

MEMO**ASIC**

Australian Securities & Investments Commission

To: David McGuinness (SEL FS1)**cc:** Scott Seefeld (Lawyer FS1)**From:** Kaan Finney (Snr Manager FS1)**File Ref:** 13-40007**Re:** Franchelen Pty Ltd**Date:** 13 September 2013**Purpose**

1. The purpose of this memorandum is to provide an overview of the present status of the investigation of Franchelen Pty Ltd and to provide recommendations for future actions on this matter.

Background

2. The directors of Franchelen are Ron Grabbe and Robert Gowland. Grabbe and Gowland are property developers on the Sunshine Coast in Queensland. Grabbe is a builder and Gowland is a qualified accountant.
3. Grabbe and Gowland developed a complex of 100 residential units called Ocean Reach. Settlement of unit sales in Ocean Reach was due on 30 June 2010. However, as a result of lower than expected valuations, numerous purchasers were not able to access sufficient finance from commercial lenders. As a consequence, Gowland and Grabbe decided to offer vendor finance to certain purchasers for a loan period of 12 months.
4. Franchelen was registered solely for this purpose and subsequently provided 49 loans totalling approximately \$7 Million. As at November 2012, 35 of these loans remained on foot. At no time was Franchelen registered or licensed to engage in credit activity.
5. In around August 2012, ASIC informed Franchelen of the need to be licensed. Upon being so informed, the directors of Franchelen sought a second legal opinion and suspended collection of interest. The directors of Franchelen also attempted to become compliant by applying for an Australian Credit Licence (ACL). A decision on that application has been on hold pending the outcome of the FS enforcement investigation.
6. Between November 2012 and February 2013, ASIC and Franchelen attempted to negotiate an enforceable undertaking. In February 2013, ASIC ceased these negotiations.

and referred the matter to FS Enforcement. The investigation was scoped to determine whether civil penalty proceedings should be taken against Franchelen.

S 42

s 42

s 47C, s 47E (d)

s 47C, s 47E (d)

20. It is therefore recommended that ASIC grant an ACL to Franchelen with the condition that any credit activity be limited to managing existing loans according to their terms.

s 47C, s 47E (d)

s 47C, s 47E (d) For this reason it is also recommended that ASIC also execute an enforceable undertaking whereby Franchelen agrees to:

- a. the grant of the conditional ACL (on the terms above);
- b. cancel of the ACL upon the completion of those loans; and
- c. sanctions in the event of non-compliance.

MEMO



ASIC

Australian Securities &
Investments Commission

To:	Peter Kell		
From:	David McGuinness (SEL FS1)		
Re:	Franchelen Pty Ltd	File Ref:	13-40007
Date:	17 December 2013		

Purpose

1. The purpose of this memorandum is to provide an overview of the present status of this matter and to seek the Commission's guidance on a proposed regulatory response to the matter.

Background

2. The directors of Franchelen are property developers on the Sunshine Coast in Queensland. In June 2010, having sought legal advice, these directors provided finance to certain purchasers of units in one of their developments. Franchelen was registered for this purpose and provided 49 loans totalling approximately \$7 Million. At no time was Franchelen registered or licensed to engage in credit activity.
3. In around August 2012, ASIC informed Franchelen of the need to be licensed. Upon being so informed, Franchelen sought a second legal opinion, suspended loan repayments and applied for an Australian Credit Licence (ACL). The matter was referred by DCI to FS Enforcement in February 2013.

Investigation results

s 42

s 47C, s 47E (d)

s 42

s 47C, s 47E (d)

Recommendation

Conditional ACL with an enforceable undertaking

6. It is recommended that ASIC grant an ACL to Franchelen with the condition that any credit activity be limited to managing existing loans according to their terms.

Enforceable undertaking

s 47C, s 47E (d)

9. FSE considers that all of these issues are best dealt with in an EU which Franchelen has offered ASIC. Broadly, the terms of the EU would include:
 - a. a framework under which Franchelen would collect the outstanding loans (including extension of its hardship provisions);
 - b. an assessment of the appropriateness of the loans currently still on foot by an independent external compliance consultant who would determine the actions required by Franchelen in the event where a loan is found to be unsuitable for a Borrower; and
 - c. a review of Franchelen's compliance with the NCCP including the policies, procedures and systems Franchelen has in place in relation to the loans it has made.