

[PF 221]

Liquidator's undertaking: Pro forma deed for partners/sole proprietors

Issued 30/9/2005

Australian Securities and Investment Commission ("ASIC") Corporations Act 2001 – Subsection 1284(1)

Liquidator's Undertaking

To: **Australian Securities and Investments Commission of**
[address of ASIC Office]

Undertaking by: [Liquidator's name]
[Address]
[Address]

1. Background

- 1.1 Subsection 1284(1) of the *Corporations Act 2001* (the "Act") requires a person registered as a liquidator under subsection 1282(1) of the Act to:

"lodge and maintain with ASIC a security for the due performance of his or her duties as such a liquidator in such form and for such amount as is, from time to time, determined by ASIC in relation to that liquidator and with such surety or sureties (if any) as ASIC, from time to time, requires."

- 1.2 For the purposes of subsection 1284(1) of the Act, ASIC has determined that the security for [Liquidator] will be for an amount of \$250,000.
- 1.3 ASIC has stated in Policy Statement 33: *Security Deposits* ("PS 33") that it will not take enforcement action against a liquidator who fails to lodge and maintain a security under subsection 1284(1) of the Act where the liquidator:
- 1.3.1 holds a public practice certificate (a "Certificate") from either the Institute of Chartered Accountants in Australia (the "ICAA"), CPA Australia (the "CPA") or the National Institute of Accountants (the "NIA"); and
 - 1.3.2 provides to ASIC, and complies with an undertaking that the liquidator will maintain professional indemnity

insurance (“PI Insurance”) in accordance with PS 33 and maintain a Certificate.

- 1.4 *[Liquidator]* holds a Certificate from the ICAA / CPA / NIA
{delete whichever is not appropriate}.
- 1.5 *[Liquidator]* has provided ASIC with a certificate of currency for a policy of PI Insurance the terms of which satisfy the requirements of PS 33.
- 1.6 *[Liquidator]* is aware that in the event he/she does not:
 - 1.6.1 hold a Certificate; and
 - 1.6.2 hold PI Insurance which complies with PS 33; and
 - 1.6.3 comply with the requirements applicable in relation to the Certificate that he/she holds,
 it will be necessary to lodge and maintain with ASIC a security in the amount of \$250,000 as required by subsection 1284(1) of the Act.

2. Undertakings

- 2.1 *[Liquidator]* undertakes to ASIC that, for so long as he/she remains registered as a liquidator and does not lodge and maintain with ASIC a security for the due performance of his or her duties as a liquidator in accordance with subsection 1284(1) of the Act, he/she will:
 - 2.1.1 hold a Certificate; and
 - 2.1.2 comply with the requirements applicable in relation to his/her Certificate; and
 - 2.1.3 notify ASIC in writing within 14 days if:
 - (a) he/she ceases to hold a Certificate for any reason, including because it has expired without being renewed or replaced; or
 - (b) his/her right to practice under the Certificate is suspended; or
 - (c) he/she fails to comply with any requirement applicable in relation to his/her Certificate.
- 2.2 *[Liquidator]* undertakes to ASIC that, for so long as he/she remains registered as a liquidator and does not lodge and maintain with ASIC a security for the due performance of his or

her duties as a liquidator in accordance with subsection 1284(1) of the Act, he/she will:

2.2.1 hold PI Insurance, which satisfies the requirements of PS 33; and

2.2.2 notify ASIC in writing within 14 days of ceasing to hold such PI Insurance for any reason including because the policy expired without being renewed or replaced; or because of any variation in its terms so that it no longer satisfies the requirements of PS 33; and

2.2.3 provide ASIC with a copy of the PI Insurance policy, cover note or brokers certificate of insurance relating to professional indemnity insurance at any time on the written request of ASIC.

2.3 *[Liquidator]* undertakes to ASIC not to vary or revoke this deed without the prior written agreement of ASIC for so long as he/she remains registered as a liquidator and has not lodged with ASIC a security for the due performance of his or her duties as a liquidator in accordance with subsection 1284(1) of the Act.

3. Interpretation

3.1 In this deed, except where the context otherwise requires, a reference to “Policy Statement 33: Security Deposits” or “PS 33” is a reference to that policy statement as amended from time to time and includes a reference to any policy statement issued by ASIC to replace that policy statement.

Executed as a deed this day of 200 .

Signed sealed and delivered by:

[Liquidator]

in the presence of:

[Witness]

[Name of witness]