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

MATTER NO: 17/VIC20
Medium Neutral Citation: [2025] CADB 1

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)
Applicant

BRADLEY LAURANCE WILLOT TAYLOR
Respondent

NOTICE OF DECISION AND REASONS

in relation to exercise by CADB of its powers under s1292 of the Corporations Act.

The Notice of Decision and Reasons will be given to the Respondent under s1296(1)(a) of the Act and lodged with ASIC under s1296(1)(b) of the Corporations Act.

25 June 2025

Panel:

Howard K Insall SC (Panel Chairperson)

Michael Bray (Accounting Member)

Naomi Rule (Business Member)

Hearing 20 March 2025, Final submissions 4 June 2025

Counsel and instructors:
Jonathon Moore KC with *Ian Fullerton* instructed by *Australian Government Solicitor* for the Applicant
Oren Bigos KC with *Christina Klemis* instructed by *Maddocks* for the Respondent

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NOTICE OF DECISION

Bradley Laurance Willot TAYLOR

Corporations Act 2001 (Cth)
SECTION 1296(1)

Following a hearing held pursuant to section 1294 of the *Corporations Act 2001* (Cth) (**Corporations Act**) on 20 March 2025, a Panel of the Companies Auditors Disciplinary Board (**the Board**) decided that it was satisfied, on an Application by the Australian Securities and Investments Commission, that **Bradley Laurance Willot TAYLOR,** a registered auditor, had failed to carry out and perform adequately and properly the duties of an auditor, for the purposes of s 1292(1)(d) of the Corporations Act and on 25 June 2025, decided to exercise its powers under section 1292 of the Corporations Act by making the following orders:

1. Pursuant to s 1292(1) of the Corporations Act, the registration of Mr **Bradley Laurance Willot TAYLOR (Mr Taylor),** with auditor registration number 000202051, as an auditor be cancelled.
2. Pursuant to s 1297(1)(a) of the Corporations Act, the order for cancellation in paragraph 1 will come into effect at the end of the day on which the Board gives Mr Taylor a notice of the decision in accordance with s 1296(1)(a) of the Corporations Act.

Dated: 25 June 2025

Kathy Vaiano

Registrar

REASONS FOR DECISION

Part A. INTRODUCTION

Preliminary

1. These are the Reasons for the decision of the Panel of the Companies Auditors Disciplinary Board (**the Board** or **CADB**) in relation to an Application made to the Board by the Australian Securities and Investments Commission (**ASIC**) on 20 November 2020 (**Application**) that the Respondent, Mr Bradley Laurance Willot TAYLOR **(Mr Taylor)**, be dealt with under s 1292(1)(d)(i) of the Corporations Act 2001 (Cth) (**the Corporations Act**)[1].

2. Section 1292(1)(d)(i) of the Corporations Act provides, in substance, that the Board may, if it is satisfied on an Application by ASIC, that a person who is registered as an auditor has failed to carry out or perform adequately and properly the duties of an auditor, by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

3. This Application relates to the performance by Mr Taylor of his duties in relation to the audit of the financial report of the consolidated entity comprising iSignthis Limited and its subsidiaries for the financial year ended 30 June 2018 (**FY18**). Grant Thornton Audit Pty Ltd was appointed as auditor of the financial reports of iSignthis and its subsidiaries. Mr Taylor, a Director of Grant Thornton Audit Pty Ltd, was Engagement Partner and Lead Auditor.

4. The Application was filed together with a Concise Outline on 20 November 2020. On 21 January 2021, Mr Taylor filed a Concise Response. ASIC filed an Amended Concise Statement on 12 April 2021.

5. However, thereafter, the proceedings before the Board were substantially delayed by reason of the commencement of criminal proceedings in another court.

Delay due to commencement of criminal proceedings and Federal Court Stay

6. The relevant procedural history is set out in paragraphs [8] to [13] of the judgment of the Full Court of the Federal Court of Australia in *ASIC v Taylor* [2023] FCFCA 189. The following summary of events is largely taken from those paragraphs.

    (a) In around June 2021, shortly after the Amended Concise Statement was filed with the Board, ASIC referred a brief to the Commonwealth Director of Public Prosecutions (**CDPP**) in relation to Mr Taylor;

[1] See Application dated 20 November 2020, paragraph 2 and Concise Outline fn 2.

(b) In August 2021, Mr Taylor applied to the Board for a temporary stay of these disciplinary proceedings pending the conclusion of any criminal prosecution against him;

(c) On 25 October 2021, Ms Maria McCrossin, the then Chairperson of the Board, dismissed that Application;

(d) In November 2021, the Board proceedings were listed for a hearing commencing 16 May 2022;

(e) On 14 April 2022, the CDPP confirmed that it was in the process of issuing charges which would be served on Mr Taylor, relating to the same subject-matter as the disciplinary proceedings;

(f) On 5 May 2022, Mr Taylor made a further Application to the Board for a stay of the disciplinary proceedings, pending the conclusion of the criminal prosecution;

(g) The Application was dismissed by the then Chairperson, who published reasons on 10 May 2022;

(h) On 9 May 2022, an originating Application for judicial review was filed by Mr Taylor in the Federal Court challenging the decisions of the then Board Chairperson;

(i) On 12 May 2022, Mr Taylor provided an undertaking to ASIC and the Federal Court not to perform the duties of a registered auditor until the determination of the Board proceedings, or further order of the Board or the Federal Court;

(j) On the same day, by consent, the primary judge in the Federal Court proceedings ordered that the proceedings before the Board be stayed until further order of the Federal Court;

(k) On 22 June 2022, the CDPP, at the instigation of ASIC, commenced a prosecution against Mr Taylor in the Magistrate's Court of Victoria, in respect of the conduct of the FY18 Audit;

(l) On 22 December 2022, the primary judge in the Federal Court allowed Mr Taylor's Application for a stay, ordering that the hearing before the Board be stayed pending the outcome of the criminal proceeding;

(m) An appeal by ASIC against the stay was dismissed by the Full Court on 6 December 2023.

7. As a result, the proceedings before the Board were stayed as from 12 May 2022 until late 2024.

8. Mr Taylor has not performed the duties of a registered company auditor since the time he provided the undertaking on 12 May 2022.

9. By a Diversion Notice dated 11 July 2024, the CDPP recommended that Mr Taylor be granted Diversion. The CDPP did so with the consent of ASIC.

10. On 5 September 2024, the Magistrates' Court agreed to adjourn the criminal proceeding for a period of 12 months to enable the accused to participate in and complete the diversion program. The parties' agreement to the diversion program was conditional, among other things, on Mr Taylor admitting contraventions in this proceeding and agreeing to the cancellation of his registration as an auditor and undertaking not to seek registration in future.

Resumption of proceedings before the Board in October 2024

11. On 18 October 2024, the parties emailed the Board, giving notice of the Diversion and seeking directions for the filing of a statement of agreed facts and joint submissions and proposing that the matter be listed for a one-day hearing as soon as practicable after those documents could be filed. Thereafter, a Pre-hearing Conference was held and the Chairperson set the matter down for hearing on 29 November 2024.

12. On 20 November 2024, the parties contacted the Board requesting a vacation of the hearing on the basis that the parties had been unable to reach agreement on the Statement of Agreed Facts. Following a further Pre-Hearing Conference, the Chairperson agreed to vacate the hearing and set the matter down for a hearing on 20 March 2025.

13. A Panel of the Board was constituted, consisting of Mr Howard Insall SC (Chairperson), Mr Michael Bray (Accounting Member) and Ms Naomi Rule (Business Member).

14. The hearing took place on 20 March 2025 with Messrs Jonathon Moore KC and Ian Fullerton of counsel appearing for the Applicant (instructed by the Australian Government Solicitor) and Mr Oren Bigos KC and Ms Christina Klemis appearing for the Respondent, (instructed by Maddocks).

15. On 8 April 2025, the Panel sought supplementary submissions on the question of sanctions. The parties requested until 3 June 2025 to provide those submissions.

16. On 3 June 2025, the parties filed supplementary submissions dealing with sanctions.

Evidence and Statement of Agreed Facts and Admissions (SAFA) – Submissions

17. At the commencement of the hearing, a Statement of Agreed Facts and Admissions (**SAFA**) and supporting documents were tendered. However, the case was presented on the basis that the Board was to deal with the matter on the basis only of the matters in the SAFA. We have had access to and referred to some of the supporting documents but only to the extent that they reflect matters in the SAFA. Counsel for ASIC, Mr Moore KC, confirmed that the Board was not asked to rely upon any matter other than those in the SAFA or to make its own private investigations into the documents tendered.

18. The SAFA states that it is made jointly by the Applicant and the Respondent, Mr Taylor, in accordance with the Companies Auditors Disciplinary Board (CADB) Practice Note 1.

19. The parties also filed "Joint submissions". Counsel for the parties also made oral submissions at the hearing. There were some minor disagreements about the extent of matters agreed between the parties, but we do not think that these matters affect the outcome.

20. As indicated above, on 3 June 2025, the parties filed supplementary submissions on sanctions.

21. We have considered all of the above submissions.

Part B. OVERVIEW OF FACTS - CONTENTIONS - THE BOARD'S FINDING

Overview of facts

22. As foreshadowed above, the case concerns the audit of the financial report for the year ended 30 June 2018 of a listed public company, iSignthis Limited (**iSignthis**) by Grant Thornton Audit Pty Ltd. Mr Taylor was the "lead auditor" and the "engagement partner" on the audit (**the Audit**).

23. The question for the Board is whether Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor in relation to the Audit. The primary case put forward was that Mr Taylor, as lead auditor, was required by s 307A of the Corporations Act, to ensure that the Audit was conducted in accordance with the auditing standards, and that he failed to do so.

24. As at 2018, iSignthis operated a business involving online identity verification and payment authentication. iSignthis commenced operating this business in about 2014, effectively as a "startup" business.

25. The financial report for the year ended 30 June 2018 revealed a very large increase in revenue compared with earlier years. Most of this was recorded as having been earned in the last six months of the 2018 financial year. In the financial year ending 30 June 2018, "Sales to customers" of "fees" were $5,800,846 compared to $666,305 for the previous financial year – an increase of 770.6% - and most of this was earned in the last six months of the financial year.

26. The fact that revenue had increased to this level had a collateral significance for directors. Certain directors were holders of 336,666,667 "performance shares" which would convert to ordinary shares in iSignthis if revenue of a particular level was achieved by 30 June 2018. If issued, the new ordinary shares would constitute approximately 33% of the issued ordinary shares of iSignthis. If the revenue milestone had not been reached, the performance shares would have converted to a single ordinary share.

27. In other words, the directors with performance shares would obtain a real benefit if the company was able to reach the requisite revenue milestone.

28. Prior to about 2014, iSignthis had been named Otis Energy Ltd and its principal activities had been oil and gas exploration and development. Otis Energy had been listed on the ASX since about 1998.

29. In about 2014, Otis Energy Ltd substantially disposed of its mining assets and entered into a "reverse acquisition" arrangement with entities associated with Mr N J (John) Karantzis (**Mr Karantzis**) to acquire 100% of the issued capital of iSignthis BV and ISX IP Ltd, which operated an online identification and payment authenticator provider business. As already indicated, the business was essentially a startup which had been founded by Mr Karantzis.

30. On 28 August 2018, Mr Taylor signed an audit report for the FY18 Financial Report which contained no qualification and expressed the opinion that the FY18 Financial Report was in accordance with the Corporations Act.

31. The audit report included the following:

> "**Independent Auditor's Report**
>
> **To the Members of iSignthis Ltd**
>
> **Report on the audit of the financial report**
>
> **Opinion**
>
> We have audited the financial report of iSignthis Ltd (the Company) and its subsidiaries (the Group), which comprises the consolidated statement of financial position as at 30 June 2018, the consolidated statement of profit or loss and other comprehensive income, consolidated statement of changes in equity and consolidated statement of cash flows for the year then ended, and notes to the consolidated financial statements, including a summary of significant accounting policies, and the Directors' declaration.
>
> In our opinion, the accompanying financial report of the Group is in accordance with the *Corporations Act 2001*, including:
>
> a giving a true and fair view of the Group's financial position as at 30 June 2018 and of its performance for the year
>
> b complying with Australian Accounting Standards and the *Corporations Regulations 2001*.
>
> **Basis for opinion**
>
> We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of our report. We are independent of the Group in accordance with the auditor independence requirements of the *Corporations Act 2001* and the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion."

