

## COURT ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

Section 93AA

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

Robert Johnson  
of 1<sup>st</sup> Floor, 6 Phipps Close, Deakin Australian Capital Territory

**(Mr Johnson)**

And

The partners for the time being of Hardwicke's (ABN 35 973 938 183)  
of 1<sup>st</sup> Floor, 6 Phipps Close, Deakin Australian Capital Territory

**(Hardwickes)**

### DEFINITIONS

1. In addition to terms defined elsewhere in this undertaking, the following definitions are used:
  - (a) **Acceptance Date** means the date of acceptance by ASIC of this court enforceable undertaking;
  - (b) **APES 110** means *APES 110 Code of Ethics for Professional Accountants (including Independence standards)* made by APESB.
  - (c) **APES 320** means *APES 320 Quality Management for Firms that provide Non-Assurance Services* made by APESB.
  - (d) **APESB** means the Accounting Professional & Ethics Standard Board Limited.
  - (e) **ASA 220** means *Auditing Standard ASA 220 Quality Control for an Audit of a Financial Report and Other Historical Financial Information* made by the AUASB.
  - (f) **ASIC** means the Australian Securities and Investments Commission.
  - (g) **ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth);
  - (h) **ASQM 1** means *Auditing Standard ASQM 1 Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Service Engagements* made by AUASB.
  - (i) **ASQM 2** means *Auditing Standard ASQM 2 Engagement Quality Reviews* made by AUASB.

- (j) **AUASB** means the Auditing and Assurance Standards Board.
- (k) **Auditing Standards** means the auditing standards made by AUASB (including the Quality Management Standards and Relevant Ethical Requirements).
- (l) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (m) **Current Partners of Hardwicks** means Eugene Kalenjuk, Andrew Snaidero and Bhaumik Bumia.
- (n) **Quality Management Standards** means ASQM 1, ASQM 2 and ASA 220.
- (o) **Relevant Ethical Requirements** means applicable ethical requirements, including but not limited to APES 110, APES 320.
- (p) **Relevant Period** means the period of approximately 32 consecutive years, commencing in 1992 and ending on or about 4 March 2024.

#### **ASIC'S ROLE**

2. Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

#### **BACKGROUND**

3. Mr Johnson is a registered company auditor.
4. Mr Johnson was a partner of Hardwicks during the Relevant Period.
5. During the Relevant Period Hardwicks was appointed as auditor for Consolidated Builders Limited (ABN 53 008 654 411) (**CBL**) pursuant to section 324AA of the Corporations Act.
6. During the Relevant Period, Mr Johnson was the lead auditor (within the meaning of section 324AF of the Corporations Act) in relation to the audit of CBL.
7. During the Relevant Period, Hardwicks provided various non-assurance services to CBL and its directors including, but not limited to, preparing financial reports audited by Mr Johnson.
8. On 13 December 2023 Mr Johnson lodged an annual statement as an auditor required by s1287A of the Corporations Act, covering a period from 29 November 2022 to 28 November 2023 (**2023 Annual Statement**). The annual statement requires an individual auditor to provide details in relation to their 10 highest fee-paying Corporations Act audits. The statement omitted the CBL audit conducted by Mr Johnson during the statement period.
9. On 4 March 2024, Mr Johnson notified CBL that Hardwicks resigned from the audit of CBL.
10. Between 15 December 2023 and March 2024 ASIC conducted inquiries into aspects of the audits of CBL during the Relevant Period (**Investigation**).

11. Effective from 31 March 2024 Mr Johnson retired as a partner of Hardwicks and from that date he ceased acting as a lead auditor or performing any audit services.

#### **ASIC'S FINDINGS**

12. Based on the Investigation, ASIC formed the view that Mr Johnson failed to carry out or perform adequately and properly the duties of an auditor by failing to:
  - (a) ensure that the audit of CBL was conducted in accordance with the Relevant Ethical Requirements, including addressing the unmitigated threats to his independence from:
    - (i) his long association with CBL;
    - (ii) the non-assurance services also being provided to CBL and its directors; and
  - (b) provide to the directors of CBL an accurate declaration of auditor independence; and
  - (c) ensure the accuracy of the 2023 Annual Statement.
13. ASIC also formed the view that Hardwicks failed to establish and maintain a system of quality control to provide Hardwicks with reasonable assurance that:
  - (a) Hardwicks and its personnel comply with applicable Auditing Standards and applicable legal and regulatory requirements; and
  - (b) The audit reports issued by Hardwicks or engagement partners are appropriate in the circumstances.

