



**ASIC**  
Australian Securities &  
Investments Commission



S02508468

## INFRINGEMENT NOTICE

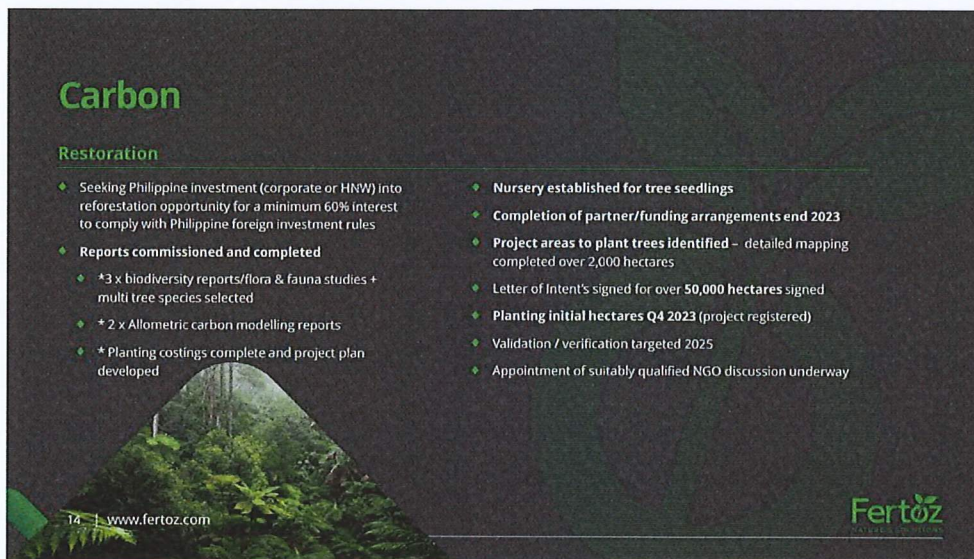
### Section 12GX of the Australian Securities and Investments Commission Act 2001 (Cth)

Date of giving this notice: 28 May 2024

Unique identification code: S02508468

TO: Fertoz Limited  
ACN 145 951 622

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**).
2. ASIC has reasonable grounds to believe that Fertoz Limited (**Fertoz**) has contravened section 12DB(1)(a) of the ASIC Act, an infringement notice provision, as follows:
  - (a) On 15 November 2023 Fertoz published to the Australian Securities Exchange a presentation updating the market regarding its projects, including the Philippines reforestation project (in the same form or substantially the same form as Annexure A) (**15 November 2023 Presentation**).
  - (b) Page 14 of the 15 November 2023 Presentation included the following statements under the heading 'Carbon – Restoration':



- (c) By publishing the 15 November 2023 Presentation, which included the statement "planting initial hectares Q4 2023", Fertoz conveyed that the Philippines reforestation project would begin planting the initial hectares in the respective area of the Reforestation Project in quarter 4 2023 (**Project Progress Statement**).
- (d) The Project Progress Statement was made in trade or commerce and in connection with the supply, or the promotion of the supply, of Fertoz securities. Further, the Project Progress Statement was false or misleading because at the time the 15 November 2023 Presentation was published Fertoz had:

- i. ceased discussions with its previous potential off-take partners, on 20 April 2023 and 29 August 2023, which resulted in delays in the Project's timeframe in relation to securing of a funding partner and initial planting;
- ii. not secured any funding necessary for the progress of the Philippines reforestation project to begin planting;
- iii. accordingly, at the time of the 15 November 2023 Presentation was published, Fertoz had no reasonable basis to conclude it was possible to achieve the planting of initial hectares by quarter 4 2023, or any certainty in relation to the timeframe for doing so.

#### **Amount payable under this notice**

3. The amount payable under this notice in relation to the alleged contravention is \$18,780 . This amount can be paid using the method detailed in the covering letter accompanying this notice.
4. The payment period for the notice will be 28 days, beginning on the day after this notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn.
5. Fertoz may, in writing, apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments.

#### **Consequences of paying the amount payable under this notice**

6. If Fertoz pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is withdrawn):
  - (a) any liability of Fertoz for the alleged contravention is discharged;
  - (b) Fertoz will not be liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention of the infringement notice provision; and
  - (c) Fertoz will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.
7. Payment of the amount payable under this notice is not an admission of guilt or liability.

#### **Consequences of not paying the amount payable under this notice**

8. Fertoz may choose not to pay the amount specified in this notice.
9. If Fertoz does not pay the amount specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, then Fertoz may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention of the infringement notice provision.
10. The maximum pecuniary penalty that a court may order Fertoz to pay for the alleged contravention is the greatest of:
  - a) \$15,650,000; and

- b) if the Court can determine the benefit derived and detriment avoided because of the contravention – that amount multiplied by 3; and
  - c) either:
    - i. 10% of annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision;
    - ii. if the amount worked out under subparagraph (i) is greater than an amount equal to \$782.5 million - \$782.5 million.
11. The maximum criminal penalty that a court may order Fertoz to pay for the alleged contravention is \$626,000.

**Applying for more time to pay the amount payable under this notice**

- 12. ASIC may at its discretion extend the time to pay the amount payable under this notice if ASIC is satisfied that it is appropriate to do so.
- 13. If Fertoz wishes to apply for an extension of time to pay the amount specified in this notice, Fertoz must do so in writing within 28 days after the day the notice is issued (see paragraph 20)

**Applying to pay the amount payable under the notice by instalment**

- 14. ASIC may at its discretion make an arrangement for Fertoz to pay the amount payable by instalments if ASIC is satisfied that it is appropriate to do so.
- 15. If Fertoz wishes to apply for an arrangement to pay the amount payable under the infringement notice by instalments, Fertoz must do so in writing within 28 days after the day the notice is issued to you (see paragraph 20).

**Applying to have this notice withdrawn**

- 16. Within 28 days after the day on which this notice is given, Fertoz may apply to have this notice withdrawn by making written representations to ASIC (see paragraph 20).

**Withdrawal of this notice**

- 17. ASIC may at its discretion, by written notice given to Fertoz, withdraw this notice if ASIC is satisfied that it is appropriate to do so, whether or not Fertoz has applied to have this notice withdrawn (**withdrawal notice**).
- 18. If the withdrawal notice is given after Fertoz has paid the amount specified in this notice, ASIC will refund to Fertoz the amount paid under the notice.
- 19. If the notice is withdrawn, then Fertoz may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention of the infringement notice provision.

**Requirements for applications**

- 20. An application to have this notice withdrawn, for more time to pay the amount payable under this notice or to pay by instalments:
  - a) must be in writing;
  - b) must include the unique identification code set out at the top of this notice;
  - c) must include your reasons for making the application; and

d) may be made by forwarding your application to ASIC at the address in paragraph 21.

21. You may contact ASIC in relation to this notice by contacting:

Marita Hogan  
Australian Securities and Investments Commission  
GPO Box 9827  
BRISBANE QLD 4000  
or by email: [ACLInfringementNotices@asic.gov.au](mailto:ACLInfringementNotices@asic.gov.au)

*Signature of delegate giving the notice*

A handwritten signature in blue ink, appearing to be 'MH', with a long horizontal flourish extending to the right.

Marita Hogan  
as a delegate of the Australian Securities and Investments Commission