

ENFORCEABLE UNDERTAKING

National Consumer Credit Protection Act 2009

Section 322(1)

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

INHOUSE FINANCE GROUP (SYDNEY) PTY LTD

ACN 138 529 183

Australian credit licence number 404110
42 Roebuck Street Cabramatta NSW 2166

1. Definitions

1.1 In this undertaking, a reference to the singular includes the plural and vice versa.

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

ASIC means the Australian Securities and Investments Commission.

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

Australian credit licence has the meaning given by subsection 35(1) of the National Credit Act.

Best Buy Autos means Best Buy Auto Group Pty Ltd ACN 134 795 412.

Commencement Date means the date this undertaking is accepted by ASIC.

Contracted Amount means the total amount payable by a consumer under a Relevant Contract.

consumer has the meaning given by subsection 5(1) of the National Credit Act.

credit contract has the meaning given by section 4 of the National Credit Code.

credit legislation has the meaning given by subsection 5(1) of the National Credit Act.

Entitled Amount means, in relation to a Relevant Contract, the lesser of:

(a) the Contracted Amount; and

- (b) the total amount that would be payable by the consumer under the Relevant Contract if the annual cost rate of the Relevant Contract (determined as if the amount of credit provided under the Relevant Contract did not include the cost of the Warranty) were 48%.

IFG means Inhouse Finance Group (Sydney) Pty Ltd ACN 138 529 183.

IFG Website means the website at www.inhousefinancegroup.com.au.

National Credit Act means the *National Consumer Credit Protection Act 2009* (Cth).

National Credit Code means Schedule 1 to the National Credit Act.

Paid Amount has the meaning given in paragraph 3.2.

Refund Amount has the meaning given in paragraph 3.3.1.

Relevant Contract means a credit contract entered into by IFG in the Relevant Period where a Warranty was also purchased by the consumer and financed under the contract.

Relevant Period means the period from 1 July 2013 to 30 June 2014.

Remediation Period means the six-month period commencing on the Commencement Date.

Warranty means a motor vehicle warranty administered by National Warranty Company Pty Ltd ACN 087 662 771 (deregistered on 17 September 2016) or Davantage Group Pty Ltd ACN 161 967 166.

2. Background

ASIC's role

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- 2.2 ASIC is responsible for, among other things, the administration and enforcement of the National Credit Act which regulates consumer credit in Australia.

ASIC's surveillance, including details of conduct

- 2.3 IFG holds an Australian credit licence (number 404110) authorising it to engage in credit activities as a credit provider.
- 2.4 IFG provides finance to customers of Best Buy Autos, a used car retailer operating from several locations across Sydney, New South Wales. Best Buy Autos operates the website www.bestbuyautos.com.au.
- 2.5 In 2014, ASIC commenced a surveillance in relation to the credit activities engaged in by IFG, in particular focussing on IFG's compliance with the credit legislation.
- 2.6 During the Relevant Period, IFG promoted on the IFG Website that it provided finance for applicants with bad credit and for those who were discharged bankrupts, self-employed and pensioners.
- 2.7 In conducting the surveillance, ASIC identified that IFG offered each consumer who was a customer of Best Buy Autos and who was approved for finance the following additional services:
 - 2.7.1 a Warranty;
 - 2.7.2 motor vehicle servicing; and
 - 2.7.3 roadside assistance.

These additional services were offered to cover the duration of the relevant credit contract and were financed under the credit contract.

- 2.8 Following a review of credit contracts IFG entered into, ASIC found that IFG required the consumer under the contract to purchase a Warranty in circumstances where the consumer was unable to pay a deposit of 80% (subsequently revised to 60% during the period of ASIC's surveillance) towards the purchase of the motor vehicle.
- 2.9 ASIC also found that IFG adopted a risk-based pricing model for setting the interest rate for a credit contract, which ranged from 18% to 39%, depending on the creditworthiness of the consumer as assessed by IFG.

