

SCHEDULE A
ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Peter Dinoris

of Artemis Insolvency, Level 1/190 Edward Street, Brisbane Qld 4000

Definitions

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

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

ARITA means the Australian Restructuring Insolvency & Turnaround Association.

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

CAANZ means Chartered Accountants Australia and New Zealand.

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

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

Corporations Rules means the *Insolvency Practice Rules (Corporations) 2016* (Cth).

Mr Dinoris means Mr Peter Dinoris.

1.2 Unless otherwise indicated, all references to sections are references to sections of the Corporations Act.

Background

ASIC's role

- 1.3 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.
- 1.4 Part 2 of Schedule 2 of the Corporations Act charges ASIC with responsibility for registering liquidators and maintaining a register of liquidators.
- 1.5 ASIC is empowered to give a registered liquidator a notice under section 40-40 (a show-cause notice) of Schedule 2 of the Corporations Act if ASIC believes that the liquidator has contravened a provision of the Corporations Act.
- 1.6 ASIC may refer a registered liquidator to a committee convened under section 40-45 if ASIC:
- (a) gives the liquidator a show-cause notice; and
 - (b) either:
 - (i) does not receive an explanation within 20 business days after the notice is given; or
 - (ii) is not satisfied by the explanation.

Details of Mr Dinoris

- 1.7 Mr Dinoris was registered as a liquidator under the Corporations Act on 14 March 2007. His registration number is 310195.
- 1.8 Mr Dinoris currently practises as a registered liquidator in the firm Artemis Insolvency of Level 1/190 Edward Street, Brisbane Qld 4000.
- 1.9 Mr Dinoris is a member of CAANZ and ARITA.

ASIC's views concerning the conduct of Mr Dinoris

- 1.10 As a result of the decision by Reeves J¹ and the Full Court of the Federal Court², ASIC's view is that Mr Dinoris has breached section 180(1) of the Corporations Act by not personally contacting the director of Asden Developments Pty Ltd (**Company**), at all, after Mr Dinoris became aware that the director withdrew \$236,500 from the Company's bank account one day prior to Mr Dinoris' appointment
- 1.11 ASIC gave Mr Dinoris a show cause notice under section 40-40(1) of Schedule 2 of the Corporations Act to explain why his registration should continue, based on the decision of Reeves J referred to in paragraph 1.10 above.
- 1.12 ASIC is not satisfied with the explanation provided by Mr Dinoris in response to ASIC's section 40-40(1) notice.

¹ *Asden Developments Pty Ltd (in liq) v Dinoris (No 3)* [2016] FCA 788.

² *Asden Developments Pty Ltd (in liq) v Dinoris* [2017] FCAFC 117

Acknowledgement of ASIC's views

- 1.13 Mr Dinoris acknowledges that ASIC's view detailed in paragraph 1.10 is reasonably held.

Undertakings

Appointment of Quality Reviewer

- 1.14 Under section 93AA of the ASIC Act, Mr Dinoris has offered, and ASIC has agreed to accept, the undertakings set out in paragraphs 1.15 to 1.22 below as an alternative to ASIC referring Mr Dinoris to a committee convened under section 40-45 of Schedule 2 of the Corporations Act.
- 1.15 Mr Dinoris undertakes to request ASIC to approve, within one month of the Acceptance Date, or within such longer period as may be agreed by ASIC:
- (a) the appointment of a quality reviewer (**Quality Reviewer**) that meets the criteria in paragraph 1.16(a) below; and
 - (b) draft terms of engagement for that Quality Reviewer that meets the requirements of this enforceable undertaking.
- 1.16 Mr Dinoris undertakes:
- (a) to nominate, under paragraph 1.15 above, a Quality Reviewer who, in Mr Dinoris' opinion has the necessary expertise, experience and capacity to perform the role of Quality Reviewer under this enforceable undertaking; and
 - (b) to provide to ASIC, with the request to approve a Quality Reviewer, details of any association between Mr Dinoris and the Quality Reviewer and the Quality Reviewer's staff (if any) during the two (2) year period prior to the Acceptance Date.
- 1.17 If ASIC approves the draft terms of engagement and the Quality Reviewer following a request by Mr Dinoris under paragraph 1.15, Mr Dinoris undertakes to appoint the approved Quality Reviewer on the terms approved by ASIC, within 10 business days of receiving ASIC's approval, or within such longer period as may be agreed by ASIC.
- 1.18 Mr Dinoris undertakes to provide to the Quality Reviewer, before the Quality Review required under this enforceable undertaking commences, copies of all correspondence that has passed between ASIC and Mr Dinoris which has led to, or is otherwise related to, this enforceable undertaking.

