

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

MATTER NO: 16/NSW20

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)
Applicant

JAKIN LEONG LOKE
Respondent

DECISION of the Board to exercise its powers under s1292 Corporations Act (**Act**). Notice of this decision will be given to the Respondent under s1296(1)(a) of the **Act** and a copy of that notice will be lodged with ASIC under s1296(1)(b) of the **Act**.

03 March 2022

Panel:

Maria McCrossin (Panel Chairperson)

Inge Kindermann (Business Member)

Tony Brain (Accounting Member)

Table of Contents

Introduction	1
Agreed facts and Proposed Consent Orders – relevant considerations.....	1
Agreed Facts – Relevant Background to specific Contentions	2
Sub-Section 1292(1)(d) – its ambit and the Board’s task.....	8
The Relevant Benchmark	13
Overview of Contentions	15
Contention 1	17
Contention 2F	21
Contention 4	24
Contention 5	26
Contention 7	27
Parties submissions on Proposed Consent Orders.....	29
Decision and Orders	34
Schedule A Form of Undertaking (Order 3)	37
Schedule B Media Release	40
Glossary	42

Introduction

1. This is an Application under s1292 of the **Act** lodged with **CADB** by the Australian Securities and Investments Commission (ASIC or Applicant) on 13 October 2020. By this Application, **ASIC** seeks orders including an order cancelling the registration of the Respondent, Jakin Leong Loke (Mr Loke or Respondent) a registered company auditor (**RCA**).
2. Prior to the hearing in this matter, ASIC and Mr Loke jointly filed an agreed statement of facts (Agreed Facts) and proposed consent orders (Proposed Consent Orders) for the consideration of this Panel.
3. By the Proposed Consent Orders, Mr Loke indicates his consent to:
 - (a) An order suspending his registration as a company auditor for a period of 12 months.
 - (b) Certain undertakings to ASIC in relation to his Continuing Professional Development (CPD) activities for the next three years.
 - (c) An order to pay ASIC's costs, in a fixed amount of \$95,000, within 28 days of any order.
4. A hearing was held before the Panel in this matter on 1 February 2022. Mr McNally SC appeared for the Applicant and Mr Newlinds SC appeared for the Respondent.

Agreed facts and Proposed Consent Orders – relevant considerations

5. Notwithstanding the parties agree on the Proposed Consent Orders, CADB's jurisdiction only arises under s1292 of the **Act** if a Panel is satisfied that at least one of the three bases set out in that section has been established.¹
6. Relevantly, s1292(1) provides:

The Board may, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:

 - (d) *the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:*
 - (i) *the duties of an auditor; or*

¹ See Hill J in *Davies v Australian Securities Commission* (1995) 59 FCR 221 at 233

*(ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;
or*

(iii) is otherwise not a fit and proper person to remain registered as an auditor;

by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

7. We discuss further the nature of our task under s1292(1)(d) in paragraphs 40-43 and 54-55 below - suffice to say in this specific context, that even if the parties, as they have in this matter, consent to the making of an order under s1292(1), this Panel must be independently satisfied that we have power to make an order. For the reasons the Board has already set out in its previous decision in **Wessels**² and subject to the caveats referred to therein, we accept the parties' submissions that we may proceed to consider this matter on the basis of the Agreed Statement of Facts and the Proposed Consent Orders.

Agreed Facts – Relevant Background to specific Contentions

8. The Agreed Facts set out below provide relevant background and context. The further Agreed Facts specifically relevant to each of the contentions pressed by ASIC are set out in the context of our reasons for conclusion on each of those contentions in this Decision.

Mr Loke and his place of professional audit practice

9. Mr Loke was registered as a company auditor on 24 February 2016. Mr Loke's principal place of practice is Ecovis Clark Jacobs, 1 Market St, Sydney NSW 2000 (**ECJ**). **ECJ** is a business name registered on 12 October 2017 to Clark Jacobs Pty Ltd (ACN 109 062 624) (**Clark Jacobs**).
10. Since 1 July 2016, the five directors of **Clark Jacobs** have been:
- (a) Mr David Conley - appointed 1 July 2006.
 - (b) Mr Heath Stewart - appointed 1 July 2010. Mr Stewart is an **RCA**.
 - (c) Ms Elissa Lippiatt (**Ms Lippiatt**) - appointed 1 July 2016.
 - (d) Mr Scott Hogan-Smith - appointed 1 July 2016.
 - (e) The Respondent Mr Loke - appointed 1 July 2016.

² Wessels 05/QLD13 Decision of the Board 15 November 2013 paragraphs 6-23 and see also Board's Practice Note CPN1 Pt12.

11. The directors of **Clark Jacobs** are also shareholders. Mr Loke and **Ms Lippiatt** became shareholders of **Clark Jacobs** on 1 January 2018.

Big Un Ltd

12. During the period relevant to these proceedings, Big Un Limited (formerly Republic Gold Limited, a gold mining exploration company) (**Big Un**) operated in the media and technology space providing video content, video reviews and online marketing services for consumers and small and medium businesses in Australia, the United States, the United Kingdom, Hong Kong, Singapore and Vancouver. **Big Un** operated through a wholly owned subsidiary, Big Review TV Limited (BRTV).
13. **Big Un** was one of the best-performing shares on the ASX in 2017 with its share price rising from \$0.10 in 2014 to an all-time high of \$4.79 in mid-November 2017.
14. Between 30 June 2016 and 16 February 2018, the closing share price and market capitalisation of **Big Un** was as follows:

Date	Closing share price	Market capitalisation
30 June 2016	\$0.105	\$10.28 million
31 December 2016	\$0.230	\$24.87 million
30 June 2017	\$1.085	\$142.40 million
21 November 2017	\$4.790	\$688.79 million
31 December 2017	\$3.630	\$533.26 million
16 February 2018	\$2.220	\$381.62 million

15. A large proportion of **Big Un's** revenue came from a sponsorship agreement between First Class Securities Pty Ltd, a subsidiary of First Class Capital, and BRTV dated 8 December 2015 (**2015 Sponsorship Agreement**). **Big Un** recorded revenue when the customers entered into a preliminary contract pursuant to the **2015 Sponsorship Agreement**, at which stage the customers had no obligation to pay. The unearned revenue portion was transferred to deferred revenue at month's end.
16. On 29 September 2017, **Big Un** published its financial reports for the year ended 30 June 2017 (**June 2017 Financial Report**)

17. On 21 February 2018, **Big Un's** securities were suspended from official quotation on the Australian Stock Exchange (**ASX**) pending a response by **Big Un** to queries from the **ASX**.
18. On 21 May 2018, BRTV was placed into voluntary administration as a result of continued operating losses.
19. On 30 July 2018, **Big Un** lodged a Financial Report with the **ASX** dated 31 December 2017 that contained the restatements and corrections to the **June 2017 Financial Report** outlined in paragraph 39 herein.
20. On 24 August 2018, Neil Robert Cussen and Matthew James Donnelly were appointed jointly and severally as administrators (Administrators) of **Big Un**.
21. On 7 November 2018, the creditors of BRTV resolved that BRTV would be wound up and the Administrators were appointed as liquidators.
22. On 15 January 2019 the Administrators executed a deed of company arrangement to implement a proposal by 'WOW World'.

Relationship between ECJ, BigUn, Rothsay Auditing and Mr Swan and the structure of the 2017 Audit Engagement Team for BigUn.

23. A letter dated 19 October 2016, recorded the nomination of '*Graham Swan from Rothsay Resources*' as auditor at **Big Un's** 2016 Annual General Meeting.
24. Mr Graham Swan (**Mr Swan**) was at all relevant times the sole director of Rothsay Consulting Services Pty Ltd (also referred to as Rothsay Resources and Rothsay Auditing (**Rothsay**) and was at all relevant times an **RCA**, having become registered on 8 October 1986 (registration number 4153)³.
25. By further letter dated 28 October 2016 entitled '*Re:Consent to Act*' and signed by both **Rothsay** and **Mr Swan** (as '**RCA 4153**') addressed to the director of **Big Un**, **Mr Swan** consented to act as auditor of **Big Un** for the 2016 half year audit of **Big Un**.
26. On 28 November 2016 **Big Un** held its annual general meeting and a resolution to appoint '*Graham Swan of Rothsay Resources*' as the auditor of **Big Un** was passed.
27. By letter dated 20 July 2017, **Mr Swan** confirmed the re-appointment of Rothsay and **Mr Swan** as auditor of **Big Un** to perform the 2017 Audit of **Big Un** (**Engagement Letter**).

³ According to the **RCA** register maintained by ASIC, **Mr Swan** is no longer an **RCA**.

28. The **Engagement Letter** stated:
- (a) Under the heading '**ECJ**':
 - i. *Whilst **Rothsay** are [**Big Un**'s] statutory auditors, as with the December 2016 half year, we will utilise the services of **ECJ** a 'BRW Top 100 firm' to manage the day-to-day audit activities and transaction testing.*
 - ii. *We work in conjunction with directors Heath Stewart and Jakin Loke of **ECJ** in a number of audits and their team is committed to delivering a high-quality professional service.*
 - (b) Under the heading '*Your Engagement Team*':

*Mr Swan of Rothsay will sign the statutory audit opinion. Your engagement partner at **ECJ**, Heath Stewart will be your main contact point. Heath is supported by Mr Loke and a strong team committed to delivering you a high quality service.'*
29. In or around February 2016, **Big Un** had entered into a retainer with **ECJ** pursuant to which **ECJ** provided accountancy and corporate secretarial services to **Big Un**. The accountancy services provided by **ECJ** included, amongst other things:
- (a) preparation of the end of financial year reporting including preparation of general-purpose financial statements and all note disclosures;
 - (b) facilitation of information required for audit; and
 - (c) preparation and lodgement of quarterly business activity statements.
 - (d) Mr Mark Wellings, a qualified Chartered Accountant, provided accountancy services to **Big Un** pursuant to the terms of the retainer with **ECJ**.
 - (e) During 2016 and 2017 (including the period relevant to the 2017 Audit of BigUn and during that audit), **Ms Lippiatt**, was the Company Secretary of **Big Un**. She had been appointed to this role on 31 July 2015, and remained in that role throughout the **2017 Audit**.
30. The commercial relationship between **ECJ** and **Big Un** described in paragraph 29 continued during the performance of the 2017 Audit of **Big Un**.