- 2.10 During the period from 23 May 2011 (the date IFG was granted an Australian credit licence) to 30 June 2014, IFG entered into 1,448 credit contracts with customers of Best Buy Autos. On 1,433 occasions (representing 98.96% of contracts), IFG also required the consumer to purchase a Warranty.
- 2.11 Given the consumer market IFG was targeting, ASIC considered that IFG's requirement, which was in place until 30 June 2014, for a consumer to purchase a Warranty in circumstances where the consumer was unable to pay a deposit of 80% (subsequently revised to 60% during the period of ASIC's surveillance) effectively amounted to a precondition for entering into the credit contract for the great majority of consumers.
- 2.12 In requiring a consumer to purchase the Warranty in the circumstances referred to in paragraph 2.8, ASIC is concerned that the amount payable by the consumer in relation to the Warranty amounts to a credit fee or charge payable in relation to the credit contract and, therefore, an amount which should be included in the 'credit cost amount' for the purposes of calculating the annual cost rate under section 32B of the National Credit Code.
- 2.13 Section 32A of the National Credit Code, which commenced on 1 July 2013, prohibits a credit provider from entering into a credit contract if the annual cost rate of the contract exceeds 48%.
- 2.14 During the Relevant Period, IFG entered into 249 credit contracts with customers of Best Buy Autos. On 243 occasions (representing 97.59% of contracts), IFG also required the consumer to purchase a Warranty. In respect of these 243 contracts, ASIC is concerned that 177 were entered into whereby the annual cost rate of the contract exceeds 48%.
- 2.15 Historical data provided by IFG in relation to credit contracts entered into during the period 1 July 2013 to 13 February 2014 where a Warranty was purchased shows that IFG experienced a default rate of 39.74%.

ASIC's views concerning the conduct

- 2.16 As a result of the surveillance, ASIC is concerned that during the Relevant Period, IFG is likely to have contravened 32A of the National Credit Act by entering into credit contracts with consumers where the annual cost rate of the contract exceeded 48%.

Acknowledgement of ASIC's views

- 2.17 IFG acknowledges that the views expressed by ASIC in relation to the alleged facts are reasonably held and has offered an enforceable undertaking in the terms of paragraphs 3.1 to 3.26 below.

Determination of Contracted Amounts and Entitled Amounts

- 2.18 For each Relevant Contract, IFG has agreed with ASIC:

2.18.1 the Contracted Amount; and

2.18.2 the Entitled Amount.

2.19 Of the 243 Relevant Contracts entered into, there are 177 for which the Contracted Amount exceeds the Entitled Amount.

3. Undertakings

3.1 Under section 322(1) of the National Credit Act, IFG has offered, and ASIC has agreed to accept as an alternative to taking administrative action in relation to IFG's Australian credit licence under the National Credit Act, the undertakings in paragraphs 3.2 to 3.26 below.

3.2 For each Relevant Contract for which the Contracted Amount exceeds the Entitled Amount, IFG undertakes to determine, within 14 days after the Commencement Date, the aggregate amount (**Paid Amount**) paid by the consumer under the Relevant Contract as at the time of the determination.

3.3 For each Relevant Contract for which the Contracted Amount exceeds the Entitled Amount, IFG undertakes that:

3.3.1 if the Paid Amount is more than the Entitled Amount:

- (a) IFG will use its best endeavours to refund to the consumer, by the end of the Remediation Period, the amount (**Refund Amount**) by which the Paid Amount exceeds the Entitled Amount;
- (b) if, after using its best endeavours to refund the consumer in accordance with paragraph (a) above, it is not able to do so, IFG will pay the Refund Amount to an organisation in accordance with paragraph 3.4; and
- (c) IFG will not accept any further payments from the consumer in relation to the Relevant Contract; and

3.3.2 if the Paid Amount is not more than the Entitled Amount, IFG will only continue to accept payments from the consumer to the extent that the aggregate of the payments made by the consumer does not exceed the Entitled Amount.

Contribution to community benefit program

3.4 Within 28 days after the expiration of the Remediation Period, IFG undertakes to pay to an organisation, as directed by ASIC in writing, for the purposes of funding financial literacy programs, financial counselling, consumer education and research in Australia, any Refund Amount that has not been refunded within the Remediation Period.

