the liquidator;*
- *(ii) if the liquidator's firm (if any) is a partnership--a partner in that partnership;*
- *(iii) if the liquidator 's firm (if any) is a body corporate--that body corporate or an associate of that body corporate;*

has, or has had within the preceding 24 months, a relationship with:
- *(i) the company; or*
- *(ii) an associate of the company; or*
- *(iii) a former liquidator, or former provisional liquidator, of the company; or*
- *(iv) a former administrator of the company; or*
- *(v) a former administrator of a deed of company arrangement executed by the company; and*

(b) if so, stating the liquidator's reasons for believing that none of the relevant relationships result in the liquidator having a conflict of interest or duty.

21. On the basis of the facts agreed by the parties with respect to Contention 4, we are satisfied that **Mr Traianedes** has failed to carry out or perform adequately and properly the duties of a liquidator within sub-section 1292(2)(d)(i) of **the Act.** The **Farr Enterprises DIRRI** did not make reference to the existence of any pre-existing relationships even though a number had arisen by reason of the meetings that had taken place between **Mr Traianedes** and the **Farr Enterprises**' director, the wife of the director, and its accountant and solicitor. In our view a reasonably competent liquidator at the time would have been aware of and complied with the provisions of the **IPA Code** and the legislation set out in paragraphs 18, 19 and 20 and, based on those requirements, would have disclosed those relationships. Compliance with these requirements is an important aspect of a liquidator's duty. The failure to do so was a significant omission on **Mr Traianedes'** part particularly given the fact that **ASIC** had communicated with him only some months before about the types of pre-appointment dealings with directors or associates of a company that it considered appropriate to be disclosed in a **DIRRI**.

22. We find that Contention 4 has been established.

Contention 8 – Misleading communications with the ATO

23. The relevant circumstances in connection with Contention 8 agreed by the parties are set out in sub-paragraphs 14(o), (t), (u), (v), (w), (x) and (y) hereof. In summary, in late August 2011, **Mr Traianedes** made two disclosures to the **ATO** that represented that a dividend from **Farr Enterprises** was not likely and that there would be no funds available to satisfy any debt due to the **ATO** in respect of outstanding superannuation guarantee charges and a running balance account deficiency in respect of BAS amounts.

24. **Mr Traianedes** has admitted that both of these forms as completed by him, were false or misleading, or omitted information required to be included because it was likely that a dividend would be payable, and that funds would be available to satisfy the debt, because **Farr Enterprises** had recently sold the **Bakery Business** for $430,000 and owned a motor vehicle shortly before it entered liquidation. **Mr Traianedes** further admitted that he made the communications to the **ATO** in circumstances where he was negligent as to whether they were false or misleading because before sending the communications to the **ATO**, he did not undertake any further enquiries in relation to either the sale of the **Bakery Business** or whether a dividend was likely to be payable. **Mr Traianedes** says that at the time of completing the forms he did not know whether – as a matter of fact – the business had been sold, and he did not at the relevant time have funds available to pay the debt.

25. The following professional standards and legislative provisions in effect in 2011 are relevant to consider in forming our view as to whether **Mr Traianedes** has failed to carry out or perform his duties adequately and properly within the meaning of sub-section 1292(2)(d)(i) of **the Act**:

    (a) The **IPA Code**, requiring practitioners to take care to communicate with affected parties in a manner that is, *inter alia*, accurate.[14] Specifically, the **IPA Code** requires members to take care to ensure that all communications are:

        (i) accurate;

        (ii) free from false or misleading statements; and

        (iii) do not omit or obscure information required to be included[15].

    (b) the duty to act with care and diligence as provided by sub-section 180(1) of **the Act** that applies to a liquidator as an officer of a corporation[16]. The liquidator of a company must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they were a liquidator of the corporation in the corporation's circumstances[17];

[14] IPA **Code**, Ibid footnote 11 sub-section 8.1.
[15] IPA **Code**, Ibid footnote 11 at section 8.1.
[16] Section 9 of **the Act**
[17] Sub-section 180(1) of **the Act**

(c) section 130.1(b) of **APES 110**, requiring a liquidator to act diligently in accordance with applicable technical and professional standards when providing professional services.

26. The professional standards and legislative duties enumerated clearly envisage that a liquidator will take care to ensure that their communications with creditors and other relevant stakeholders do not contain information that is false or misleading. *ASIC v Dunner*[18] referred to the liquidator's obligation to communicate properly and effectively with persons making claims in the liquidation. It is well accepted that it is reasonable to expect that a liquidator will apply a high standard of care and diligence to the performance of his duties given they are appointed and paid to exercise a particular skill[19].

27. In the context of these principles and on the basis of the agreed facts with respect to Contention 8, we are satisfied that having regard to what he knew about **Farr Enterprises**, **Mr Traianedes** completed the relevant forms inaccurately and this resulted in the information provided to the **ATO** being false and misleading. **Mr Traianedes'** professional duty was to apply a high standard of care and diligence and to ensure his communications were accurate. We are satisfied that he failed to carry out or perform his duties adequately and properly within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

28. We find that Contention 8 has been established.

Contention 10 – Drawing remuneration in excess of authorised amount

29. Sub-section 499(3) of **the Act** provides that:

The remuneration to be paid to the liquidator may be fixed:

(a) if there is a committee of inspection – by that committee; or

(b) by resolution of the creditors.

30. The **IPA Code** provides that:

(a) a practitioner is entitled to draw remuneration[20] once it is approved and according to the terms of the approval[21]; and

(b) a practitioner is entitled to draw remuneration, subject to the terms of the approval[22].

31. The relevant facts agreed by the parties have been set out in sub-paragraphs 14(aa), (bb), (dd), and (ee) hereof. In summary those facts are that **Mr Traianedes** claimed and was paid remuneration beyond the amount for which he had obtained approval (being an amount of $5,331.70 (incl GST) that was not approved).

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[18] ***ASIC** v Dunner* (2013) FCA 872 ("*Dunner*") at [27-30]
[19] *Pace v Antlers Pty Ltd (in liq)* (1998) 80 FCR 485 at 497; 26 ACSR 490 *("Pace")* at [501]
[20] Defined to mean any monies claimed by a Practitioner on account of work performed or to be performed by the Practitioner in the administration (**IPA Code** Ibid footnote 11 at page.[18])
[21] **IPA Code** Ibid footnote 11 at Principle 12 page 81
[22] **IPA Code** Ibid footnote 11 at sub-section 16.1

32. It was accepted by **Mr Traianedes** (as the facts clearly reveal) that in respect of a proportion of remuneration paid to him there had not been the requisite approval under sub-section 499(3) of **the Act** by either a committee of inspection or a resolution of the creditors. Payment of remuneration in such circumstances was not consistent with principle 12 and sub-section 16.1 of the **IPA Code** which require a liquidator not to draw remuneration beyond the sum which has been fixed pursuant to sub-section 499(3) of **the Act**. We are satisfied that this conduct demonstrates that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

33. We find that Contention 10 has been established.

Contention 12 – Failing to exercise proper care to lodge accurate Forms 524 with ASIC

34. As set out in sub-paragraphs 14(ff) and (gg) hereof **Mr Traianedes** prepared and lodged with **ASIC** several Forms 524 in which he stated that no remuneration had been paid to him in respect of the Farr liquidation since the date of his appointment ("**False Remuneration Statements**") in circumstances where remuneration had in fact been paid to him.

35. **Mr Traianedes'** explanation, contained in the **SAFC**, is that his understanding of proper professional practice at the time was that payment of remuneration pursuant to an indemnity was not payment from the company's assets and was not to be included therefore in the information set out in the *"Account of receipt and payments"* part of the Form 524. The **AFSC** stated that his understanding was based on discussions regarding such matters that he had been involved in with other practitioners, including in professional discussion groups. **Mr Traianedes** accepted however, that in not further considering this issue or seeking advice as to the appropriate approach to adopt, he had failed to take reasonable steps to ensure that his communications and documents did not contain false or misleading statements and that this conduct did not comply with accepted professional standards as set out in the **IPA Code** nor did the conduct evidence the degree of care and diligence reasonably to be expected of liquidators as company officers and required by section 180(1) of **the Act** and/or section 130.1(b) of **APES 110**[23].

36. We refer to paragraphs 25 and 26 hereof which set out the professional standards and legislative duties with respect to accurate communication and our comments therein that are also relevant to a consideration of Contention 12. The seven Forms 524 in question lodged with **ASIC** between 23 February 2012 and 2 February 2015 all required **Mr Traianedes** to state the amount of "*Remuneration paid to you during the period for which this account is made up"* and the *"Remuneration paid to you from the date of your appointment to the date to which this account is made up*". **Mr Traianedes** wrote "*nil*" in response to both of these items on all of the Forms 524, thereby representing inaccurately that no remuneration had been paid to him in respect of the liquidation since the date of his appointment. In our view a registered liquidator properly carrying out his duties in the circumstances of Contention 12 would have appreciated that

[23] See also ***ASIC** v Fernandez* (Decision of **the Board** dated 29 October 2013, Matter No. 02/VIC13) *("Fernandez")* at [270].

the Forms 524 as completed and without further explanation or clarification were likely to mislead the recipients. **Mr Traianedes'** conduct, when evaluated by reference to the standard of a reasonably competent liquidator who is expected to exercise a high degree of care and diligence by reason of his office fell well short of that standard because the Forms 524 were inaccurate and objectively misleading.

37. For these reasons we are satisfied that in the circumstances of this contention **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act.**

38. We find that Contention 12 has been established.

Contention 13 - Failing to properly investigate affairs of Farr Enterprises

39. It was not in dispute between the parties that a fundamental obligation of a liquidator is to investigate the affairs of a company in liquidation[24] and that, in the circumstances of the **Farr Enterprises** liquidation, **Mr Traianedes** had failed to conduct an adequate investigation into the possible assets of **Farr Enterprises** by failing to conduct a basic VicRoads search to ascertain whether **Farr Enterprises** had, or previously had, any motor vehicles registered in its name. **Mr Traianedes** accepted that in failing to properly investigate he had not met an adequate standard of care and diligence in the discharge of his duties as required by sub-section 180(1) of **the Act**, at common law and under sub-section 130.1(b) of **APES 110**.

40. The parties agreed that:

    (a) It is standard practice for liquidators, when investigating the affairs of a company in liquidation, to conduct basic searches for motor vehicles in order to ascertain whether a company owns or has owned any motor vehicles prior to the liquidation commencing.

    (b) It was **Mr Traianedes**' own standard practice to conduct a basic search for motor vehicles.

    (c) Further, **Mr Traianedes** knew that **Mr Farrugia** and **Mr Caluzzi** believed or hoped that liquidation may be a means by which **Farr Enterprises** could avoid its obligations to creditors (although **Mr Traianedes'** evidence, with which **ASIC** did not take issue, was that at the **24 May Meeting** he had asked **Messrs Caluzzi and Farrugia** specifically about the assets of **Farr Enterprises**, including motor vehicles, and no vehicle was disclosed to him).

    (d) On 10 August 2011, **Mr Farrugia** had attended VicRoads and transferred the car with registration number XCQ542 from **Farr Enterprises** to himself personally[25].

[24] *ASIC v Fiorentino* (Decision of **the Board** dated 24 June 2014, Matter no 03/NSW13) ("*Fiorentino*") at [525]-[528].
[25] **Mr Traianedes** was not aware of this fact until after the commencement of these proceedings.

41. **Mr Traianedes**' duties as the liquidator of **Farr Enterprises** included a duty to locate and collect the assets of the company for the benefit of its creditors[26]. In **the Board's** decision in *Joubert*[27] the nature of correspondence that it is customary for a liquidator to send shortly following appointment to a company being liquidated was considered. Such correspondence includes letters to banking institutions, utilities, telecommunication providers, WorkCover, the Office of State Revenue, the **ATO** and the Roads and Traffic Authority to inform those bodies of the liquidator's appointment and to instruct them to preserve any assets and/or to seek information accordingly. **ASIC** in *Joubert*[28] had submitted that such correspondence is well known in the insolvency profession as "*Day One*" correspondence.

42. **The Board** made the following observation in the Joubert decision in connection with the subject matter of "*Day One"* correspondence[29]:

> *"While there is no specific legislative or other mandate for this obligation [to despatch "Day One" correspondence] it quite clearly follows, in our view, from the legislative mandate in section 474 of the Act. Section 474 of the Act provides that if a company is being wound up in insolvency and a liquidator has been appointed – the liquidator must take into his or her custody, or under his or her control, all the property which is or which appears to be, property of the company. While there is no specific further requirement that the correspondence the subject of these contentions be sent within 2 days of appointment, the rationale for sending such correspondence within 2 days is self-evident as doing so is a means of ensuring that the liquidator has taken appropriate steps to comply with section 474 of the Act which is a mandatory legislative requirement. Having regard to this context we think that the subject matter of these contentions relates to an important liquidator's duty and we do not agree that (with the exception of contention 45 discussed further below) the circumstances alleged relate to matters in respect of which a liquidator's duty to act adequately and properly within the meaning of sub-section 1292(2) is not relevant".*

43. A motor vehicle search is one of the enquiries that it is both customary and necessary for a liquidator to undertake in order to locate and collect the assets of the company for the benefit of its creditors and normally forms part of the "*Day One Correspondence*". For the reasons we referred to in the *Joubert* decision, the **Board's** view is that this is an important obligation having regard to section 474 of **the Act**.

44. **Mr Traianedes'** failure to conduct a motor vehicle search as part of his investigation of **Farr Enterprises** did not in our view meet the standard of a reasonably competent liquidator. It demonstrated a failure to have taken timely and appropriate steps to identify and secure an asset of the company. We are satisfied that the circumstances of Contention 13 evidence a failure to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i).

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[26] See *Wimborne and Others v Brien* (1997) 23 ACSR 576 at [582]
[27] ***ASIC** v Joubert* (Decision of **the Board** dated 11 May 2016 Matter No 01/NSW15) ("*Joubert*") at [347-354]
[28] *Joubert* Ibid footnote 27 at [350]
[29] *Joubert* Ibid footnote 27 at [352]

45. We find that Contention 13 has been established.

Agreed facts - BK Diesel

46. The following relevant facts were agreed by the parties:

(a) **BK Diesel** was registered on 4 January 2006. At all relevant times, Katrina Dale ("**Mrs Dale**") was the formally appointed director and secretary of **BK Diesel** and **BK Diesel** was the trustee of The **BK Diesel Trust** ("**BK Diesel Trust**").

(b) **BK Diesel** as trustee for the **BK Diesel Trust** carried on a **mechanic business** ("**mechanic business**"). At all relevant times, **Mrs Dale**'s husband ("**Mr Dale**") was also involved with the **mechanic business**.

