



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Raymond Anthony Sutcliffe

of 200-224 Alexandra Parade, Fitzroy, Victoria

1. Definitions

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

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

APES 330 means the APES 330 Insolvency Services standard issued by the Accounting Professional and Ethical Standards Board Limited in November 2011 and revised in September 2014;

ARITA means the Australian Restructuring Insolvency and Turnaround Association (formerly the Insolvency Practitioners' Association of Australia);

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

ARITA Code means the ARITA Code of Professional Practice for Insolvency Practitioners third edition effective from 1 January 2014 (as amended 18 August 2014) and its antecedent versions;

CAANZ means Chartered Accountants Australia and New Zealand;

Committee means a committee convened by ASIC pursuant to section 40-45 of the Insolvency Practice Schedule to make a decision of a kind mentioned in section 40-55 of the Insolvency Practice Schedule;

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

Court means the Federal Court of Australia or the Supreme Court of Victoria;

External Administrations means the external administrations listed in Schedule A to this document;

Insolvency Practice Schedule means the Insolvency Practice Schedule (Corporations) being Schedule 2 of the Act;

Mr Sutcliffe means Raymond Anthony Sutcliffe;

Replacement Liquidator means the liquidator or liquidators appointed by ASIC pursuant to paragraph 4.4; and

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

2. Background

ASIC's role

- 2.1 Under s 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 The object of the Insolvency Practice Schedule in relation to registered liquidators is to ensure that any person registered as a liquidator:
 - (a) has an appropriate level of expertise;
 - (b) behaves ethically; and
 - (c) maintains sufficient insurance to cover his or her liabilities in practising as a registered liquidator.

Details of Mr Sutcliffe

- 2.3 Mr Sutcliffe was registered as a liquidator under the Act on 23 December 1999 (registration number 194345).
- 2.4 Mr Sutcliffe currently practices as a sole practitioner at City Side Serviced Offices, 200-224 Alexandra Parade, Fitzroy, Victoria 3065.
- 2.5 Mr Sutcliffe is a member of CAANZ and ARITA.

ASIC's investigation

- 2.6 Pursuant to section 13(3) of the ASIC Act, ASIC is investigating the conduct of Mr Sutcliffe in relation to the External Administrations.

ASIC's concerns

- 2.7 As a result of the investigation referred to in paragraph 2.6, ASIC is concerned that Mr Sutcliffe may have failed to carry out adequately and properly, and/or failed to faithfully perform, the duties of a liquidator during his conduct of each of the External Administrations by failing to:
 - (a) conduct a pre-appointment independence review to ensure compliance with sections 448C and 532(2) of the Act and/or the requirements of section 6.16 of the ARITA Code;
 - (b) send adequate "*day one*" correspondence (as that term is used within the insolvency profession and as referred to in the CALDB decisions of *ASIC v Joubert* (11 May 2016, Matter No: 01/NSW15) and *ASIC v Trianedes* (12 December 2016, Matter No: 01/VIC16), including failing to send correspondence to banking institutions, utilities providers, motor vehicle registries, telecommunications providers, or conduct any real property or Personal Property Security Register searches to ensure compliance with section 474 of the Act;
 - (c) undertake adequate and proper investigations as to the company's business, property, affairs and financial circumstances to ensure compliance with section 438A of the Act;
 - (d) take steps to protect and secure assets in a timely manner to ensure compliance with sections 474 and/or 478 of the Act;

- (e) undertake adequate and proper investigations of the potential illegal phoenix activities and taxation offences of directors and their advisors;
- (f) make sufficient and adequate requests, in accordance with section 530B of the Act, of the directors, officers of the company and/or company accountant regarding delivery of the company's books and records in order to obtain adequate books and records in a timely manner;
- (g) seek from assistance ASIC promptly under the Liquidator Assistance Program where the director(s) and/or company accountant failed to provide adequate books and records;
- (h) undertake an adequate review of voidable transactions including unfair preferences and uncommercial transactions;
- (i) comply with section 533(1) of the Act in that he lodged reports with ASIC that were deficient in their content and/or did not identify possible misconduct;
- (j) provide creditors with a remuneration report that enabled them to make an informed assessment as to whether Mr Sutcliffe's proposed remuneration was reasonable and to summarise accurately the tasks to be performed by him and the costs of those tasks, to ensure compliance with section 499(7) of the Act. As a result, the remuneration Mr Sutcliffe drew may not have been validly determined as required by section 449E(1)(b) of the Act; and
- (k) document adequately the work that was undertaken, or reasons for not taking any action identified, to ensure compliance with section 531 of the Act, reg. 5.6.01 of the Regulations, section 18.2 of the ARITA Code and/or clause 9.2 of APES 330.

2.8 ASIC acknowledges that not all of the concerns set out in paragraph 2.7 applied to all of the External Administrations, however, ASIC considers that all of the External Administrations demonstrated conduct that raised various and multiple instances of the concerns as listed above.

3. Acknowledgement of ASIC's concerns

3.1 Mr Sutcliffe acknowledges that the concerns held by ASIC in relation to his conduct as set out above are reasonably held and has offered an enforceable undertaking in the terms of paragraphs 4.1 to 4.8 below.