31. It was not in issue that Mr Loke:
- (a) Was aware of the structure of the audit engagement for the 2017 Audit of **Big Un**, including the engagement of **Mr Swan** as the lead auditor and **ECJ** as audit service provider.
 - (b) Knew of both the historical and ongoing commercial relationship between **ECJ** and **Big Un**, including **Ms Lippiatt's** role as Company Secretary of **Big Un**.
 - (c) Was the most senior member of **ECJ** who performed audit work in connection with the 2017 Audit of **Big Un (2017 Audit)**. **ECJ** staff Karina Fowler and Stephanie Krnjulac also carried out work on the **2017 Audit**.
32. Mr Loke's evidence was that he did not believe it was his role to supervise the work of other **ECJ** staff assigned to the **2017 Audit**. Accordingly, he did not supervise the work of Ms Fowler or Ms Krnjulac in relation to the **2017 Audit**. Mr Loke's evidence was that he believed that Mr Swan alone held responsibility for supervision of the work performed by ECJ on the **2017 Audit**.

The 2017 Audit

33. As already noted, on 29 September 2017, **Big Un** published its **June 2017 Financial Report** on the ASX.
34. Between 25 July 2017 and 29 September 2017, **Mr Swan** conducted the **2017 Audit**, assisted by **ECJ**.
35. **Mr Swan** is recorded as having signed an Independent Auditor's Report in respect of the June 2017 Financial Report on 29 September 2017 (2017 Audit Report).
36. The 2017 Audit Report was included in the June 2017 Financial Report and listed '*Rothsay Assurance*' as the Auditor under the section headed 'Corporate Directory'.
37. **Big Un** restated its financial report in December 2017 (December 2017 Financial Report)
38. On 30 July 2018, Mr Swan signed and/or issued an independent review report in respect of the December 2017 Financial Report which was released to the ASX by **Big Un** on that date.
39. Mr Loke did not carry out any work in relation to the December 2017 Financial Report.

40. The December 2017 Financial Report contained several restatements with respect to the **June 2017 Financial Report**. Comparative extracts of the **June 2017 Financial Report** and the December 2017 Financial Report are set out below.

	30 June 2017 Restated	30 June 2017 Audited
Profit & Loss (Extracts)		
Revenue	4,168,538	13,973,339
Share-based payment	(1,645,303)	-
Loss before income tax	(17,327,716)	(4,238,746)
Balance Sheet (Extracts)		
Current assets		
Cash & cash equivalents	918,953	9,200,175
Other financial assets	8,281,222	-
Trade & other receivables	593,344	2,646,591
Non-current assets		
Goodwill	1,288,262	1,288,262
Total assets	16,154,835	14,839,466
Current liabilities		
Deferred revenue	-	9,379,482
Contingent consideration	3,555,139	652,319
Borrowings	18,693,911	-
Total liabilities	25,725,703	13,835,880
Net assets/(deficiencies)	(9,570,868)	1,003,586
Statement of cash flows		
Receipts from customers and other sources	4,464,695	21,516,422

Sub-Section 1292(1)(d) – its ambit and the Board’s task

The ambit of s 1292(1)(d)

41. Sub-paragraph (d)(i) of s1292(1) confers power on CADB if it is satisfied on an application...for a person who is registered as an auditor to be dealt with under this section, that...the person... *‘has failed...to carry out or perform adequately and properly...the duties of an auditor’*.
42. By contrast, sub-paragraph (d)(ii) of s1292(1) refers to *‘any duties or functions required by an Australian law to be carried out or performed by a registered company auditor.’*
43. Both sub-paragraphs apply only to **RCAs**. In its decision in *Hill*⁴ the Board referred to its earlier decision in *Fernandez* that discussed the relevant authorities and expressed the view that the preferable construction to be placed on sub-paragraph (d)(i) was one that included both the statutory duties and the general law duties of an auditor.
44. The combined operation of sub-paragraphs (i) and (ii) of s1292(1)(d) together create the legislative obligation for all **RCAs** to carry out **any** audit duties, common law or statutory, or any functions they may be required to perform pursuant to an Australian law, in or outside Australia, to an appropriate competency standard that reflects compliance with current Australian Auditing Standards and proper professional practice, or risk having their registration cancelled or suspended by CADB.

The Preliminary Question

45. In these proceedings there was an initial hearing at the request of the Respondent on the following:
 - (a) Whether, on the facts alleged in the parties’ pleadings, CADB has jurisdiction and/or power to deal with **Mr Loke** under s1292(1)(d)(i).
 - (b) If the answer is *‘no’*, should these proceedings be dismissed.

(Preliminary Question)

46. Both parties filed written submissions with respect to the **Preliminary Question** and a hearing took place on 6 October 2021 at which Mr McNally SC appeared for ASIC and Mr Newlinds SC appeared for the Respondent.

⁴ 01/NSW14 Decision of the Board in Hill paragraphs 12-23

47. In his oral submissions Mr Newlinds clarified that the **Preliminary Question** was not one concerning whether CADB has jurisdiction over a person who is an **RCA**, but rather *‘what is meant as a question of statutory construction by the duties of an ‘auditor’ for the purpose of s1292(1)(d)(i)’*.⁵
48. Mr Newlinds submitted that the words in s1292(1)(d)(i) of the **Act** capture only the Lead Auditor (as that term is used in s324AF of the **Act**) (**Lead Auditor**) when properly construed, based on the ordinary natural meaning of the word *‘auditor’* as used in **(d)(i)** and when read in the context of the whole of s1292(1)(d) having regard to the various relevant definitions in the **Act** including of *‘individual auditor’*, *‘audit’*, and *‘Engaging in audit activity’* and the reference in s324AF to **Lead Auditor**, as well as to the lack of a statutory definition of the word auditor in the **Act**. Based on that construction, he submitted that **(d)(i)** does not extend to an **RCA** who happens to be performing audit duties as part of an audit team such as was Mr Loke’s role in the **2017 Audit** and as such, CADB’s sanctions power with respect to Mr Loke did not arise.
49. The second and related point submitted on behalf of Mr Loke at the hearing was that the plain English meaning of the words *‘the auditor’* or *‘an auditor’* in the context of an audit must be a reference to the **Lead Auditor**. **Mr Loke** in performing his duties in the **2017 Audit**, had duties under the general law and duties pursuant to the Auditing Standards, but they were not *‘the duties of an auditor’* within **(d)(i)**. Mr Newlinds submitted that the question for the Panel was what the word auditor means in **(d)(i)** (**the additional question**).
50. Mr McNally’s submissions argued that the scope of s1292(1) extended to any **RCA** performing audit duties.
51. In summary, ASIC’s submissions as to the **additional question** and why the **Preliminary Question** should be answered in the positive were as follows:
- (a) With respect to the Respondent’s arguments:
- i. The interpretation of **(d)(i)** advanced relied on incorporating extra words into the sub-section that are not there – namely a change in the language of **(d)(i)** from *‘an auditor’* to *‘the Lead Auditor’*.
 - ii. Sub-section 1A of s1292 provides that the extent to which the person is involved in an audit and the level of responsibility they assume in an audit are two factors to which to have regard for the purpose of determining whether a person has performed significant audit work within the meaning of s1292(1)(b)(ii). This is legislative

⁵ T 6/10/2021 line 13 page 5

recognition that auditors will perform different levels or have different levels of responsibility in relation to the work they carry out in an audit, and supports the interpretation of **d(i)** for which ASIC contends.

- iii. The plain language of s307A and s1292 do not support the Respondent's interpretation of **(d)(i)**. The fact that s307A imposes criminal and civil liability on a **Lead Auditor** does not derogate from the pre-existing duties imposed by legislation that all **RCAs** owe when carrying out their professional obligations as **RCAs**.
- (b) The starting point for the interpretation of the legislation is s15AA of the Acts Interpretation Act (1901) (Cth) as amended, which provides that the interpretation to be favoured is one that '*best achieves the purpose or object of the Act*'. The purpose or object of s1292 includes to provide a disciplinary mechanism for auditors who fail to meet an appropriate professional standard or benchmark in their performance of an audit. The other objects of the section are to deter similar behaviour by other auditors and to educate those other auditors. ASIC's construction it was submitted best achieves those objects and is to be preferred because it is only in that way that all **RCAs** who perform work on an audit may be subject to the jurisdiction of the Board.
- (c) The Australian Auditing Standards (**Auditing Standards**) are designed to work hand in glove with the **Act**. S336(1) of the **Act** provides: '*The AUASB may, by legislative instrument, make auditing standards for the purposes of this Act. The Standards must not be inconsistent with this Act or the regulations.*' The definition of auditor adopted by the Australian Auditing Standards confirms the general applicability of the ASAs to Mr Loke. ASA 200 defines auditor in paragraph 13(d) to include any '*member of the engagement team*' unless otherwise specified:

'Auditor means the person or persons conducting the audit, usually the engagement partner or other members of the engagement team, or, as applicable, the firm. Where an Auditing Standard expressly intends that a requirement or responsibility be fulfilled by the engagement partner, the term 'engagement partner' rather than 'auditor' is used. 'Engagement partner' and 'firm' are to be read as referring to their public sector equivalents where relevant...
- (d) Mr Loke's role as one of the '*persons conducting the audit*' and one of the '*other members of the engagement team*' meant he fell within the scope of the definition of '*auditor*' in ASA 200 13(d) in relation to the work he performed on the **2017 Audit**. As an auditor within the

meaning of both **(d)(i)** of the **Act** and the applicable **Auditing Standards**, Mr Loke was required by ASA 200 paragraph 18 to ‘*comply with all Australian Auditing Standards relevant to the audit*’. ASA paragraph 18 specifies that ‘*[a]n Auditing Standard is relevant to the audit when the Auditing Standard is in effect and the circumstances addressed by the Auditing Standard exist*’.

- (e) The definition of ‘*professional members of the audit team*’ in S324AE of the **Act** is also relevant to the extent it refers to ‘*any registered auditor who participates in the conduct of an audit*’. Mr Loke falls within this definition.