#### **ADMISSIONS**

14. Mr Johnson acknowledges and admits that he failed to carry out or perform adequately and properly the duties of an auditor as outlined in paragraph 1212 above.
15. Each of the Current Partners of Hardwicks acknowledges and admits Hardwicks failed to establish and maintain a system of quality control as outlined in paragraph 1313 above.

#### **UNDERTAKINGS BY MR JOHNSON**

16. Under section 93AA of the ASIC Act, Mr Johnson has offered, and ASIC has agreed to accept, the undertakings in paragraph 1717 below.
17. Mr Johnson undertakes that:
  - (a) within 7 business days of the Acceptance Date, Mr Johnson will complete and lodge with ASIC a Form 905 Notice of Ceasing to practice as an Auditor;
  - (b) he will not apply for registration as a registered company auditor at any time;

- (c) if ASIC requests information and documents for the purpose of assessing compliance with the terms of the undertakings given by him, Mr Johnson will provide the requested information and documents to ASIC within 7 business days of the request; and
  - (d) he will pay the costs of compliance with the undertakings given by him and he will not seek reimbursement of, contribution towards, or otherwise directly or indirectly pass on the costs of compliance with the undertakings given by him or any proportion of those costs to any third-party, except that he may seek reimbursement or contribution from Hardwicks.
18. For the avoidance of doubt, the undertakings in paragraph 1717 above do not prevent Mr Johnson from providing, on his own behalf or on behalf of another entity, tax agent or accountancy services or business advice work which does not involve work performed by a registered company auditor.

#### **UNDERTAKINGS BY EACH PARTNER OF HARDWICKES**

19. Under section 93AA of the ASIC Act, each of the Current Partners of Hardwicks has offered, and ASIC has agreed to accept, the undertakings in paragraph 2020 below.
20. Each of the Current Partners of Hardwicks, undertakes that:

##### **Peer Review**

- (a) Hardwicks will engage a suitably independent and qualified third-party expert (**Peer Reviewer**), to conduct a peer review of the firm's audit practices and its compliance with applicable Auditing Standards and legal and regulatory requirements (**Peer Review**);
- (b) Hardwicks will require that the Peer Reviewer:
  - (i) complete a review of the design, implementation and operation of the firm's system of quality management for audits in accordance with ASQM 1;
  - (ii) upon receipt of ASIC's nomination of three of Hardwicks audit files and ASIC's approval of a compliance checklist, review those three files, using the approved compliance checklist;
  - (iii) prepare a written report of their findings and recommendations issued to the firm (**Peer Review Report**);
  - (iv) complete the Peer Review Report and provide it to Hardwicks within 10 months of the Acceptance Date.
- (c) Hardwicks will ensure the Peer Reviewer's terms of engagement:
  - (i) include a statement by the Peer Reviewer that the Peer Review is to be carried out for Hardwicks and ASIC and acknowledging ASIC is relying on that work;
  - (ii) include a statement that upon request by ASIC, ASIC is to be informed of, provided with or be copied into all or some communications between Hardwicks and the Peer Reviewer;

- (iii) require the Peer Reviewer to notify ASIC where a conflict of interest (actual or potential) arises during the engagement or when the Peer Reviewer becomes aware of information that adversely affects its ability to exercise objective and impartial judgement;
- (d) Within 10 business days of the Acceptance Date, Hardwicks will provide ASIC with draft terms of engagement of the Peer Reviewer that meet the requirements of this court enforceable undertaking, and request ASIC's approval of the draft terms of engagement and appointment of the Peer Reviewer;
- (e) If ASIC approves the draft terms of engagement and the appointment of the Peer Reviewer, to appoint the approved Peer Reviewer on the terms approved by ASIC, within 5 business days of receiving ASIC's approval, (or within such longer period as may be agreed by ASIC);
- (f) Within 12 months after the Acceptance Date, Hardwicks will provide to ASIC a copy of the Peer Review Report along with details of Hardwicks planned and, or, implemented remedial actions addressing the recommendations in the Peer Review Report (**Remedial Action Plan**);
- (g) After 24 months and before 25 months from the Acceptance Date, Hardwicks will provide to ASIC in writing:
  - (i) a summary of its implementation of the Remedial Action Plan;
  - (ii) an statement as to whether it has complied with the undertakings in subparagraphs 20(a)-(o);