4. Undertakings

4.1 Under s93AA of the ASIC Act, Mr Sutcliffe has offered, and ASIC has agreed to accept, as an alternative to ASIC commencing civil proceedings or pursuing administrative action against Mr Sutcliffe in respect of any of ASIC's concerns as described in paragraph 2.7, the undertakings in paragraphs 4.2 to 4.8 below.

Cancellation of registration as liquidator

4.2 Mr Sutcliffe will, within one business day of the Acceptance Date, lodge with ASIC a duly completed Form 905AA, together with the prescribed fee of \$38.00, requesting that ASIC cancel his registration as a liquidator.

4.3 Mr Sutcliffe undertakes not to reapply for registration as a liquidator for a period of three years after the date of cancellation of his registration by ASIC.

- 4.4 Mr Sutcliffe undertakes that he will, within ten (10) business days of being notified of the details of any registered liquidator appointed by ASIC pursuant to section 40-111 of the Insolvency Practice Schedule to replace Mr Sutcliffe as liquidator (Replacement Liquidator), transfer to the Replacement Liquidator's possession or control any books relating to the external administration of the companies in respect of which the Replacement Liquidator is appointed and that are in Mr Sutcliffe's possession or control.

Further undertakings

- 4.5 Mr Sutcliffe undertakes that he will not, for a period of three years from the date of his cancellation as a liquidator perform any duty or function which requires the person performing such duty or function to be registered as a liquidator under the Act.
- 4.6 Mr Sutcliffe undertakes that he will not perform any paid work in relation to the external administrations of which he was replaced as liquidator pursuant to paragraph 4.4 above.
- 4.7 Mr Sutcliffe undertakes that he will pay the costs of his compliance with this enforceable undertaking.
- 4.8 Mr Sutcliffe undertakes, for a period of three years after the date of cancellation of his registration as a liquidator, to provide all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking.

5. Acknowledgements

- 5.1 Mr Sutcliffe acknowledges that ASIC:
- (a) 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;
 - (b) may from time to time publicly refer to this undertaking;
 - (c) will from time to time publicly report on compliance with this undertaking; and
 - (d) will make this undertaking available for public inspection.
- 5.2 Further, Mr Sutcliffe acknowledges that:
- (a) ASIC's acceptance of this enforceable 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 set out in this enforceable undertaking or arising from Mr Sutcliffe's future conduct; and
 - (b) 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.
- 5.3 Mr Sutcliffe and ASIC acknowledge that this undertaking has no operative force until the Acceptance Date.

Notification

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

The Senior Executive Leader


Insolvency Practitioners

Australian Securities and Investments Commission

GPO Box 9827

MELBOURNE VIC 3001

Signed:



Raymond Anthony Sutcliffe

21/57 June 2017

Accepted by the Australian Securities and Investments Commission under s 93AA of the ASIC Act by its duly authorised delegate:



George Stogdale

Delegate of Australian Securities and Investments Commission

22 June 2017

Schedule A – External Administrations

Company Name	ACN
ACN 097 562 591 Pty Ltd	097 562 591
ACN 146 449 309 Pty Ltd	146 449 309
ACN 164 667 565 Pty Ltd	164 667 565
ACN 164 674 793 Pty Ltd	164 674 793
Adrian Buzeski's Maintenance Services Pty Ltd	112 909 136
Advanced Warehouse Solutions Services Pty Ltd	141 414 155
Arnsdorf Pty Ltd	144 567 162
Australian Box Recycling Pty Ltd	081 095 472
Ballarat Foods Pty Ltd	145 316 669
Balotelli Pty Ltd	159 284 670
Bradford Motors Pty Ltd	006 737 864
Building Bricks Pty Ltd	600 385 395
Bulk Commodity Handlers Pty Ltd	160 266 295
Bundoora Foods Pty Ltd	142 132 367
CCSLS Services Pty Ltd	159 674 558
CJB Services (Vic) Pty Ltd	159 391 410
Crane Crew Operations Australia Pty Ltd	155 165 969
Demasi Concreting Pty Ltd	159 558 648
Demasi Holdings Pty Ltd	164 571 484
DSM Transport Services Pty Ltd	113 274 472
Friend of Mine (Australia) Pty Ltd	162 639 796
GFB Managers Pty Ltd	074 948 066
Good Concreting Pty Ltd	600 448 879
Idthree Pty Ltd	103 570 976
Iku Restaurants Pty Ltd	146 860 139

Jels Investments (Aust) Pty Ltd	123 849 310
JIT Services (Vic) Pty Ltd	169 675 174
Koonunga Constructions Pty Ltd	165 244 548
Lizme Pty Ltd	164 526 176
Mastetrans Pty Ltd	144 939 033
Mecall Pty Ltd	159 283 897
Mistique Runway Pty Ltd	140 163 024
Piston Transport Pty Ltd	164 938 149
Pizzaaye Pty Ltd	108 190 352
Purple Duck Restaurant Pty Ltd	134 399 278
R.R.M. Freight Pty Ltd	168 429 230
Rebel Services Pty Ltd	083 957 457
Riverina Transport Pty Ltd	160 265 869
Sanvi Pty Ltd.	142 055 230
Specialized Structures Pty Ltd	147 576 029
Think Tyres Pty Ltd	129 287 896
Urban Timber Operations Pty Ltd	105 384 610
VVE Pty Ltd	151 641 780