Panel’s finding on Preliminary Question

52. The Panel delivered its finding on the **Preliminary Question**, which was ‘**yes**’ to the question posed in paragraph 45(a) hereof, at the hearing on 6 October 2021 as follows:

‘The Panel does not accept the basis of the respondent’s submissions that impose on subsection **(d)(i)** a definition of the word ‘*auditor*’ that requires the inclusion of additional words in **(d)(i)** that would confine its scope so that a registered company auditor, performing audit duties as part of an audit team but who is not the Lead Auditor on that audit, as defined in the **Act**, does not fall within the purview of subsection **(d)(i)**. We accept the Applicant’s submission that a broader interpretation is consistent both on the basis of the plain words of the subparagraph and in accordance with section 15AA of the Acts Interpretation Act and that that best achieves the purpose and object of section 1292 to provide a disciplinary framework that applies to all registered company auditors with respect to any audit duties they perform in order to protect the public and achieve the other stated purposes of the establishment of the Board; namely, general deterrence and education as to the appropriate benchmark for the performance of audit duties by a registered company auditor which, as is well established by existing precedent, requires a Panel of this Board to assess the level and standard of performance of the audit duties that were performed by reference to the current Professional Standards’.⁶

53. In addition to the further comments below, the Panel’s view is that the above summary of the reasons (**Reasons**) for its finding on the **Preliminary Question** sufficiently addresses the reasons for its conclusion in the context of these proceedings.
54. With respect to the **additional question**, the submissions advanced on behalf of **Mr Loke** in support of a narrow interpretation of the words ‘*an auditor*’ in

⁶ T 6 October 2021 69:26–70:27

(d)(i) were simply not supported either by the legal principles of interpretation referred to in our **Reasons** nor either on a plain reading of **(d)(i)** or having regard to the context provided by the relevant sections of the **Act** and the **Auditing Standards**, or existing precedent⁷ as was set out by ASIC in its detailed submissions, which we accept. It is relevant also that the question posed by the Respondent's counsel in these proceedings regarding the meaning of auditor as it is used in **(d)(i)** was subject to the Board's consideration in its decision in *Williams* albeit in a different context. There the Board said about the construction of s1292(1)(d)⁸ being proposed by the Respondent in those proceedings:

'Further, it is not a reading of section 1292(1)(d) of the Act that, in our view, takes into account the purpose and object of the Act which is best served if the distinction between auditor in paragraph (d)(i) and registered auditor in paragraph (d)(ii) is given some effect so that the reference to auditor in paragraph (d)(i) covers the general duties of an auditor and therefore contemplates a circumstance where Mr Williams carried out the 2012 LM audit as if it were a Chapter 2M audit.'

55. For the reasons stated, our view is that the answer to **the additional question** is that the reference in **d(i)** is to an **RCA**.

The Panel's task when considering an Application

56. The nature of the task to be performed by a Panel when considering the performance of duties by an **RCA** in the context of s1292(1)(d) of the **Act** has been considered in several cases before the Board, as well as judicially. A detailed discussion of the principles that apply emerging from those cases may be found in the Board's decision in *ASIC v Evett*⁹. The authorities there referred to stand for a number of important propositions and particularly importantly, that the exercise of Board's power under s1292 does not turn on a requirement to be satisfied regarding the alleged conduct as to a legal standard. S1292 does not call upon the Board to determine whether the failure to carry out or perform a relevant duty has breached a general law principle or a specific statutory provision. Rather, the question regarding the relevant evidence is what it demonstrates regarding the adequacy and propriety of the carrying out or performance of a relevant duty and that is to be judged by the Board by making an evaluative and subjective determination¹⁰.
57. The Board has adopted the 'relevant benchmark' terminology in recent decisions to refer to what comprises the 'measuring stick' by reference to

⁷ As to which see the Board's decision in 01/QLD17 Williams paragraphs 59-62

⁸ n7 paragraph 60(a)

⁹ See Board's decision in 17/NSW20 Evett paragraphs 22-25

¹⁰ See *Albarran v CALDB* [2006] FCAFC 69 at 45.

which a Panel undertakes its assessment of the level of performance of an RCA of their relevant duties an/or functions and whether duties and/or functions have been performed properly.

The Relevant Benchmark

58. In support of the contentions advanced, the allegations particularised by ASIC in its Concise Outline refer to various provisions in the Auditing Standards, Accounting Standards and Assurance Standards¹¹, as well as provisions of and regulations made under **the Act**.
59. In its decision in *ASIC v Evett*¹² it was said in relation to the relevant benchmark terminology:

*'In support of the contentions advanced, the allegations particularised by ASIC in its Concise Outline refer to various provisions in the Auditing Standards, Accounting Standards and Assurance Standards, as well as provisions of and regulations made under the **Act**.*

*Based on the authorities discussed above, it is uncontroversial to propose that the requirements of the Auditing and Assurance Standards, relevant provisions and regulations under the Corporations legislation and relevant pronouncements by the Accounting Professional and Ethical Standards Board in force from time to time will inform the general professional standard to be met by an **RCA**. Evidence relevant to an auditor's compliance or otherwise with specific aspects of this framework will therefore be instructive.*

Further, the Auditing Standards are principles based and designed to be applied by an auditor through the exercise of professional judgement and the appropriately diligent application of professional scepticism. The Panel's assessment of whether there has been proper and adequate performance of duties will also therefore involve an element of qualitative evaluation.

The framework referred to in paragraph 27 is of central relevance to evaluating the level and standard of performance by Mr Evett of his audit duties and functions, although is not circumscriptive. Relevant matters for this Panel's consideration with respect to the facts we find to be reasonably established include whether or the extent to which those facts demonstrate:

- (a) *Any respects in which the audits were not performed in compliance with specific relevant applicable legislative/regulatory requirements and framework, including the Auditing Standards.*
- (b) *Whether Mr Evett had performed his audit duties in accordance with relevant Auditing and Assurance Standards Board (AUASB) guidelines, pronouncements and/or bulletins published from time to time.*

¹¹ see Glossary

¹² n9 paras 27-29

(c) *Whether the entity's reporting in its financial statements was compliant with relevant AASB requirements.*

(d) *Whether each of the audit engagements was performed in accordance with the representations made in the **Engagement Letters** and the **Audit Reports** for each of the relevant years.*

*The matters discussed in paragraphs 27 - 29 comprise **The Relevant Benchmark** to which we have referred subsequently in this decision in the context of our determination of each contention.*

60. We adopt the relevant benchmark terminology (**Relevant Benchmark**) in this decision and accept that **Agreed Facts** pertaining to Mr Loke's compliance or otherwise with specific aspects of the statutory/regulatory framework in place at the time he performed the **2017 Audit** will be instructive with respect to the question of whether he has met an appropriate professional standard when carrying out his audit duties.
61. We accept ASIC's submissions that:
- (a) In determining whether Mr Loke has met the general professional standard to be met by an **RCA** for which the Board has adopted the **Relevant Benchmark** as a convenient shorthand, the following matters are instructive:
 - i. Whether Mr Loke complied with the requirements of the **Auditing Standards** and the APES110 Code of Ethics for Professional Accountants 2010 edition in force at the time of the **2017 Audit (APES110)**.
 - ii. Whether **Big Un's** reporting in its financial statements for the **June 2017 Financial Report** was compliant with the relevant AASB requirements and the extent to which Mr Loke was responsible for failing to identify the Company's non-compliance with any such requirements.
 - (b) Mr Loke's failure to meet the **Relevant Benchmark** (as informed by the applicable Auditing and Accounting Standards) is determinative of whether he has failed to '*carry out or perform adequately and properly the duties of an auditor*' within the meaning of s1292(1)(d)(i) of the **Act** (although in this regard the Panel notes its previous comment that the relevant assessment to be undertaken by the Panel may, depending on the specific facts, also involve a qualitative element).
62. We now turn to a consideration of each of the Contentions pressed by ASIC by reference to the Agreed Facts in order to make our evaluation of whether and to what extent Mr Loke's performance of his duties in the **2017 Audit**

failed to meet the relevant requirements in force at the relevant time, and did not therefore meet the **Relevant Benchmark**.

Overview of Contentions

63. The final contentions pressed by ASIC in this Application were as follows (collectively **The Contentions**):
- (a) Contention 1 – That Mr Loke, as a member of the **ECJ** audit team for the **2017 Audit of Big Un**, carried out audit fieldwork for **Mr Swan** in circumstances where he knew that **ECJ** could not be appointed as auditor of **Big Un** due to a conflict of interest and failed to adequately address the conflict of interest and independence issues inherent in the engagement. (**Contention 1**).
 - (b) Contention 2F - That Mr Loke failed to obtain reasonable assurance that the **June 2017 Financial Report** was free from material misstatement in relation to the value of share-based payment transactions and the existence and value of the share option reserve (**Contention 2F**).
 - (c) Contention 4 - That Mr Loke failed to set Performance Materiality for the **2017 Audit** at an appropriately low level (**Contention 4**).
 - (d) Contention 5 - That Mr Loke failed to gather sufficient appropriate audit evidence from **Big Un's** previous auditor, PKF Melbourne Pty Ltd (**Contention 5**).
 - (e) Contention 7 - That Mr Loke failed to obtain reasonable assurance and sufficient appropriate audit evidence to reduce risk in relation to **Big Un's** ability to continue as a going concern to an acceptably low level (**Contention 7**).
64. Contentions **1, 2F, 4, 5** and **7** alleged Mr Loke failed to perform the duties of an **RCA** within the meaning of s1292(1)(d)(i) of the **Act** in the **2017 Audit**.
65. With respect to each of **The Contentions** Mr Loke expressly acknowledged and accepted that:
- (a) When he performed work on the **2017 Audit**, he made many assumptions and that much of his understanding as to his role and responsibility was based on those assumptions, which were not articulated, discussed with others or documented.