(c) Prior to January 2006, the **mechanic business** conducted by **BK Diesel** had been conducted by **BK D Diesel** Pty Ltd ("**BK D Diesel**"). **BK Diesel** took over this business when **BK D Diesel** went into liquidation in January 2006. **Mr Dale** had been the sole director and secretary of **BK D Diesel**.

(d) From 10 April 2012, three days before **BK Diesel** was placed into liquidation, **Dale Diesel** Power Pty Ltd ("**Dale Diesel**") took over the **mechanic business**. **Mr Dale** is the sole director and secretary of **Dale Diesel**.

(e) On around 30 June 2010, **Mr Caluzzi** was appointed as the registered agent and tax agent of **BK Diesel**. The financial statements for the **BK Diesel Trust** for the year ended 30 June 2009, which were prepared by **Mr Caluzzi** and signed by **Mrs Dale**, recorded *inter alia* that **BK Diesel** owned a Holden Ute which it had purchased for $17,000 and a Holden Torana which it had purchased for $20,030.

(f) At all relevant times, **BK Diesel** also had registered in its name a Mazda with registration number XTF 782.

3 April Meeting

(g) In around March 2012, **Mrs Dale** told **Mr Caluzzi** that **BK Diesel** was having difficulty paying its debts. **Mr Caluzzi** then arranged a meeting for **Mr and Mrs Dale** with **Mr Traianedes**.

(h) On 3 April 2012, the **Mr and Mrs Dale** and **Mr Caluzzi** met **Mr Traianedes** at his office in Parkville ("**3 April Meeting**"). During the meeting the following occurred:

(i) **Mr and Mrs Dale** and **Mr Caluzzi** informed **Mr Traianedes** about **BK Diesel**'s assets and liabilities. **Mr Traianedes** subsequently prepared a note that reflected **BK Diesel**'s financial position as advised to him by **Mr and Mrs Dale** and **Mr Caluzzi**. The **ASFC** records details of the note as follows:

"Asset"	
Cash	*$20,000*
Debtors (10)	*$20,000*
Stock	*$5,000*
Plant/equipment	*$2,000*
Commodore / ute	*$12,000*
Forklift	*$3,000*
Ute (1)	*$100*
Mazda	*$40,000*
	$60,000

(ii) Either **Mr Dale** or **Mrs Dale** told **Mr Traianedes** that **BK Diesel** had been having difficulty paying its debts for some time;

(iii) **Mr Caluzzi** informed **Mr Traianedes** that **BK Diesel** owed a lot of tax;

(iv) The possibility of placing **BK Diesel** into liquidation was discussed and **Mr Traianedes** explained the steps involved;

(v) **Mrs Dale** told **Mr Traianedes** that there was a Mazda in **BK Diesel's** name for which she was making loan repayments and was otherwise responsible. She said that the Mazda had been put into **BK Diesel**'s name to take the benefit of *"taxation advantages"*.

(vi) **Mr Dale** told **Mr Traianedes** that he wanted to continue the **mechanic business** and the establishment of a new company through which the **Mr and Mrs Dale** could continue to operate the **mechanic business** was then discussed;

(vii) there was discussion about the process for changing **BK Diesel**'s name so as to potentially permit the new company to retain the **BK Diesel** name and further discussions as to whom should be the director of the new company;

(viii) **Mr Dale** said to **Mr Traianedes** that he needed the equipment owned by **BK Diesel**. **Mr Traianedes** said that he would need a valuation for the equipment before it was sold to the new company.

(i) After the **3 April Meeting** and before **BK Diesel** was placed into liquidation, **Mr Traianedes** communicated with **Mr and Mrs Dale** and **Mr Caluzzi** a number of times in relation to **BK Diesel** and the new company. The communications related to, among other things, **Mr and Mrs Dale** establishing a new company and included the following emails:

(i) **Mr Traianedes** to **Mr and Mrs Dale** dated 5 April 2012 referring to the **3 April Meeting**, and requesting certain information for the purpose of the winding up of **BK Diesel**. In that email, **Mr Traianedes** said: "*I trust that our meeting last Thursday was helpful. I understand that you are currently attending to some matters with the business with Joe [Caluzzi]. I expect that these issues will be finalised over the next 10 days*";

(ii) From **Mr Traianedes** to **Mr Caluzzi** and **BK Diesel** (at bk_diesel@yahoo.com.au) dated 10 April 2012 in which **Mr Traianedes** advised that :

a) **BK Diesel** could change its name to "its ACN number" for a fee of $351, and he attached a relevant form to effect that change;

b) "*the new entity will need to lodge a name change application (form 205), and the 'old' Company will need to do the same to release the BK name. The new entity will still incur a fee of $351 for the name change*";

c) these steps could take place after the winding up commenced.

(iii) from **Mr Caluzzi** to **Mr Traianedes** on 10 April 2012, asking:

a) why **Mr and Mrs Dale** needed to change the name of **BK Diesel**;

b) noting that **Mr and Mrs Dale** had "*already set up a new entity being a company and trust*".

(iv) from **Mr Traianedes** to **Mr Caluzzi** on 10 April 2012, noting that "*[**Mr Dale**] requested the retention of the name. It is not a necessary step for the winding up*";

(v) from **Mr Traianedes** to **Mr Caluzzi** on 10 April 2012, stating that **BK Diesel**'s bank "*needs to be contacted just after the appointment on Friday*";

(vi) from **Mr Dale** to **Mr Traianedes** on 11 April 2012, in relation to the company name change, querying the form that **Mr Traianedes** had sent to him for listing **Mr Dale** as director;

(vii) from **Mr Traianedes** to **Mr Dale** on 11 April 2012 in response to the email referred to in sub-paragraph (vi) above which stated:

"*The form 205 is for the NEW Company, of which you are the director, to change its name to **BK Diesel**. I don't know the name of the new Company and so I have left the Company name area blank.*

The new company can change its name to B K Diesel Pty Ltd AFTER the start of the winding up on 13 April. As Liquidator of BK from 13 April, I will change the name to the ACN number. This will avoid you having to pay the name change fee of $351 twice".

(viii) to **Mr Traianedes** from **Mr Caluzzi** on 12 April 2012 in which he referred to correspondence that he had received from the **ATO**;

(ix) from **Mr Traianedes** to **Mr Caluzzi** on 12 April 2012 stating: "*I will notify the Australian Taxation Office tomorrow of the winding up. You will not have to contact them after that*".

(j) On 10 April 2012, **Mrs Dale** transferred the Mazda out of **BK Diesel**'s name and into her brother-in-law's name.

(k) On 10 April 2012, **Dale Diesel** was registered. From that time, the **mechanic business** operated through **Dale Diesel** from the same location, with the same employees and using the same equipment.

*The Liquidation of **BK Diesel***

(l) On 11 April 2012, **Mrs Dale** signed documents, including a "*Presentation of summary of affairs of a company*", to commence the liquidation of **BK Diesel**. Subsequently, on around 20 April 2012, **Mrs Dale** signed a further "*Presentation of summary of affairs of a company*" ("**Summary of Affairs**").

(m) On 13 April 2012, **BK Diesel** was placed into liquidation and **Mr Traianedes** was appointed as the liquidator.

(n) On 16 April 2012, **Mr Dale** sent **Mr Traianedes** a fax attaching a List of Assets and Creditors ("**List of Assets and Creditors**") and a bank statement for account number 126837442 in **BK Diesel**'s name ("**BK Diesel 442 Account**") covering the period 12 March to 13 April 2012. At some point, **Mr Dale** and/or **Mrs Dale** also gave **Mr Traianedes** a copy of a further bank statement for the **BK Diesel 442 Account** for the period 3 to 17 April 2012 and a bank statement for another account in **BK Diesel**'s name with account number 129913828 ("**BK Diesel 828 Account**") for the period 1 February to 17 April 2012 (together, "**the Bank Statements**").

(o) On 20 April 2012, **Mr Traianedes** completed a **DIRRI** and, by letter dated 24 April 2012, provided it to the creditors of **BK Diesel** with the notice of meeting of creditors.

Potential voidable transactions

(p) The **Bank Statements** recorded that **BK Diesel** made the following payments, among others, in the month before **BK Diesel** entered liquidation:

(i) $30,300 on 27 March 2012;

(ii) $50,000 on 28 March 2012;

(iii) $66,916.52 on 30 March 2012;

(iv) $9,000 on 2 April 2012;

(v) $18,000 on 3 April 2012;

(vi) $10,000 on 7 April 2012;

(vii) $41,000 on 11 April 2012; and

(viii) $3,000 on 11 April 2012.

The Bank Statements did not identify the recipients of the payments set out in (i) – (viii) hereof.

(q) On 1 May 2012, Heavy Parts Pty Ltd ("**Heavy Parts**"), a supplier and creditor of **BK Diesel**, submitted a proof of debt to **Mr Traianedes**. The proof of debt attached a statement of **BK Diesel**'s account with **Heavy Parts** ("**Heavy Parts Statement**"). The **Heavy Parts Statement** recorded that, in the period between 17 January 2012 and 2 April 2012, **Heavy Parts** received the following payments from **BK Diesel**:

(i) $45,169.07 on 23 February 2012;

(ii) $50,000.00 on 28 March 2012; and

(iii) $66,916.52 on 2 April 2012.

(r) Further, **the Bank Statements** evidence that a number of withdrawals were made from the **BK Diesel 442 Account** which, by reason of their description, indicated that the payments made may have been of a personal nature, including:

(i) payments to "Westpac Cards" on 16 March 2012, 23 March 2012 30 March 2012, 4 April 2012, 6 April 2012 and 9 April 2012;

(ii) payments to "R&K Dale NAB" on 22 March 2012 and 5 April 2012;

(iii) a payment to "Mowbray College" on 12 April 2012.

(s) In addition to the payments recorded in **the Bank Statements** and the **Heavy Parts Statement**, **Heavy Parts** received the following additional payments from **BK Diesel** of which **Mr Traianedes** was aware:

(i) on 9 December 2011, $38,406.02;

(ii) on 21 December 2011, $26,406.02.

(t) The parties agree that from the sum of information provided to **Mr Traianedes** by way of the discussions at the **3 April Meeting**, the **List of Assets and Creditors** and the **Summary of Affairs** prepared by **Mrs Dale**, it would have been apparent to **Mr Traianedes** that **BK Diesel** was insolvent at the time of his appointment as liquidator and potentially for a significant period before that (although it was not apparent for how long **BK Diesel** had been insolvent).

(u) At the **3 April Meeting**, **Mr Traianedes** had asked **Mr and Mrs Dale** whether **BK Diesel** had made any payments to its creditors. They said that it had, to its main parts supplier, and that **BK Diesel** owed the supplier a lot of money. **Mr Traianedes** asked **Mr and Mrs Dale** about whether the supplier had taken any steps such as stopping supply or putting **BK Diesel**'s account onto a "COD" basis, or had made demands

for payment or issued legal proceedings to recover the debt and they responded in the negative.

(v) Neither **Mr Traianedes**, nor any of his staff asked **Mr and Mrs Dale** about any transactions recorded in **the Bank Statements** or about the specific payments made to **Heavy Parts** recorded in the **Heavy Parts Statement**.

(w) On 20 April 2012, **Mr Traianedes**' employee, Ms Debbie Welsh ("**Ms Welsh**"), had emailed **Mr and Mrs Dale** and requested, for the six month period up to and including the appointment date:

> "*Transaction Records (Deposits and Payments)*
> *Balance Sheets*
> *Profit and Loss Reports*
> *Copies of Invoices issued*
> *Copies of all dealings with the Australian Tax Office*"

(x) Those documents were not produced by **Mr and Mrs Dale**. The only bank records in the file produced to **ASIC** by **Mr Traianedes** are **the Bank Statements** which relate to the one month period prior to the appointment date in respect of the **BK Diesel 442 Account** and to a period of less than two months prior to the appointment date in respect of the **BK Diesel 828 Account**.

(y) **Mr Traianedes** did not receive the bank records for the entire relation-back period, did not make any further enquiries to attempt to locate those records, nor did he seek production of those records from a third party, such as the bank.

Assets

(z) At the **3 April Meeting, Mrs Dale** had informed **Mr Traianedes** that **BK Diesel** had assets including a "Commodore/Ute" worth $12,000, a "ute" worth $100 and a "Mazda" worth $40,000.

(aa) **Mr Traianedes** did not conduct a VicRoads search to ascertain whether **BK Diesel** had, or previously had, any motor vehicles registered in its name.

(bb) **Mr Traianedes** did not take any steps to investigate whether the Mazda was beneficially owned by **BK Diesel** or the **BK Diesel Trust**.

Overview of contentions maintained with respect to BK Diesel (Contentions 15, 18, 19, 21, 23 and 28)

47. With respect to **Mr Traianedes'** conduct in connection with the **BK Diesel** liquidation, **ASIC** contends that **Mr Traianedes** failed within the meaning of sub-section 1292(2)(d)(i) of **the Act**, to carry out or perform adequately and properly the duties of a liquidator in relation to his appointment as liquidator of **BK Diesel** insofar as he:

(a) Provided an inadequate **DIRRI** to creditors (because it did not disclose his pre-appointment meetings and other contact with the director and others involved with the company), in circumstances where he was negligent as to whether proper disclosure was made (Contention 15).

(b) Failed to conduct proper investigations into potentially voidable transactions in circumstances where such investigations were called for (Contention 18).

(c) Failed to keep proper books and records that reflected or recorded the investigations that were in fact undertaken, and failed to properly document work undertaken to investigate potential unfair preference claims or uncommercial transactions (Contention 19).

(d) Sent a false and misleading communication to creditors in which **Mr Traianedes'** statements conveyed that he had undertaken proper investigations into voidable transactions, when in fact he had not properly undertaken those investigations and had failed to exercise proper care to ensure that the communication was not false or misleading (Contention 21).

(e) Failed to adequately and properly investigate the affairs of **BK Diesel** by failing to conduct searches for motor vehicles and failing to take proper steps to investigate whether a vehicle was beneficially owned by BK Diesel (Contention 23).

(f) Failed to exercise reasonable care in forming his opinion recorded in his report pursuant to section 533(1)(c) of **the Act** that the books and records of the company that had been provided to him and were adequate, (Contention 28).

Contention 15 – Inadequate DIRRI

48. On 20 April 2012, **Mr Traianedes** had completed a DIRRI for BK Diesel ("**the BK Diesel DIRRI")** and, by letter dated 24 April 2012, provided it to the creditors of **BK Diesel** with the notice of meeting of creditors. In **the BK Diesel DIRRI Mr Traianedes** did not disclose or make reference to any of the following matters:

(a) that during the 24 months preceding his appointment as liquidator of **BK Diesel** he had had a relationship with the company and its accountant;

(b) that, on 3 April 2012 he had met with the director of **BK Diesel** (**Mrs Dale**), and her husband (**Mr Dale**), and the registered tax agent of **BK Diesel** (**Mr Caluzzi**);

(c) the issues discussed with **Mr and Mrs Dale** and **Mr Caluzzi** at the **3 April Meeting**;

(d) his communications regarding **BK Diesel** between 3 and 12 April 2012;

(e) any explanation about the relationship between **Mr Traianedes** and **BK Diesel** (by reason of his dealings with **Mr and Mrs Dale** and **Mr Caluzzi**), and why those relationships did not result in a conflict of interest and duty on his part as the appointed liquidator of **BK Diesel** (together "**the relevant matters**").