- 3.5 Where, after IFG pays an amount under paragraph 3.4, a consumer under a Relevant Contract who did not receive their Refund Amount under paragraph 3.3.1 makes a claim for that Refund Amount from IFG, IFG undertakes to pay that Refund Amount.

Warranty under a Relevant Contract

- 3.6 IFG undertakes to honour each Warranty in relation to a Relevant Contract.

Independent overview of remediation program

- 3.7 Within 14 days after the Commencement Date, IFG undertakes to engage an auditor (the **Remediation Consultant**) whose terms of engagement are to be approved by ASIC in writing (such approval not to be unreasonably withheld).
- 3.8 IFG undertakes not to vary the terms of engagement for the Remediation Consultant without the prior written approval of ASIC.
- 3.9 IFG undertakes to ensure that its terms of engagement of the Remediation Consultant require the Remediation Consultant to conduct a review of IFG's compliance with the undertakings set out in paragraphs 3.9.1 to 3.9.4 and to submit a written report (**Remediation Report**) to IFG and ASIC on the review by 30 days after the end of the Remediation Period that includes the following:
- 3.9.1 the total dollar value of Refund Amounts paid to consumers and a list identifying each Relevant Contract for which a Refund Amount has been paid and the amount of the Refund Amount;
- 3.9.2 for each Relevant Contract in relation to which:
- (a) the Contracted Amount is greater than the Entitled Amount; and
- (b) the Paid Amount is less than the Entitled Amount;
- details of the Relevant Contract, including the name of the consumer and the balance to be paid to reach the Entitled Amount;
- 3.9.3 a statement as to whether or not the processes referred to in paragraphs 3.2 and 3.3 have been complied with (and if not, providing the reasons why) in relation to a random sample of 30 consumers, randomly selected by the Remediation Consultant, or such larger number which the Remediation Consultant considers reasonable for the purposes of its review; and
- 3.9.4 the total amount paid to the organisation under paragraph 3.4 including the details of each Relevant Contract and each Refund Amount.

- 3.10 IFG undertakes to ensure that its terms of engagement of the Remediation Consultant:
- 3.10.1 include a statement to the effect that the work of the Remediation Consultant is being carried out for IFG and ASIC, and acknowledging that ASIC is relying on the work of the Remediation Consultant;
 - 3.10.2 include a statement that upon request by ASIC, ASIC is to be copied into all or some communications between IFG and the Remediation Consultant;
 - 3.10.3 require the Remediation Consultant to notify ASIC where a conflict of interest arises during the engagement or when the Remediation Consultant becomes aware of information that adversely affects its ability to exercise objective and impartial judgement; and
 - 3.10.4 include an acknowledgement that in relation to the Remediation Report to be provided to ASIC and IFG as described in paragraph 3.9, ASIC may from time to time publicly refer to the content of the Remediation Report, and may make a summary of the content of the Remediation Report or a statement that refers to the content of the Remediation Report public.

Establishing and maintaining trust account for consumer refunds

- 3.11 IFG undertakes to transfer a total of \$100,000 to a trust account held by IFG, where Raed Rahal of Cambridge Law and Wayne Hardy-Smith of IFG are the authorised persons required to operate and sign jointly on behalf of IFG (the **Authorised Persons**), on the Commencement Date. Where a refund is payable to a consumer in accordance with paragraph 3.3.1, IFG undertakes to ensure that the Authorised Persons make the payment to the consumer on behalf of IFG.
- 3.12 IFG will maintain a minimum balance of \$100,000 in the trust account referred to at paragraph 3.11 at all times during the Remediation Period, unless ASIC advises otherwise in writing prior to the expiration of the Remediation Period. Where the balance is likely to fall below \$100,000, IFG will, within five business days, transfer into the account either:
- 3.12.1 such amount that is necessary to bring the account balance to \$100,000; or
 - 3.12.2 where the total amount remaining to be paid under the remediation program described in this enforceable undertaking is less than \$100,000, such amount that is necessary to bring the account balance to be equal to the total amount remaining to be paid under the remediation program.