- (b) He was too reliant on his experience of how audits had been done before with **Mr Swan** as Engagement Partner and did not consider matters for himself.
- (c) He did not pay sufficient attention to what his precise role was within the **2017 Audit** or what the lines of communication were.
- (d) He relied too heavily on certain assumptions he made without satisfying himself that others in the team, including **Mr Swan** as Engagement Partner, agreed with them and had the same understanding as Mr Loke.
- (e) In hindsight, it was not clear enough or documented:
 - i. Who within **ECJ** was reporting to Mr Loke, if anyone, and who, including Mr Loke himself, was reporting to **Mr Swan** as Engagement Partner.
 - ii. Whether the **ECJ** staff whose responsibility Mr Loke understood it was to carry out work on the key audit matter of revenue and deferred revenue, were being supervised or having their work reviewed and critically analysed by Mr Loke or by **Mr Swan** as Engagement Partner.
- (f) Because of the structure of the arrangement between **Mr Swan**, as Engagement Partner, and **ECJ** and the lack of coordination between **ECJ** staff (including the lack of coordination and discussion between Mr Loke and other **ECJ** staff), Mr Loke was too dependent on other members of the audit team informing him that something he had done, such as the setting of Performance Materiality, needed to be reassessed or reviewed having regard to what they knew about revenue or deferred revenue.
- (g) He was overly dependent on others who were in charge of the testing of revenue and deferred revenue in the **2017 Audit** alerting him to any issue regarding the treatment of revenue and deferred revenue that may have impacted assumptions underpinning much of the work Mr Loke did on **Big Un's** capacity to continue as a going concern.
- (h) Given his lack of experience and knowledge of certain procedures within the CaseWare file¹³ sections that he completed for the **2017 Audit**, Mr Loke should not have completed them and should have left

¹³ References in this decision to the Caseware file are references to an accounting software package used to create and store audit records that was used in the **2017 Audit**.

them to **Mr Swan**. Specifically, Mr Loke should not have completed the 'Preliminary engagement', 'Materiality', 'Going Concern' or the 'Equity' sections within the CaseWare file.

- (i) Mr Loke was too reliant on **Mr Swan** reviewing and correcting the **2017 Audit** work Mr Loke had undertaken, as **Mr Swan** considered necessary. Mr Loke accepts that he should have either declined to complete the sections of the Caseware file referred to, or have completed those sections in a manner that involved critically analysing for himself the accuracy and completeness of the information he was recording.

66. We now turn to a consideration and our findings with respect to each of The Contentions.

Contention 1

67. It was not in dispute, based on the facts that were agreed, that Mr Loke had participated in the **2017 Audit** in circumstances where he was aware, but did not have regard to the ramifications of the circumstances that:

- (a) One of his partners at **ECJ**, **Ms Lippiatt**, was the Company Secretary for **Big Un** and would continue to occupy that role throughout the **2017 Audit**.
- (b) **ECJ** had and would continue during the course of the **2017 Audit**, to provide accountancy services to **Big Un**, including the preparation of end of financial year reporting and facilitating the provision of information on **Big Un's** behalf that was required for the **2017 Audit**.
- (c) Big Un had appointed a Lead Auditor from outside ECJ, **Mr Swan**, for the **2017 Audit**.
- (d) Notwithstanding **Mr Swan's** appointment, **ECJ** staff (including **Mr Loke**) would be providing audit services for the **2017 Audit**, including handling the day-to-day audit activities and transaction testing. (**2017 Audit Arrangement**)

68. The parties agreed that the sole matter about which this Panel must be satisfied for **Contention 1** to be established is that Mr Loke's participation in the **2017 Audit** in the context of the **2017 Audit Arrangement** did not meet the requirements of **APES110**, compliance with which is mandated for auditors by ASA 200 paragraph 14 and ASA 102 paragraph 5. The parties agree that if we accept the interpretation of **APES110** for which **ASIC** contends, **Mr Loke** should not have participated in the **2017 Audit**.

69. It was not in issue that at the time of the **2017 Audit**:
- (a) **Mr Loke** was a member of Chartered Accountants Australia & New Zealand (**CAANZ**), a professional body that had adopted **APES110**.
 - (b) **Mr Loke** was an **'auditor'** within the meaning of ASA 200 paragraph 13(d) and was therefore required by ASA 200 paragraph 14 to *'comply with relevant ethical requirements, including those pertaining to independence, relating to a financial report and audit engagement'*.
 - (c) ASA 102 - *Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements* provided in paragraph 5 that *'[t]he auditor, assurance practitioner, engagement quality control reviewer, and firm shall comply with relevant ethical requirements, including those pertaining to independence, when performing audits, reviews and other assurance engagements'*.
70. **APES110**:
- (a) Provided in Section 1.2

*'[a] all Members in Australia shall comply with **APES110** including when providing Professional Services in an honorary capacity'*.
 - (b) Defined **'Member'** in s 2 as:

'a member of a professional body that has adopted this Code as applicable to their membership, as defined by that professional body'.
 - (c) Provided in Section 1.4:
 - (a) *'This Code is not intended to detract from any responsibilities which may be imposed by law or regulation. AUASB has issued auditing standards as legislative instruments under the Corporations Act 2001 (the Act). For audits and reviews under the Act, those standards have legal enforceability. **To the extent that those auditing standards make reference to relevant ethical requirements, the requirements of APES 110 have legal enforceability due to Auditing Standard ASA 102 Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements'**. (Emphasis added)*
 - (d) Provided in Section 1.6:

'in applying the requirements outlined in this Code, Members

*shall be guided, not merely by the words, but also by the **spirit** of this Code.*' (emphasis added)

(e) Provided in Section 290:

'[t]he concept of Independence is fundamental to compliance with the principles of integrity and objectivity. This Code adopts a conceptual framework that requires the identification and evaluation of threats to Independence so that any threats created are eliminated or reduced to an Acceptable Level by the application of safeguards.'

(f) Provided in Section 290.146:

'If a partner or employee of the Firm serves as a Director or Officer of an Audit Client, the self-review and self-interest threats created would be so significant that no safeguards could reduce the threats to an Acceptable Level. Accordingly, no partner or employee shall serve as a Director or Officer of an Audit Client.'

(g) Provided in Section 290.147 that the position of Company Secretary:

'generally...is seen to imply a close association with the entity'.

(h) Provided in AUST290.148.1:

'As the company secretary of a company incorporated in Australia is an Officer under the Corporations Act 2001, no Partner or employee of a Firm shall act in the position of the company secretary of an Audit Client. If such an individual were to accept such a position the only course of action is for the Firm to refuse to perform, or withdraw from, the Audit Engagement'.

(APES110 Provisions).

71. While the parties agreed that the **APES110 Provisions** prescribed relevant ethical requirements applying to the **2017 Audit Arrangement** both parties appeared to accept that the words of sections 290.147 and Aust 290.148.1 of **APES110** (the **Independence Requirements**) were ambiguous because the references to '*Firm*' and '*Audit Client*' in those sections were capable of interpretation in the circumstances of the **2017 Audit Arrangement**, one of which would not have brought the **2017 Audit Arrangement** within the purview of the **Independence Requirements**.

72. ASIC submitted that in applying the **Independence Requirements** to the **2017 Audit Arrangement**, a purposive interpretation to promote the object of auditor independence and to adhere to the spirit of **APES110** was applicable and appropriate. We accept this submission. It is consistent with Section 234A of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), ‘*Purposive interpretation of standards*’, which provides:
- (1) *In interpreting an auditing standard made or formulated by the AUASB, a construction that would promote the objects of this Part is to be preferred to a construction that would not promote those objects.*
 - (2) *In interpreting an auditing standard made or formulated by the AUASB, a construction that would promote a purpose or object of the standard (to the extent to which it is not inconsistent with the objects of this Part) is to be preferred to a construction that would not promote that purpose or object. This is so even if the purpose or object is not expressly stated in the standard.*
73. Section 234A applies to **APES110** via the operation of the provisions of **ASA 200** and **ASA 102** (see paragraphs 68 (b) and (c) above), which are both instruments falling within the meaning of the words in s234A ‘*an auditing standard made or formulated by the AUASB*’.
74. At the hearing, Mr Newlinds SC submitted that **Mr Loke’s** position was not that the **Independence Requirements** should not be construed in the way submitted by ASIC, but that this was not conceded because whether the **2017 Audit Arrangement** came within the words of the **Independence Requirements** was ambiguous. **Mr Loke’s** evidence was that he would never again become involved in an arrangement similar to the **2017 Audit Arrangement**, and that he accepts that the **Independence Requirements**, which at the time of the **2017 Audit Arrangement** he did not consider, should have precluded him and **ECJ** from being involved in the **2017 Audit**. Nevertheless, the words of the **Independence Requirements** were in Mr Newlinds’ submission not clear, and this was a matter for the Panel’s consideration.
75. In the context of the **2017 Audit Arrangement**, the available interpretations of the words ‘*Firm*’ and ‘*Audit Client*’ as referred to in the **Independence Requirements** are that: **ECJ** and/or **Mr Swan’s** firm is the ‘*Firm*’ and **Big Un** is the ‘*Audit Client*’ of either **Mr Swan** and **ECJ**, or of **Mr Swan**.
76. If the **Independence Requirements** are construed so that ‘*Firm*’ is interpreted as **Mr Swan’s** firm and **Big Un** as **Mr Swan’s** audit client, then the **2017 Audit Arrangement** was one that would have allowed **ECJ** to participate in the **2017 Audit** even though **Ms Lippiatt**, a Director of **ECJ** was the Company

Secretary of **Big Un**. The outcome of such a construction would have been that the **2017 Audit Arrangement** did not fall foul of the **Independence Requirements** regardless of **Ms Lippiatt's** continuing role and **ECJ's** involvement in the **2017 Audit**.