The Contentions

32. Against that background, ASIC contended on this Application that Mr Taylor had failed to carry out or perform adequately and properly the duties of an auditor in connection with each of the following aspects of the FY18 Audit:

    (a) The assessment of the risks of material misstatement of revenue (Specific Contention 1);

    (b) The auditing of revenue, receipts and receivables relating to the Services (Specific Contention 2);

    (c) The auditing of expenses, payments, creditors and accruals in respect of the Services (Specific Contention 4);

    (d) The auditing of related party disclosures (Specific Contention 6);

    (e) The steps taken in respect of the auditor's responsibilities relating to fraud (Specific Contention 7); and

    (f) The auditor's report (Specific Contention 9).

33. Each of these contentions was underpinned by allegations that the Audit was not conducted in compliance, in particular respects, with auditing standards

The Board's finding

34. For reasons which follow, on the basis of the material set out in the Contentions and the Statement of Agreed Facts, we are satisfied that

    (a) Mr Taylor, a person registered as an auditor, failed in a number of ways as discussed below, to comply with his duty as an auditor to ensure that the Audit was carried out in accordance with the Auditing Standards:

    (b) Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor in respect of the Audit; and

    (c) It is appropriate to make the orders in the form of the Proposed Consent Orders and the sanctions proposed by the parties, including an order pursuant to s 1292(1) of the Corporations Act that the registration of Bradley Taylor as an auditor be cancelled.

Part C. RELEVANT PRINCIPLES - APPLICATIONS UNDER s 1292(1)(d)(i) - CONSENT APPLICATIONS – RELEVANT "DUTIES OF AN AUDITOR"

The principles governing Applications under s 1292(1)(d)

35. As already stated, ASIC made an Application to the Board on 20 November 2020, supported by its Concise Outline, which was replaced by its Amended Concise Outline dated 12 April 2021. Each of these documents asserted that the basis for the Application was that Mr Taylor had failed to carry out or perform adequately and properly the duties of an auditor, within s 1292(1)(d)(i) (see, in particular, paragraph 2 of the Application).

36. Section 1292(1) provides (relevantly):

> "(1) 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
>
> (ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;
>
> or 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." (emphasis added).

37. The present Application relies only on sub-paragraph 1292(1)(d)(i). Thus, the essential question on this Application is whether the Board "is satisfied … that … [Mr Taylor] has failed … to carry out or perform adequately and properly … the duties of an auditor".

38. In paragraphs [13] to [18] of the Joint Submissions, the parties have set out the well-established principles which govern the task of the Board on an Application under s 1292(1)(d). We accept the correctness of those submissions.

39. The principles have also been recently discussed by the Board in *ASIC v Santangelo* 03NSW/23, (***Santangelo***) (available on the Board's website) (at paragraphs [29] to [31]) and were discussed by Rofe J in *CMW23 v Companies Auditors Disciplinary Board* [2024] FCA 407 and Perry J in *Williams v Companies Auditors Disciplinary Board* [2025] FCA 629.

40. Having regard to the submissions of the parties, the decisions in *ASIC v Santangelo* and *CMW23, Williams* and the authorities discussed in those decisions, the principles applicable to the determination by the Board of an application under s 1292(1)(d) may be summarised as follows.

41. The essential task of the Board on such an Application involves:

    (a) *First*, identifying the "duties of an auditor"; and

(b) *Secondly*, making an evaluative or subjective determination about whether the duties have been carried out or performed "adequately and properly" (cf *CMW23 v Companies Auditors Disciplinary Board* [2024] FCA 407 at [56]; *Williams v Companies Auditors Disciplinary Board* [2025] FCA 629 at [42]).

42. *As to the first task,* (identification of the "duties of an auditor"), this depends very much on the nature of the pleaded case and the relevant circumstances. The principles involved are discussed in more detail at 71*ff* below.

43. *As to the second task,* the following principles apply:

(a) The ultimate question for the Board under s 1292(1)(d) is not a pure question of law. It is not concerned about whether there has been a contravention of a statute or the commission of an offence;

(b) Further, the question is not dependent simply on whether the auditor has breached an identified duty or identified duties;

(c) The question for the Board is whether relevant duties have been performed "adequately and properly";

(d) This requires assessment of the level and standard of performance of duties;

(e) The level and standard of performance of the duty needs to be tested against a relevant benchmark;

(f) CADB has adopted the "relevant benchmark" terminology to refer to what comprises the "measuring stick" by reference to which a Panel undertakes its assessment of the level of performance of a registered company auditor of their relevant duties, and whether those duties have been performed properly;

(g) The benchmark is "accepted professional standards";

(h) The accepted professional standards may be found by the Board to be set by, or alternatively reflected in, published Auditing Standards;

(i) The level of performance called for is that of "adequacy"; the standard is that the duty or function must be performed "properly";

(j) At its heart, the question is directed to whether duties have been performed with "requisite skill and probity" and the question can be seen as a reasonable surrogate for an enquiry as to the fitness of the person;

(k) In other words, the Board tests performance of duties and it does so by making an evaluative and subjective judgment, by reference to a benchmark, being accepted professional standards;

(l) This is a task within the expertise of the Board, as a body with appropriate professional skills to make informed decisions on this question[2]; and

(m) The question can depend to some extent on having an intelligent understanding of the purposes which relevant provisions of the Corporations Law are trying to achieve, and what proper professional practice required to be done to enable those purposes to be achieved;

(see *Santangelo* at [29]-[30], *Albarran v Members of CALDB* [2006] FCFCA 69 at [42]*ff*; *Dean-Wilcocks v CALDB* (2006) 59 ACLR 698 at [26]; *Re Vouris; Epromotions Pty Ltd and Relectronic-Remech Pty Ltd (in liq)* (2003) 177 FLR 289; 47 ACSR 155 at [103]; *Goodman v Australian Securities and Investments Commission* (2004) 50 ACSR 1 at [26]; *Albarran v Members of the Companies Auditors and Liquidators Board* (2007) 231 CLR 350; [2007] HCA 23 at [18]-[29], [52]-[54] (***Albarran***); *Williams v Companies Auditors Disciplinary Board* [2025] FCA 629 at [43]).

44. To elaborate the points made in paragraph 43(i)-(m) above, we note the following observations of the High Court in *Albarran*, the decision which remains the leading authority dealing with the correct approach to the Board's jurisdiction (notwithstanding that the observations were made in relation to the now repealed s 1292(2)(d)[3]):

(a) Section 203 of the ASIC Act, in dealing with the composition of the board, requires that it include members appointed by the Minister from panels nominated by professional accountancy bodies. The section also requires the appointment of "business members" from among persons the Minister is satisfied are suitable as representatives of the business community by reason of qualifications, knowledge or experience in fields including business or commerce, the administration of companies, financial markets, and financial products and financial services (at [19]);

(b) Against that background, par (1)(d) is designed to enable a board representative of the commercial and accounting communities to consider whether the [duty] has been adequately and properly carried out (at [20]);

(c) To assess this, it is permissible to have regard to the standards operative in the relevant sphere of activity (at [20]);

(d) The character of the Board means that members of the board can be taken to be imbued with knowledge of professional standards (at [29]);

(e) The words "adequately and properly" import notions of judgment by reference to professional standards rather than pure questions of law (at [24]); and

[2] And see the recent decision in *Williams v Companies Auditors Disciplinary Board* [2025] FCA 269 at [61]*ff*.
[3] Section 1292(2)(d) was a provision in almost identical terms to s 1292(1)(d) but applicable to liquidators.

(f) The concluding expression in s 1292(1)(d), containing the words "otherwise not a fit and proper person", expands or adds to what precedes it but does not draw in a discrete subject-matter (at [24]).

Relevant principles governing consent applications

45. As already indicated, the present Application has proceeded on the basis of the presentation to the Board of a Statement of Agreed Facts and Admissions, proposed Consent Orders and Joint Submissions.

46. The parties made submissions concerning the principles governing the Board's obligations when dealing with consent Applications at paragraphs [20]-[23] and [187]-[194] of the Joint Submissions.

47. In essence, those submissions were to the following effect:

(a) Even where the parties have agreed to the making of orders under s 1292, CADB must be independently satisfied that it has the power to make the orders;

(b) Subject to the caveats expressed in the Board decision of *ASIC v* Wessels 05/QLD13 (***Wessels***) at [23], the Board may proceed to consider a matter by reference to an agreed statement of facts and the proposed consent orders filed and the submissions made by the parties at the hearing of the matter;

(c) ASIC's view, as the relevant regulator, about the proposed orders is relevant on the question of sanction, particularly regarding the deterrent effect of the order, but not determinative;

(d) The fact that ASIC has joined in the proposed orders is a large factor supporting the decision to accept the proposed orders; and

(e) ASIC is relevantly a guardian of the public interest, and is in a good position to appraise the practicalities of the matter and what part those practicalities should have among considerations in favour of accepting the agreed outcome.

48. We accept these submissions, which are largely consistent with the summary of principles in *Santangelo*. The caveat in *Wessels*, to which the parties refer, is important. At paragraph [23] in that Decision, the Board stated:

> "The Board may well be 'satisfied' where, for example, agreed facts involve an admission of a straightforward act (such as misappropriation) and an agreement that by reason of this act, the respondent is not a fit and proper person. But where the agreed facts concern conduct which is more nuanced or not so clearly improper, or where the 'agreed facts' relate to conclusions of mixed fact and law, (such as whether certain matters constituted a failure to carry out adequately and properly the duties of an auditor), it may be more difficult for the parties to proceed by way of 'agreed facts' and consent orders (cf *Legal Services Commissioner v Rushford* [2012] VSC 632 and the decision of the Board in *ASIC v Walker* 22 December 2008 para [7.1(c)])."

49. In paragraph [188]*ff* of the Joint Submissions, the parties made submissions concerning the applicability of principles governing the approach to determining penalties in the analogous context of civil penalty provisions. There are, no doubt, similarities between the task of the Board in exercising a discretion to impose a sanction under 1292 and the task of a Court in deciding an appropriate civil penalty for a contravention of statute. However, the context is not identical.

50. In particular, a consideration for the Board will often be whether or not to cancel registration and thereby deprive an auditor of the right to continue to occupy an important statutory position which constitutes the source of his or her livelihood. The imposition of a monetary penalty for contravention of a statute will not usually involve this consideration.

51. We do, however, agree with the parties that the following passage in the judgment of the plurality in *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482 (***FWBII***) at [58], although dealing with penalties, is applicable to the approach to sanction under s 1292:

> "Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances thus revealed, it is consistent with principle and … highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty."

52. Otherwise, for the purposes of the present case, we do not believe that it is necessary to go beyond the statement of principles summarised in previous Board decisions in *Wessels* and *Santangelo* (at [32]-[40]), (the latter applying the principle in *FWBII* just quoted).

53. Adopting the parties' submissions, (where appropriate) together with the statement of principles previously adopted by the Board in *Wessels* and *Santangelo*, we summarise the position as follows:

    (a) Even in "consent" matters, the question whether orders should be made under s 1292 is ultimately one for the Board, and the Board needs to be "satisfied" of relevant matters in s 1292 before making orders;

    (b) The decision cannot be delegated to the parties, which would, in effect, happen if the Board adopted an agreed form of consent orders without giving genuine consideration to what the Board should do;

    (c) "Satisfaction" requires the Board to be "sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences[4];

    (d) The material which may produce the Board's satisfaction may include a statement of agreed facts and admissions by the parties;

[4] *Commonwealth of Australia v Director, Fair Work Building Inspectorate* (2015) 258 CLR 482; [2015] HCA 46 at [58], albeit dealing with the analogous area of civil penalties.

(e) The Board needs be persuaded that the penalty which the parties propose is an "appropriate" remedy in the circumstances[5];

(f) The fact that parties join in proposing a discretionary order to be made by consent is a consideration favouring a discretionary decision to make it, particularly when ASIC, which for relevant purposes is a guardian of the public interest, has consented; and

(g) subject to being satisfied to the above standard, it is consistent with principle and highly desirable in practice to accept the parties' proposal and therefore impose the proposed penalty.

54. We give further consideration to the principles governing the Board's exercise of its discretion in relation to consent orders for sanctions at paragraphs 543*ff* below.

Relevant "duties of an auditor"

The pleaded case – s 1292(1)(d)(i)

55. As already noted above, ASIC relies only on sub-paragraph 1292(1)(d)(i) of the Corporations Act, and does not rely upon the ground in s 1292(1)(d)(ii) (which applies where a registered company auditor "has failed … to carry out or perform adequately and properly …(ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor").