49. The parties agreed that **Mr Traianedes** knew or ought to have known that his **DIRRI** was required to set out the matters referred to in paragraph 48 hereof and that this conduct did not comply with:

(a) The requirements of section 506A and sub-section 60(2) of **the Act**;

(b) the accepted professional standards as set out in the **IPA Code** and **APES 330**[30];

(c) the practice of a reasonably competent liquidator,

and that the failure to make reference to **the relevant matters** in **the BK Diesel DIRRI** was a failure to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

50. We refer to and repeat the discussion in paragraph 21 hereof relating to the requirements for disclosure of relevant relationships to creditors in the **Farr Enterprises** liquidation.

51. On the basis of the facts and matters agreed by the parties with respect to Contention 15 and our comments with respect to Contention 4 we are satisfied that **Mr Traianedes** has failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

52. We find that Contention 15 has been established.

Contention 18 – Failing to conduct proper investigations into potentially voidable transactions

53. In relation to this contention the SAFC recorded the following matters:

(a) a fundamental obligation of a liquidator is to investigate the affairs of a company in liquidation.[31] That obligation requires the liquidator to investigate whether the company in liquidation may have given any unfair preferences, or entered into any uncommercial transactions, that are recoverable insolvent transactions. That duty must be discharged with due care and diligence as required by sub-section 180(1) **of the Act** and/or sub-section 130.1(b) of **APES 110**.

(b) a transaction will be an unfair preference that may be recoverable as an insolvent transaction if:

[30] **APES 330** Insolvency Services (2nd edition) effective 1 April 2012 ("**APES 330**")
[31] *Fiorentino* Ibid footnote 24 at [525]-[528].

(i) the company and a creditor of the company were parties to the transaction; and [32]

(ii) the transaction results in the creditor receiving from the company, in respect of an unsecured debt owed by the company to the creditor, more than the creditor would receive if the transaction were set aside and the creditor proved in the winding up;[33]and

(iii) when the transaction was entered into, the company was insolvent or became insolvent because of, or because of matters including, entering into the transaction;[34] and,

(iv) the transaction under inquiry was entered into during the six months immediately prior to the relation-back day or after that day but before the winding up began.[35]

(c) An unfair preference that is an insolvent transaction will not be recoverable if the person who received the payment received it in good faith, at a time when they had no reasonable grounds to suspect the insolvency of the company and no reasonable person in the person's circumstances would have had such grounds for so suspecting, if they had either provided valuable consideration under the transaction or changed their position in reliance on the transaction.[36]

(d) A transaction will be an uncommercial transaction if a reasonable person in the company's circumstances would not have entered into the transaction having regard to a number of factors, including the benefits to the company of entering into the transaction and the detriment to the company[37].

(e) An uncommercial transaction may be recoverable as an insolvent transaction if: it was entered into at a time when the company was insolvent;[38] and, the transaction was entered into during the six months immediately prior to the relation-back day or after that day but before the winding up began.[39]

(f) Based on the information provided to **Mr Traianedes** at the **3 April Meeting**, the **List of Assets and Creditors** and the **Summary of Affairs** provided to **Mr Traianedes** in April 2012, it would or should have been apparent to **Mr Traianedes** that **BK Diesel** was insolvent at the time **BK Diesel** entered liquidation.

(g) Further, from either, or both, of **the Bank Statements** and the **Heavy Parts Statement** that **Mr Traianedes** received in April and early May 2012 respectively, it was or should have been readily apparent to him that **BK Diesel** had made substantial payments, including to **Heavy Parts**, in

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[32] Section 588FA(1)(a). of **the Act**
[33] Section 588FA(1)(b).of **the Act**
[34] Section 588FC of **the Act**
[35] Section 588FE(2)(b) of **the Act**
[36] Section 588FG(2) of **the Act**
[37] Section 588FB(1) of **the Act**
[38] Section 588FC of **the Act**.
[39] Section 588FE(2)(b) of **the Act**.

the six-month period before **BK Diesel** entered into liquidation. Those payments would have, or should have, alerted him to the fact or the reasonable possibility that there were creditors which had received unfair preference payments that were recoverable by the liquidator as insolvent transactions and/or that **BK Diesel** had entered into uncommercial transactions that were recoverable as insolvent transactions.

(h) **Mr Traianedes** admitted that he did not properly investigate the potential voidable transactions. In particular, **Mr Traianedes** admitted that:

(i) he only obtained bank statements for the one-month period preceding the liquidation for the **BK Diesel 442 Account** and for less than the two-month period preceding the liquidation for the **BK Diesel 828 Account**;

(ii) did not enquire of **Mr and Mrs Dale** about any payments made to **Heavy Parts** other than the initial questions during the **3 April Meeting**;

(iii) did not ask the directors of **Heavy Parts** about any payments made to **Heavy Parts**;

(iv) did not ask **Mr and Mrs Dale** about any transactions in the Bank Statements; and

(v) did not take any other steps to investigate any transactions in the Bank Statements.

(i) **Mr Traianedes** admits that in the circumstances a reasonably competent liquidator would have done at least the following:

(i) obtained bank statements for all bank accounts in the name of **BK Diesel** for the relation-back period (the six month period prior to **Mr Traianedes**' appointment);

(ii) questioned **Mr and Mrs Dale** about the transactions in **the Bank Statements**, and other transactions in the relation back period;

(iii) questioned the directors of **Heavy Parts** about the payments made to it.

54. Applying the relevant principles reveals that there existed potentially voidable transactions in the **BK Diesel** liquidation which in our view a reasonably competent liquidator acting diligently would have taken steps to investigate including at least those steps set out in paragraph 53(i) hereof. We are satisfied that in failing to undertake those steps **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

55. We find that Contention 18 has been established.

Contention 19 – Failing to keep proper books and records with respect to investigations

56. **ASIC** alleged that to the extent that **Mr Traianedes** investigated potential unfair preferences and uncommercial transactions, he failed both to keep proper books that reflected a complete and correct record of his administration of **BK Diesel**'s affairs as required by section 531 of **the Act**; and to properly document work undertaken to investigate potential unfair preference claims.

57. **Mr Traianedes** admits Contention 19 and acknowledges that his conduct did not reflect an adequate professional standard having regard to his duties under the standards and legislation referred to in paragraph 59 hereof.

58. **Mr Traianedes**' working file with respect to **BK Diesel** did not contain any documents recording or evidencing any investigations undertaken by him in relation to potential voidable transactions. **Mr Traianedes** acknowledged that he had failed to prepare or maintain on his file working papers that appropriately documented the work performed, or recorded reasons for his decision not to investigate or investigate further, the potentially voidable transactions.

59. The parties referred to:

    (a) section 18(2) of the **IPA Code** requiring a practitioner to prepare and maintain working papers that appropriately document work performed in a liquidation;

    (b) the liquidator's duty of care and diligence under sub-section 180(1) of **the Act**, and at common law;

    (c) section 130.1(b) of **APES 110**, which requiring a liquidator to act diligently in accordance with applicable technical and professional standards when providing professional services; and

    (d) section 531 of **the Act** and Regulation 5.6.01 of the *Corporations Regulations* 2001 (Cth) ("**Regulations**") requiring a liquidator to keep proper documents[40] that provide a complete and correct record of the liquidator's administration of the company's affairs.

60. Having regard to section 531 of **the Act** and **Regulation** 5.6.01 we would expect a reasonably competent liquidator to keep a record of investigations undertaken as part of the "*complete and correct record of the liquidator's administration of the company's affairs*". In the circumstances of Contention 19 where the objective facts strongly suggest that potentially there were unfair preference claims and uncommercial transactions, we would expect that there would be kept on file sufficient working papers and notes to evidence the steps taken to investigate these matters. The failure to keep any record including a record as to why he had not investigated or investigated further the potential claims and transactions, reveals a lack of proper diligence and attention by **Mr Traianedes** to his duties as a liquidator.

[40] Section 531 of **the Act** refers to keeping proper "books". "Books" is defined in the Act to include "a document" (section 9 of **the Act**).

61. We are satisfied for the reasons stated that **Mr Traianedes**' failure to retain a sufficient written record in the circumstances of Contention 19 was a failure to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

62. We find that Contention 19 has been established.

Contention 21 – Inaccurately reporting to creditors

63. On 30 January 2013 **Mr Traianedes** had sent a report to creditors, which he also lodged with **ASIC**, in which he stated:

> "*Investigations have been undertaken to examine the extent of voidable transactions and insolvent transactions that may be recoverable pursuant to Section 588FA of the Corporations Act. My investigation did not identify any transactions that would meet the criteria to be deemed as insolvent transactions or unfair preferences.*"

64. On the basis of our finding with respect to Contention 18 that **Mr Traianedes** had not undertaken adequate and proper investigations into potentially voidable transactions it follows that the statement made to creditors and **ASIC** set out in paragraph 63 hereof was objectively inaccurate in so far as it conveyed the impression that **Mr Traianedes** had undertaken proper and adequate investigations to examine the extent of those transactions.

65. **Mr Traianedes** admits that the statement was false or misleading and that he failed to exercise reasonable care or take reasonable steps to ensure that the communication was not false or misleading. He accepted that this conduct did not meet accepted professional standards as reflected by the **IPA Code,** nor meet the standard of care and diligence required by sub-section 180(1) of **the Act** and/or sub-section 130.1(b) of **APES 110**.

66. We are satisfied that the circumstances of Contention 21 establish that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

67. We find that Contention 21 has been established.

Contention 23 – Failing to properly investigate

68. The **SAFC** records that **Mr Traianedes** did not conduct a VicRoads search to ascertain whether **BK Diesel** had, or previously had, any motor vehicles registered in its name and that **Mr Traianedes** did not take any steps to investigate whether a motor vehicle that he had been told was registered in **BK Diesel**'s name, was beneficially owned by **BK Diesel** or the **BK Diesel Trust**. **Mr Traianedes** had been informed that **BK Diesel** had assets of approximately $60,000, including a "*Commodore / Ute*" worth $12,000, a "*ute*" worth $100, and a "*Mazda*" worth $40,000.

69. **Mr Traianedes** admits that failing to carry out these enquiries amounted to a failure to investigate in an adequate or timely manner, or at all, the property of

BK Diesel and was a relevant failure within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

70. We refer to and repeat our comments in respect of Contention 13 in paragraphs 41, 42 and 43 hereof with respect to the steps it is customary for a liquidator to take to secure the assets of the company in liquidation and which are part of properly discharging a liquidator's duty to investigate the affairs of a company. These comments are also relevant to the view we have formed in relation to this contention.

71. Based on the obligations we referred to in paragraphs 41, 42 and 43 a reasonably competent liquidator properly carrying out his professional duties would have undertaken motor vehicle ownership searches and made enquiries regarding the possible beneficial ownership of the relevant vehicle. It follows that **Mr Traianedes'** failure to undertake those enquiries in the circumstances of Contention 23 was a failure to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

72. We find that Contention 23 has been established.

Contention 28 – Failing to exercise reasonable care forming an opinion on whether the records of BK Diesel were adequate

73. On 13 August 2012, **Mr Traianedes** lodged a report with **ASIC** pursuant to section 533 of **the Act** in which he stated that he had obtained the books and records of **BK Diesel**, and in his opinion the books and records were adequate.

74. Section 286 of **the Act** provides that a company must keep written financial records that:

    (a) correctly record and explain its transactions and financial position and performance; and

    (b) would enable true and fair financial statements to be prepared and audited.

75. Section 9 of **the Act** defines "*financial records*" as including:

    (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and

    (b) documents of prime entry; and

    (c) working papers and other documents needed to explain:

        (i) the methods by which financial statements are made up; and

        (ii) adjustments to be made in preparing financial statements.

76. The **SAFC** also referred to **ASIC** Information Sheet 76 that provides guidance as to the basic financial records that should be kept in order to comply with the

requirements of section 286 of **the Act**. Information Sheet 76 provides that companies should keep the following:

(a) profit and loss accounts;

(b) balance sheets;

(c) depreciation schedules;

(d) taxation returns;

(e) general ledgers;

(f) general journals;

(g) cash records (including cash receipts journal, bank deposit books, cash payments journal, cheque butts and petty cash books);

(h) bank account statements;

(i) sales/debtor records (including sales journal, debtors' ledger, list of debtors, invoices and statements issued and delivery dockets);

(j) work in progress records;

(k) invoices and statements received and paid;

(l) creditors' ledger; and

(m) unpaid supplier invoices, including wages records and superannuation records.

77. The **SAFC** records the following further facts in relation to this contention:

(a) On 26 June 2014, **Mr Traianedes** produced to **ASIC** all documents in his possession relating to his engagement as the liquidator of **BK Diesel** pursuant to a notice issued under section 30 of the **ASIC Act** ("**BK Diesel Documents**").

(b) **Mr Traianedes** did not obtain from **BK Diesel**, or examine, any documents other than the **BK Diesel Documents**.

(c) The **BK Diesel Documents** did not include:

(i) any profit and loss accounts;

(ii) any balance sheets;

(iii) any depreciation schedules;

(iv) any taxation returns;

(v) any general ledgers;

(vi) any general journals;

(vii) any cash records (i.e. cash receipts journal, bank deposit books, cash payments journal, cheque butts, petty cash books);

(viii) bank account statements other than statements for the period 3 to 17 April 2012 (for account number 126837442), 1 February 2012 to 17 April 2012 (for account number 129913828) and 12 March 2012 to 13 April 2012 (for account number 126837442, No 1 Account);

(ix) any sales or debtor records (i.e. sales journal, debtors' ledger, list of debtors, invoices and statements issued, delivery dockets);

(x) any work in progress records;

(xi) any invoices and statements received and paid;

(xii) any creditors' ledger kept by **BK Diesel**;

(xiii) any copies of unpaid supplier invoices kept by **BK Diesel** (the only unpaid supplier invoices produced as part of the **BK Diesel Documents** were those submitted to **Mr Traianedes** by creditors as supporting their proofs of debt); or

(xiv) any wages records or superannuation records.

78. By reason of the matters set out in paragraph 77, the **BK Diesel Documents** did not include financial records that complied with section 286 of **the Act**, because they:

(a) did not correctly record and explain **BK Diesel**'s transactions and financial position and performance; and/or

(b) were not such as would enable true and fair financial statements to be prepared and audited.