77. On the other hand if in terms of the **2017 Audit Arrangement**, **ECJ** is construed as *'the Firm'* and **Big Un** as *'an Audit Client'* of both **Mr Swan** and **ECJ**, then **Ms Lippiatt's** role as **Big Un's** company secretary is clearly an obstacle to **ECJ's involvement** in the **2017 Audit** and the objective of auditor independence is upheld by this construction of the **Independence Requirements**.
78. S234A, which applies to **APES110**, directs us to prefer this latter construction as the purposive one, which 'would promote the objects of this Part', compared to the former that is '*...a construction that would not promote those objects*'. This construction had the effect of prohibiting **ECJ**, as *'the Firm'*, from participating in the **2017 Audit** of **Big Un**, the *'Audit Client'*, whilever **Ms Lippiatt** served as Company Secretary of **Big Un**.
79. As noted, the parties agreed that the sole matter about which this Panel must be satisfied for **Contention 1** to be established is that **Mr Loke's** participation in the **2017 Audit** in the context of **The Audit Arrangement** did not meet the requirements of **APES 110**, compliance with which is mandated for auditors by ASA 200 paragraph 14 and ASA 102 paragraph 5. For the reasons we have set out we have so concluded.
80. Based on the admissions in the Agreed Facts and our finding with respect to the proper construction of the **Independence Requirements** we are satisfied, that Mr Loke, as a member of the **ECJ** audit team for the **2017 Audit** of **Big Un**, carried out audit fieldwork for **Mr Swan** in circumstances where he should have known that **ECJ** could not be appointed as auditor of **Big Un**. Mr Loke should have been aware of the **Independence Requirements**, a matter that, as we know he now accepts should have precluded him (and **ECJ**) from being involved in the **2017 Audit**. His failure in this regard did not meet the **Relevant Benchmark**.
81. We are therefore satisfied, based on the agreed facts relevant to **Contention One** and having regard to our finding on the appropriate construction of the **Independence Requirements**, that **Contention One** is established.

Contention 2F

82. The Applicant relied upon the following facts agreed between the parties and admissions relevant to **Contention 2F**:

- (a) The **June 2017 Financial Report** was materially misstated in that it omitted the following information that was subsequently disclosed in the restatements in the **December 2017 Financial Report**:
 - i. Information relating to the fair value of share-based payments totalling \$1,645,303 for the period ending 30 June 2017.
 - ii. The existence and value of a share option reserve of \$1,396,818.
 - iii. Share option expenses totalling \$1,006,801.
 - (b) Mr Loke completed and signed off on the 'Equity' section of the CaseWare file that addressed **Big Un's** share-based payments for the reporting period, despite having no experience in auditing share-based payments or share option reserves and not knowing what was expected or required for the auditing of share-based payments.
 - (c) Mr Loke received accounting records indicating what **Big Un** had recorded as share option reserves, but did not obtain underlying supporting documents to verify the accuracy of that information (or the value of **Big Un's** share-based payments more generally) or identify that the **June 2017 Financial Report** did not comply with the requirements of AASB 101 - *Presentation of Financial Statements*, for the share option reserve.
 - (d) Mr Loke's evidence was that he assumed that **Mr Swan** would see what he had provided on the CaseWare file index and that **Mr Swan** would inform Mr Loke if more information was required.
83. Based on the admissions in the Agreed Facts ASIC contended and we are satisfied, that the audit work performed by Mr Loke in the **2017 Audit** in relation to the share based payments and the share option reserve did not meet the **Relevant Benchmark** because Mr Loke accepted accounting records relating to **Big Un's** share-based payments and share option reserve at face value and did not obtain any underlying supporting documents to verify the accuracy of the information provided as he should have done having regard to the obligations in:
- (a) ASA 200, paragraph 15 to apply an appropriate level of professional scepticism when performing an audit.
 - (b) ASA 200 paragraph 17, ASA 500 paragraph 6, ASA 510 paragraph 6 and ASA 540 paragraph 13 which set out requirements for obtaining sufficient appropriate evidence relating to share-based payments and share option reserves and to design procedures for obtaining such evidence.

- (c) ASA 500 paragraphs 7 and 9, ASA 510 paragraph 6 and ASA 330 paragraph 26 to conclude whether sufficient audit evidence to support the estimates had been obtained and consider the reliability of such evidence.
- (d) ASA 315 paragraphs 25 and 26, to identify and assess the risk of material misstatement in relation to assertions relating to share-based payments and the account balance for share option reserve, including by obtaining an understanding of relevant controls.
- (e) ASA 540, paragraph 8, to obtain an understanding of the requirements of the applicable financial reporting framework relating to share-based payments and the share option reserve, how **Big Un's** management identified transactions and events relevant to those matters, and how **Big Un's** management made the estimates reflected in the accounting records (including the data on which those estimates were based).
- (f) ASA 540 paragraph 9, to review the estimates relating to share-based payments and the share option reserve included in the prior period financial report.
- (g) ASA 540 paragraphs 13(b), 18 and 21, to test management estimates and data, including by considering the reasonableness of the estimates for share-based payments and share option reserve and considering any indicators of management bias.
- (h) ASA 330 paragraph 24 and ASA 540 paragraph 12, to perform audit procedures to evaluate whether the financial report was in accordance with the applicable financial reporting framework or otherwise determine whether **Big Un** management had appropriately applied the requirements of the financial reporting framework which, if Mr Loke had carried out, and evaluated, should have resulted in him identifying that the **June 2017 Financial Report** did not comply with the requirements of paragraph 54(r) of AASB 101 with respect to the share option reserve, or paragraphs 10, 11, 12, 16 and 17 of AASB 2 with respect to the share-based payments.
- (i) As a result of his inexperience with auditing procedures for share-based payments and share option reserve and uncritical acceptance of **Big Un's** accounting records relating to these matters, Mr Loke failed to prepare sufficient documentation to allow an experienced auditor to understand relevant aspects of the audit, contrary to ASA 230, paragraphs 8 and 9.

84. As noted in paragraph 64 above, Mr Loke acknowledged that given his lack of both experience and knowledge of certain audit procedures within the sections of the CaseWare File that he completed (including the section on 'Equity'), he should not have completed them but should have left them to **Mr Swan**.
85. Based on the above facts and for the reasons we have set out we are satisfied that Contention 2F is established.

Contention 4

86. Contention 4 alleged the failure by Mr Loke to set Performance Materiality at an appropriately low level.
87. ASIC contended that Performance Materiality should be set at a level lower than Overall Materiality in order to reduce to an appropriately low level the probability that the aggregate of uncorrected and undetected misstatements exceeds materiality for the financial report as a whole. We accept this proposition.
88. ASA 320, paragraphs 10 and 11, as read with paragraph 9 required Mr Loke to determine materiality for the financial report as a whole, taking into account whether, in the specific circumstances of the entity, there were particular classes of transactions, account balances or disclosures for which misstatements of lesser amounts than materiality for the financial report as a whole could reasonably be expected to influence the economic decisions of users taken on the basis of the financial report, in which case Mr Loke was required to also determine the materiality level or levels to be applied to those particular classes of transactions, account balances or disclosures.
89. Paragraphs 9 and 11 of ASA 320 required Performance Materiality to be determined for the purpose of assessing the risks of material misstatement and determining the nature, timing and extent of further audit procedures (where Performance Materiality means the amount or amounts set by the auditor at less than materiality for the financial report as a whole to reduce to an appropriately low level the probability that the aggregate of uncorrected and undetected misstatements exceeds materiality for the financial report as a whole and, where applicable, the amount or amounts set by the auditor at less than the materiality level or levels for particular classes of transactions, account balances or disclosures).
90. ASIC relied on the following agreed facts and matters relevant to Contention 4:

- (a) Mr Loke completed and signed off on the 'Materiality' section of the CaseWare file that addressed Overall Materiality and Performance Materiality for the **2017 Audit**.
 - (b) Mr Loke set Overall Materiality at \$120,050 based on 10% of net assets (50% weighting factor) and 1% gross revenue (50% weighting factor).
 - (c) Mr Loke set Performance Materiality at 100% of Overall Materiality, rather than at a level lower than Overall Materiality.
 - (d) Mr Loke set the Clearly Trivial Amount at \$12,005, being 10% of the amount set for Performance Materiality, resulting in the exclusion from the audit procedures of all invoices that were the subject of a sponsorship agreement between **Big Un's** subsidiary and First Class Securities. This was a significant source of the revenue received by the Company.
 - (e) Mr Loke did not make any independent assessment of the specific circumstances of the **2017 Audit** before setting materiality. He followed his usual past practice when conducting audits with **Mr Swan**, which was to set both performance materiality and overall materiality at the same level of, or around \$100,000.
 - (f) Mr Loke did not understand the conceptual distinction between Performance Materiality and Overall Materiality.
91. As a result of the above conduct, Performance Materiality for the **2017 Audit** was not set at a level lower than Overall Materiality and the probability that the aggregate of uncorrected and undetected misstatements exceeded materiality for the financial report as a whole was therefore not reduced to an appropriately low level in the **2017 Audit**. Mr Loke should have but did not determine materiality for the financial report as a whole in accordance with ASA 320 paragraphs 9, 10 and 11. He should have ensured he was independently aware of the specific relevant requirements contained in the **Auditing Standards** before setting materiality in the **2017 Audit**. To the extent he was not familiar with the audit concept of materiality, Mr Loke should have taken steps to properly familiarise himself with those concepts before undertaking his role in the **2017 Audit**.
92. A result of Mr Loke not knowing the difference between the concepts of Performance Materiality and Overall Materiality there was insufficient documentation prepared in the **2017 Audit** to allow an experienced auditor, having no previous connection with the audit, to understand relevant aspects of the audit, as was required to satisfy ASA 230 paragraphs 8 and 9.

93. Having regard to the requirements set out in ASA 320 and ASA 230 referred to above, we are satisfied based on the Agreed Facts and Mr Loke's acknowledgments, that the audit work performed by Mr Loke in the **2017 Audit** in relation to setting the performance materiality did not meet the **Relevant Benchmark**.
94. Based on the above agreed facts and for the reasons we have set out we are satisfied that Contention 4 is established.