56. Thus, the present case is to be distinguished from the position in *CMW23 v Companies Auditors Disciplinary Board* [2024] FCA 407. That case involved alleged failings by a "review auditor". Rofe J held (at paragraphs [64], [65] and [70]) that the duties or functions of a review auditor were required by s 324AF of the Corporations Act to be carried out be a person who was a registered company auditor and thus came within s 1292(1)(d)(ii). Therefore, the question in that case was whether the Respondent had carried out or performed adequately and properly the duties of a "review auditor" (see paragraph [75]).

57. Here, ASIC does not frame its case on the basis of an argument that:

(a) Mr Taylor was the "lead auditor";

(b) The duties or functions of a "lead auditor" were required by an Australian law to be carried out or performed by a registered company auditor; and

(c) That Mr Taylor has failed to carry out adequately and properly the duties or functions of a "lead auditor".

58. ASIC simply relied upon s 1292(1)(d)(i) in asserting that Mr Taylor has failed to carry out or perform adequately and properly "the duties of an auditor".

[5] Ibid.3

59. In the circumstances, in considering the Application, the essential task of the Board involves:

(a) *First*, identifying the relevant "duties of an auditor"; and

(b) *Secondly*, making an evaluative or subjective determination about whether Mr Taylor has failed to perform or carry out the relevant duties "adequately and properly" (cf *CMW23 v Companies Auditors Disciplinary Board* [2024] FCA 407 at [56]).

The parties' submissions concerning duties of an auditor

60. The parties' primary submission as to the relevant duties of an auditor was based upon s 307A(2) of the Corporations Act, which provides that if an audit firm conducts an audit of the financial report for a financial year, the lead auditor for the audit must ensure that the audit is conducted in accordance with the auditing standards. The lead auditor is the registered company auditor who is primarily responsible to the audit firm for the conduct of the audit (s 324AF of the Corporations Act).[6] It was agreed that Mr Taylor was the lead auditor on the Audit.

61. The parties also submitted that the ASAs applied to an "auditor" as defined in paragraph 13.1(d) of ASA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards*, which provides:

> "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…"

62. The parties also made submissions concerning the general duties of an auditor as follows (see paragraphs [33]-[38] of the Joint Submissions):

(a) An auditor who audits the financial report for a financial year must form an opinion, and report to members, on whether the financial report is in accordance with the Corporations Act, including s 296 (compliance with accounting standards) and s 297 (true and fair view) (ss 307 and 308 Corporations Act);

(b) An audit conducted in accordance with the ASAs and relevant ethical requirements enables the auditor to form that opinion (paragraph 3 of ASA 200);

(c) As the basis for the auditor's opinion, the ASAs require the auditor to obtain reasonable assurance as to whether the financial report as a whole is free from material misstatement, whether due to fraud or error;

(d) Reasonable assurance is a high level of assurance, which is obtained when the auditor has obtained sufficient appropriate audit evidence to reduce

[6] SAFA [21].

audit risk (being the risk the auditor expresses an inappropriate opinion when the financial report is materially misstated) to an acceptably low level (see paragraph 5 of ASA 200);

(e) ASA 200 [18] requires an auditor to comply with all Australian Auditing Standards relevant to the audit;

(f) ASA 200 [19] requires an auditor to have an understanding of the entire text of an Auditing Standard, including its Application and other explanatory material, to understand its objectives and to apply its requirements properly; and

(g) ASA 200 [20] provides that an auditor shall not represent compliance with Australian Auditing Standards in the auditor's report unless the auditor has complied with the requirements of this Auditing Standard and all other Australian Auditing Standards relevant to the audit.

63. The parties' concluding submission stated:

> "Accordingly, having regard to Mr Taylor's responsibilities as the lead auditor and engagement partner on the FY18 Audit, to the extent GT Audit did not perform the FY18 Audit in accordance with the ASAs, these matters reflect instances of Mr Taylor failing to satisfy the Relevant Benchmark when performing his duties within the meaning of s 1292(1)(d). Such failure is sufficient to provide the CADB jurisdiction to make orders under s 1292(1)(d) in the matter.[7]"

64. In support of this paragraph, the parties cited the Board's decision in *ASIC v Evett* 17/NSW20 at paragraph [48].

65. The critical matter to be established in this case is that Mr Taylor, as a person who is registered as an auditor, had failed to carry out or perform adequately and properly "the duties of an auditor". It is implicit in section 1292 that the duties which were not carried out or performed adequately and properly were duties of an auditor which the Respondent (ie in this case, Mr Taylor) was obliged to carry out or perform.

66. The various general duties enumerated in paragraphs [33]-[38] of the Joint Submissions, (including the duty of an auditor to form an opinion and the duty of an auditor to comply with auditing standards when performing an audit), are all duties which are, in terms, imposed upon "the auditor". Here, the "auditor" which conducted the Audit was GT Audit.

67. At the Hearing, the Panel sought clarification about how the case on "duties" was put. In oral submissions, Mr Moore KC for ASIC confirmed that the critical provision which imposed a duty on Mr Taylor was s 307A of the Corporations Act. He embraced the following position:

(a) Where (as here) an audit company conducts an audit of a financial report for a financial year, s 307A(2) of the Corporations Act requires the lead

[7] *Evett* at [48].

auditor for the audit to ensure that the audit is conducted in accordance with the auditing standards (being the standards in force under s 336); and

(b) The present audit was not, in specific respects, conducted in accordance with the auditing standards and the non-compliance was such that Mr Taylor failed to perform adequately and properly the duties of an auditor.

68. Mr Moore KC also accepted the proposition that the test for failure to carry out or perform the duties of an auditor adequately and properly was not necessarily a black and white situation and there may be no failure in the case of a very minor breach of a standard.

69. Mr Moore also referred to other duties of auditors referred to in the Joint Submissions. As already stated, many of those duties were, on the face of things, owed by "the auditor". However, the submissions also relied on the decision of the Board in the matter of *ASIC v Evett* at paragraph [48].

70. Thus, the parties contended that the relevant duties owed by Mr Taylor were the duty under s 307A(2) and the duties referred to in *ASIC v Evett* at [48].

Consideration

Introduction

71. We consider that there is some lack of clarity in the authorities dealing with the meaning of the phrase "duties of an auditor" within s 1292 and that some analysis of the phrase is necessary in the present case, particularly where the Respondent was not the auditor who performed the Audit.

72. It is true that the concept of the "duties of an auditor" within s 1292 has a chameleon-like nature, which may vary depending upon the nature of the circumstances. The concept needs to be considered in the context of the essential task to be performed by the Board, namely an evaluative determination by reference to professional standards as to whether duties have been performed *with "requisite skill and probity"*, a task which can be seen "as a guide to whether the person is fit and proper to remain registered" (*Albarran* at [24], [42], [97]).

73. In a global sense, the "duties of an auditor" have been said to include

(a) The duties in contract and tort for which an auditor bears liability (as recognised in the leading authorities),

(b) The statutory duties imposed upon an auditor by act of parliament; and

(c) Generally recognised standards, promulgated by law and by bodies whose standards are universally recognised:

see *ASC v Companies Auditors & Liquidators Disciplinary Board* (1994) 13 ACSR 373 at [15], [16] (Administrative Appeals Tribunal)[8] (***ASC v CALDB***) and see the decision of the Board in *ASIC v Hill* 01/NSW14 at [23].

74. However, in considering what is meant by "duties of an auditor" in the context of the essential task to be performed by the Board, (ie to make a judgment about whether the respondent "has failed … to carry out or perform *adequately and properly* … the duties of an auditor"), the position adopted by Tamberlin J in *Dean-Willcocks* suggests that the task is directed to evaluation of the performance of the "role" or "office" of an auditor. At paragraphs [24]-[25] of *Dean-Willcocks*, Tamberlin J said (in the context of a case involving the now repealed s 1292(2)(d)(ii) relating to the duties and functions of an administrator):

> "[24] The language of s 1292(2)(d)(ii) directs attention to the question of whether there has been a failure to *adequately* and *properly* carry out or perform the duties or functions required to be performed by a registered liquidator. The emphasis is on the adequacy level or sufficiency of performance of the function or role by the registered liquidator. In this case, the function to be performed is that of an administrator. To evaluate the level of performance is a question of fact and degree which calls for the application of a standard. It is not a qualitative consideration whether there has been performance, but rather calls for consideration as to the sufficiency of the acts or omissions of the administration. This is a task which calls for some acquaintance with professional standards applicable to the role of an administrator.
>
> [25] Upon and after accepting appointment of the office of an administrator, the liquidator must perform the functions and tasks of that office in a proper and adequate way. This obligation to meet a standard is attracted by the terms of s 1292(2)(d) itself. It is not necessary, in my view, to identify a specific legislative duty independently imposed by legislation. When a person assumes the office of an administrator, he or she is then bound to perform adequately and properly the functions of the office. The focus of the provision concerns the sufficiency and quality of the performance of the office that must be carried out by a registered liquidator. (Underlined emphasis added)"

75. This approach echoed the views of Campbell J in *Re Vouris; Epromotions Pty Ltd and Relectronic-Remech Pty Ltd (in liq)* (2003) 177 FLR 289; 47 ACSR 155 (***Re Vouris***) at [100], where his Honour accepted that there would be a failure under s 1292(2)(d)(ii) if an administrator had taken a bribe for making a particular recommendation, even though nothing in Pt 5.3A said that administrators were not to take bribes.

76. It is certainly true that in identifying the "duties of an auditor" for the purposes of an Application to the Board, it is not necessary to identify "a specific duty directly imposed by legislation". This was expressly accepted by the plurality of the High Court in *Albarran v Members of the Companies Auditors and Liquidators Board* (2007) 231 CLR 350; [2007] HCA 23 (***Albarran***) at [18] endorsing the views of

[8] Although the actual decision of the AAT was overturned by Hill J in *Davies v ASC*, His Honour did not deal with the views of the AAT on this issue. But cf the decision of the Board in *ASIC v Fenandez* 02/VIC13 at [36].

Tamberlin J in *Dean-Willcocks v Companies Auditors and Liquidators Disciplinary Board* [2006] FCA 1438 at [25] (***Dean-Willcocks***)[9].

77. However, the fact that it is not necessary, on an Application to the Board, to identify a failure to comply with a specific statutory duty does not mean that an Application based upon such a failure would not satisfy the requirements of s 1292(1)(d)(i). So much was accepted by Tamberlin QC in his capacity as Deputy President of the Administrative Appeals Tribunal in *Hill v Members of Companies Auditors and Liquidators Disciplinary Board* [2015] AATA 245 (***Hill***) at [38], [39].

78. We take the view that an Application to the Board concerning failure to carry out and perform duties may:

    (a) On the one hand, be based upon a contention that an auditor, in performing *the role* which he or she is required to perform as an auditor, (and thereby, in a real sense, performing the duties of an auditor), has fallen below professional standards (consistently with the approach in *Dean-Willcocks* and *Re Vouris*); and

    (b) On the other hand, be based upon the fact that an auditor has failed to perform one or more of the accepted duties of an auditor, including a specific statutory duty (consistently with the approach in *Hill*).

79. However, bearing in mind the fact that the real task of the Board is to consider whether duties have been performed "adequately and properly", a failure to perform a specific duty may not be sufficient to enliven the Board's jurisdiction. As Hill J stated in *Davies v ASC* (1995) 18 ACSR 129 at 148:

> "If the failure to perform a statutory or other duty was such as to be insignificant, *de minimis* or trivial, it could perhaps be possible to argue that the auditor had not failed to carry out or perform the relevant duty or function adequately."

80. There may be other ways of formulating an Application.

81. For example, as stated in *ASC v CALDB*, the "duties of an auditor" have been said to include the duties in contract and tort for which an auditor bears liability (as recognised in the leading authorities[10]). Thus, whilst not necessary to decide on this occasion, it may be that an Application could be made on the basis that an auditor has failed to perform adequately and properly the duties of an auditor in this sense.

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[9] We note that in accepting this proposition, the High Court was actually dealing with a provision which was in slightly different terms to the provision which we are considering (s 1292(1)(d)(i)) but we doubt whether the proposition is inapplicable (and see, in this regard, *Gould v Companies Auditors and Liquidators Disciplinary Board* [2009] FCA 475 at [49])).

[10] As a broad overview, the general law duties of an auditor arise from the retainer. An auditor's retainer will ordinarily include implied terms requiring the auditor to perform such an audit as will enable the auditor to form the opinions required by legislation, to provide a report of the auditor's opinion based upon the audit work complying with the Corporations Act and the company's constitution and to use reasonable care and skill in the conduct of the audit and making of the report (see *Ford, Austin and Ramsay's Principles of Corporations Law, LexisNexis Australia* at [11.540.3] and see *Daniels (formerly practising as Deloitte Haskins & Sells v Anderson* (1995) 37 NSWLR 438 at 480)

82. Whatever the position, the Board must be satisfied that the allegations establish a failure to carry out or perform adequately and properly, the duties of an auditor.