79. On 20 April 2012, **Ms Welsh** (**Mr Traianedes'** employee) had sent an email to **Mr and Mrs Dale** seeking confirmation of debtors and creditors, as well as transaction records, balance sheets, profit and loss reports, copies of invoices issued and copies of all dealings with the **ATO** for the six month period prior to liquidation. Neither **Mr** nor **Mrs Dale** responded to **Ms Welsh**'s email or otherwise provided the requested documents.

80. As liquidator of **BK Diesel**, **Mr Traianedes** had a duty to form an opinion, and report to **ASIC** that opinion, as to whether the books and records of **BK Diesel** were adequate.

81. **Mr Traianedes** agreed that he had failed to exercise reasonable care in forming his opinion that the books and records were adequate because he did so without receiving from **BK Diesel** all of the books and records that he had requested. His file in relation to **BK Diesel** contained no working papers recording any consideration as to whether the books and records of **BK Diesel** were adequate even though sub-section 18.2 of the **IPA Code** provides that a liquidator should

prepare and maintain working papers that appropriately document the work performed in a liquidation.

82. Based on these facts we are satisfied that **Mr Traianedes** failed to exercise reasonable care in forming his opinion as to the adequacy of the books and records of **BK Diesel.** The books and records he received were incomplete insofar as they did not include any of the documents set out in paragraph 77(c) hereof and did not comply with section 286 of **the Act** for the reasons set out in paragraph 78 hereof. **Mr Traianedes** did not obtain sufficient documents to justify forming a view that the financial records of **BK Diesel** were adequate. Further, there were no file notes or other records which provided an explanation as to how or why he had formed his opinion. Clearly such conduct does not reflect the high level of skill and diligence expected of a registered liquidator and in our view was a failure to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

83. We find that Contention 28 has been established.

Agreed facts - Dura

84. The agreed facts in relation to **Dura** were as follows:

(a) On 22 November 1950, the company now known as **Dura** was registered. At all relevant times, Lim Hong Richard Khor ("**Mr Khor**") and Shane Anthony Cody ("**Mr Cody**") were the directors of **Dura**. **Dura** carried on a construction business. At all relevant times, **Simgon** Pty Ltd ("**Simgon**") was the sole shareholder of **Dura** and **Mr Khor** and his wife were the directors and shareholders of **Simgon**.

(b) Hall Chadwick was the auditor of **Dura** between 19 July 2006 and 5 May 2008. **Mr Traianedes** was a partner at Hall Chadwick until late March 2008.

Hue**, and disputes between **Hue** and **Dura

(c) On 15 December 2004, **Dura** entered into a contract with Hue Boutique Living Pty Ltd (formerly called SC Land Richmond Pty Ltd) ("**Hue**") to construct a boutique apartment complex in Richmond ("**the contract**"). Lance Ho Chuen Chu ("**Mr Chu**") and Chenghan Tan ("**Ms Tan**"), who were directors of **Hue**, gave personal guarantees in respect of **Hue**'s obligations under **the contract**.

(d) From around 2006, a number of disputes arose between **Dura** on the one hand and **Hue**, **Mr Chu** and **Ms Tan** on the other in relation to the works under **the contract**. A number of legal proceedings were commenced and a number of judgments and orders were made with respects to claims made by **Hue**, **Mr Chu** and **Ms Tan** against **Dura** and claims made by **Dura** against **Hue**, **Mr Chu** and **Ms Tan**. In those proceedings, Noble Lawyers acted for **Dura** and Herbert Smith Freehills ("**HSF**") acted for **Hue**, **Mr Chu** and **Ms Tan**.

(e) **Mr Traianedes** was aware, before his appointment as the liquidator of **Dura** that there had been a long and contentious history of litigious disputes between the principals of **Dura** and **Hue**.

(f) On 30 March 2012, Dixon J delivered judgment in *Dura v Hue* [2012] VSC 99. In those proceedings all of **Dura**'s claims against **Hue** were dismissed and in respect of **Hue**'s counterclaim **Dura** was ordered to pay **Hue** the sum of $6,173,155.80 ($4,457,308 representing the claim and $1,715,847.83 for interest with interest continuing to accrue). Dixon J made various adverse findings concerning **Dura**'s conduct including that:

(i) **Dura** had made false claims in the proceedings;

(ii) **Dura** had set out to mislead the Court,

(iii) **Dura**'s conduct, in relation to **Hue** demonstrated – at best – a serious want of proper commercial morality;

(iv) **Dura** had selectively and inappropriately briefed its expert witnesses for the trial.

(g) Subsequently, Dixon J also found that **Dura**'s solicitors, Noble Lawyers, had known that **Dura's** claims did not have a proper basis and he made a costs order in favour of **Hue** against Noble Lawyers and Darren Noble ("**Mr Noble**") directly in the sum of $113,092.50.

(h) In December 2006, **Mr Traianedes**, while a partner at Hall Chadwick, had prepared an independent expert's report on behalf of **Dura** to be filed in one set of proceedings between **Dura** and **Hue** (Supreme Court of Victoria proceeding 9929/2006). In February 2007, **Mr Traianedes** prepared a further independent expert's report for **Dura** in that proceeding. In the reports, **Mr Traianedes** provided his opinion on whether the financial statements of **Hue** were prepared in accordance with generally accepted accounting procedures and standards. Hall Chadwick was paid $5,500 for the first report and $5,654 for the second report. In the course of preparing those reports, and consistent with his role as an independent expert witness, **Mr Traianedes** received instructions from the solicitors retained by **Dura** in the proceedings and met with the solicitors and with Counsel retained by **Dura** in the proceedings.

(i) The proceedings in respect of which **Mr Traianedes** prepared the expert reports were different proceedings to those referred to in sub-paragraph (f) above.

(j) The $6,173,155.80 judgment against **Dura** referred to in sub-paragraph (f) above was the catalyst for **Dura** entering into liquidation. **Hue** was **Dura**'s largest creditor.

Pre-liquidation meetings and transactions

(k) In the two-year period prior to **Dura** entering into liquidation, **Mr Traianedes** had three meetings with **Mr Khor**.

(l) The first meeting took place on 19 October 2011. The discussion at these meetings concerned the procedures and effects of winding up including the prospective recoveries available to a liquidator in a winding up.

(m) The second and third meetings took place between **Mr Traianedes** and **Mr Khor** on 30 April 2012 and 15 August 2013 respectively.

*Liquidation of **Dura***

(n) On 15 August 2013, **Mr Khor**, on behalf of **Simgon** as shareholder of **Dura**, resolved that **Dura** be wound up voluntarily and that **Mr Traianedes** be nominated as the liquidator. On that day, **Dura** entered into liquidation and **Mr Traianedes** was appointed as the liquidator.

(o) Upon his appointment as liquidator of **Dura**, **Mr Traianedes** retained Hall and Wilcox Solicitors, as his solicitor ("**Mr Traianedes' solicitor**").

(p) Prior to **Dura** entering into liquidation, it and/or **Mr Khor** received legal advice from Hall & Wilcox in relation to whether to liquidate **Dura**. **Mr Traianedes** became aware, on the day of his appointment, that Hall & Wilcox had advised **Mr Khor** and **Dura** in relation to whether **Dura** should be placed into liquidation.

(q) On around 26 August 2013, **Mr Traianedes** sent a letter to creditors that, included notification that a creditors' meeting was scheduled for 6 September 2013, his **DIRRI** and a remuneration report pursuant to sub-section 499(7) of **the Act**.

*Communications between **HSF** and Hall & Wilcox*

(r) Between 28 August and 6 September 2013, there was correspondence between **HSF** and **Mr Traianedes' solicitor**, by which **Mr Traianedes' solicitor** was put on notice of **Hue**, **Mr Chu** and **Ms Tan's** were concerns about **Mr Traianedes**' lack, or perceived lack, of independence as liquidator of **Dura**.

(s) By a letter dated 3 September 2013, **HSF**:

(i) attached a proof of debt for **Hue** in the amount $6,258,225.69, and a proof of debt for **Hue**, **Mr Chu** and **Ms Tan** as joint creditors in the amount of $4,462,307.98;

(ii) asked **Mr Traianedes' solicitor** to advise it regarding **Mr Traianedes**' position in relation to the proofs of debt;

(iii) asked whether **Mr Traianedes** objected to representatives of **Hue**, **Mr Chu** and **Ms Tan** (namely Alan Mitchell ("**Mr Mitchell**") and Carla Aumann ("**Ms Aumann**") of **HSF**), attending the creditors' meeting and speaking on behalf of **Hue**, **Mr Chu** and **Ms Tan**.

(t) By letter dated 4 September 2013, **Mr Traianedes' solicitor**, responded on behalf of **Mr Traianedes**. Their letter stated that there was no objection to the attendance of **Mr Mitchell** and **Ms Aumann** at the

creditors meeting and with respect to their clients' proofs of debt a response would be provided in due course.

(u) By letter dated 5 September 2013, **HSF** followed up on its request that **Mr Traianedes' solicitor** advise of **Mr Traianedes**' position in relation to the proofs of debt and sought confirmation that **Mr Traianedes** did not oppose **Mr Mitchell** and **Ms Aumann** speaking at the meeting.

(v) The response from **Mr Traianedes' solicitor** dated 6 September 2013, Hall & Wilcox stated "*We reiterate that Mr Mitchell and Ms Aumann will be allowed to attend the creditor's meeting as observers*" but did not address the issue of whether or not **Mr Mitchell** and **Ms Aumann** could speak at the meeting (which under section 24.7.1 of the **IPA Code** they would have been entitled to do).

(w) On 6 September 2013, **HSF** sent an email to **Mr Traianedes** attaching an appointment of proxy form for **Hue**, **Mr Chu** and **Ms Tan** appointing **Mr Mitchell** as the proxy in order to ensure that he would be able to speak at the meeting.

Proxies and communications with creditors

(x) On 28 and 29 August 2013, **Mr Traianedes**, **Ms Welsh** and Sash Nikolovski ("**Mr Nikolovski**") of McLean Delmo Bentleys Pty Ltd, a **Dura** creditor, exchanged emails in relation to attendance at the creditors' meeting and proxy forms as follows:

(i) on 27 August 2013, **Mr Traianedes** wrote to **Mr Nikolovski** stating "*The notices to creditors were sent out yesterday. Is there any debt outstanding to you from Dura (Australia) Constructions Pty Ltd?*";

(ii) on 27 August 2013, **Mr Nikolovski** responded to **Mr Traianedes** saying "*Just a small amount for $227. I can send you the invoice. Let me know*";

(iii) on 27 August 2013, **Mr Traianedes** responded to **Mr Nikolovski** stating "*Yes. You need to be [sic] creditor. Call later to discuss*";

(iv) on 28 August 2013, **Mr Nikolovski** sent an email to **Mr Traianedes** with a subject line "*Dura Invoice*" and stating "*As requested*";

(v) on 28 August 2013, **Mr Traianedes** responded to **Mr Nikolovski** stating "*Circular as requested*";

(vi) on 28 August 2013, **Mr Nikolovski** responded to **Mr Traianedes** stating "*Do you want me to return the proxy form with you as Proxy?*";

(vii) on 28 August 2013, **Mr Traianedes** responded to **Mr Nikolovski** stating "*A special. Consult with Debbie about this tomorrow*";

(viii) on 29 August 2013, **Ms Welsh** wrote to **Mr Nikolovksi** saying "*Further to your discussions with Stan, please find attached a Special Proxy and Proof of Debt form for the meeting*". The attached proxy form had been pre-completed by either **Mr Traianedes** or **Ms Welsh** to provide the following instruction to the proxy holder: "*To vote against the appointment of an alternate Liquidator*";

(ix) on 30 August 2013, **Mr Nikolovski** completed a proxy in favour of Moi Choong;

(x) on 2 September 2013, **Mr Traianedes** wrote to **Mr Nikolovski** stating "*Your [sic] more than welcome to come to the circus (creditors' meeting) on Friday. Too bad the Hue Boutiq [sic] principals will be overseas on the day*";

(xi) on 2 September 2013, **Mr Nikolovski** responded to **Mr Traianedes** stating "*If you need me there from a voting viewpoint I can attend. Let me know how you go*".

(y) On 29 August 2013, Geoff Steinman ("**Mr Steinman**"), the general manager of Dura Constructions Pty Ltd ("**Dura Constructions"**), a **Dura**-related company, and **Mr Traianedes** exchanged emails in relation to a draft letter to creditors as follows:

(i) **Mr Steinman** wrote to **Mr Traianedes** stating that "*[t]he below is a draft e-mail that I wish to send to specific key creditors of the Dura Group, of whom we are fully servicing their current monthly progress claim payments from the DC entity as a voluntary contribution. ... Given it is in writing, I thought it best to be sure that am [sic] not conflicting with your duties in any of the statements that I have noted. For this reason, please advise if I have reported anything inaccurately from your position as liquidator*". The draft letter stated, among other things, that "*the liquidator has advised that any independent body to DAC can at any time make a contribution towards a creditor's debt, and if so, it will not be subject to any scrutiny or preferential treatment through the liquidation process. ... Additionally, we attach a proxy form, in the event that you will be unable to attend the creditor's meeting. This will enable your vote to count, and accordingly if you will not be attending, we ask that you complete this proxy form by filling in the first 2 and last 2 tabulated entries, and forward it back to me by return e-mail*".

(ii) **Mr Traianedes** wrote to **Mr Steinman** setting out revisions to the draft letter.

(z) Between 30 August and 6 September 2013, **Mr Steinman** and **Mr Traianedes** exchanged emails in relation to voting as a proxy and appointing Michael Sholakis ("**Mr Sholakis**") and Domenic Perrone ("**Mr Perrone**") as proxies as follows:

(i) On 30 August 2013, **Mr Steinman** sent an email to **Mr Traianedes** which stated: "*We have a number of creditors sending us proxy forms signed, but some of them have my name listed as the proxy. This means that I will be a designated proxy for more than one creditor. Does this mean that I will be able to cast a vote for each (i.e. multiple votes based on the number of proxy's in my name), or does any individually [sic] only have a single vote allowable irrespective of being assigned as proxy by more than one creditor. If only a single vote is allowable in this circumstance, I will need to get the proxy forms with my name listed, changed to another name*";

(ii) On 30 August 2013, **Mr Traianedes** responded by email to **Mr Steinman** stating "*In the event of an 'on the voices' vote, ie., a show of hands, each individual entitled to vote will be counted as a single vote only. ... In contrast, where a vote is taken by poll, one vote is counted per proxy held*";

(iii) On 30 August 2013, **Mr Steinman** responded by email to **Mr Traianedes** stating "*I will have them changed so that we have one individual is [sic] assigned to one proxy only*";

(iv) On 30 August 2013, **Mr Traianedes** responded by email to **Mr Steinman** stating "*Thanks Geoff. The greater the number of individual creditors the simpler it will be to administer the expected poll*";

(v) On 5 September 2013, **Mr Traianedes** wrote to **Mr Steinman** stating that "*I am advised that Mr Michael Sholakis (Michael.sholakis@rocg.com) and Domenic Perrone (domenic@networkcapital.com.au) are prepared to act as proxies*"; and

(vi) On 6 September 2011, **Mr Traianedes** wrote to **Mr Steinman** stating "*Did you get anyone to appoint Domenic Perrone from this office?*'.