Contention 5

95. ASIC relied upon the following agreed facts and admissions relevant to Contention 5:
- (a) **PKF** were the previous auditors appointed to **Big Un**.
 - (b) Mr Loke signed off on working paper 1-230 *ASA Program – First Engagement* in the CaseWare File (**1-230**) marking 'Complete' for the procedures:
 - i. Reviewing the predecessor auditor's working papers to obtain evidence regarding the opening balances.
 - ii. Evaluating whether audit procedures performed in the current period provide evidence relevant to the opening balances.
 - iii. Performing specific audit procedures to obtain evidence regarding the opening balances.
 - (c) Mr Loke also completed and signed off on the '*Preliminary Engagement Activities*' section of the CaseWare file. He acknowledged he did not know what was required to adequately complete it to an appropriate standard.
 - (d) At the time Mr Loke completed and signed off on the sections of the CaseWare file referred to in (b) and (c) above and contrary to what Mr Loke represented by marking 'Complete' in **1-230**, Mr Loke had not met with **PKF**, had not obtained **PKF's** working papers for the previous audit of **Big Un**, and had not turned his mind to the fact that **PKF's** working papers for the previous audit needed to be obtained.
96. In the work he performed on the **2017 Audit**, which was an initial audit following a change of auditor, **Mr Loke** should have, amongst other things:
- (a) Prior to commencing the initial audit, communicated with the previous auditor, in accordance with the requirement in ASA 300, paragraph 13(b);

- (b) Identified and assessed the risks of material misstatement at the financial report level and the assertion level for transactions, account balances and disclosures, including by obtaining an understanding of relevant controls in accordance with ASA 315 paragraphs 25 and 26;
 - (c) Obtained reasonable assurance by obtaining sufficient appropriate audit evidence to reduce audit risk to an acceptably low level (in particular, in relation to opening balances and prior period closing balances, by obtaining the previous auditor's working papers, and verifying the consistent application of accounting policies as between opening balances and the current period's financial report); designing procedures for obtaining such evidence; and concluding whether sufficient appropriate audit evidence had been obtained in accordance with ASA 200 paragraph 17; ASA 500 paragraphs 6, 7 and 9; ASA 510 paragraphs 6(a) and 8; and ASA 330 paragraph 26.
 - (d) Prepared sufficient documentation to allow an experienced auditor, having no previous connection with the audit, to understand relevant aspects of the audit in accordance with ASA 230, paragraphs 8 and 9.
97. We are satisfied, given the Agreed Facts and the requirements of the Auditing Standards referred to that were not met, that **Mr Loke's** conduct did not meet the **Relevant Benchmark** and we are satisfied that **Contention 5** is established.

Contention 7

98. ASIC relied upon the following agreed facts and admissions relevant to Contention 7:
- (a) The restated financials for 30 June 2017 in the 31 December 2017 Financial Report identified a going concern issue based on, among other things, a net assets deficiency of \$9,570,868 (total assets of \$16,154,835 and total liabilities of \$25,725,703).
 - (b) In the **2017 Audit**, Mr Loke prepared the audit workpaper 4-256 *Going Concern Review – 2017*, which stated:

'We have no reason to doubt the company's viability moving forward as a going concern. The business is highly liquid to fund its intended expansion into new jurisdictions and for any future acquisitions that may arise.'
 - (c) Mr Loke signed off on workpaper 2-150 *ASA Program – Going Concern (Risk Assessment)*, in which all procedures were marked as completed but no reference was made to any other workpaper.

- (d) Mr Loke signed off on workpaper *4-250 ASA Program – Going Concern (Reporting)*, in which all procedures were marked either ‘*Completed*’ or ‘*Not Applicable*’ but no reference was made to any other working paper.
 - (e) Mr Loke signed off on workpaper *4-251 BIG Business Model v11 2.0* (Model tab), which documented a forecast from 1 July 2016 to 28 June 2019, but there was no evidence of audit procedures being carried out on this working paper.
 - (f) Even though the **ECJ** engagement team documented that **Big Un** incurred losses in the year ending 30 June 2017, and even though the restated financials for **Big Un** identified a going concern issue based on **Big Un’s** losses, **Mr Loke** did not identify the existence of a material uncertainty that may have cast a significant doubt about **Big Un’s** ability to continue as a going concern.
 - (g) In preparing and signing off on the working papers referred to above, **Mr Loke** did not review the entire CaseWare file or all of the sections completed by other **ECJ** staff and instead assumed:
 - i. **Mr Swan** would carry out those responsibilities and would be reviewing the working paper.
 - ii. That if something relevant to the going concern section had been identified by other **ECJ** staff or by **Mr Swan**, he would have been so informed by other **ECJ** staff or by **Mr Swan**.
 - iii. That **Mr Swan** would consider the significance of such matters in preparing his audit opinions and conclusions and edit the information in the CaseWare accordingly.
99. In his role in the **2017 Audit** evaluating the status of **Big Un** as a going concern for the **2017 Audit**, Mr Loke, amongst other things was required by:
- (a) ASA 200, paragraph 15, to perform his role with an appropriate level of professional scepticism, recognising that circumstances may exist that cause the financial report to be materially misstated.
 - (b) ASA 200 paragraph 17; ASA 500 paragraphs 6, 7 and 9; ASA 330 paragraph 26 and ASA 570 paragraphs 9(a), 16 and 17 to obtain reasonable assurance by obtaining sufficient appropriate audit evidence to reduce audit risk to an acceptably low level, to design procedures for obtaining such evidence, and to conclude whether sufficient appropriate audit evidence had been obtained - including to allow a conclusion to be made as to the appropriateness of

management's use of the going concern basis of accounting in the preparation of the financial report.

- (c) ASA 570, paragraphs 9(b), 10, 11, 12 and 14 to consider and conclude, based on the audit evidence obtained whether:
 - i. A material uncertainty existed relating to events or conditions that may have cast significant doubt on the entity's ability to continue as a going concern.
 - ii. Any assessment by management of **Big Un** as to **Big Un's** ability to continue as a going concern identified any events or conditions that may have cast significant doubt on the entity's ability to continue as a going concern and, if so, management's plans to address them. Absent an assessment by management, Mr Loke was required to discuss with management the basis for the intended use of the going concern basis of accounting; to enquire of management whether events or conditions existed that, individually or collectively, may have cast significant doubt on the entity's ability to continue as a going concern; or, at a minimum, to raise these matters with **Mr Swan** for further consideration.
 - (d) ASA 315 paragraphs 25 and 26 to identify and assess risks of material misstatement at the financial report level and the assertion level for transactions, account balances and disclosures, including by obtaining an understanding of relevant controls.
 - (e) ASA 230, paragraphs 8 and 9 to prepare sufficient documentation to allow an experienced auditor, having no previous connection with the audit, to understand relevant aspects of the audit:
 - (f) ASA 330 paragraph 25, based on the audit procedures performed and the audit evidence obtained, to evaluate before the conclusion of the **2017 Audit** whether the assessments of the risks of material misstatement at the assertion level remained appropriate.
100. Based on the admissions in the Agreed Facts set out above, we are satisfied that **Mr Loke** did not attend to the matters set out in Paragraph 98 above and that his conduct failed to satisfy the **Relevant Benchmark**.

101. We are therefore satisfied that Contention 7 has been established.

Parties submissions on Proposed Consent Orders

102. The parties proffered Consent Orders, which they asked the Board to make, as follows:

1. Pursuant to sub-section 1292(1) of the Corporations Act 2001 (Cth) (**Act**), that the registration of **Mr Loke** as an **RCA** be suspended for a period of twelve (12) months.
2. Pursuant to sub-section 1297(1)(a) of the Act, that the order for suspension in paragraph 1 **will** come into effect at the end of the day on which the Board gives Mr Loke a notice of the decision pursuant to sub-section 1296(1)(a) of the Act.
3. Pursuant to sub-sections 1292(9)(b) and (c) of the Act, that Mr Loke is required to give undertakings in the form attached as Schedule A to these orders.
4. Pursuant to section 223 of the Australian Securities and Investments Commission Act 2001 (Cth), that Mr Loke pay the Applicant's costs in the fixed sum of \$95,000 within twenty-eight (28) days of the date of this order.

103. The undertaking proposed by the parties was as follows:

*'The Respondent **Mr Loke** gives the following undertakings in writing to the Australian Securities and Investments Commission (**ASIC**) and to CADB within seven (7) days after this order takes effect:*

1. **Mr Loke** will use reasonable endeavours to retain his membership of Chartered Accountants Australia & New Zealand (**CAANZ**) until 31 December 2024.
2. **Mr Loke** will complete, for each of the years 2022, 2023 and 2024, fifteen (15) hours of Continuing Professional Development (**CPD**) activities (not including any training Mr Loke is required to undertake to retain his membership of CAANZ), consisting of at least:
 - a. 5 hours of training content covering ethics for auditors, including independence and identification of conflicts of interest.
 - b. 5 hours of training content covering, in the aggregate, the concepts of professional scepticism, professional judgement, the gathering of sufficient appropriate audit evidence, and appropriate audit documentation.
 - c. 5 hours of training content covering substantive audit matters, including going concern review, opening balances, the audit of share-based payments, and materiality (including performance materiality).

The training provider and the training content are to be approved in writing in advance by ASIC.

3. **Mr Loke** will provide ASIC, as soon as practicable following each of:
 - a. 31 December 2022.
 - b. 31 December 2023.

c. *The date by which he has completed his CPD requirements for the period from 1 January 2024 to 31 December 2024,*

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

4. **Mr Loke** will, at his own expense, engage a registered company auditor, subject to paragraph 5 below (**Peer Reviewer**), to review the next 3 company audits for which he is responsible (and identified as the lead auditor or engagement partner) following the resumption of his status as a registered company auditor as soon as practicable after completing those audits and, in any event no later than 3 months after completing the audits. If **Mr Loke** has not completed 3 company audits within 12 months following resumption of his status as a registered company auditor, he will engage the Peer Reviewer to review such audits as have been completed by him during that period and engage the Peer Reviewer to review the remaining company audits as soon as practicable after completing each audit and, in any event, no later than 3 months after completing each audit.