83. As already indicated, the present case throws up a particular issue arising from the fact that the Application hinges on deficiencies in the performance of the Audit, but Mr Taylor was not actually the auditor.

84. We emphasise, again, that the case was not brought against Mr Taylor under sub-paragraph (ii) of s 1292(1)(d), on the basis that he, as Lead Auditor, had not performed adequately and properly the duties required by an Australian law to be carried out or performed by a registered company auditor (ie the duties of a "Lead Auditor").

Duty arising under s 307A(2) of the Corporations Act

85. As already indicated, the parties submitted that the primary relevant duty was the obligation imposed by s 307A(2) of the Corporations Act.

86. Section 307A(2) is a statutory provision which, in terms, provides that "the lead auditor … must ensure that the audit … is conducted in accordance with the auditing standards". There is no apparent basis for contending that s 307A(2) does not impose a *duty* upon a lead auditor[11] (cf *NHPT and Members of the Companies Auditors and Liquidators Disciplinary Board* [2015] AATA 245 at [38], [39]; *Islam v ASIC* [2024] ARTA 88 at [100] – [101]).

87. It can be accepted that subsections 307A(3) and 307A(4) go on to provide that a person who contravenes s 307A(2) commits an offence, but that is a separate matter from the effect of s 307A(2) itself. Acceptance of this proposition does nothing to undermine the conclusion that s 307A(2) imposes a "duty" upon a lead auditor. (Of course, whether or not an offence has been committed under s 307A is not an issue which the Board has jurisdiction to decide, (see *Albarran v Companies Auditors and Liquidators Disciplinary Board* [2006] FCAFC 69 at [45]) nor was there any allegation concerning any offence under s 307A(3) or (4) in the pleading in the present case)).

88. Is the duty under s 307A(2), which is nominally a duty of the "Lead Auditor", a "duty of an auditor" under s 1292(i)(d)(i)? It is implicit in the parties' submissions that they contend that it is.

89. It is not clear to us that the definition an "auditor" in paragraph 13.1(d) of ASA 200 (which would include "engagement partner") assists on this question.

90. Whilst the matter is not free from doubt, we consider that the duty under s 307A is a "duty of an auditor". The term "lead auditor" is defined in s 324AF as "the registered company auditor who is primarily responsible to the … audit company for the conduct of the audit". In effect, the obligation imposed by s 307A(2) is that "the registered company auditor who is primarily responsible to the … audit

[11] It should be noted that in *Goodman v ASIC* (2004) 50 ACSR 1 at [26], Branson J appeared to suggest that Auditing Standards had no "direct statutory significance". She held that they were relevant to establishing the benchmark of "professional standards", against which performance of duties had to be judged. However, s 307A was only enacted in 2004, and thus was not relevant to her Honour's decision. In our view, by reason of the enactment of s 307A and similar provisions, as from 2004 auditing standards did have direct statutory significance for auditors.

company for the conduct of the audit must ensure that the audit … is conducted in accordance with the auditing standards". We consider that such an obligation is a duty which is imposed upon an auditor and thus, comes within the phrase "duties of an auditor" in s 1292.

91. We note that the obligation in s 307A(2) is *only* imposed upon the auditor primarily responsible to the audit company for the conduct of the audit (see *Deloitte Touche Tohmatsu v Sadie Ville Pty Ltd* [2020] FCFCA 23 at [17]-[23], [228], [229]). However, the position remains that the obligation is in a real sense imposed upon "the registered company auditor" who is primarily responsible for the audit. The duty may not be owed by every auditor involved in an audit, but it is owed by a particular auditor and, in our view, this is sufficient to support a finding that the duty comes within the "duties of an auditor".

92. Accordingly, we accept the submission that a relevant "duty of an auditor" within s 1292 was owed by Mr Taylor in the present case, namely a duty imposed by s 307A(2) to ensure that the audit was conducted in accordance with the auditing standards.

93. In the context of the matters relied upon in the present Application (largely a series of failures to comply with auditing standards), the obligation under s 307A(2) picks up the failings relied upon by the parties.

Duties referred to in ASIC v Evett

94. Paragraph [48] of the Board's decision in *Evett*, (relied upon by the parties at paragraph [38] of the Joint Submissions), does not explicitly identify the relevant duty or duties which were said to be breached in that case. However, the paragraphs which precede paragraph [48] in that decision shed light on this question.

Evett para [42] – reliance on section 989CA(2) – same duty as that imposed by s 307A(2)

95. At paragraph [42] of *Evett*, the Board stated that "the relevant statutory duty was imposed upon Mr Evett as Lead Auditor in the Halifax audits by 989CA(2) of the Corporations Act". This provision is relevantly identical to s 307A(2), (albeit applicable to audits of the financial statements of financial services licensees). It is therefore apparent that the Board in *Evett* had in mind that one of the relevant duties in that case was the duty imposed by s 989CA(2), in effect, the same duty as that imposed by s 307A(2).

Evett para [43] - Duties imposed by paragraphs [15]-[17] of ASA 220

96. At paragraph [43] of *Evett*, the Board referred to the duties imposed upon an engagement partner by paragraphs [15] to [17] of ASA 220.

97. Paragraphs [15] to [17] of ASA 220 provide:

> "**Engagement Performance**
>
> *Direction, Supervision and Performance*

15. The engagement partner shall take responsibility for:

(a) The direction, supervision and performance of the audit engagement in compliance with Australian Auditing Standards, relevant ethical requirements, and applicable legal and regulatory requirements; and (Ref: Para. A14-A16, A21)

(b) The auditor's report being appropriate in the circumstances.

Reviews

16. The engagement partner shall take responsibility for reviews being performed in accordance with the firm's review policies and procedures. (Ref: Para. A17-A18, A21)

17. On or before the date of the auditor's report, the engagement partner shall, through a review of the audit documentation and discussion with the engagement team, be satisfied that sufficient appropriate audit evidence has been obtained to support the conclusions reached and for the auditor's report to be issued. (Ref: Para. A19-A21)"

98. The Joint Submissions do not explicitly refer to paragraphs [15] and [16] of ASA 220, (although Contention 7(vi) is squarely based upon a failure by Mr Taylor as engagement partner, to comply with paragraph [17] of ASA 220). We note however that paragraph [29.3] of the Joint Submissions refers to paragraph 8 of the SAFA, in which the parties agreed that as the "engagement partner", Mr Taylor was responsible under paragraph 8 of ASA 220 for "the overall quality on the audit engagement" and, under paragraph 15 of ASA 220, for the matters in paragraph 15(a) and (b) referred to above.

99. In a sense, the obligations in paragraphs [15]-[17] are enlivened in the present case by the obligation under s 307A(2). Mr Taylor was obliged to ensure that the Audit was conducted in accordance with the auditing standards, and these paragraphs comprise part of the auditing standards. Therefore, Mr Taylor was obliged to ensure that the Audit was conducted in accordance with these paragraphs and, for example, was obliged to ensure that the Audit was conducted in a way whereby he, as "Engagement Partner" took responsibility for the performance of the Audit.

100. However, this does not involve a separate "duty" beyond the duty arising by virtue of s 307A(2), already discussed.

101. Insofar as the parties rely upon paragraph [17] of ASA 220 (which imposes a duty on the "engagement partner"), we consider that this is a "duty of an auditor", for similar reasons to those set out above at paragraph 88.

102. The definition of "engagement Partner" in ASA 220 is:

"Definitions

7. For the purposes of this Auditing Standard, the following terms have the meanings attributed below:

…

(a) Engagement partner means the partner or other person in the firm who is responsible for the audit engagement and its performance, and for the auditor's report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.

Aus 7.2 Engagement partner should be read as referring to a public sector equivalent where relevant.

…"

103. It must follow that the Engagement Partner is an auditor. Paragraph 17 imposes an obligation upon an auditor, albeit where the auditor is performing the role of "Engagement Partner".

104. Matters in the Auditing Standards may constitute duties of an auditor, regardless of the operation of s 307A, where the auditor concerned is performing an audit: *Goodman v ASIC* (2004) 50 ACSR 1 at [26]; *Williams v Companies Auditors Disciplinary Board* at [43]-[46]. However, where, as here, the Respondent was not conducting the Audit, it is a little more difficult to understand how obligations under the auditing standards become part of his duty, except pursuant to s 307A. It may be possible to say that where a registered company auditor has accepted the role of Engagement Partner, it is part of his duty as an auditor to comply with the obligations in ASA 220 paragraphs [15]-[17] (cf *CMW* at [38] and [62]). Although the definition of "Engagement partner" in ASA 220 does not expressly provide that the Engagement Partner must be a registered company auditor, it seems inconceivable that this is not intended, so that the obligations in paragraphs [15]-[17] would be obligations of an "auditor".

Evett - Duties referred to in paragraphs [44]-[47] of that decision

105. The duties referred to in paragraphs [44]-[47] of Evett appear to be relevant only to audits of the financial statements of financial services licensees.

Conclusion

106. We accept the submission that a relevant "duty of an auditor" within s 1292 was the duty imposed by s 307A(2) to ensure that the audit was conducted in accordance with the auditing standards and that this duty was owed by Mr Taylor in the present case.

107. In the absence of full submissions on the impact of paragraphs [15] and [16] of ASA 220, we prefer not to make any final determination on whether those paragraphs were a separate source of obligation constituting "duties of an auditor".

108. Therefore, the question for the Board is whether, making an evaluative or subjective determination, by reference to the benchmark of professional standards, Mr Taylor has carried out the duty to ensure that the FY18 audit was conducted in accordance with the auditing standards "adequately and properly" in the manner alleged in each of the Contentions.

109. In our view,

(a) Mr Taylor was obliged to ensure that the Audit in the present case was carried out in accordance with the auditing standards;

(b) That obligation was a duty which Mr Taylor owed, as an auditor, and it came within the scope of the phrase "the duties of an auditor" within s 1292;

(c) It is clear, for reasons we discuss in detail below, that the Audit was not carried out in accordance with the auditing standards in a number of significant respects; and

(d) In those circumstances, Mr Taylor did not ensure that the Audit was carried out in accordance with the auditing standards and the number, extent and significance of the failures was such that we are satisfied that Mr Taylor did not adequately and properly carry out the duties of an auditor.

Part D. SECTION A OF THE SAFA – BACKGROUND FACTS

Introduction

110. Section A of the SAFA contains the "Background Facts". As these are important to an understanding of the Application as a whole, we have largely reproduced Section A of the SAFA in this Part of our Decision.

111. The matters set out in this Part D are virtually all matters of fact which are capable of being admitted by, and are admitted by, Mr Taylor. They are, in any event, consistent with the documents tendered at the hearing.

112. In the circumstances, the Panel accepts the matters set out below in this Part D as correct.

The audit of the iSignthis financial report for 2018 financial year

113. At relevant times iSignthis Limited (ACN 075 419 715) (**iSignthis** or **ISX**) was a listed public company. iSignthis prepared and published annual and half-yearly financial reports.

114. iSignthis issued its annual report for the year ending 30 June 2018 on 28 August 2018. This included a financial report (**FY18 Financial Report**) which disclosed revenue of $6,338,969, an increase from $1,371,192 in the previous financial year.

115. On 28 August 2018, Mr Taylor signed an audit report for the FY18 Financial Report (the **FY18 Audit Report**) (see paragraph 31 above) which contained no qualification and expressed the opinion that the FY18 Financial Report was in accordance with the Corporations Act, including:

(a) Giving a true and fair view of the financial position of the consolidated entity (ie iSignthis and its subsidiaries) as at 30 June 2018 and of its performance for the year ended on that date; and

(b) Complying with Australian Accounting Standards and the Corporations Regulations 2001 (Cth).

Appointment of GT Audit as auditor of iSignthis

116. On 30 November 2015, iSignthis appointed Grant Thornton Audit Pty Ltd (**GT Audit**) as the auditor of the financial reports for iSignthis and its subsidiaries (referred to as "the consolidated entity" and described as the **iSignthis Group**).

117. At all relevant times, GT Audit was registered as an authorised audit company under s 1299C of the Corporations Act 2001 (Cth) (the **Corporations Act**). At all relevant times, Mr Taylor was a registered company auditor as defined in s 9 of the Corporations Act, and was a director of GT Audit from 17 June 2008 to 13 November 2020.