(aa) At that time, **Mr Sholakis** and **Mr Perrone** worked in the same building and on the same floor as **Mr Traianedes**. Neither **Mr Sholakis** nor **Mr Perrone** had any prior relationship or connection with **Dura** or any of its creditors.

(bb) **Mr Sholakis** and **Mr Perrone** became proxies for creditors of **Dura** after **Mr Traianedes** approached them and requested that they each act as proxies for creditors of **Dura** at the creditors' meeting on 6 September 2013. They were made aware of the fact that at the meeting there might be a motion to replace **Mr Traianedes** as liquidator of **Dura**.

(cc) **Mr Sholakis** was appointed proxy for Metweld Steel Pty Ltd dated 4 September 2013; and

(dd) **Mr Perrone** was appointed proxy for Conset (Vic) Pty Ltd dated 5 September 2013.

(ee) On 5 September 2013, **Mr Noble** (lawyer for **Dura**) and **Mr Traianedes** exchanged emails in relation to **Dura** obtaining proxies as follows**:**

(i) **Mr Noble** wrote to **Mr Traianedes**, stating "*See below in the e-mail chain*" and forwarded correspondence between **Mr Noble** and **Mr Steinman** in which **Mr Steinman** had stated that "*Freehills have been calling the creditors trying to get their proxy votes*" and **Mr Noble** stated "*Pls also keep calling all of the creditors and obtain as many proxies as you can. Even if they say they have given proxies to Freehills, get them anyway as we will argue the later proxy should prevail*";

(ii) **Mr Traianedes** response was "*Noted*".

(ff) On 5 September 2013, Mr Yung Hun Wong ("**Mr Wong**") sent an email to **Mr Traianedes** attaching a copy of an appointment of proxy form appointing **Mr Wong** as the proxy for Austest Pipeline Solutions Pty Ltd ("**Austest**").

Creditors meeting

(gg) On 6 September 2013, the first creditors' meeting for **Dura** was held. The attendees included:

(i) **Mr Mitchell** from **HSF** as proxy and legal representative for **Hue**, **Mr Chu** and **Ms Tan;**

(ii) **Ms Aumann** as legal representative for **Hue**, **Mr Chu** and **Ms Tan**;

(iii) Mr Simon Stuart ("**Mr Stuart")** as proxy for **Hue** and Transfare Pty Ltd; and

(iv) **Mr Wong**, a director of SC Land Pty Ltd, a **Hue**-related company, as proxy for **Austest**, Australian Digital Security, Brandon Industries and Britex Metal Products.

(hh) **Mr Mitchell**, **Ms Aumann**, **Mr Stuart** and **Mr Wong** sat together in the second and third row from the front of the room. Each of **Messrs Mitchell, Stuart and Wong** were entitled to vote. Collectively, they held proxies for the majority in value of the creditors. They each represented the interests of **Hue**, **Mr Chu** and **Ms Tan**.

(ii) Both **Mr Wong** and **Mr Cody** (director of **Dura**) held a proxy for **Austest**. **Mr Traianedes** adjourned the meeting and considered both proxies. **Mr Traianedes** says that the advice to him from his staff, who had administrative responsibility for receipt of proxies, was that **Mr Cody's** proxy had been received later in time and **Mr Traianedes** accepted **Mr Cody's** proxy on that basis although:

(i) before the creditors' meeting, **Mr Traianedes** had received the email from **Mr Noble** that stated "*Even if they say they have given*

proxies to Freehills, get them anyway as we will argue the later proxy should prevail";

(ii) **Mr Mitchell** had raised a number of points at the creditors' meeting to suggest that **Mr Traianedes** did not have a proper basis for accepting **Mr Cody's** proxy; and

(iii) there was no objective documentation to substantiate either that **Mr Traianedes** received the proxy from **Mr Cody** later than that from **Mr Wong**, or that the proxy held by **Mr Cody** was completed later than that held by **Mr Wong**.

(jj) At the meeting, **Mr Mitchell** raised a number of concerns about **Mr Traianedes**' independence and proposed a resolution that **Mr Traianedes** be removed as the liquid**ato**r. **Messrs Mitchell, Stuart and Wong** voted to remove **Mr Traianedes**. The majority of creditors in number voted against removing **Mr Traianedes**. **Mr Traianedes** did not exercise a casting vote. The resolution did not pass.

(kk) At the meeting, **Mr Traianedes** proposed a resolution that his accrued remuneration in the amount of $33,389 (excl GST) be approved. The resolution was moved. **Mr Mitchell** requested that a poll be taken. The majority in number voted for the resolution. **Messrs Mitchell, Stuart and Wong**, representing the majority in value, voted against the resolution. The resolution did not pass. **Mr Traianedes** then proposed a resolution that his prospective remuneration in the amount of $70,000 (excl GST) be approved. The resolution was not moved.

(ll) A committee of inspection ("**COI**") was formed and the following persons were appointed as members: **Messrs Mitchell, Stuart, Wong,** Stuart Mackey ("**Mr Mackey**"), Joe Karac ("**Mr Karac**"), **Mr Noble** and **Mr Cody**. After the **COI** was formed:

(i) **Mr Traianedes** said words to the following effect: "*Those gentlemen, after this meeting, if they can stay back just to have a discussion about some proposed issues*";

(ii) **Mr Traianedes** did not give notice of the issues that would be discussed;

(iii) **Mr Traianedes** did not state that a meeting of the **COI** would be held;

(iv) the members of the **COI** did not agree that a meeting of the **COI** could be held without the formal requirements for convening such a meeting having been complied with.

*Purported **COI** meeting*

(mm) **Mr Traianedes** then purported to hold a meeting of the **COI**. **Messrs Mackey, Karac, Noble and Cody** attended. **Messrs Mitchell, Stuart and Wong** did not attend. **Messrs Mitchell and Stuart** have given

evidence that they were not aware that **Mr Traianedes** had held a meeting purporting to be a **COI** meeting.

(nn) At the purported **COI** meeting, **Mr Traianedes** proposed that a decision be made to approve his remuneration. Votes were cast on the motions proposed for accrued and prospective remuneration that were in the same form as had been tabled at the creditor's meeting. **Mr Karac** said "*what's the point in voting when I'm just going to get voted down?*" **Messrs Mackay, Noble and Cody** voted in favour of the motions. **Mr Traianedes** declared the motions carried and the meeting closed

*Events following the creditors meeting and purported **COI** meeting*

(oo) On 9 September 2013, **Mr Traianedes** sent an email to **Mr Cody** saying, among other things, "*[t]hanks for your assistance and support last Friday*". The reference to "*last Friday*" was a reference to the creditors' meeting. **Mr Traianedes** says that in the lead up to the creditors' meeting he had had several meetings with **Mr Cody**, who had provided documents and substantial assistance to requests for information and records, and that the purpose of the email was to thank him for that assistance.

(pp) On 11 September 2013, **Mr Traianedes** wrote to the members of the **COI**. The letter did not refer to the fact that a purported meeting of the **COI** had taken place on 6 September 2013 nor that motions had been passed approving **Mr Traianedes**' accrued and prospective remuneration.

(qq) On 11 September 2013, **Hue** filed an application seeking orders that, *inter alia*, **Mr Traianedes** be removed as liquidator of **Dura**. In support of that application, **Hue** filed an affidavit sworn by **Mr Mitchell** and an affidavit sworn by **Ms Aumann**.

(rr) On 20 September 2013, **Mr Traianedes** filed an affidavit sworn by him in response.

(ss) On 25 September 2013, orders were made by consent that **Mr Traianedes** would resign as liquidator of **Dura**.

(tt) On 23 September 2013, **Mr Traianedes** drew remuneration in the amount of $55,277.50; and

(uu) On 25 September 2013, **Mr Traianedes** drew remuneration in the amount of $2,492.60.

(vv) On 25 September 2013, **Mr Traianedes** lodged, among other things, the minutes of the **COI** meeting.

(ww) On 1 October 2013, **HSF** wrote to **Mr Traianedes**' solicitors, Hall & Wilcox, demanding that **Mr Traianedes** return the remuneration paid to him. On 3 October 2013, Hall & Wilcox wrote to **HSF** advising that **Mr Traianedes** would return the funds. The funds were repaid to **Dura** on 4 October 2013. By a subsequent application made to the Supreme Court of

Victoria (which application was made on notice to **ASIC**), **Mr Traianedes**' remuneration was approved by the Court.

Overview of Contentions with respect to Dura (29, 30, 31, 32, 33, 34 and 35)

85. The seven contentions maintained against **Mr Traianedes** by **ASIC** with respect to the liquidation of **Dura** were that **Mr Traianedes** failed, within the meaning of sub-section 1292(2)(d)(i) of **the Act** to carry out or perform adequately and properly the duties of a liquidator insofar as he:

    (a) improperly purported to hold a meeting of the **COI** where the requirements for convening such a meeting were not complied with (Contention 29);

    (b) improperly proposed a resolution to fix his remuneration in circumstances where he had not complied with the requirements of sub-section 499(6)(b) of **the Act** by failing to give a report to members of the **COI** at the same time as they were notified of the meeting (Contention 30);

    (c) improperly proposed a resolution to fix his remuneration by failing to table at the purported meeting of the **COI** information in support of the remuneration request (Contention 31);

    (d) drew remuneration that had not been properly or validly approved (Contention 32);

    (e) improperly sought to retain appointment as liquidator of **Dura** after a creditor had raised concerns with **Mr Traianedes** about his independence and impartiality (Contention 33);

    (f) failed to implement appropriate policies and processes in relation to independence, maintaining written records demonstrating compliance with such processes, and maintaining a working paper to support his completed **DIRRI (**Contention 34);

    (g) improperly solicited proxies from creditors (Contention 34).

Contention 29 – Purporting to hold an improperly convened COI meeting

86. Contention 29 alleges that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator in purporting to hold a meeting of the **COI** that had not been properly convened in accordance with applicable requirements.

87. **Mr Traianedes** admits the allegation in Contention 29.

88. **Regulations** 5.6.12(1)(c) and 5.16.14B and 5.6.11(2)(a)(iii) contain relevant requirements with respect to convening a meeting of a **COI**. **Regulation** 5.6.12(1)(c) provides that the convener of a meeting must give "*notice in writing*" of the meeting to every person appearing on the company's books or otherwise, in the case of a meeting of the **COI**, to every member of the **COI**. Rule 5.6.14B provides that a meeting of the **COI** may be held if all the persons who are entitled to be present at, and to vote at, the meeting agree, even if it has

not been convened in accordance with the **Regulations**. The **SAFC** records that not all persons who were entitled to be present and vote at the **COI** Meeting had so agreed.

89. The **IPA Code** provides at sub-section 24.8 that a practitioner should ensure that a meeting of the **COI** is properly convened pursuant to the legal requirements.

90. The agreed facts demonstrate that **Mr Traianedes** purported to hold a **COI** meeting in circumstances where he had not convened the meeting in accordance with the relevant requirements in the **Regulations**. We are satisfied that complying with **Regulations** such as those the subject of this contention is a relevant duty of a liquidator and that a reasonably competent liquidator would have understood those requirements and observed them when convening a meeting of the **COI.** We are satisfied that **Mr Traianedes'** conduct in failing to properly convene the **COI** meeting is a failure to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

91. We find that Contention 29 has been established.

Contention 30 – Proposing resolution to fix remuneration when requirements of sub-section 499(6)(b) of the Act not satisfied

92. Contention 30 alleges that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator in that he proposed a resolution to fix his remuneration in circumstances where he had not complied with the requirements of sub-section 499(6)(b) of **the Act**.

93. **Mr Traianedes** admits the allegation in Contention 30.

94. Section 499(6) of **the Act** provides that before remuneration is fixed by the **COI** the liquidator must:

    (a) prepare a report that sets out, among other things, such matters as will enable the members of the committee to make an informed assessment as to whether the proposed remuneration is reasonable; and

    (b) give a copy of the report to each member of the committee at the same time as the member is notified of the relevant meeting of the committee.

95. It was not in contention that at the purported meeting of the **COI**:

    (a) **Mr Traianedes** proposed resolutions for the fixing of his accrued and prospective remuneration;

    (b) the **COI** members voted on the proposed resolutions, and purported to approve **Mr Traianedes**' accrued and prospective remuneration.

96. **Mr Traianedes** did not give a copy of a report pursuant to sub-section 499(6) of **the Act** to each member of the **COI** at the same time as the member was notified of the **COI** meeting. While **Mr Traianedes** admits this was the case,

he notes that a copy of a remuneration report under sub-section 499(7) of **the Act** had been provided to creditors together with the notice of the creditors' meeting, and that any report under sub-section 499(6) of **the Act** would have been identical to or substantially the same as the remuneration report already provided. **ASIC**'s concern arose from the fact that the failure to provide a separate remuneration report to members of the **COI** would have reinforced the view of members of the **COI** that a formal meeting was not being called, or at least no meeting at which resolutions concerning remuneration were likely to be proposed.

97. It is not in debate that it is a duty of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act** to provide a report as set out in sub-section 499(6) of **the Act**. The point validly made by **ASIC** was that the failure to provide the report in accordance with sub-section 499(6) of **the Act** and before the **COI** meeting was likely to have reinforced the view of members of the **COI** that a formal meeting was not being convened, or at least not a meeting at which resolutions concerning remuneration would be proposed. Compliance with sub-section 499(6) of **the Act** would have required **Mr Traianedes** not only to provide a report but, at the same time, formal notice of the meeting to all **COI** members including those who were not even aware that the purported meeting was to be held. Had all **COI** members received that notice it is reasonably likely that the resolution on **Mr Traianedes**' past and future remuneration would not have been carried given the outcome of the voting on that issue at the creditors' meeting that same day. It is entirely plausible that a motive for improperly convening the meeting was not to have all **COI** members present so as to increase the likelihood of the motions being carried. These matters underscore the significance of **Mr Traianedes'** failure to comply with sub-section 499(6) of **the Act** and demonstrate that the fact he had already provided the remuneration report to those present but in a different context did not mitigate that significance.

98. The agreed facts demonstrate that **Mr Traianedes** purported to propose a resolution to fix his remuneration in circumstances where he had not complied with the requirements of sub-section 499(6)(b) of **the Act**. We are satisfied, that this is a failure to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

99. We find that Contention 30 has been established.

Contention 31 – Failing to table information in support of a remuneration request

100. Contention 31 alleges that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator in that he proposed a resolution to fix his remuneration in circumstances where he failed to table the information provided to the **COI** in support of the remuneration request.