104. In proposing these orders, ASIC submitted:

- (a) The Board must consider the ‘gravity’ of **Mr Loke’s** conduct and the circumstances in which the failures occurred when considering an appropriate penalty that provides the requisite degree of public protection and promotes the objectives of specific and general deterrence. The Board has recognised that ‘one of the principal factors relevant to [its] consideration of sanctions is the seriousness of the matters that have been found to be established’: *ASIC v McVeigh*, Matter No 10/VIC08 at [12.7] (**McVeigh**); see also *Re Young and Companies Auditors and Liquidators Disciplinary Board* (2000) 34 ACSR 425 [82]–[83], [89]; *Walker* at [21.4].
- (b) An auditor’s departure from the **Relevant Benchmark**, and thus failure to comply with the duties of an auditor, will always be serious because auditors ‘perform a vital role in the administration of corporate affairs and ... the financial and wider communities rely on the reports of auditors and are entitled to assume that auditors undertake their statutory functions with adequate skill and care in accordance with applicable auditing standards’: *Walker* at [21.5]. ASIC accepted that **Mr Loke’s** failure to meet the **Relevant Benchmark** did not rise to the highest level of seriousness as it did not involve dishonesty or deliberate impropriety: *Wessels* at [51]. Even so, **The Contentions** established by the Agreed Facts reflect a moderately high, to high degree of seriousness that supports the 12-month suspension and undertaking proposed by the parties. Mr Loke failed to comply with

many of the **Auditing Standards** when performing his duties in the **2017 Audit** including standards relating to independence, conflicts of interest and basic audit requirements such as the gathering of sufficient appropriate audit evidence and the need for proper documentation. The Board has noted previously that failures of this type are ‘*serious*’ and go to matters of ‘*fundamental importance for an auditor properly discharging their duty and observing professional standards of auditing*’: Walker at [21.4].

- (c) The Agreed Facts demonstrate that Mr Loke’s conduct was serious and supports the period of suspension proposed by the parties.
- (d) The Board has recognised that a practitioner’s contrition and remorse are relevant matters to be weighed in the balance in setting an appropriate penalty. We were referred to the Board’s decision in *ASIC v Fiorentino* 03/NSW13, in which the Board endorsed the following articulation of principle (at [997], [1005]):

‘Relevant matters include the Respondent’s recognition and acceptance of breaches of duty, attitude to compliance generally and willingness to improve. Genuine acceptance of failure, contrition and remorse are necessary prerequisites to rehabilitation.’

- (e) In **McVeigh** (at [14.5]) it was said in relation to the meaning of remorse:

‘We are using remorse in this context in the sense of remorse caused by a recognition of failure rather than remorse caused by being investigated, brought before the Board and facing a serious sanction. Mr McVeigh through his counsel made it clear that Mr McVeigh did acknowledge, recognise and accept that his conduct had constituted a failure to perform his duties and for that he had genuine remorse.’
- (f) Support for the proposition that in assessing the appropriateness of sanction credit for ‘*a thoughtful and well-prepared personal statement*’ in which the practitioner ‘*recognised that he needed to take responsibility for improving his conduct to a level the standards require of him*’ is found in *McVeigh* (at [14.5]) In this matter the statement submitted by Mr Loke demonstrates a level of contrition and remorse. ASIC noted that parts of Mr Loke’s statement attributed responsibility to **Mr Swan** or more junior members of the **ECJ** engagement team for deficiencies in aspects of the **2017 Audit** that were within Mr Loke’s purview (including the work the subject of **The Contentions**) on the basis that those others did not review his work or draw his attention to relevant matters. While ASIC acknowledged this further highlighted Mr Loke’s failure to appreciate what the relevant **Auditing Standards** required of him it did not consider this matter weighed the balance in

favour of a sanction greater than that which was proposed by the parties in these proceedings.

- (g) The Board should give weight to the consideration that the proposed sanction is supported by ASIC, the specialist regulatory body that administers the regime for auditor registration, and that ASIC considers the proposed penalty will have a deterrent effect on the Respondent personally and generally on other registered company auditors: *Wessels* at [49].
- (h) Because the Board's '*prime concern*' is the protection of the public, the personal circumstances of the practitioner are to be given only limited consideration in the setting of an appropriate penalty: *McVeigh* at [12.7]. Accordingly, the fact that Mr Loke was not the Engagement Partner for the **2017 Audit** and had limited experience as an **RCA** (having been registered since 2016), should be given only limited weight. Moreover, the absence of evidence as to whether anyone suffered loss as a consequence of the Mr Loke's conduct is not relevant: *McVeigh* at [14.8]. Nevertheless, it cannot be discounted that users of the **June 2017 Financial Report** were materially prejudiced by the material misstatements in the report that are attributable to the audit duties performed by Mr Loke in the **2017 Audit** the subject of **The Contentions**.
- (i) ASIC's view is that a sanction comprising a 12-month suspension of registration, and the undertakings proposed, appropriately reflects the nature of Mr Loke's role in the **2017 Audit** and would have, as well as an appropriate deterrent and educative effect on Mr Loke, a broader deterrent and educative effect on the current community of **RCAs**. In particular, educative regarding the scope of the responsibility of an **RCA** when performing audit duties in non-lead auditor roles, the obligation of all **RCAs** to assess potential conflict issues and to otherwise perform their duties adequately and properly in any audit they are involved in, even when they are not the **Lead Auditor** or **Engagement Partner**. In ASIC's view, this would be a very desirable outcome of the proposed sanction.
- (j) With respect to the relevance of the nature of sanctions imposed by the Board in prior matters, it was accepted in *McVeigh* (at [13.3]) that while in a general sense it is desirable that there be a consistency of approach by the Board in the application of sanctions under the **Act**, the question of the appropriate order to be made in a specific matter is to be answered by reference to its individual merits. ASIC's submission sought to highlight the limits of relying too heavily on a comparison of sanctions in past cases as a measure of the appropriateness of the

sanction proposed, because each case turns on its own facts and the basis on which contentions are found to have been established, even when apparently similar, are likely to differ. Moreover, it is not only the objective circumstances of a particular case but matters such as a respondent's recognition and acceptance of breaches of duty, attitude to compliance with professional standards generally and the willingness to improve that are relevant to the appropriateness of a sanction.

Decision and Orders

105. We accept the submissions on sanctions outlined above. The fact that ASIC joins in the proposed orders is a large factor supporting any decision to accept the agreed period of suspension and the other proposed orders. ASIC is relevantly a guardian of the public interest, and is in a good position to appraise the practicalities of this matter and what part those practicalities should have among considerations in favour of accepting the agreed outcome.¹⁴ We also accept as was noted in the Board's previous decision in *Wessels*¹⁵ that the fixing of a period of suspension is not an exact science. *Wessels* discussed judicial authority apposite to the Board's jurisdiction and having regard to those principles, we are satisfied that the orders proposed by the parties are certainly within '*the permissible range*'¹⁶ of sanctions and there is no proper reason to attempt any alternative formulation.
106. The fact that Mr Loke and his legal team have cooperated with ASIC with respect to the conduct of these disciplinary proceedings and reached agreement on an order for payment towards the costs incurred by ASIC in this matter are additional significant ameliorating factors that we considered were relevant to our conclusion that the proposed sanction is appropriate.
107. Mr Loke's failures are not insignificant, and the twelve month suspension of his registration as a company auditor reflects that. In addition to having an appropriate deterrent effect on Mr Loke, the suspension will protect the public until, pursuant to the undertakings proposed, Mr Loke will have engaged in education and learning that covers all of the areas identified as a result of these proceedings. This gives the Panel confidence that by the time the twelve month suspension of his registration has expired, Mr Loke will be equipped with appropriate knowledge and understanding in order to perform his duties and functions as an **RCA** at a standard appropriate to satisfy the **Relevant Benchmark**.

¹⁴ Re One Tel; ASIC v Rich 44 ACSR at [31]

¹⁵ n2 paragraph 48(b) and see paragraph 49 for White J's summary of principles applying to proposed consent sanctions in *ASIC v Rich*.

¹⁶ *ASIC v Rich* (2004) 50 ACSR 500 @ [80(2)]

108. Further, with respect to the proposed undertakings proposed we comment as follows:
- (a) The additional continuing education requirement proposed for two years following the resumption of his registration as an auditor gives this Panel confidence that there is a means for the knowledge Mr Loke will gain in the first year to be further reinforced and embedded in his approach to audit practice.
 - (b) The peer review process contemplated gives the Panel confidence that there will be a mechanism in place that provides confirmation through the visibility it will provide of his performance of audits when his registration resumes, that the learning Mr Loke engages in during the first year while his registration is suspended, has served to address successfully the knowledge gaps identified by **The Contentions**.
 - (c) Should any issues of concern be identified by the peer review process, they will be capable of being brought to ASIC's attention promptly by the operation of the undertakings, so that steps may be taken to ensure there is no further threat to the protection of the public.
109. For the above reasons we are satisfied that the scope of the proposed undertakings operate effectively as an adjunct to the period of suspension proposed and together represent an appropriate sanction in this matter.
110. With respect to the undertaking proposed by the parties, the Board noted in its decision in *Wessels*¹⁷ that it can only accept undertakings of a type contemplated by s1292(9) of the **Act** and that such undertakings must be in a form which makes them readily enforceable. We are satisfied that the substance of the undertaking proposed by the parties is of a type contemplated by s1292(9). We note that the nature of the undertaking proposed is such that it is to be administered by ASIC over its duration. Should Mr Loke not comply with the undertaking in any respect over the next three years the Board would not have visibility of that circumstance, unless notified by ASIC. In those circumstances we have formed the view that the appropriate order pursuant to s1292(9)(b) of the **Act** is that Mr Loke provides an undertaking to ASIC in the form that is attached to this Decision as **Schedule A**. Although for the sake of clarity the words and structure of the undertaking set out in **Schedule A** differs from that proposed by the parties and set out in paragraph 103 hereof, the substance is unchanged.
111. Should any substantive issues of compliance with the undertaking ordered arise during its term, we note the Board's jurisdiction conferred by s1292(9) to make an order to cancel or suspend Mr Loke's registration as a company auditor based either on a failure to give the undertaking set out in Schedule A

¹⁷ n2 at paragraph 20

or in the event the undertaking is contravened. ASIC may invoke this jurisdiction by application should it consider that be necessary.