Consumer communication

- 3.13 IFG undertakes to, as soon as practicable after the Commencement Date, send each relevant consumer that entered into a Relevant Contract where the Contracted Amount is greater than the Entitled Amount a letter (including where an email address is held, also sending a copy electronically) in a form approved by ASIC in writing that sets out the following:
- 3.13.1 the concerns referred to at paragraph 2.16; and
 - 3.13.2 the steps that IFG is required to undertake in accordance with this undertaking, including:
 - (a) details of the refund to be provided by IFG, or the Entitled Amount now payable under the contract (as opposed to the Contracted Amount); and
 - (b) in circumstances where a refund is payable to the consumer, that the Refund Amount will be paid into the consumer's last known bank account, or if no such details exist or the consumer has closed that bank account, details about how the consumer can access the refund.
- 3.14 In circumstances where the consumer is entitled to a refund in accordance with paragraph 3.3.1, and IFG has not either:
- 3.14.1 received a response to the communication referred to in paragraph 3.13 within 21 days of the date of that communication; or
 - 3.14.2 been able to pay the Refund Amount into the consumer's last known bank account within 21 days of the date of the communication;
- IFG will attempt to contact the consumer again in a form and manner to be agreed by ASIC in writing.

External compliance consultant

- 3.15 Within 30 days after the Commencement Date, IFG undertakes to engage an external compliance consultant (the **Compliance Consultant**) whose appointment and terms of engagement are to be approved by ASIC in writing (such approval not to be unreasonably withheld).
- 3.16 IFG undertakes not to vary the terms of engagement for the Compliance Consultant without the prior written approval of ASIC.
- 3.17 IFG undertakes to ensure that the terms of engagement require the Compliance Consultant to undertake a review of the compliance of IFG and its representatives with the credit legislation, including but not limited to a review of:

- 3.17.1 general conduct obligations under section 47 of the National Credit Act;
 - 3.17.2 the responsible lending obligations under Chapter 3 of the National Credit Act;
 - 3.17.3 the prohibition on entering into credit contracts if the annual cost rate exceeds 48% under section 32A of the National Credit Code;
 - 3.17.4 any advertising carried out by IFG to ensure that it complies with the relevant provisions contained in the credit legislation; and
 - 3.17.5 Division 2 of Part 2 of the ASIC Act.
- 3.18 IFG undertakes to ensure that the terms of engagement require the Compliance Consultant to prepare a written report on the review undertaken for the purposes of paragraph 3.17, including:
- 3.18.1 a description of the methods used in the review undertaken by the Compliance Consultant;
 - 3.18.2 the dates that the Compliance Consultant carried out the review;
 - 3.18.3 the Compliance Consultant's assessment of the compliance arrangements including a conclusion as to whether the compliance arrangements are adequate in respect of each of the matters referred to in paragraph 3.17;
 - 3.18.4 details of all disputes made by consumers in relation to the credit activities engaged in by IFG and its representatives, including the outcome, and whether any disputes were lodged with an external dispute resolution scheme; and
 - 3.18.5 any recommendations made to IFG for changes to the compliance arrangements.
- 3.19 IFG undertakes to ensure that the terms of engagement require the Compliance Consultant to carry out the review and prepare the written report as required by paragraphs 3.17 and 3.18, for the following periods:
- 3.19.1 the 6 month period commencing from the Commencement Date (**First Compliance Report**); and
 - 3.19.2 the 6 month period commencing after the period of the First Compliance Report (**Second Compliance Report**).
- 3.20 IFG undertakes to ensure that the terms of engagement require the Compliance Consultant to submit the First Compliance Report and Second Compliance Report to IFG and ASIC within 30 days after the expiration of the relevant periods referred to under paragraph 3.19.
- 3.21 IFG undertakes to ensure that its terms of engagement of the Compliance Consultant:

- 3.21.1 include a statement to the effect that the work of the Compliance Consultant is being carried out for IFG and ASIC, and acknowledging that ASIC is relying on the work of the Compliance Consultant;
 - 3.21.2 include a statement that upon request by ASIC, ASIC is to be copied into all or some communications between IFG and the Compliance Consultant;
 - 3.21.3 require the Compliance Consultant to notify ASIC where a conflict of interest arises during the engagement or when the Compliance Consultant becomes aware of information that adversely affects its ability to exercise objective and impartial judgement; and
 - 3.21.4 include an acknowledgement that in relation to the First Compliance Report and the Second Compliance Report to be provided to IFG and ASIC and as described in paragraph 3.19 ASIC may from time to time publicly refer to the content of those reports, and may make a summary of the content of those reports or a statement that refers to the content of those reports public.
- 3.22 IFG undertakes to, within 14 days after receiving each of the First Compliance Report and Second Compliance Report, submit a report (each a **Certification Report**) to ASIC:
- 3.22.1 certifying which of the recommendations made by the Compliance Consultant have been implemented; and
 - 3.22.2 providing a timetable for the implementation of any recommendations in the Compliance Consultant's report which had, at the date of the report, not been implemented.

Reporting to ASIC

- 3.23 IFG undertakes to ensure the Remediation Report, First Compliance Report, Second Compliance Report, and each Certification Report is provided to ASIC by email to DCI.referrals@asic.gov.au.
- 3.24 IFG undertakes that it will pay the costs of its compliance with this enforceable undertaking.
- 3.25 IFG undertakes to provide all documents and information requested by ASIC from time to time for the purpose of assessing IFG's compliance with the terms of this enforceable undertaking.

Assistance to Remediation Consultant and Compliance Consultant

- 3.26 IFG undertakes to do all things reasonably necessary to enable the Remediation Consultant and the Compliance Consultant to conduct the reviews and prepare the Remediation Report, First Compliance Report and Second Compliance Report, including:

- 3.26.1 giving the Remediation Consultant and the Compliance Consultant any assistance, information and explanations that it reasonably requires for conducting the reviews and preparing those reports;
- 3.26.2 permitting the Remediation Consultant and the Compliance Consultant, subject to any claims of legal professional privilege, to have access to IFG's books, including consumer files;
- 3.26.3 interviewing IFG's employees, contractors and representatives; and
- 3.26.4 contacting IFG's consumers.

4. Acknowledgements

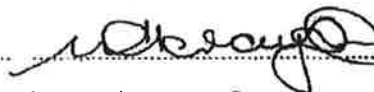
- 4.1 IFG acknowledges that ASIC:
 - 4.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2 may from time to time publicly refer to this undertaking;
 - 4.1.3 will from time to time publicly report about compliance with this undertaking; and
 - 4.1.4 will make this undertaking available for public inspection.
- 4.2 IFG acknowledges that in relation to the Remediation Report, First Compliance Report, Second Compliance Report, and each of the Certification Reports, ASIC:
 - 4.2.1 may issue a media release referring to the content of these reports;
 - 4.2.2 may from time to time publicly refer to these reports or their contents; and
 - 4.2.3 will make available for public inspection a summary of the content of these reports.
- 4.3 ASIC acknowledges that it will not refer to any information from Remediation Report, First Compliance Report, Second Compliance Report, and each of the Certification Reports that:

- 4.3.1 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the enforceable undertaking;
 - 4.3.2 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of IFG or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;
 - 4.3.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 4.3.4 IFG has asked not to be released if we are satisfied:
 - (a) it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of IFG otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
 - (b) it should not be released because it would be against the public interest to do so.
- 4.4 Further IFG acknowledges that:
- 4.4.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct; and
 - 4.4.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.
- 4.5 IFG acknowledges that this undertaking has no operative force until accepted by ASIC, and IFG and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

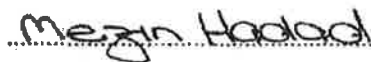
Executed by Inhouse Finance Group
(Sydney) Pty Ltd ACN 138 529 183 in
accordance with section 127 of the
Corporations Act 2001:



Director



Director/Company Secretary



Full name



Full name

Accepted by the Australian Securities and Investments Commission under s322 of
the National Credit Act by its duly authorised delegate:



Full name: MICHAEL SAADAT

Delegate of Australian Securities and Investments Commission

Date: 17/2/2017