101. **Mr Traianedes** admits the allegation in Contention 31.

102. Sub -section 15.5 of the **IPA Code** provides that at a meeting at which a request for remuneration is being considered, a Practitioner must table the information provided to the **COI** in support of the remuneration request.

103. According to the agreed facts **Mr Traianedes** did not table at the purported meeting of the **COI** any information provided to the **COI** in support of the remuneration request (although he notes the same matters as he has in paragraph 96 hereof) as he was required to do by sub-section 15.5 of the **Code**.

104. We refer to and repeat our comments in paragraph 97 with respect to Contention 30.

105. We are satisfied that the facts demonstrate that **Mr Traianedes** has failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

106. We find that Contention 31 has been established.

Contention 32 – Drawing remuneration not validly approved

107. Contention 32 alleges that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator in that he drew remuneration in circumstances where his remuneration was not properly or validly approved.

108. **Mr Traianedes** admits the allegation in Contention 32

109. Sub-section 499(3) of **the Act** provides that the remuneration to be paid to a liquidator may be fixed by a committee of inspection, or by resolution of the creditors.

110. **APES 330**[41] at sub-section 8.14 provides that:

"*A Member in Public Practice shall only draw Professional Fees once the proper resolution, order, or authority has been obtained from the Approving Body and in accordance with the terms of approval.*"

111. **APES 110** at sub-section 150.1 provides that:

"*The principle of professional behaviour imposes an obligation on all Members to comply with relevant laws and regulations and avoid any action or omission that the Member knows or should know may discredit the profession. This includes actions or omissions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the Member at that time, would be likely to conclude adversely affects the good reputation of the profession.*"

112. The resolutions proposed to the meeting of creditors of **Dura** to approve **Mr Traianedes** accrued and prospective remuneration were not passed.

113. The resolutions proposed at the **COI** meeting to approve of **Mr Traianedes'** accrued and prospective remuneration were purportedly passed in circumstances where:

(a) the **COI** meeting had not been validly convened (Contention 29); and

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[41] **APES 330** Ibid footnote 30

(b) **Mr Traianedes** had not given a remuneration report as required by sub-section 499(6) of **the Act** to members of the **COI** at the same time as they were notified of the relevant meeting of the **COI** (Contention 30);

(c) **Mr Traianedes** had not tabled at the meeting of the **COI** any information in support of his remuneration request as he was required to do by the **Regulations** to which we have already referred (Contention 31).

114. It follows from our findings on Contentions 29, 30 and 31 that the purported approval of his remuneration by the **COI** was invalid.

115. Notwithstanding, **Mr Traianedes** drew remuneration in the amounts of $55,277.50 and $2,492.60 in accordance with the purported decisions of the **COI** which, in the circumstances, was not in accordance with sub-section 8.14 of **APES 330** as he did not have approval either by resolution of the creditors, from the **COI** or from the Court before drawing his remuneration[42].

116. While **Mr Traianedes** admits these matters and that by reason of their occurrence he has failed to carry out or perform adequately and properly the duties of a liquidator, he says that at the time he drew the remuneration, he believed that valid resolutions had been passed (albeit that he has now admitted that they were not). **Mr Traianedes** further submitted that after the invalidity of the meeting was brought to his attention, he repaid the monies to **Dura**. Subsequently **Mr Traianedes** made an application to the Supreme Court of Victoria for approval of the remuneration. The application (a) was made on notice to **ASIC** and **Hue** and (b) he made full disclosure of the **COI** meeting and the (invalid) resolution. The Court approved **Mr Traianedes'** remuneration.

117. The matters raised by **Mr Traianedes** do not in our view relevantly bear upon the question of whether his actions amount to a relevant failure within the meaning of sub-section 1292(2)(d)(i) of **the Act**. That question involves consideration of the nature of the conduct that took place. If the conduct pertained to a "duty" of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**, the question is whether it met the standard of a reasonably competent liquidator having regard to the relevant legislation, common law and professional standards in place which circumscribe that duty. The duty of a liquidator to comply with the legislation and relevant standards with respect to payment of fees is in our view a relevant duty within the meaning of sub-section 1292(2)(d)(i) of **the Act**. A reasonably competent liquidator acting diligently and aware of his legislative obligations would have recognised that he did not have proper approval to draw his remuneration. We are satisfied that in the circumstances of Contention 32 **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

118. We find that Contention 32 has been established.

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[42] *Dunner* Ibid footnote 18 at [160] and [193].

Contention 33 – Retaining appointment as liquidator when valid concerns as to independence raised by a creditor

119. As a matter of general law, a person must not retain an appointment as a liquidator of a company if a reasonable observer might[43] reasonably apprehend that the practitioner might lack independence or impartiality. An important tenet of this principle is that a liquidator must not only be independent but also be "seen to be independent"[44].

120. Part C of the **IPA Code** sets out guidance and examples to assist in applying the principles set out in the **IPA Code**. Principle 2 of the **IPA Code**[45] relates to independence and states that *when accepting or retaining an appointment the Practitioner must at all times during the administration be, and be seen to be, independent*. Clause 6 of Part C sets out the guidance on independence and (in part) provides as follows:

A Practitioner must:

- *be independent in fact; and*
- *be seen or perceived to be independent. …*

… A Practitioner must be seen to be independent, that is, they must not accept an appointment, or continue to act under an existing appointment, if:

- *a reasonable and informed third party;*
- *on the information available (or which should have been available) at the time;*
- *might reasonably form the opinion that the Practitioner might not bring an independent mind to the administration and thus may not be impartial or may in fact act with bias;*
- *because of a lack of independence, or a perception of a lack of independence.*

121. In relation to prior professional relationships, Clause 6.9 of the **IPA Code** provides that:

A Practitioner may take an appointment if the professional relationship with the Insolvent occurred more than two years prior to the date of the Appointment.

Nevertheless, the Practitioner must not take the appointment if the prior relationship:

- *is material to the insolvency;*

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[43] ***ASIC** v Franklin* (2014) 223 FCR 204 ("*Franklin*") at [75].
[44] ***ASIC** v McVeigh* ((Decision of **the Board** dated 19 January 2010 Matter no 10/VIC08) ("*McVeigh*") at [5.3]; *Advance Housing Pty Ltd (in liq) v Newcastle Classic Developments Pty Ltd* (1994) 14 ACSR 230 at 234; *Bovis Lend Lease Pty Ltd v Wily* (2003) 45 ACSR 612 at [140]; *Franklin* Ibid footnote 43 at [75].
[45] **IPA Code** Ibid footnote 11 at page 19

- *has real potential for a litigation claim against the Practitioner by a stakeholder; or*

- *is related to structuring of financial affairs of the entity in order to avoid the consequences of insolvency i.e. the distancing of the assets from creditors in the event of insolvency, even if this advice was provided at a time when the entity was solvent.*[46]

122. The parties agree that **Mr Traianedes** had the following dealings or connections with **Dura** *prior* to his appointment as liquidator neither of which were disclosed to creditors:

    (a) between July 2006 and May 2008, **Mr Traianedes** was a partner at Hall Chadwick at the same time as it was the auditor of **Dura**;

    (b) in December 2006 and February 2007, **Mr Traianedes** was retained by **Dura** as an expert witness in litigation against **Hue**;

123. In the 2 years prior to **Dura** entering into liquidation, **Mr Traianedes** had three meetings with **Mr Khor** in October 2011, April 2012 and August 2013 which were disclosed in the **DIRRI** he completed in relation to the appointment.

124. **Mr Traianedes** accepts that:

    (a) a fair-minded observer might reasonably have apprehended, when the matters set out in paragraphs 122 and 123 are considered collectively, that **Mr Traianedes** might lack independence or impartiality;[47]

    (b) he should not have sought to retain the appointment once the issue of his perceived independence or impartiality had been raised by creditors.

125. In seeking to retain his appointment as liquidator of **Dura** despite his relevant prior dealings and connections with **Dura**, **Mr Traianedes** did not act in accordance with his obligations at general law and pursuant to accepted professional standards reflected in the provisions of the **IPA Code** that we have set out. This conduct demonstrates a significant lack of regard for the independence and impartiality demanded of the office of a liquidator and we are satisfied that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

126. We find that Contention 33 has been established.

Contention 34 - Failing to maintain written records demonstrating compliance with appropriate policies in relation to verifying independence

127. Contention 34 alleges that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator in that he failed to maintain written records demonstrating compliance with appropriate policies and

[46] See also **APES 330** Ibid footnote 30 at Clauses 4.2 and 4.16.
[47] *Franklin* Ibid footnote 43 at [75]; **IPA Code** Ibid footnote 11 at Clause 6.1.

processes in relation to independence, and did not maintain a working paper to support the completed **DIRRI** sent to creditors of **Dura** ("**Dura DIRRI**").

128. **Mr Traianedes** admits the allegations made in Contention 34.

129. The guidance contained in the **IPA Code** provides as follows:

"*6.14 Practitioners must actively seek to identify any risks to independence before accepting an appointment. As a minimum every firm must document and implement policies and processes that:*

- *recognise the importance of independence;*
- *establish clear criteria to identify and categorise threats;*
- *standardise the steps of investigation, enquiry, reporting and resolution;*
- *require education of Principals and staff on the process;*
- *include a process of consultation with senior staff for difficult cases;*
- *provide guidance as to courses of action to be taken if a threat to independence is identified after an appointment is accepted; and*
- *monitor adherence to the process.*

*Members must ensure that for every Appointment a written record is maintained which demonstrates compliance with the firm's independence processes and provides a working paper to support the completed **DIRRI**.*"

130. **Mr Traianedes** has admitted that he did not keep a written record demonstrating compliance with appropriate policies and processes in relation to independence or a relevant working paper to support his completed **DIRRI**.

131. **Mr Traianedes** has also admitted that he failed to comply with accepted professional practice and thereby failed, within the meaning of sub-section 1292(2)(d)(i) of **the Act**, to carry out or perform adequately and properly the duties of a liquidator.

132. The facts in relation to Contention 34 identify a straightforward failure on the part of **Mr Traianedes** to meet the requirements of the **IPA Code** as he did not maintain a written record demonstrating compliance with the firm's independence processes nor any working papers to support the completed **Dura DIRRI**. The failure to maintain any record is a significant departure from the professional standards reflected in the relevant provisions in the **IPA Code** set out in paragraph 129 hereof and in our view does not meet the standard of care and diligence required of a liquidator by either sub-section 180(1) of **the Act**, section 130.1(b) of **APES 110** or at general law. We are satisfied that **Mr Traianedes** conduct amounts to a failure to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

133. We find that Contention 34 has been established.

Contention 35 – Improperly soliciting proxies from creditors

134. Contention 35 alleges that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator in that he solicited proxies from creditors.

135. **Mr Traianedes** admits the allegation in Contention 35.

136. It was a matter of agreed fact between the parties that **Mr Traianedes** had engaged in conduct (especially when considered cumulatively) in relation to **Messrs Nikolovski, Perrone and Sholakis**, as referred to in sub-paragraphs 84 (x), (y), (z), (aa), (bb), (cc) (dd), (ee) and (ff) hereof that amounted to seeking to solicit proxies (directly or indirectly) from creditors. Particularly when considered as a whole it was accepted by **Mr Traianedes** that this conduct did not reflect an appropriate professional standard.

137. **Mr Traianedes** had approached **Mr Perrone** and **Mr Sholakis** who worked in his office building and arranged for those gentlemen to be proxies for **Dura** related creditors even though they had never before had any association with those creditors. He had also engaged in correspondence with **Mr Nikolovski** and provided him with a proxy form with a pre-completed voting instruction.

138. **Mr Traianedes**' conduct raises questions about independence and whether he had turned his mind to his obligations of independence and impartiality as the liquidator of **Dura**.

139. In our view, particularly having regard to the emphasis placed by the **IPA Code** on the importance of the duty of a liquidator to be and be seen to be independent, a reasonably competent liquidator would recognise that being involved in arranging the appointment of proxies or in otherwise soliciting proxies as occurred in the circumstances of Contention 35 would be likely to call his independence into question. We refer to our comments in paragraph 119 hereof. We are satisfied that **Mr Traianedes** failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**.

140. We find that Contention 35 has been established.

Board's discretion to make orders enlivened

141. **The Board**, with respect to each of the contentions pressed and for the reasons we have set out, is satisfied that **Mr Traianedes** has failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of sub-section 1292(2)(d)(i) of **the Act**. **The Board's** jurisdiction under section 1292 **of the Act** to make orders at our discretion is thereby enlivened.

Are the agreed orders an appropriate sanction?

142. It remains to consider the **consent orders** submitted by the parties and whether they represent an appropriate sanction in this matter. In summary the consent orders proposed that:

(a) **Mr Traianedes**' registration as a liquidator be suspended for a period of 3 years;

(b) **Mr Traianedes** provide undertakings to **the Board** and to **ASIC** as follows:

"Undertaking as to resolution of existing matters

1. The Respondent STAN TRAIANEDES gives the following undertaking to the Board and to ASIC:

*(a) That if for any reason his appointment as liquidator of Playzone (Australia) Pty Ltd ACN 097 564 924 (**Playzone**) does not cease on 8 January 2017, he will make all necessary arrangements for the appointment of a replacement liquidator within 28 days of 8 January 2017 such replacement liquidator to be approved by ASIC prior to his/her appointment;*

(b) That the costs of and incidental to the appointment of replacement liquidators to each of the companies in Schedule B (including, if relevant, Playzone), will be borne by Mr Traianedes, including but not limited to the cost of any necessary Court applications or creditors' meetings;

(c) To the extent that any of the costs of and incidental to the appointment of a replacement liquidator to any company in Schedule B has been paid out of the company's own funds, Mr Traianedes will reimburse the company for such costs within 28 days of the date of the Board's order requiring the giving of this undertaking, or within 28 days of the cost being paid out of the company's funds, whichever is later.

(d) Mr Traianedes will provide all necessary assistance to the replacement liquidator of each company in Schedule B (including, if relevant, Playzone).