Responsibility for the audit of the financial report of iSignthis for the year ended 30 June 2018 (FY18)

118. With respect to the Audit of iSignthis's FY18 Financial Report, GT Audit issued an engagement letter dated 26 June 2018, signed by Mr Taylor, to Todd Richards (**Mr Richards**), Chief Financial Officer of iSignthis. The letter named Mr Taylor as the Engagement Partner and Lead Auditor for the audit for the financial year (**FY18 Audit**).

119. Consequently:

    (a) GT Audit was the auditor of the FY18 Financial Report for the purposes of the Corporations Act;

    (b) GT Audit was required by s 307A(1) of the Corporations Act to conduct the Audit in accordance with auditing standards issued by the Auditing and Assurance Standards Board (the **Auditing Standards** or **ASAs**);

    (c) Mr Taylor was the "lead auditor" in respect of the FY18 Audit under s 324AF(1) of the Corporations Act and the "engagement partner" as defined in paragraph 7(a) of Auditing Standard ASA 220 Quality Control for an Audit of a Financial Report and Other Historical Financial Information;

    (d) As the "lead auditor", Mr Taylor was required by s 307A(2) of the Corporations Act to ensure that the FY18 Audit was conducted in accordance with the Auditing Standards; and

    (e) As the "engagement partner", Mr Taylor was responsible under paragraph 8 of ASA 220 for "the overall quality on the audit engagement" and under paragraph 15 of ASA 220 for:

        i. the direction, supervision and performance of the audit engagement in compliance with the Auditing Standards, relevant ethical requirements, and applicable legal and regulatory requirements; and

        ii. the auditor's report being appropriate in the circumstances.

120. Mr Simon Trivett, of GT Audit, was the "review auditor" in respect of the FY18 Audit under s 324AF(2) of the Corporations Act and the "engagement quality control reviewer" as defined in ASA 220.

121. The FY18 Audit was the third annual audit of the financial reports of the iSignthis consolidated entity in which GT Audit was the auditor, Mr Taylor was the lead auditor and Mr Trivett was the engagement quality control reviewer.

122. Messrs Bradley Krafft (Audit Manager), Niall McDonald (Audit Senior) and Steven Zaharis (Associate), each of whom were employees of GT Audit, were "professional members of the audit team" under s 324AE of the Corporations Act and, together with Mr Taylor, constituted the "engagement team" as defined in paragraph 7(d) of ASA 220 (the **Audit Team**).

123. Mr Taylor signed off on the contents of the "audit file", as defined in paragraph 6(b) of Auditing Standard ASA 230 Audit Documentation, that was compiled by GT Audit for the FY18 Audit (the **Audit File**). GT Audit also prepared an audit findings report dated 24 August 2018 under the authority of Mr Taylor for presentation to the management of iSignthis (**Audit Findings Report**).

iSignthis and its subsidiaries

124. At all material times, iSignthis was registered under s 112 of the Corporations Act as a public company limited by shares. At all material times, iSignthis was listed on both the Australian Securities Exchange (**ASX**) and the Frankfurt Stock Exchange.

125. Throughout FY18, Mr N J (John) Karantzis was the Managing Director and Chief Executive Officer of iSignthis and Mr Richards was the Chief Financial Officer and Company Secretary of iSignthis.

126. During FY18, iSignthis owned 100% of the shares in each of the following entities:

Name	Place of incorporation
Authenticate Pty Limited	Australia
iSignthis eMoney (Au) Pty Ltd (incorporated on 2 March 2018)	Australia
Authenticate BV	Netherlands
iSignthis BV	Netherlands
ISX IP Ltd	British Virgin Islands (BVI)
iSignthis eMoney Ltd	Cyprus
iSignthis Inc	United States of America
iSignthis (IOM) Ltd	Isle of Man
iSignthis (UK) Ltd	United Kingdom

The FY18 Annual Report

127. iSignthis was required, under Part 2M.3 of the Corporations Act, to prepare a financial report for FY18 and have that report audited.

128. The iSignthis FY18 Annual Report was dated 28 August 2018 and filed with the ASX on 29 August 2018. It included the following:

(a) A Letter from the Managing Director signed by Mr Karantzis (the **Managing Director's Letter**);

(b) A Directors' Report signed by Mr Karantzis (**FY18 Directors' Report**);

(c) The FY18 Financial Report, which comprised financial statements for the iSignthis Group for FY18, including notes to the financial statements, and constituted iSignthis's financial report for FY18, for the purposes of Chapter 2M of the Corporations Act; and

(d) The FY18 Audit Report signed by Mr Taylor and GT Audit.

129. The business of iSignthis was described as follows in the FY18 Directors' Report:

> "iSignthis Ltd is an Australian headquartered business with patented technology used to significantly enhance online payment security and to electronically verify identities by way of a dynamic, digital and automated system. The system assists obligated entities under Anti Money Laundering ("AML") and Counter Terrorism Funding ("CTF") legislation to meet their compliance requirements and to ensure rapid and convenient on boarding of their customers. iSignthis also assists online merchants with mitigating Card Not Present ("CNP") fraud and providing CNP liability shift, within the framework of the card scheme rules and applicable regulatory regimes."

130. The "Statement of profit or loss and other comprehensive income" for the consolidated entity in the FY18 Financial Report indicated that the consolidated entity had:

(a) A loss before income tax of $5,532,177, compared with a loss before income tax of $5,700,062 in the previous financial year (ie. a reduction of $167,885);

(b) Revenue of $6,338,969, compared with revenue of $1,371,192 in the previous financial year (ie. an increase of $4,967,777, or 362%); and

(c) Operating costs of $4,957,592, compared with operating costs of $768,611 in the previous financial year (ie. an increase of $4,118,981 or 545%).

131. "Note 4: Operating segments" and "Note 5: Revenue" in the FY18 Financial Report indicated that the consolidated entity's revenue from "Sales to customers" or "Fees" amounted to $5,800,846, compared with $666,305 for the previous financial year (an increase of $5,134,541 or 770.6%).

132. "Note 6: Expenses" in the FY18 Financial Report indicated that the consolidated entity's "Cost of sales" for FY18 was $4,363,097, compared with $263,252 for the previous financial year (an increase of $4,099,845 or 1,557%).

New revenue sources

133. Authenticate Pty Ltd, one of iSignthis's subsidiaries, entered into an agreement dated 27 October 2017 with OT Markets Pty Ltd (**OT Markets Agreement**) to provide transaction processing services to OT Markets Pty Ltd (**OT Markets**). The OT Markets Agreement was varied by a letter dated 7 December 2017, which altered the services to be provided by Authenticate Pty Ltd from KYC/payment processing to the integration of a payment processing trading platform, 'Pandats.com'. Fee income of $871,160.93 (in a single receipt) was recorded by the iSignthis Group on 31 March 2018 in relation to the varied agreement.

134. Authenticate BV, another of iSignthis's subsidiaries, entered into an agreement with Nona Marketing Ltd (**Nona**) dated 11 December 2017 to provide marketing services (**Nona Marketing Agreement**). Nona is a company registered in the Marshall Islands. Fee income of $385,210.23 ($234,615.38 + $150,594.85) was recorded by the iSignthis Group in April and May 2018 in relation to this agreement.

135. Authenticate BV also entered into service agreements (Service Agreements) with:

    (a) Corp Destination Pty Ltd (**Corp Destination**), a company incorporated in Australia, dated 15 May 2018 and varied 7 June 2018;

    (b) FCorp Services Ltd (**FCorp Services**), a company incorporated in the Marshall Islands, dated 30 May 2018; and

    (c) IMMO Servis Group (**IMMO**), a company incorporated in the Czech Republic, dated 6 June 2018,

    for the provision of software and certain related services, (the **Services**).

136. Authenticate BV also entered into corresponding agreements with:

    (a) Fino Software Technologies Ltd (**Fino Software**), a company incorporated in Cyprus, to supply software and certain related services to Corp Destination and FCorp Services under the Service Agreements; and

    (b) Gibi Tech Ltd (**Gibi Tech**), a company incorporated in the Seychelles, to supply software and certain related services to IMMO under the Service Agreements.

137. The following amounts of revenue and related expenses were included in the FY18 Financial Report in relation to the Service Agreements, shown in Euros and Australian dollars:

Customer	**Gross Revenue**		**Related expenses**		**Net revenue**
	EU	AUD	EU	AUD	AUD
Corp Destination	526,525	810,038	489,100	752,462	57,576

					(or 7.1%)
FCorp Services	478,500	736,154	442,000	680,000	56,154 (or 7.6%)
IMMO	900,000	1,384,308	884,000	1,360,000	24,308 (or 1.7%)
Totals	**1,905,025**	**2,930,808**	**1,815,100**	**2,792,462**	**138,346** **(or 4.7%)**

138. The net revenue for all three projects was $138,346, which represents a profit margin of less than 5%.

139. The gross revenue of $2,930,808 from the Service Agreements constituted 53% of the revenue of the iSignthis Group for the six-month period ending 30 June 2018. The gross revenue from the Service Agreements together with the receipt of $871,161 under the varied OT Markets Agreement and the two receipts totalling $385,210 under the Nona Marketing Agreement amounted to $4,187,179, which constituted 76% of the revenue of the iSignthis Group for the six-month period ending 30 June 2018.

Performance Shares

140. iSignthis was previously named Otis Energy Ltd (**Otis**). On 16 March 2015, under an arrangement described in a prospectus issued and lodged with ASIC on 22 December 2014 (the **Prospectus**) and a supplementary prospectus dated 29 January 2015 (the **Supplementary Prospectus**), Otis, which was listed on the ASX, acquired all of the issued capital in iSignthis BV and ISX IP Ltd from iSignthis Limited (**iSignthis (BVI)**), a company incorporated in the British Virgin Islands.

141. The acquisition of iSignthis BV and ISX IP Ltd by Otis was a "reverse acquisition", as it resulted in iSignthis (BVI), the former owner of the shares in iSignthis BV and ISX IP Ltd, owning a majority of the shares in Otis (the listed entity), which thereafter owned iSignthis BV and ISX IP Ltd. Immediately after that acquisition, the name of the listed entity was changed from Otis to iSignthis Limited.

142. A condition of the acquisition of iSignthis BV and ISX IP Ltd by Otis was that Otis (subsequently renamed iSignthis Ltd) would issue 336,666,667 "performance shares" (the **Performance Shares**) to iSignthis (BVI).

143. Mr Karantzis was a shareholder and director of the iSignthis (BVI). Messrs Scott Minhane and Timothy Hart were shareholders of iSignthis (BVI). Under the arrangement, Messrs Karantzis, Minhane and Hart were to be appointed directors of Otis Energy Ltd (to be renamed as iSignthis Limited).

144. The 336,666,667 Performance Shares were issued on the following terms:

(a) 112,222,222 Class A Performance Shares would convert into fully paid ordinary shares on a one for one basis if the revenue of iSignthis was at

least $2.5 million in any six-monthly reporting period (being a period ending on 30 June or 31 December) up to 30 June 2018 (**the Expiry Date**);

(b) 112,222,222 Class B Performance Shares would convert into fully paid ordinary shares on a one for one basis if the revenue of iSignthis was at least $3.75 million in any six-monthly reporting period (being a period ending on 30 June or 31 December) up to the Expiry Date; and

(c) 112,222,223 Class C Performance Shares would convert into fully paid ordinary shares on a one for one basis if the revenue of iSignthis was at least $5.0 million in any six-monthly reporting period (being a period ending on 30 June or 31 December) up to the Expiry Date.

145. If the milestone for the conversion of a particular class of Performance Shares was not met, then all the Performance Shares of that class would consolidate and convert into just one ordinary share after the Expiry Date. If the milestones for the conversion of all three classes of Performance Shares were met in the six-month period ending 30 June 2018, then, after the issue of the new ordinary shares, the new ordinary shares would constitute approximately 33% of the issued ordinary shares of iSignthis.

146. The Prospectus indicated that Mr Karantzis held an interest of more than 20% in iSignthis (BVI) and Mr Karantzis would have a "relevant interest" in:

(a) Ordinary shares and Performance Shares issued to iSignthis (BVI) on the acquisition of iSignthis BV and ISX IP Ltd; and

(b) Any ordinary shares that may be issued to iSignthis (BVI) on the conversion of the Performance Shares.

147. None of the milestones for the conversion of Performance Shares were met in the six-month periods ending 30 June 2015, 31 December 2015, 30 June 2016, 31 December 2016, 30 June 2017 or 31 December 2017.

148. On 30 August 2017, iSignthis reported to the ASX that its revenue for the financial year ending 30 June 2017 was $666,305.