#### **Mandatory Training**

- (h) Within 10 business days of the Acceptance Date, Hardwicks will amend its training framework to increase the amount of mandatory training provided on a quarterly basis to all assurance and audit staff in relation to technical, ethics and quality standards to 10 hours per quarter (being 40 hours each year) (**Mandatory Training**);
- (i) Within 10 business days of the Acceptance Date, Hardwicks will implement a policy that failure by assurance and audit staff to complete Mandatory Training will be considered during annual performance reviews and may adversely impact such a reviews;

#### **Other**

- (j) Within 10 business days of the Acceptance Date, the Board of Hardwicks will implement as standing agenda item for its meetings "Key Audit Findings – Engagement, Ethics, Risk and Quality" consistent with APES 325;
- (k) Within 10 business days of the Acceptance Date, Hardwicks will update the partnership agreement to increase the adverse effect on partner remuneration outcomes when Hardwicks Quality Control Manual processes and procedures are not followed;
- (l) If ASIC requests information and documents for the purpose of assessing compliance with the terms of the undertakings given by Hardwicks, the

requested information and documents will be provided to ASIC within 7 business days of ASIC's request;

- (m) Hardwickes will pay the costs of compliance with the undertakings given by the Current Partners and will not seek reimbursement of, contribution towards, or otherwise directly or indirectly pass on the costs of compliance with these undertakings or any proportion of those costs to any third-party; and
- (n) To notify ASIC within 7 business days if the Current Partners' partnership is dissolved for any reason during the period of 25 months from the Acceptance Date.

### **ACKNOWLEDGMENTS**

21. Mr Johnson and the Current Partners of Hardwickes acknowledge that ASIC:

- (a) May issue a media release on execution of this undertaking referring to its terms, the findings outlined in paragraph 1212 and 13 above, and the admissions outlined in paragraph 14 above and 15 above;
- (b) May from time to time publicly refer to this undertaking;
- (c) May from time to time publicly report about compliance with this undertaking;
- (d) Will make this undertaking available for public inspection; and
- (e) May make available for public inspection a summary of the content of the Peer Review Report as an expert report, or a statement that refers to the content of the expert report.

22. ASIC acknowledges that it will not refer to any information that:

- (a) Consists of personal information of an identified natural person who acts or omissions are not the subject of, or a concern mentioned in, the court enforceable undertaking;
- (b) ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Mr Johnson or the Current Partners of Hardwickes or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcome of the court enforceable undertaking; and
- (c) ASIC is satisfied should not be released because it would be against the public interest to do so.


23. Further, Mr Johnson and the Current Partners of Hardwickes acknowledge that:

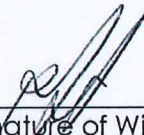
- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any

contravention not the subject of ASIC's concerns in this court enforceable undertaking or arising from future conduct;

- (b) This undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct;
- (c) This court enforceable undertaking has no operative force until accepted by ASIC; and
- (d) The date of the court enforceable undertaking is the date on which it is accepted by ASIC.

Signed by **ROBERT JOHNSON** in the presence of: )  
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)

  
Name: Robert Johnson

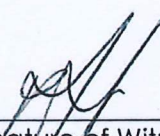
  
Signature of Witness

PETRA SHASHA  
Name of Witness in full

28.05.2024  
Date

Signed by **EUGENE KALENJUK** in the presence of: )  
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)  
)  
)

  
Name: Eugene Kalenjuk


  
Signature of Witness

PETRA SHASHA  
Name of Witness in full

28.05.24  
Date

Signed by **ANDREW SNAIDERO** in the presence of: )  
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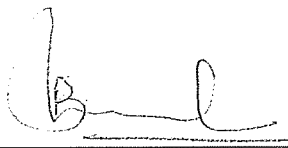
  
Name: Andrew Snaidero

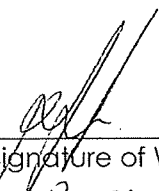
  
Signature of Witness

PETRA SHASHA  
Name of Witness in full

28-05-24  
Date

Signed by **BHAUMIK BUMIA** in the presence of: )  
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)  
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Name: Bhaumik Bumia

  
Signature of Witness

PETRA SHASHA  
Name of Witness in full

28.05.2024  
Date

Accepted by the ASIC under section 93AA of the ASIC Act by its duly authorised delegate:

  
Signature of Delegate of ASIC

Tom O'Shea  
Name of Delegate of ASIC

29/05/2024  
Date