(e) That in the event of any default of 1(a) above, he indemnifies ASIC for the cost of any Court application required for the rectification of that default, including but not limited to any application for the appointment of replacement liquidators;

Undertaking as to Further Education

2. Mr Traianedes give the following undertaking in writing to the CALDB and ASIC within seven (7) days after this order takes effect:

(a) *Mr Traianedes will use reasonable endeavours to retain his membership of CPA and ARITA for a period of not less than 4 years from the date that his suspension to practice as a registered liquidator ends.*

(b) *He undertakes to complete the following Continuing Professional Development (**CPD**) activities during the period of his suspension:*

(i) *all CPD requirements imposed on members of ARITA for the period from 1 January 2017 to 31 December 2019 (**the CPD Period**);*

(ii) *in addition to the minimum annual requirement for CPD to which members of ARITA are subject, he will at his own expense undertake during each year of the CPD Period at least a further 10 hours of CPD relating to insolvency practice and practice management;*

(iii) *over the CPD Period, the CPD that he undertakes will include at least 3 hours of training or courses relating to each of (1) independence, (2) remuneration, (3) investigations/reporting and (4) record-keeping (or, if relevant training or courses are not available in any area, such other training or courses as are approved by ASIC);*

(c) *He undertakes, as soon as practicable following each of:*

(i) *31 December 2017;*

(ii) *31 December 2018; and*

(iii) *the date by which he has completed his CPD requirements for the period from 1 January 2019 to 31 December 2019*

to provide ASIC with documents evidencing his completion of CPD for that period.

(d) *Until Mr Traianedes has complied fully with these undertakings, he will not accept any new appointment to any office required under the Corporations Act to be filled by a registered liquidator.*

Undertaking as to Joint Appointments or Reviews of Appointments Post Suspension

3. *Mr Traianedes give the following undertaking in writing to the CALDB and ASIC within seven (7) days after this order takes effect:*

(a) *Upon expiry of the suspension period, Mr Traianedes undertakes that for the first ten appointments that he accepts to any office required under the Corporations Act to be filled by a registered liquidator, he will use his best endeavours to undertake such appointment jointly and severally with a registered liquidator or registered liquidators approved by ASIC.*

(b) If he is unable to procure a joint and several appointee for any of his first ten appointments in respect of an appointment falling within sub-paragraph (a), he will:

(i) within 7 days of the appointment, notify ASIC, that he has accepted an appointment other than as a joint and several appointment and provide a written explanation to ASIC of the steps that he took to procure a joint and several appointment;

(ii) in relation to any such appointment, he will:

(A) procure (at his own expense) an independent registered liquidator (approved in advance by ASIC) to provide written reports to ASIC on the adequacy of Mr Traianedes' compliance with all relevant requirements and professional standards including, but not limited to, independence/conflicts, investigations, reporting to creditors and ASIC, and remuneration;

(B) use his best endeavours to procure that the reports are provided to ASIC: (i) within 6 months of the commencement of the appointment and (ii) if the appointment has not concluded within 12 months of its commencement, further reports one month after each 12 month period and a final report one month after completion of the appointment.

(c) If, during the period of 3 years following the expiry of the suspension period, he commences practice as a sole practitioner (that is, in a practice where he is the sole registered liquidator):

(i) within 3 months of commencing such practice, he will have all template, checklist and procedure documents to be used in the practice reviewed (at his cost) by an independent reviewer (approved by ASIC) who will provide a report on compliance with industry best practice, and recommendations for any changes to his processes and documents to comply with best practice; and

(ii) within 3 months of the completion of such review, he will make any changes to those documents recommended by the external reviewer;

(iii) he will provide to ASIC, as soon as reasonably practicable, any report or recommendations made by the external reviewer, and an explanation (by way of a statutory declaration) of the steps that he has taken to institute those recommendations.

Undertaking as to employment during the period of suspension

4. Mr Traianedes give the following undertaking in writing to the CALDB and ASIC within seven (7) days after this order takes effect:

(a) During the period of his suspension, Mr Traianedes will not undertake work in relation to any formal insolvency appointment except as supervised by a registered liquidator in a firm or practice not established by Mr Traianedes.

(b) The arrangement that he enters into with any firm in association with whom Mr Traianedes undertakes insolvency-related work, and the manner in which his role is represented to clients and the public, will not be such as to suggest that Mr Traianedes is a registered liquidator or a principal in that firm or practice.

(c) Mr Traianedes will report to ASIC as to the nature of the arrangements pursuant to which he is employed or engaged by IRT Advisory or any other firm once those arrangements are formalised and will report further to ASIC if there is any subsequent change to those arrangements during this suspension period.

(d) Mr Traianedes will provide any information or documentation requested of him by ASIC for the purposes (in ASIC's sole discretion) of verifying the matters set out at sub-paragraphs 4(a) to (c) above.

SCHEDULE B: COMPANIES

Creditors' Voluntary Liquidation

1. Playzone (Australia Pty Ltd) ACN 097 564 924

2. Sutherlands Creek Farm Pty Ltd ACN 124 637 298

3. Zamac Property Holdings Pty Ltd ACN 125 774 870

4. JCP Carpentry & Design Pty Ltd ACN 082 989 973

5. PC Construct Pty Ltd ACN 147 812 851

6. Cyberduck Software Pty Ltd ACN 075 497 415

7. B.A.S (R&D) Pty Ltd ACN 060 882 224

8. B.A.S Melb Pty Ltd ACN 100 085 229

9. Prosperity Legal Group Pty Ltd ACN 123 412 331. "

(c) the order for suspension of registration take effect 28 days from the date that it is made by **the Board** (to provide **Mr Traianedes** with time to resign his existing appointments);

(d) **Mr Traianedes** pay **ASIC's** costs of and related to this application in the fixed sum of $60,000.

*Further evidence relevant to **the Board's** consideration of whether the consent orders are an appropriate sanction*

143. In circumstances where parties agree orders, **the Board** may call for further evidence if it considers such evidence may assist the consideration of whether the proposed orders are an appropriate sanction[48]. The evidence that was initially available to **the Panel** and relevant to this question was the **SAFC.** As well as setting out the agreed facts with respect to each of the contentions pressed it recorded **Mr Traianedes'** admissions that he had failed to carry out or perform his duties adequately and properly under sub-section 1292(2)(d)(i) of **the Act.** The **SAFC** also included the proposed consent orders. After considering the contents of the **SAFC, the Panel** indicated to the parties that further evidence would assist it in its task.

144. **The Panel** identified the areas it wished to explore further including:

(a) **Mr Traianedes'** character; and

(b) the reasons the failings had occurred.

The Panel invited the Respondent to provide evidence relevant to these matters.

145. Following an adjournment **Mr Traianedes** submitted an additional statement in the proceedings that addressed the context in which the matters the subject of the contentions occurred and steps he had taken to address issues identified by the failings identified in the **SAFC** ("**Traianedes statement**") together with four written character references ("**the character evidence**"). When the hearing resumed **Mr Traianedes** provided further oral evidence (on oath) that was relevant to the question of whether the orders proposed were appropriate.

*Further evidence - **Traianedes statement***

146. **ASIC** did not seek to cross examine **Mr Traianedes** on his statement or otherwise challenge the evidence but made a number of submissions with respect to the **Traianedes statement** that are useful to record. In summary those submissions were:

(a) When considered alongside **Mr Traianedes**' explanations as to how the failures occurred the contentions established justify a lengthy suspension of **Mr Traianedes**' registration as a liquidator as they evidence that **Mr Traianedes**' failures arose due to repeated inattention, oversight and inadvertence to the required professional standards.

(b) Nevertheless, provision by **Mr Traianedes** of an explanation and the evidence of recognition by him of his failures, goes some way towards providing reasonable comfort that he will properly perform his duties following a lengthy period of suspension.

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[48] *Topp* Ibid footnote 4 at [8(f)]

(c) **The Traianedes statement** referred to practice and procedure improvements **Mr Traianedes** had introduced at **S & Z Insolvency** in response to the failures identified. That evidence was not in a form so as to be objectively verifiable.

(d) **Mr Traianedes**' admission of his failures should be afforded significant weight in considering suspension as the appropriate sanction, most relevantly because it demonstrates that **Mr Traianedes** cooperated with **ASIC** and has recognised his shortcomings - an important step in ensuring that such failures will not recur.

The Character Evidence

147. **Mr Traianedes** tendered four written references from:

(a) Jeffrey William Browne, an accountant and registered company auditor;

(b) Carl Foti, an accountant and auditor;

(c) Neil Robert Gardiner, an accountant; and

(d) Paul Holdway, a solicitor.

148. **ASIC** did not object to the tender of the written references, and did not seek to cross-examine any of the referees proposed. ASIC noted the general nature of the references provided but acknowledged that they nevertheless provided some further evidence as to **Mr Traianedes'** character and fitness.

***Mr Traianedes** further oral evidence*

149. **Mr Traianedes'** further oral evidence included:

(a) an expression of genuine remorse for his failures of duty;

(b) re-iteration of his commitment to meet the requisite professional standard at all times in the future.

150. During the course of **Mr Traianedes'** oral evidence **the Panel** members asked **Mr Traianedes** to provide documentary evidence that could assist **the Board** to corroborate the procedural changes to which he had deposed ("**the revised practices information**"). **Mr Traianedes** fully cooperated with **the Board's** request. The **revised practices information** of itself did not (and could not) provide reassurance as to the overall efficacy of the changes implemented at **S & Z Insolvency** nor their full scope. It was not **the Board's** intention to satisfy itself in respect of that issue as that exercise would have been far too extensive to undertake in the context of these proceedings. However, confirmation of the existence of **the revised practices information** provided **the Board** with a basis to place some confidence in the general reliability of **Mr Traianedes**' evidence (which in these proceedings was largely untested) and was a matter that together with the undertaking to be included in the **consent orders** that an independent review of his office procedures would be necessary within 3 months of him ever resuming practice as a registered liquidator on his own

account, was directly relevant to the question of whether suspension would be an appropriate sanction.

151. When providing his further oral evidence and by way of further explanation, **Mr Traianedes** also referred to challenging personal circumstances which he was experiencing during the time the failings the subject of the contentions pressed, occurred.

Further submissions on agreed sanction

152. In addition to the submissions to which we have already referred, the parties contended that the proposed sanction of a 3 year suspension of **Mr Traianedes'** registration was within an appropriate range, and would adequately serve the public protective aim of proceedings before **the Board** because **Mr Traianedes**' agreed failures, while serious, have not involved dishonesty and he has provided evidence that he has taken steps within his practice to seek to address the issues identified by the admitted contraventions. Further, in these proceedings **Mr Traianedes**:

    (a) expressed contrition and remorse in relation to his failures;

    (b) expressed a willingness to submit to further conditions as to targeted training and supervision following a period of suspension;

    (c) undertaken (inter alia) that during any period of suspension he will work only with another insolvency firm, with such work necessarily being supervised by a registered liquidator.

153. **ASIC** submitted that the matters enumerated in paragraph 152 are relevant to the important element of public protection any sanction imposed by **the Board** must serve. Especially when considered cumulatively they provide a sufficient degree of assurance as to **Mr Traianedes**' fitness to practise as a registered liquidator following the proposed significant 3 year period of suspension of his registration as a liquidator contemplated by the **consent orders**.

154. In addition to the matters going to the important consideration of whether the proposed sanction would have the requisite public protective effect, **ASIC** submitted additional matters that **the Board** should take into account in determining whether the proposed **consent orders** represent an appropriate sanction in the present case. Those matters included:

    (a) the significant public interest in encouraging settlement of proceedings of this type, and in promoting predictability of outcome for regulators and wrongdoers;

    (b) that if an agreed sanction proposed is *an* appropriate sanction, even if not the precise sanction that **the Board** would have arrived at, **the Board** should not depart from it merely because it might otherwise have been disposed to different orders.

    (c) an order for publication of **the Board's** decision would further assist in serving the public protective aims of the proceeding by:

(i) having a consequential educative effect on other liquidators; and

(ii) demonstrating publicly that there is a regulatory regime applicable to liquidators that is effective,

thereby also serving a strong deterrent function and assisting in ensuring that liquidators adequately and properly perform their duties;

(d) **ASIC**'s decision to reach a **SAFC**, that resulted in the withdrawal of a number of contentions initially pressed against **Mr Traianedes**, and to support proposing consent orders that embodied a lengthy suspension of **Mr Traianedes'** registration, reflects its pragmatic assessment that the public interest is served by finalising the current proceeding (which would otherwise have involved **ASIC** calling a large number of witnesses as part of its case) on agreed terms as to sanction, thereby avoiding the risks and further expense of litigation. That such a process of reasoning is reasonable, and to be anticipated, was most recently noted by Keane J in *Fair Work*[49];

(e) that it is of some relevance that a 3 year suspension of his registration as a liquidator would have a significant impact on a sole practitioner such as **Mr Traianedes** even though the personal consequences of any sanction imposed is not a priority given the protective nature of **the Board's** jurisdiction under section 1292 of **the Act**. **ASIC** considered that a 3 year suspension would strike an appropriate balance between protection of the public, achieving deterrence and allowing **Mr Traianedes** the possibility of resuming his own practice as a registered liquidator at the end of a period of suspension.

***Board's** findings on appropriate orders*

155. The following matters were relevant to forming our view on whether the agreed orders represent an appropriate sanction:

(a) **Mr Traianedes**' evidence that he is and will continue to be committed to addressing his mistakes and to taking the appropriate steps to ensure that lapses will not occur in the future. This evidence provides a basis for **the Board** to be confident that he will comply with the undertakings included in the **consent orders** and continue to take responsibility for improving his conduct to the level that the current professional standards require of him.

(b) **Mr Traianedes'** explanation for his failings, i.e. that he had not paid proper attention to his duties as a liquidator nor been diligent in carrying out or turning his mind to his professional duties. We accept **Mr Traianedes'** explanation as plausible to the extent that it was consistent with the agreed facts, particularly in light of the personal issues **Mr Traianedes** alluded to as in play over the relevant time that required him to be absent from his office for significant periods. To the extent that had been the cause of the failings, a period of suspension and undertakings

[49] *Fair Work* Ibid footnote 5 at [109]

providing for additional learning and professional development could satisfactorily address the rehabilitation necessary to ensure the public's protection in the future. However the conduct found to be established with respect to **Dura** is not fully explained by a lack of proper care and diligence. In our view significant elements of **Mr Traianedes'** conduct in improperly convening the **COI,** improperly proposing the resolution to approve his remuneration and actively soliciting proxies from creditors, was deliberate conduct and therefore significantly more serious in nature. That conduct, especially when considered in combination with the extensive and rather pervasive lack of care and diligence demonstrated by **Mr Traianedes'** conduct of the matters the subject of these proceedings calls for a serious sanction. In our view, a 3 year suspension together with the undertakings proposed reflects a serious sanction.

(c) **Mr Traianedes'** expression of remorse for his failings. We are satisfied that **Mr Traianedes** has accepted the findings that have been made and has begun the process of taking responsibility for them. This factor supports suspension as an appropriate order as it lends further conviction to the proposition that **Mr Traianedes** will commit to the process of rehabilitation that he must undertake before he can resume practice (and which will be assisted by satisfaction of the undertakings proposed).