149. On 28 February 2018, iSignthis reported to the ASX that its revenue for the first half of the FY18 year (ie the six- month period ending 31 December 2017) was $799,499.

150. iSignthis made the following announcements to the ASX regarding its revenue in the six months ending 30 June 2018 (ie. the second half of FY18):

(a) On 26 April 2018, the company announced that its revenue for the third quarter (ie 1 January 2018 to 31 March 2018) was $1.48 million and year-to-date was $2.28 million;

(b) On 22 June 2018, the company announced to the ASX that:

> "Cash receipts for Half Two (H2) are in excess of Three Million Seven Hundred and Fifty Dollars ($3,750,000). Subject to audit, the receipts will

satisfy the Milestone A and Milestone B requirements for issue of Class A and Class B Performance Rights under Section 14.2 of the iSignthis Ltd Prospectus dated 22 December 2014.": and

(c) On 31 July 2018, the company issued a quarterly announcement to the ASX stating that its unaudited consolidated revenue for the six-month period ending 30 June 2018 was in excess of $5.5 million. The announcement also stated that:

> "Based on the unaudited revenue of the 6 months from 1st January 2018 to 30 June 2018, estimated as being in excess of the A$5.0m Target Milestone, it will meet the requirements of Tranche 1, 2 and 3 of the Performance Rights. On this basis, 336,666,667 Ordinary shares will be issued in the September quarter period, taking the total number of shares on issue for the Company to 1,004,832,159.

151. The Prospectus stated:

> "...In addition, the Vendor will be issued 336,666,667 Performance Shares on completion of the Acquisition (refer to Section 14.2 for further details). Mr. Karantzis will have a relevant interest in these Performance Shares and any Shares issued on conversion of the Performance Shares. If all of the Performance Shares are converted to Shares prior to the expiry date of the Performance Shares, then the Vendor will hold (and Mr. Karantzis will have a relevant interest in) 635,000,000 Shares which would increase the voting power of the Vendor (and consequently Mr Karantzis) to 70.71% (assuming no Shares are issued to the Vendor for the Cash Shortfall Amount).
>
> Mr Karantzis is a director and shareholder of the Vendor. Mr Hart and Mr Minehane are shareholders of the Vendor.
>
> …
>
> Directors, Mr. Nickolas John Karantzis, Mr. Scott Minehane and Mr. Timothy Hart and the Chief Financial Officer and Company Secretary, Mr. Todd Richards are shareholders of the Vendor.
>
> Mr Karantzis is also a director of the Vendor."

152. GT Audit did not audit iSignthis (BVI), as that entity did not form part of the iSignthis Group.

153. As stated above, in the six-month period ending 30 June 2018:

(a) The OT Markets Agreement (as varied) contributed $871,161 to the iSignthis Group's revenue;

(b) The Nona Marketing Agreement contributed $385,210 to the iSignthis Group's revenue; and

(c) The Service Agreements contributed $2,930,808 to the iSignthis Group's revenue.

154. In the six-month period ending 30 June 2018 iSignthis' revenue totalled $5,512,057.

155. This meant that all of the milestones for the conversion of the Class A, Class B and Class C Performance Shares were achieved. Consequently, 336,666,667 ordinary shares were issued to iSignthis (BVI) on conversion of the Performance Shares, which represented 33.5% of the share capital of iSignthis (immediately after the issuing of the shares). Immediately after the issue of the 336,666,667 ordinary shares, there was no material change to the price of the ordinary shares.

156. iSignthis issued its annual report for the financial year ended 30 June 2018 on 28 August 2018. This included a financial report which disclosed revenue of $6,338,969, an increase from $1,371,192 in the previous financial year.

157. The reliability of the reported revenue of iSignthis was important to users of the FY18 Annual Report, particularly iSignthis shareholders, whose shareholdings stood to be, and were, substantially diluted by the conversion of the Performance Shares, and also to other market participants or prospective investors in iSignthis.

Part E. THE CONTENTIONS GENERALLY

158. In the Amended Concise Outline filed on 12 April 2021, ASIC contended that Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor in relation to each of the following aspects of the FY18 Audit:

(a) The assessment of the risks of material misstatement of revenue (Specific Contention 1);

(b) The auditing of revenue, receipts and receivables relating to the Services (Specific Contention 2);

(c) The auditing of expenses, payments, creditors and accruals in respect of the Services (Specific Contention 4);

(d) The auditing of related party disclosures (Specific Contention 6);

(e) The steps taken in respect of the auditor's responsibilities relating to fraud (Specific Contention 7); and

(f) The auditor's report (Specific Contention 9)[12].

159. Each of these contentions was underpinned by allegations that the Audit was not conducted in compliance, in particular respects, with auditing standards. We shall deal with each contention in turn.

[12] The Amended Concise Outline had included three other Specific Contentions (3, 5 and 8) which ASIC did not press at the Hearing

PART F - CONTENTION 1: IDENTIFICATION AND ASSESSMENT OF THE RISKS OF MATERIAL MISSTATEMENT OF REVENUE

160. Contention 1 is that Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor regarding the identification and assessment of risks in relation to the reporting of revenue.

161. This contention is based upon a number of specific matters set out in sub-contentions 1(i)-(iv).

Sub-contention 1(i) – failure to assess adequately and evaluate identified risk

162. Sub-contention 1(i) is set out in paragraph 39.1 of the parties Joint Submissions as follows:

> "Contrary to paragraphs 26(b) and (c) of **ASA 315** *Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment*, Mr Taylor, having identified "revenue and receivables not valid" as a significant risk, did not adequately assess the identified risk and evaluate whether it related more pervasively to the financial report as a whole and potentially affected many assertions, nor did he adequately relate the identified risk to what can go wrong at the assertion level, taking account of relevant controls that the auditor intended to test."

The facts and parties' submissions - Sub-contention 1(i)

163. We note that the agreed facts set out in the SAFA include:

> "49. The Audit Team assessed "Recorded revenue and receivables not valid (due to error or fraud)" as a "significant risk" and, in this regard, identified the risk of management override of controls.
>
> 50. The Audit Team "determined the occurrence of revenue to be a key audit matter due to the application of judgement due to the complexity and customised nature of the arrangements entered into with customers".
>
> 51. As part of the audit process, sales revenue testing was conducted with the stated aims of ensuring that sales revenue has occurred and has not been materially misstated and has been recognised appropriately in the period and is line with contract terms.
>
> 52. The Audit File does not record that the Audit Team's assessment of risks relating to "revenue" identified and evaluated the following:
>
> 52.1 the fact that ASIC had issued a media release warning the public not to deal with OT Markets;
>
> 52.2 the significance of the Performance Shares in relation to the risk of misstatements of revenue;
>
> 52.3 Mr Karantzis, two other members of the iSignthis Board and Mr Richards (the Chief Financial Officer) were beneficiaries of the Performance Share arrangement; or

52.4 the significance of the fact that revenue of $4,377,260.98, comprising 69% of the total revenue of the iSignthis Group for FY18, including all of the revenue from the Nona Marketing Agreement and the Service Agreements, was recorded in Authenticate BV, a company incorporated in the Netherlands.

53. At the time of the FY18 Audit, Mr Taylor was aware of the Performance Shares and the revenue milestones for the conversion of the Performance Shares."

164. The parties' submissions were to the following effect:

(a) Audit Workpaper Significant Risk Planning – ISX FY2018 identified the risk of "Recorded revenues and receivables not valid (due to error or fraud)" and classified the risk as significant.[13];

(b) The Audit Team "determined the occurrence of revenue to be a key audit matter due to the application of judgement due to the complexity and customised nature of the arrangements entered into with customers".[14]; and

(c) The fact that the risks had been identified meant that under paragraph 26(b) and (c) of ASA 315, the auditor was required to assess the risk and evaluate whether it related more pervasively to the financial report as a whole and potentially affected many assertions. The term "assertions" in this context means (see paragraph 4 of ASA 315):

> "representations by management and those charged with governance, explicit or otherwise, that are embodied in the financial report, as used by the auditor to consider the different types of potential misstatements that may occur";

(d) A substantial part (46%) of the revenue of the iSignthis Group arose from three transactions (**the Services transactions**) which were substantially accounted for under AASB 111 *Construction Contracts.* In broad terms, AASB 111 specified that the revenue and expenses relating to a long term construction contract were to be brought to account on the basis of "percentage of completion" of the contract. Accordingly, any risk of material misstatement of revenue resulting from an error in the estimate of the extent of completion of the services under the contracts at 30 June 2018 was a risk of material error not only in revenue but also expenses, debtors and liabilities and so related more pervasively to the financial report as a whole. However, Mr Taylor did not ensure that the identified risks arising from the same source - the risks of an incorrect assertion regarding the extent of completion of contracted work - were adequately assessed as to whether they related more pervasively to the financial report as a whole;

(e) Furthermore, no assessment was made of the potential implications of the identified risk at the "assertion level". In particular, the identification of a risk of material misstatement of revenue due to fraud or error did not result in an evaluation of the risk that an assertion by management which was

[13] SAFA [49].
[14] SAFA [50].

relevant to the amount of the recorded revenue – particularly, an assertion as to the extent to which the services required by the Services transactions had been completed by 3 June 2018 – might be incorrect.

165. Mr Taylor admitted that by:

(a) Failing to evaluate whether the identified risk of material misstatement of revenue and receivables related to the financial report as a whole and potentially affected many assertions; and

(b) Failing to relate the identified risks to "what can go wrong at the assertion level",[15]

he did not comply with paragraphs 26(b) and (c) of ASA 315.[16]

Consideration

166. This contention focuses on ASA 315[17], particularly paragraphs 26(b) and (c).

167. ASA 315 is an auditing standard entitled "Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment". Its objective is stated in paragraph 3 as follows:

> "3. The objective of the auditor is to identify and assess the risks of material misstatement, whether due to fraud or error, at the financial report and assertion levels, through understanding the entity and its environment, including the entity's internal control, thereby providing a basis for designing and implementing responses to the assessed risks of material misstatement."

168. Paragraphs 5 to 10 of ASA 315 deal with "Risk Assessment Procedures and Related Activities". Paragraph 5 provides, in part:

> "5. The auditor shall perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial report and assertion levels …"

169. "Assertions" is defined in paragraph 4(a) as:

> "(a) Assertions means representations by management and those charged with governance, explicit or otherwise, that are embodied in the financial report, as used by the auditor to consider the different types of potential misstatements that may occur."

170. Paragraphs 11 to 24 of ASA 315 come under the heading "The Required Understanding of the Entity and its Environment, Including the Entity's Internal Control", and deal with those matters.

---

[15] ASA 315 [26(c)].
[16] SAFA [57.2].
[17] The Parties relied upon the version of ASA 315 which was in force at the relevant time, namely ASA 315 (December 2015).

171. Paragraphs 25 to 31 of ASA 315 come under the heading "Identifying and Assessing the Risks of Material Misstatement", and deal with those matters.

172. Paragraphs 25 to 27 of ASA 315, as relevantly relied upon by the parties, provide as follows:

> **"Identifying and Assessing the Risks of Material Misstatement**
>
> 25. The auditor shall identify and assess the risks of material misstatement at:
>
> (a) the financial report level; and (Ref: Para. A122-A125)
>
> (b) the assertion level for classes of transactions, account balances, and disclosures (Ref: Para. A126-A131)
>
> to provide a basis for designing and performing further audit procedures.
>
> 26. For this purpose, the auditor shall:
>
> . . .
>
> (b) Assess the identified risks, and evaluate whether they relate more pervasively to the financial report as a whole and potentially affect many assertions;
>
> (c) Relate the identified risks to what can go wrong at the assertion level, taking account of relevant controls that the auditor intends to test; and (Ref: Para. A138-A140)
>
> (d) …
>
> *Risks that Require Special Audit Consideration*
>
> 27. As part of the risk assessment as described in paragraph 25 of this Auditing Standard, the auditor shall determine whether any of the risks identified are, in the auditor's judgement, a significant risk. In exercising this judgement, the auditor shall exclude the effects of identified controls related to the risk."

173. In the present case, it is accepted that the auditor had identified the risk of "Recorded revenues and receivables not valid (due to error or fraud)" and had classified the risk as significant. Accordingly, the auditor was required,

(a) Under paragraph 26(b), to assess the identified risks and evaluate whether they related more pervasively to the financial report as a whole and potentially affected many assertions; and

(b) Under paragraph 26(c), to relate the identified risks to what can go wrong at the assertion level

174. Mr Taylor accepts that this was not done, in the circumstances referred to in paragraph 157 and 163, 164 (d) and 164 (e) above. Mr Taylor admits the facts underpinning those paragraphs, which are consistent with the documents tendered by the parties.