112. For the reasons set out above, we have decided to exercise our powers under s1292 of the **Act** by making the orders set out in paragraph 114 below.
113. It is usual for the Board to publicise its decisions on its website and by means of a media release. ASIC submitted that the usual course should be adopted and the Respondent did not wish to make any submissions against the Board adopting its usual course. Accordingly, the Board will publish a copy of these reasons on its website and issue a media release relating to the matter a copy of which is annexed as **Schedule B**.
114. We make the following orders:
 1. Pursuant to sub-section 1292(1) of the **Act** that the registration of **Mr Loke** as a company auditor be suspended for a period of twelve (12) months.
 2. Pursuant to sub-section 1297(1)(a) of the **Act**, that the order for suspension in paragraph 1 will come into effect at the end of the day on which the Board gives **Mr Loke** a notice of this Decision pursuant to sub-section 1296(1)(a) of the Act.
 3. Pursuant to sub-section 1292(9)(b) of the **Act**, **Mr Loke** provides to ASIC undertakings requiring him to engage in specified conduct, as set out in Schedule A to this Decision.
 4. Pursuant to sub-section 1297(1)(b) of the **Act**, that the order in paragraph 3 will come into effect at the end of the day which is seven (7) days from the date **Mr Loke** is provided with a notice of this Decision pursuant to sub-section 1296(1)(a) of the **Act**,
 5. Pursuant to section 223 of the **ASIC Act** that **Mr Loke** pay the Applicant's costs in the fixed sum of \$95,000 within twenty-eight (28) days of the date **Mr Loke** is provided with a notice of this Decision pursuant to sub-section 1296(1)(a) of the **Act**.



Maria McCrossin
Panel Chairperson

03 March 2022

Schedule A

Form of Undertaking (Order 3)

The Respondent Mr Loke to provide the following undertaking to ASIC, signed witnessed and dated, within seven (7) days of the order made by CADB on 03 March 2022.

Pursuant to the order made by the CADB dated 3 March 2022 in proceedings 16/NSW20, I Jason Leong Loke, registered auditor 472396 undertake to ASIC as follows:

Membership of professional body

1. I shall use all reasonable endeavours to retain my current membership of Chartered Accountants Australia & New Zealand (**CAANZ**) until 31 December 2024.

Annual CPD requirement

2. Between the date of this undertaking and the end of calendar year 2024, I shall complete a total of 45 hours of continuing professional development education activity (**CPD**) (not including any training I am required to complete to retain my membership of **CAANZ**).
3. The **CPD** will comprise at least 15 hours annually and in each year must include:
 - (a) 5 hours of training content covering ethics for auditors, including independence and identification of conflicts of interest.
 - (b) 5 hours of training content covering, in the aggregate, the concepts of professional scepticism, professional judgement, the gathering of sufficient appropriate audit evidence, and appropriate audit documentation; and
 - (c) 5 hours of training content covering substantive audit matters, including going concern review, opening balances, the audit of share-based payments, and materiality (including performance materiality).

(Annual CPD Requirement).

4. The training provider and the training content of the **Annual CPD Requirement** must be approved in writing in advance by ASIC in accordance with paragraph 14 hereof no later than 45 days after the date of this undertaking for calendar year 2022 and no later than 45 days after the commencement of each of the two subsequent calendar years.
5. I shall provide ASIC with documentary evidence of satisfactory completion of the **Annual CPD Requirement** for each calendar year no later than 45 days

after I complete the **Annual CPD Requirement** in accordance with paragraph 14 hereof. The documentary evidence to be provided will include evidence that the **Annual CPD Requirement** completed is distinct from and in addition to the annual training I am required to complete to retain my membership of **CAANZ**.

Audit reviews by Peer Reviewer post-suspension

6. Following the 12 month suspension of my registration as a company auditor ordered by CADB I shall, at my expense, engage another registered company auditor on the terms set out in paragraphs 8 -10 hereof (**Peer Reviewer**). I will make the necessary arrangements to enable the **Peer Reviewer** to undertake a review of the first 3 company audits for which I undertake the role of either Lead Auditor or Engagement Partner (the **Audits**).
7. However, should I not undertake 3 such **Audits** within the first 12 months following resumption of my registration (the **relevant period**) I shall, in addition to the obligation in paragraph 6 hereof:
 - a) No later than 30 days after the end of the **relevant period**, inform ASIC of that circumstance together with the details of:
 - i. Any other audits I have completed during this time (**other audits**).
 - ii. The future timeframe within which I expect to complete the three **Audits**.
 - b) To the extent I have performed **other audits** in the **relevant period**, instruct the **Peer Reviewer** to prepare a **Peer Reviewer's Statement** within the timeframe set out in paragraph 9 below, with respect to any **other audits**.

Arrangements for engagement of Peer Reviewer

8. In order to enable ASIC to consider whether a prospective **Peer Reviewer** is suitable I shall, within 30 days of my registration as an auditor resuming, and in accordance with clause 14 hereof, provide ASIC with a curriculum vitae of at least one proposed **Peer Reviewer** together with draft written terms for the proposed engagement of the **Peer Reviewer** to review the **Audits** and if applicable, **other audits** that I will conduct.
9. I will ensure that a term of the retainer with which the **Peer Reviewer** must agree to comply is that as soon as practicable, and no later than 3 months after I complete each **Audit** and, if applicable each of any **other audits**, the **Peer Reviewer** will:
 - (a) Provide ASIC with an opinion in writing as to whether each **Audit** and, if applicable **other audit** has in all material respects been conducted in accordance with standards promulgated by the Auditing and Assurance Standards Board, the Australian Accounting Standards Board and the

Accounting Professional & Ethical Standards Board, including the APES 110 Code of Ethics for Professional Accountants (the **Relevant Standards**) (**Peer Reviewer's Statement**). The **Peer Reviewer's Statement** must include the reasons on which the opinion is based.

10. I acknowledge the said terms of engagement must be approved in writing by ASIC before the engagement is finalised. I shall not proceed with engaging a **Peer Reviewer** until I have received approval in writing from ASIC.
11. Should, with respect to the **Audits** or any **other audits** the **Peer Reviewer's Statement** not conclude that the audits have been conducted in all material respects in accordance with the **Relevant Standards**, I acknowledge that ASIC is entitled to take such action as it thinks fit as a result thereof.
12. Should I become aware that any of the above undertakings have not been complied with, I shall within 5 business days of becoming aware of such issue notify ASIC in writing of the details of the non-compliance including the date on which it occurred and the circumstances and reasons for which it occurred.
13. I acknowledge that should I fail to comply with any of these undertakings, ASIC is entitled to take such action as it thinks fit in relation to any such non-compliance.
14. The documents required to be provided to **ASIC** pursuant to these undertakings are to be directed to the attention of the Senior Executive Leader, Financial Reporting & Audit team, ASIC, Level 5, 100 Market Street, Sydney 2000 and service of those documents is also to be effected by email to the attention of brett.crawford@asic.gov.au.

Schedule B

Media Release

MARCH 2022

CADB SUSPENDS THE REGISTRATION OF NEW SOUTH WALES COMPANY AUDITOR

The Companies Auditors Disciplinary Board (CADB) has today made orders that:

1. The registration of Mr Jakin Leong Loke as a Company Auditor be suspended for twelve months.
2. Mr Loke provide undertakings to ASIC including:
 - a) To undertake 45 additional hours of professional education comprising at least 15 hours annually for the next three years.
 - b) At his cost to retain a registered company auditor approved in advance by ASIC, as a peer reviewer to oversee the first three company audits he conducts following the resumption of his registration as a Company Auditor.

Mr Loke was registered as a Company Auditor on 24 February 2016. His principal place of practice as an auditor is Ecovis Clark Jacobs (ECJ), 1 Market St Sydney, NSW.

The matters the subject of ASIC's application to CADB arose from Mr Loke's involvement in the 2017 Audit of Big Un Ltd. At the time Big Un Ltd was a public company listed on the Australian Stock Exchange. Mr Loke participated in the 2017 Audit of Big Un as a member of the ECJ audit team.

ASIC contended that Mr Loke failed to perform his duties as an auditor adequately and properly within the meaning of s1292(1)(d)(i) of the Corporations Act because:

1. Mr Loke, carried out audit duties when he should have known that his firm ECJ had a conflict of interest that affected his (and ECJ's) capacity to demonstrate the requisite independence that was required by the Code of Ethics for Professional Accountants (APES110) in force at the time, because ECJ was performing other accounting services for Big Un Ltd over the relevant period, which included one of his ECJ colleagues being the appointed Company Secretary of BigUn Ltd.
2. Mr Loke failed to obtain reasonable assurance that the June 2017 Financial Report prepared by BigUn Ltd was free from material misstatement in relation to the value of share based payment transactions and the existence and value of the share option reserve.
3. Mr Loke failed to set Performance Materiality for the BigUn 2017 Audit at an appropriately low level.
4. Mr Loke failed to gather sufficient appropriate audit evidence from BigUn's previous auditor.
5. Mr Loke failed to obtain reasonable assurance and sufficient appropriate audit evidence to reduce the risk in relation to Big Un's ability to continue as a going concern, to an acceptably low level.

The Board was satisfied that ASIC's contentions were established by the evidence. The full reasons for its decision have been published on its website. (<https://www.cadb.gov.au>)

The Companies Auditors Disciplinary Board is a statutory body established under Pt 11 of the ASIC Act to act as an independent tribunal to hear and determine disciplinary matters within s1292(1) Corporations Act with respect to registered Company Auditors. <https://www.cadb.gov.au>.

Glossary

ASA	References to the Australian Auditing Standards that were operative at the time of the 2017 Audit (July 2017-September 2017) (also referred to as Auditing Standards).
AAS	References to the Australian Accounting Standards that that were operative at the time of the 2017 Audit (July 2017 - September 2017) (also referred to as Accounting Standards).
AUASB	Auditing and Assurance Standards Board.
APES 110	The Code of Ethics for Professional Accountants (including International Independence Standards) based on the International Code of Ethics for Professional Accountants (including International Independence Standards) issued by the International Ethics Standards Board for Accountants (IESBA) operative at the time of the 2017 Big Un Audit.
Board	Companies Auditors Disciplinary Board (also referred to as CADB)
Panel	The three members of the Board constituted to deal with this Application under s210A(4) ASIC Act.
CA ANZ	Chartered Accountants Australia and New Zealand.