(d) **Mr Traianedes**' cooperation with **ASIC** during the investigation and enforcement phases of this matter and the significant number of admissions he made which are further indications that he has accepted responsibility for his failings. We note the dictum of Keane J in *Fair Work*[50]:

"[A] defendant's agreement to meet a plaintiff's claim for a penalty is relevant as an indication of the defendant's acceptance of responsibility, in a way which is meaningful to the fixing of a proper penalty, for its departure from legal norms which gave rise to the claim. It has significance, of such weight as the court considers appropriate, as an assurance that the defendant may be relied upon not to transgress in that way again. It is relevant to the court's assessment of what is required by way of specific deterrence to prevent departures by the defendant from those standards in the future."

(e) The character references which although not detailed provide a level of assurance that **Mr Traianedes** is of general good character and standing. There is no evidence that would cause us to apprehend that **Mr Traianedes** will not carry out the undertakings proposed as part of the agreed orders submitted by the parties and the character evidence has lent weight in this regard.

(f) The fact that **ASIC** joins in the proposed orders is *"a large factor supporting any decision to accept the agreed period of suspension"*[51]. **ASIC** is relevantly a guardian of the public interest, and is in a good position to appraise the practicalities of the litigation and the weight those

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[50] *Fair Work* Ibid footnote 5 at[104]
[51] *Re One Tel Ltd (in liq);* ***ASIC*** *v Rich (*2003) 44 ACSR 682 ("*One Tel*") per Bryson J at [31]

practicalities should have among considerations in favour of accepting the agreed outcome[52].

(g) **Mr Traianedes**' failures were serious and extensive and warranted a serious sanction that is reflected by the lengthy period of suspension proposed and the future supervision of his work as a liquidator that will be required following the suspension period pursuant to the undertakings to be given. Nevertheless his failures were not of the highest level of seriousness and the sanction proposed appropriately reflects this.

(h) The publicity which will attend the matter will obviously have a negative impact on Mr **Traianedes**' professional reputation.

(i) There is no proper reason for **the Board** to attempt any alternative formulation given the sanctions proposed by the parties are certainly within "*the permissible range*"[53] of sanctions.

(j) As part of the suite of revised undertakings proposed as part of the **consent orders** the parties submitted the following:

"4(a) During the period of his suspension, Mr Traianedes will not undertake work in relation to any formal insolvency appointment except as supervised by a registered liquidator in a firm or practice not established by Mr Traianedes; and

3(c) If, during the period of 3 years following the expiry of the suspension period, he commences practice as a sole practitioner (that is, in a practice where he is the sole registered liquidator):

*(i) within 3 months of commencing such practice, he will have all template, checklist and procedure documents to be used in the practice reviewed (at his cost) by an independent reviewer (approved by **ASIC**) who will provide a report on compliance with industry best practice, and recommendations for any changes to his processes and documents to comply with best practice; and*

(ii) within 3 months of the completion of such review, he will make any changes to those documents recommended by the external reviewer;and

*(iii) he will provide to **ASIC**, as soon as reasonably practicable, any report or recommendations made by the external reviewer, and an explanation (by way of a statutory declaration) of the steps that he has taken to institute those recommendations."*

These undertakings will ensure that **Mr Traianedes'** office procedures are independently reviewed and verified for compliance with industry best practice,

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[52] *One Tel* Ibid footnote 51 at [31]
[53] ***ASIC** v Rich* (2004) 50 ACSR 500 at [80(2)]

within 3 months of **Mr Traianedes** resuming practice on his own account as a registered liquidator, should that occur following the period of suspension.

156. Having regard to the matters we have set out in paragraph 155(a), (b), (c), (d) and (e) we have concluded that the deficiencies in **Mr Traianedes'** understanding and observance of his professional duties are capable of and likely to be rectified and that this can be achieved within the timeframe of the suspension period proposed and by satisfaction of the undertakings proposed. From a public protection perspective (that being an important purpose of our orders) we are satisfied that following suspension, he will be able to carry out his duties properly without further unacceptable risk to the public. The length of the proposed suspension adequately reflects the seriousness of the failings found and will achieve an appropriate deterrent effect, both in respect of **Mr Traianedes** and the profession generally, which is another important purpose of **the Board's** orders. Finally, there has been nothing revealed by our analysis that would support the view that suspension for the term proposed together with the undertakings, is not an appropriate sanction and no reason or basis therefore for **the Board** to depart from the orders proposed.

Decision

157. For the reasons set out above, we have decided to exercise our powers under section 1292 of **the Act** by making the orders set out in paragraph 162 hereof. The orders substantively reflect the parties proposed **consent orders** with some slight revisions to the wording used.

158. The parties agreed that **Mr Traianedes** would pay costs of the proceedings, and, accordingly, we make an order as to costs in the terms set out.

159. It is usual for **the Board** to publicise its decisions on its website and by means of a media release. Mr Liondas submitted that the usual course should be adopted and Mr Moller did not raise any matter which would cause us to adopt a different approach. Accordingly, **the Board** will publish a copy of these reasons on its website and issue a media release relating to the matter.

Date of effect of order

160. Normally, an order would come into effect at the end of the day on which a notice of the decision is given to a respondent under sub-section 1296(1)(a) of **the Act**, see sub-section 1297(1)(a) of **the Act**. However, in view of the form of the orders proposed by the parties, **the Board** will postpone the date upon which the orders come into effect for 28 days.

Notice

161. Within fourteen days of the date hereof, formal notice of this Decision will be given to **Mr Traianedes** under sub-section 1296(1)(a) of **the Act**, a copy of that notice will be lodged with **ASIC** under sub-section 1296(1)(b) of **the Act** and **the Board** will cause to be published in the Gazette a notice in writing setting out the Decision.

Orders

162. We order that:

(a) The registration of Mr Stan Traianedes as a liquidator be suspended for a period of 3 years.

(b) Pursuant to sub-sections 1292(9)(b) and (c) of **the Act**, **Mr Traianedes** is required to give undertakings in the form attached as Schedule A to these orders.

(c) Pursuant to section 223 of the **ASIC Act**, **Mr Traianedes** pay **ASIC**'s costs in the fixed sum of $60,000, as follows:

(i) $18,000 within 7 days of the date of this order;

(ii) the balance of $42,000 to be paid by the date that is four months from the date in paragraph (c)(i).

(d) Pursuant to sub-section 1297(1)(b) of **the Act**, the order for suspension in sub-paragraph (a) will come into effect 28 days from the date hereof, but otherwise these orders will come into effect in accordance with the provisions of sub-section 1297(1)(a) of **the Act**.

(e) Liberty is reserved to **Mr Traianedes** to apply to:

(i) extend the period referred to in paragraph (d) hereof; and/or

(ii) vary the terms of the undertaking included in Schedule A to these orders.

(f) The Board notes that:

(i) as at the date of these orders, **Mr Traianedes** has resigned as liquidator of each of the companies referred to in Schedule B to these orders, except for Playzone (Australia) Pty Ltd ACN 097 564 924 ("**Playzone"**);

(ii) as at the date of these orders, Dino Calvisi ("**Mr Calvisi**") has been appointed liquidator of each of the companies referred to in Schedule B to these orders, except for **Playzone**;

(iii) the appointment of **Mr Calvisi** as liquidator of each of the companies referred to in Schedule B to these orders (except for **Playzone**) was notified to **ASIC** by **Mr Traianedes**, and approved by **ASIC**, prior to the transfers of appointment taking place;

(iv) as at the date of these orders, **Mr Traianedes** remains liquidator of **Playzone**, and has applied to deregister this company;

(v) on 8 November 2016 **ASIC** published its intent to deregister **Playzone**;

(vi) **Playzone** will be deregistered on or about 8 January 2017, at which time **Mr Traianedes'** appointment as liquidator will cease; and

(vii) as at the date of these orders, Mr Traianedes holds no appointments as registered liquidator of any company other than **Playzone**.

Maria McCrossin 12 December 2016

Panel Chairperson

Counsel for the Applicant	Mr Paul Liondas
Solicitor for the Applicant	Ms Tina Beltrame of **ASIC**
Counsel for the Respondent	Mr Carl Moller
Solicitor for the Respondent	Mr Nigel Watson of Colin Biggers and Paisley

APPENDIX 1

SCHEDULE A TO BOARD'S ORDERS

UNDERTAKINGS

Undertaking as to resolution of existing matters

1. The Respondent **Mr Traianedes** gives the following undertaking to **the Board** and to **ASIC**:

   (a) That if for any reason his appointment as liquidator of **Playzone** does not cease on 8 January 2017, he will make all necessary arrangements for the appointment of a replacement liquidator within 28 days of 8 January 2017 such replacement liquidator to be approved by **ASIC** prior to his/her appointment;

   (b) That the costs of and incidental to the appointment of replacement liquidators to each of the companies in Schedule B (including, if relevant, **Playzone**), will be borne by **Mr Traianedes**, including but not limited to the cost of any necessary Court applications or creditors' meetings;

   (c) To the extent that any of the costs of and incidental to the appointment of a replacement liquidator to any company in Schedule B has been paid out of the company's own funds, **Mr Traianedes** will reimburse the company for such costs within 28 days of the date of the Board's order requiring the giving of this undertaking, or within 28 days of the cost being paid out of the company's funds, whichever is later.

   (d) **Mr Traianedes** will provide all necessary assistance to the replacement liquidator of each company in Schedule B (including, if relevant, **Playzone**).

   (e) That in the event of any default of 1(a) above, he indemnifies **ASIC** for the cost of any Court application required for the rectification of that default, including but not limited to any application for the appointment of replacement liquidators;

Undertaking as to Further Education

2. **Mr Traianedes** gives the following undertaking in writing to **the Board** and to **ASIC** within seven (7) days after this order takes effect:

   (a) **Mr Traianedes** will use reasonable endeavours to retain his membership of **CPA** and **ARITA** for a period of not less than 4 years from the date that his suspension to practice as a registered liquidator ends.

   (b) To complete the following Continuing Professional Development ("**CPD**") activities during the period of his suspension:

      (i) all **CPD** requirements imposed on members of **ARITA** for the period from 1 January 2017 to 31 December 2019 ("**the CPD Period**");

(ii) in addition to the minimum annual requirement for **CPD** to which members of **ARITA** are subject, he will at his own expense undertake during each year of the **CPD** Period at least a further 10 hours of **CPD** relating to insolvency practice and practice management;

(iii) over the **CPD** Period, the **CPD** that he undertakes will include at least 3 hours of training or courses relating to each of (1) independence, (2) remuneration, (3) investigations/reporting and (4) record-keeping (or, if relevant training or courses are not available in any area, such other training or courses as are approved by **ASIC**);

(c) To provide **ASIC**, as soon as practicable following each of:

(i) 31 December 2017;

(ii) 31 December 2018; and

(iii) the date by which he has completed his **CPD** requirements for the period from 1 January 2019 to 31 December 2019

with documents that evidence his completion of **CPD** for the relevant period.

Until **Mr Traianedes** has complied fully with these undertakings, he will not accept any new appointment to any office required under the **Act** to be filled by a registered liquidator.

Undertaking as to Joint Appointments or Reviews of Appointments Post Suspension

3. **Mr Traianedes** gives the following undertaking in writing to **the Board** and **ASIC** within seven (7) days after this order takes effect:

(a) That, following expiry of the suspension period, **Mr Traianedes** will for the first ten appointments that he accepts to any office required under **the Act** to be filled by a registered liquidator, use his best endeavours to undertake such appointment jointly and severally with a registered liquidator or registered liquidators approved by **ASIC**.

(b) If **Mr Traianedes** is unable to procure a joint and several appointee for any of his first ten appointments in respect of an appointment falling within sub-paragraph (a), he will:

(i) within 7 days of the appointment, notify **ASIC**, that he has accepted an appointment other than as a joint and several appointment and provide a written explanation to **ASIC** of the steps that he took to procure a joint and several appointment;

(ii) in relation to any such appointment, he will:

(A) procure (at his own expense) an independent registered liquidator (approved in advance by **ASIC**) to provide written reports to **ASIC** on the adequacy of **Mr Traianedes'** compliance with all relevant requirements and professional standards including, but not limited to, independence/conflicts, investigations, reporting to creditors and **ASIC**, and remuneration;

(B) use his best endeavours to procure that the reports are provided to **ASIC**: (i) within 6 months of the commencement of the appointment and (ii) if the appointment has not concluded within 12 months of its commencement, further reports one month after each 12 month period and a final report one month after completion of the appointment.

(c) If, during the period of 3 years following the expiry of the suspension period, **Mr Traianedes** commences practice as a sole practitioner (that is, in a practice where he is the sole registered liquidator) he will:

(i) within 3 months of commencing such practice, have all template, checklist and procedure documents to be used in the practice reviewed (at his cost) by an independent reviewer (approved by **ASIC**) who will provide a written report on compliance with industry best practice, and recommendations for any changes to his processes and documents to comply with best practice; and

(ii) within 3 months of the completion of such review, make any changes to those processes and documents recommended by the external reviewer;

(iii) provide to **ASIC**, as soon as reasonably practicable, the report and recommendations made by the external reviewer, and an explanation (by way of a statutory declaration) of the steps that he has taken to institute any recommendations made.

Undertaking as to employment during the period of suspension

4. **Mr Traianedes** gives the following undertaking in writing to **the Board** and **ASIC** within seven (7) days after this order takes effect:

(a) During the period of his suspension, **Mr Traianedes** will not undertake work in relation to any formal insolvency appointment except as supervised by a registered liquidator in a firm or practice not established by **Mr Traianedes**.

(b) The arrangement that he enters into with any firm in association with whom **Mr Traianedes** undertakes insolvency-related work, and the manner in which his role is represented to clients and the public, will not be such as to suggest that **Mr Traianedes** is a registered liquidator or a principal in that firm or practice.

(c) **Mr Traianedes** will report in writing to **ASIC** as to the nature of the arrangements pursuant to which he is employed or engaged by IRT Advisory or any other firm once those arrangements are formalised and will report further to **ASIC** if there is any subsequent change to those arrangements during this suspension period.

(d) **Mr Traianedes** will provide any information or documentation requested of him by **ASIC** (in **ASIC's** sole discretion) for the purposes of verifying any of the matters set out at sub-paragraphs 4(a) to (c) above.

SCHEDULE B: COMPANIES

Creditors' Voluntary Liquidation

1. Playzone (Australia Pty Ltd) ACN 097 564 924
2. Sutherlands Creek Farm Pty Ltd ACN 124 637 298
3. Zamac Property Holdings Pty Ltd ACN 125 774 870
4. JCP Carpentry & Design Pty Ltd ACN 082 989 973
5. PC Construct Pty Ltd ACN 147 812 851
6. Cyberduck Software Pty Ltd ACN 075 497 415
7. B.A.S (R&D) Pty Ltd ACN 060 882 224
8. B.A.S Melb Pty Ltd ACN 100 085 229
9. Prosperity Legal Group Pty Ltd ACN 123 412 331