175. We note that the obligations under paragraph 26(a) and (b) were imposed upon the "auditor" rather than specifically upon Mr Taylor. However, Mr Taylor was obliged to ensure that the Audit was conducted in accordance with the auditing standards.

176. In the circumstances, it follows from paragraph 174 that Mr Taylor did not ensure that the Audit was conducted in accordance with the auditing standards, and thus breached his duty as an auditor under s 307A(2).

177. In our view, the failures to ensure that the auditor assessed the identified risks, and evaluated whether they related more pervasively to the financial report as a whole and potentially affected many assertions were, against the background facts described in paragraphs 157 and 163, 164 (d) and 164 (e), serious. Whilst there was no suggestion that there was, in fact, any fraud in the present case, that is largely irrelevant. If the circumstances required the auditor to assess and evaluate the identified risks and the auditor did not do so, the failure is not excused by reason of the fact that it turned out that there was, in fact, no fraud.

Sub-Contention 1(ii)

178. Sub-contention 1(ii) is set out in paragraph 39.2 of the parties' Joint Submissions as follows:

> "39.2 Contrary to paragraphs 25 and 27 of ASA 315, Mr Taylor did not ensure that risks of material misstatement at the financial report level and the assertion level arising specifically from the Performance Shares, transactions involving foreign entities and transactions with OT Markets/OT Capital were adequately identified and assessed and determined to be significant risks"

The facts and parties' submissions - sub-contention 1(ii)

179. The parties made the following submissions concerning Sub-contention 1(ii):

> "45.1. The risk assessment that is required by ASA 315 is an assessment based on an understanding of the entity and its environment. The title of the Auditing Standard makes this clear, as does the text of the Auditing Standard at paragraphs 11 to 24 and paragraphs A25 to A121.
>
> 45.2. The understanding that the auditor is required to have of the entity and its environment includes an understanding of "its ownership and governance structures" (see paragraph 11(b)(ii) of ASA 315).
>
> 45.3. The existence and terms of issue of the Performance Shares (as recorded in the Prospectus and Supplementary Prospectus and as recorded in iSignthis's financial reports for the years ended 30 June 2016 and 2017), were matters relating to the ownership and governance structures of iSignthis. At the time of the FY18 Audit, Mr Taylor was aware of the Performance Shares and the revenue milestones for the conversion of the Performance Shares.
>
> 45.4. The existence and terms of issue of the Performance Shares were matters that should have been specifically identified as giving rise to a risk of misstatement of revenue, for the following reasons:
>
> > 45.4.1. The milestones for the conversion of the Performance Shares into ordinary shares of iSignthis were measures of gross revenue, not profit, in a six-month period (that is, the milestones could potentially be achieved if both revenue and expenses were overstated in a six month period).

45.4.2. None of the milestones for the conversion of the Performance Shares had been met in any six-month period to 31 December 2017.

45.4.3. The last six-month period in which any of the milestones for the conversion of the Performance Shares could be met was the six month period to 30 June 2018.

45.4.4. If the milestones for the conversion of all three classes of Performance Shares were met in the six-month period ending 30 June 2018, then the new ordinary shares issued on the conversion of the Performance Shares would constitute approximately 33% of the issued ordinary shares of iSignthis.

45.4.5. Messrs Richards (the Chief Financial Officer), Karantzis (Managing Director and Chief Executive Officer) and Hart (Chairman) held interests in iSignthis (BVI), the entity to which the Performance Shares were issued.

45.4.6. Consequently, key executives and members of the Board of iSignthis had a clear personal interest in the achievement of the revenue milestones for the conversion of the Performance Shares in the six-month period ending 30 June 2018. This was not only a risk of fraud; it was also a risk of bias (conscious or otherwise) in the making of assertions relevant to the revenue of the iSignthis Group in the six-month period to 30 June 2018.

45.5. The relationship between those factors created a clear, specific and significant risk of a misstatement of revenue (through error or fraud) which should have been identified as such by the auditor, particularly as the revenue recorded for the iSignthis Group for the six month period ending 30 June 2018 was exponentially (666%) greater than the revenue for the preceding six month period.

45.6 No such specific risk was recorded in the risk assessment procedures undertaken by the auditor. This supports an inference that the risk was not identified.

45.7 A further specific risk of material misstatement of revenue arose from the circumstances that:

45.7.1 three transactions giving rise to substantial revenues (the Nona Marketing Agreement and two of the three Service Agreements) were entered into with entities incorporated in foreign countries (the Marshall Islands in the case of Nona Marketing and FCorp Services and the Czech Republic in the case of IMMO);

45.7.2 all three agreements through which the iSignthis Group outsourced its obligations under the Service Agreements were entered into with companies incorporated in foreign countries (the Seychelles in the case of Gibi Tech and Cyprus in the case of Fino Software);

45.7.3 the Nona Marketing Agreement and Service Agreements and corresponding outsourcing agreements were entered into by Authenticate BV, a subsidiary incorporated in the Netherlands;

45.7.4 revenue of $4,377,260.98, comprising 69% of the total revenue of the iSignthis consolidated entity for FY18, was recorded in Authenticate BV; and

45.7.5 the auditor did not plan to visit the location at which Authenticate BV's operations were managed and no component auditor as defined in paragraph 9(b) of ASA 600 was appointed to separately audit the financial statements of Authenticate BV.

45.8 No such specific risk was identified in the documented risk assessment procedures undertaken by the auditor.

45.9 Mr Taylor admits that by failing to identify the risks of material misstatement arising from the Performance Shares, transactions involving foreign entities and transactions with OT Markets/OT Capital, he did not comply with paragraphs 25 and 27 of ASA 315."

Consideration

180. We accept the parties' submissions. We note that the obligations in paragraphs 25 and 27 of ASA 315 were obligations imposed upon the auditor but Mr Taylor was required to ensure that the Audit was carried out in accordance with the ASA 315 paragraphs 25 and 27.

181. The factual matters upon which these submissions are based (in particular, the matters in paragraphs 45.4.1 to 45.4.6, 45.6 to 45.8 above) were admitted by Mr Taylor and are supported by the documents in evidence.

182. The matters identified in the parties' submissions (particularly paragraphs 45.4, 45.5 and 45.7) provide convincing reasons why the risks of material misstatement at the financial report level and the assertion level arising specifically from the Performance Shares, transactions involving foreign entities and transactions with OT Markets/OT Capital should have been identified and assessed as significant risks.

183. Mr Taylor admits that these risks were not identified. In the circumstances, we are satisfied of the correctness of the parties' submissions in relation to Sub-contention 1(ii) and we are satisfied that Mr Taylor failed to ensure that the Audit was carried out in accordance with ASA 315 and thus failed to carry out or perform the duties of an auditor in this respect.

Sub-contention 1(iii)

184. Sub-contention 1(iii) is set out in paragraph 39.3 of the parties' Joint Submissions as follows:

"39.3. Contrary to paragraph 31 of ASA 315, Mr Taylor did not ensure that the risk of material misstatement of revenue was revised having obtained evidence that was inconsistent with the evidence on which the original risk assessment was based"

Facts and parties' submissions - Sub-contention 1(iii)

185. Mr Taylor admitted that

(a) Audit evidence was obtained which was inconsistent with the evidence on which the Audit Team originally based its risk assessment; and

(b) The Audit File does not record that the Audit Team and/or Mr Taylor revised their assessment of the risks of material misstatement of revenue (particularly how a material misstatement of revenue may occur)[18].

186. The parties jointly submitted, in paragraph 47 of their Joint Submissions:

> "47. The auditing of revenue and expenses relating to the Services transactions revealed:
>
> 47.1. difficulties in verifying the existence and addresses of customers for the Services transactions;
>
> 47.2. the existence of unsigned and internally inconsistent Service Agreements and corresponding contracts with suppliers;
>
> 47.3. inconsistencies between the terms of Service Agreements and the terms on which payments were being made to members of the iSignthis Group;
>
> 47.4. inconsistencies between amounts shown on invoices for the Services transactions and management's assertions regarding the amounts received in relation to those invoices;
>
> 47.5. management resistance to the direct contacting of a customer of the iSignthis Group by a member of the Audit Team; and
>
> 47.6. amounts being received into a bank account in which funds were held by iSignthis eMoney for merchants which was not the account stated on the invoice and was not an account used by the iSignthis entity which provided the product or service."

187. These are matters of fact which Mr Taylor has admitted (see paragraphs 45.9 and 176 of the Joint Submissions). The parties' Joint Submissions continue, at paragraphs 48 to 51:

> "48. Those issues pointed to risk factors relating to the reliability of management assertions in respect of the recognition of revenue.
>
> 49. The discovery of those risk factors should have caused Mr Taylor to revise his assessment of material misstatement to ensure that the risk regarding the reliability of management assertions in respect of the recognition of revenue was specifically identified. Had he done so, Mr Taylor would have been required by paragraph 31 of ASA 315 to "modify the further planned audit procedures accordingly" and by paragraph 6 of ASA 330 *The Auditor's Responses to Assessed Risks* to ensure that "further audit procedures … responsive to the assessed risks of material misstatement at the assertion level" were designed and performed.
>
> 50. The auditor's assessment of risk was not revised to take account of the specific risk of misstatement of revenue relating to the reliability of management assertions.

[18] SAFA paragraph 54.

51. Mr Taylor admits that by failing to revise the risk of material misstatement of revenue having identified issues with the reliability of relevant management assertions, he did not comply with paragraph 31 of ASA 315."

Consideration

188. Paragraph 31 of ASA 315 provides as follows:

> *"Revision of Risk Assessment*
>
> 31. The auditor's assessment of the risks of material misstatement at the assertion level may change during the course of the audit as additional audit evidence is obtained. In circumstances where the auditor obtains audit evidence from performing further audit procedures, or if new information is obtained, either of which is inconsistent with the audit evidence on which the auditor originally based the assessment, the auditor shall revise the assessment and modify the further planned audit procedures accordingly. (Ref: Para. A152)"

189. We accept the parties' submissions in relation to Sub-contention 1(iii). Mr Taylor admits the relevant facts and admits that audit evidence was obtained which was inconsistent with the evidence on which the Audit Team originally based its risk assessment, in particular, the matters in paragraph 47 of the parties' Joint Submissions. We agree that the matters referred to in that paragraph pointed to risk factors relating to the reliability of management assertions in respect of the recognition of revenue and should have caused Mr Taylor to revise his assessment of material misstatement to ensure that the risk regarding the reliability of management assertions in respect of the recognition of revenue was specifically identified. Mr Taylor admits that this was not done.

190. In the circumstances, Mr Taylor failed, in this respect, to ensure that the Audit was carried out in accordance with ASA 315 and thus failed to carry out or perform the duties of an auditor.

Sub-contention 1(iv)

191. Sub-contention 1(iv) is set out in paragraph 39.4 of the parties' Joint Submissions as follows:

> "Contrary to paragraph 15 of ASA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards*, Mr Taylor failed to perform the risk assessment and evaluation procedures with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated"

Facts and parties' submissions - Sub-contention 1(iv)

192. This sub-contention relies upon the same factual circumstances relied upon in support of sub-contentions 1(i)-(iii). The parties submit that these circumstances establish that Mr Taylor failed to ensure that the Audit was performed with professional scepticism in accordance with ASA 200, paragraph 15.

Consideration

193. Paragraph 15 of ASA 200 is in the following terms:

> "Professional Scepticism
>
> 15. The auditor shall plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated. (Ref: Para. A20-A24)"

194. Paragraphs A20 to A22, in the "Application" section of ASA 200, provide:

> "A20. Professional scepticism includes being alert to, for example:
>
> - Audit evidence that contradicts other audit evidence obtained.
> - Information that brings into question the reliability of documents and responses to enquiries to be used as audit evidence.
> - Conditions that may indicate possible fraud.
> - Circumstances that suggest the need for audit procedures in addition to those required by the Australian Auditing Standards.
>
> A21. Maintaining professional scepticism throughout the audit is necessary if the auditor is, for example, to reduce the risks of:
>
> - Overlooking unusual circumstances.
> - Over generalising when drawing conclusions from audit observations.
> - Using inappropriate assumptions in determining the nature, timing, and extent of the audit procedures and evaluating the results thereof.
>
> A22. Professional scepticism is necessary to the critical assessment of audit evidence. This includes questioning contradictory audit evidence and the reliability of documents and responses to enquiries and other information obtained from management and those charged with governance. It also includes consideration of the sufficiency and appropriateness of audit evidence obtained in the light of the circumstances, for example in the case where fraud risk factors exist and a single document, of a nature that is susceptible to fraud, is the sole supporting evidence for a material financial report amount."