The Quality Reviews

- 1.19 Mr Dinoris undertakes to ensure the terms of the Quality Reviewer's engagement provided to ASIC for approval under paragraph 1.15 :
- (a) requires the Quality Reviewer, to review:
 - (i) whether Mr Dinoris has carried out and performed adequately and properly his duties and functions as a liquidator in four external

administrations nominated by ASIC by considering each of the following matters:

- (A) investigations (in particular, investigations with regard to directors and their conduct); and
 - (B) contact with directors (including but not limited to obtaining contact details for directors, engaging appropriate service providers to contact and serve documents on directors where necessary, and personally contacting or interviewing directors involved in conduct which may give rise to breaches of the Corporations Act);
- (b) produce, to ASIC and to Mr Dinoris, within three months of the Acceptance Date, a written report (**Quality Review Report**) that:
- (i) contains findings in respect of the matters in paragraph 1.19(a);
 - (ii) describes any suspected breaches of the Corporations Act, Corporations Regulations or Corporations Rules identified by the Quality Reviewer in conducting the Quality Review; and
 - (iii) makes any recommendations which the Quality Reviewer considers necessary to ensure that the insolvency systems and procedures utilised by Mr Dinoris are sufficient, and sufficiently implemented, for Mr Dinoris to carry out and perform adequately and properly the duties and functions of a liquidator.

Responses to the Quality Review Report

- 1.20 Mr Dinoris undertakes, within one month (or such longer period as ASIC approves in writing) of receiving the Quality Review Report, to write to ASIC notifying ASIC of the steps taken, or proposed to be taken, to implement any recommendations made by the Quality Reviewer and, to the extent any recommendation has not or will not be implemented, the reasons why.

Costs and information to ASIC

- 1.21 Mr Dinoris undertakes to provide to ASIC 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; and
- 1.22 Mr Dinoris undertakes to pay the costs of his compliance with this enforceable undertaking.

Acknowledgements

- 1.23 Mr Dinoris acknowledges that ASIC:
- (a) may issue a media release on execution of this enforceable undertaking referring to its terms and to the concern of ASIC which led to its execution;
 - (b) may from time to time publicly refer to this enforceable undertaking;
 - (c) will from time to time publicly report about compliance with this enforceable undertaking;

- (d) will make the enforceable undertaking available for public inspection;
- (e) will include a reference to this enforceable undertaking on ASIC's Register of Liquidators that ASIC maintains pursuant to s15-1 of Schedule 2 of the Act;
- (f) may issue a media release referring to the content of the Quality Reviewer's report;
- (g) may from time to time publicly refer to the content of the Quality Reviewer's report; and
- (h) will make available for public inspection a summary of the content of the Quality Reviewer's report, or a statement that refers to the content of that report.

1.24 ASIC acknowledges that it will not refer to any information from the Quality Reviewer's report that:

- (a) 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;
- (b) ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Mr Dinoris or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;
- (c) ASIC is satisfied should not be released because it would be against the public interest to do so; or
- (d) Mr Dinoris has asked not to be released if we are satisfied:
 - (i) it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of the Mr Dinoris otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
 - (ii) it should not be released because it would be against the public interest to do so.

1.25 Further, Mr Dinoris 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 lay charges or seek a pecuniary civil penalty order in relation to any contravention not the subject of ASIC's view set out in this enforceable undertaking or arising from future conduct; and
- (b) this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this enforceable undertaking or arising from future conduct.

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


Signed:



.....
Peter Dinoris

Dated: 08/08/2018

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


.....
[name] THEA ESZENYI

Delegate of the Australian Securities and Investments Commission

Dated: 16/8/2018