195. Mr Taylor admitted the factual circumstances upon which Sub-contention 1(iv) was based (which included the factual circumstances set out above in relation to Sub-contentions 1(i) to (iv)). Those circumstances include the significance of the Performance Shares in relation to the risk of misstatements of revenue, the fact that iSignthis Board members were beneficiaries of the Performance Share arrangement, the significance of the fact that revenue of $4,377,260.98, comprising 69% of the total revenue of the iSignthis Group for FY18, was recorded in Authenticate BV, a company incorporated in the Netherlands and the inconsistencies and difficulties revealed in the auditing of revenue and expenses relating to the Services transactions, as referred to in paragraph 47 of the parties' Joint Submissions.

196. We agree that the nature of the risk assessment and evaluation procedures adopted, having regard to those circumstances, show a lack of professional scepticism in the performance of the Audit. This is admitted by Mr Taylor (see paragraph 57.5 of the SAFA).

197. In the circumstances, Mr Taylor failed in his duty as an auditor to ensure that the Audit was performed with professional scepticism in accordance with ASA 200, paragraph 15.

Contention 1 - Additional admission 1(i): Contravention of paragraph 28(a) and (c) – (f) of ASA 315

198. Included as a supplement to Contention 1 are two short additional sub-contentions.

199. The first is set out in paragraphs 54.1 of the Joint Submissions as follows:

> "Contrary to paragraphs 28(a) and (c)-(f) of ASA 315, in exercising judgement as to which risks were significant risks, Mr Taylor did not ensure that sufficient consideration was paid to the fraud risks associated with the link between reported revenue and the value of the Performance Shares."

Consideration

200. Paragraph 28 of ASA 315 provides (in part):

> "28. In exercising judgement as to which risks are significant risks, the auditor shall consider at least the following:
>
> (a) Whether the risk is a risk of fraud;
>
> …
>
> (c) The complexity of transactions;
>
> (d) Whether the risk involves significant transactions with related parties;
>
> (e) The degree of subjectivity in the measurement of financial information related to the risk, especially those measurements involving a wide range of measurement uncertainty; and
>
> (f) Whether the risk involves significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual. (Ref: Para. A141-A145)."

201. In paragraph 57.1 of the SAFA, Mr Taylor admits that contrary to paragraphs 28(a) and (c)-(f) of ASA 315, in exercising judgement as to which risks were significant risks he did not ensure that "sufficient consideration" was paid to the fraud risks associated with the link between reported revenue and the value of the Performance Shares.

202. However, this admission does not establish the factual basis for a failure to consider one or more of the specific matters in paragraph 28(a) and (c)-(f) and the parties did not refer the Panel to any other evidence supporting this

contention. The evidence we have referred to above in relation to the other sub-contentions does not inexorably establish these failures.

203. The obligation under paragraph 28(a) ASA 315 is to consider, when exercising judgement as to which risks are significant risks, at least "whether the risk is a risk of fraud". It is not clear to us from the evidence or admitted facts, that the auditor did not perform this obligation. We note that the facts relied upon above include the matter in paragraph 49 of the SAFA:

> "49. The Audit Team assessed "Recorded revenue and receivables not valid (due to error or fraud)" as a "significant risk" and, in this regard, identified the risk of management override of controls."

204. Prior to the Hearing, the Panel expressly alerted the parties of the need to focus on elaborating or explaining the basis for agreed conclusions concerning failures, particularly where these relate to Mr Taylor not undertaking steps "adequately" or "sufficiently", and referred to the Board decision in *ASIC v Santangelo* 03NSW/23 at paragraph [38]. The parties did not take the matter further in oral submissions.

205. As to paragraph 28(c) of ASA 315, the obligation requires the auditor, in exercising judgement as to which risks are significant risks, to consider at least the complexity of transactions.

206. We note that the facts already considered above include paragraph 50 of the SAFA which states:

> "50. The Audit Team "determined the occurrence of revenue to be a key audit matter due to the application of judgement due to the complexity and customised nature of the arrangements entered into with customers".

207. We are not satisfied that the evidence or specific admissions of fact show that the auditor did not, in exercising judgement as to which risks were significant risks, consider the complexity of transactions.

208. As to sub-paragraphs (d) to (f) of paragraph 28 of ASA 315, the obligation requires the auditor in exercising judgement as to which risks are significant risks, to consider at least:

(a) In the case of sub-paragraph 28(d), whether the risk involves significant transactions with related parties;

(b) In the case of sub-paragraph 28(e), to consider at least the degree of subjectivity in the measurement of financial information related to the risk, especially those measurements involving a wide range of measurement uncertainty; and

(c) In the case of sub-paragraph 28(f), to consider whether the risk involves significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual.

209. We are not satisfied that the evidence or specific admissions of fact show that the auditor did not, in exercising judgement as to which risks were significant risks, consider these matters.

210. We should make it clear that we are not concluding that Mr Taylor *did* ensure that sufficient consideration was paid to the fraud risks associated with the link between reported revenue and the value of the Performance Shares. What we are saying is that clearer identification of the specific evidence or specific admissions of fact was necessary, (beyond Mr Taylor's broad admission in paragraph 57.1 of the SAFA) to satisfy us that Mr Taylor breached the specific obligations set out in paragraphs 28(a) and (c)-(f) of ASA 315. We note, as discussed later in respect of Contentions 6 and 7 below, that we are otherwise satisfied that Mr Taylor failed, in significant respects, to perform the duties of an auditor with regard to related party disclosures and with regard to the auditor's responsibilities relating to fraud.

211. In the circumstances, we are not satisfied that Mr Taylor failed to ensure that the Audit was carried out in accordance with the auditing standards in respect of Additional Admission 1(i).

Contention 1 - Additional admission 1(ii): Contravention of paragraph 10 of ASA 320

212. The second supplemental contention relates to an alleged contravention of paragraph 10 of ASA 320 and is set out in paragraph 57.6 of the SAFA as follows:

> "57.6 contrary to paragraph 10 of ASA 320, he failed to determine materiality for the financial report as a whole at an appropriate level based on revenue, in circumstances where there was no history of earnings."

The parties' submissions

213. The parties submitted that paragraph 10 of ASA 320 requires the auditor to set a materiality limit for the entity as a whole. Paragraph A4 of ASA 320 explains that this typically involves applying a percentage to a chosen benchmark. The first step is the choice of an appropriate benchmark. Paragraph A5 of ASA 320 provides guidance on the selection of the benchmark. It states that profit before tax from continuing operations is often used for profit-oriented entities, but that "[w]hen profit before tax from continuing operations is volatile, other benchmarks may be more appropriate, such as gross profit or total revenues".

214. Mr Taylor set a materiality threshold of $271,000 for the purposes of the FY18 Audit Report. The materiality threshold was based on the earnings before income taxes. This represented 5% of the reported loss of $5,413,000 before income taxes. However, where there is no history of earnings, as was the situation here, it was appropriate to use a materiality level based on revenue, not loss before income taxes. Using revenue to set materiality, the range used would have been between 0.25% and 3% of revenue. The materiality threshold used would have been a maximum of 3% of the reported revenue of $6,338,000 – that is $190,000, rather than $271,000.

215. The parties submitted that the Services transactions, which were a major contributor to iSignthis's revenue and expenses for FY18, could not appropriately be regarded as part of iSignthis's "continuing operations" for the purposes of selecting an appropriate materiality benchmark. They were substantively low-margin and concluded on a one-off transactional basis. Moreover, iSignthis had not made a profit since the effective commencement of the company's new business following the reverse takeover of Otis Limited in 2015. In these circumstances, it was appropriate to use revenue as the relevant materiality benchmark.

216. Mr Taylor admits that by setting a materiality limit for the FY18 Audit based on loss before income taxes, instead of revenue, he failed to comply with paragraph 10 of ASA 320.

Consideration

217. Paragraph 10 of ASA 320 provides:

> **"Requirements**
>
> **Determining Materiality and Performance Materiality When Planning the Audit**
>
> 10. When establishing the overall audit strategy, the auditor shall determine materiality for the financial report as a whole. If, in the specific circumstances of the entity, there is one or more 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, the auditor shall also determine the materiality level or levels to be applied to those particular classes of transactions, account balances or disclosures. (Ref: Para. A3-A12)"

218. Paragraphs A4 to A5 of ASA 320 provide:

> *"Use of Benchmarks in Determining Materiality for the Financial Report as a Whole (Ref: Para. 10)*
>
> A4. Determining materiality involves the exercise of professional judgement. A percentage is often applied to a chosen benchmark as a starting point in determining materiality for the financial report as a whole. Factors that may affect the identification of an appropriate benchmark include the following:
>
> - The elements of the financial report (for example, assets, liabilities, equity, revenue, expenses);
> - Whether there are items on which the attention of the users of the particular entity's financial report tends to be focused (for example, for the purpose of evaluating financial performance users may tend to focus on profit, revenue or net assets);
> - The nature of the entity, where the entity is in its life cycle, and the industry and economic environment in which the entity operates;

- The entity's ownership structure and the way it is financed (for example, if an entity is financed solely by debt rather than equity, users may put more emphasis on assets, and claims on them, than on the entity's earnings); and

- The relative volatility of the benchmark.

A5. Examples of benchmarks that may be appropriate, depending on the circumstances of the entity, include categories of reported income such as profit before tax, total revenue, gross profit and total expenses, total equity or net asset value. Profit before tax from continuing operations is often used for profit-oriented entities. When profit before tax from continuing operations is volatile, other benchmarks may be more appropriate, such as gross profit or total revenues."

219. Read literally, paragraph 10 of ASA 320 simply imposes an obligation upon the auditor to determine materiality for the financial report as a whole. Here, the parties agree that the auditor *did* determine materiality for the financial report as a whole. However, the crux of the complaint is that the auditor determined materiality based upon a benchmark which was inappropriate to the circumstances of this company. The Services transactions, which were a major contributor to iSignthis's revenue and expenses for FY18, could not appropriately be regarded as part of iSignthis's continuing operations for the purposes of selecting an appropriate materiality benchmark. There was no history of earnings. In the circumstances, the appropriate benchmark to use in determining materiality was revenue, not loss before income taxes.

220. In our view, paragraph 10 of ASA 320, in requiring the auditor to determine materiality for the financial report as a whole, imposes an implicit obligation on the auditor to determine materiality on the basis of an appropriate benchmark, not simply to carry out a mechanical process of determining materiality, regardless of the circumstances. If this were not the case, the obvious purpose of the paragraph would be eviscerated. So too, would the obligation of the Lead Auditor to ensure that the audit was carried out in accordance with paragraph ASA 320.

221. The application provisions make it clear that materiality should be determined as a matter of professional judgment after giving consideration to relevant circumstances.

222. In the circumstances, we are satisfied that the auditor did not comply with paragraph 10 of ASA 320 and we are satisfied that Mr Taylor did not carry out or perform the duties of an auditor adequately and properly, in failing to ensure that the auditor determined materiality based upon a benchmark which was appropriate in the circumstances.

PART G - CONTENTION 2: AUDITING OF REVENUE, RECEIPTS AND RECEIVABLES IN RESPECT OF THE SERVICE AGREEMENTS

223. Contention 2, as originally drafted, contained a wide range of sub-contentions regarding the auditing of revenue, receipts and receivables in respect of the Service Agreements. By the time of the hearing, a number of the sub-contentions

were not pressed. The allegations which were maintained by ASIC were, in substance:

(a) Contrary to paragraph 6 of ASA 500 *Audit Evidence*, Mr Taylor failed to obtain sufficient appropriate evidence to support:

i. the applicability of AASB 111 Construction Contracts to the Services;

ii. verification of the contractual arrangements between the iSignthis Group and the customers for the Services

iii. the occurrence, accuracy and disclosure of revenue from the Services and the existence, accuracy and recoverability of receivables arising from the Services (**Sub-contention 2(i)**).

(b) Contrary to paragraph 11(a) of ASA 450 *Evaluation of Misstatements Identified During the Audit*, Mr Taylor failed to adequately determine whether uncorrected misstatements were material, individually or in aggregate (**Sub-contention 2(vii)**); and

(c) Contrary to paragraph 15 of ASA 200, Mr Taylor failed to audit revenue, receipts and receivables relating to the Services with an appropriate level of professional scepticism (**Sub-contention 2(viii)**).

Sub-contention 2(i) - failure to obtain sufficient appropriate evidence - paragraph 6 of ASA 500 Audit Evidence

224. ASIC contends, in sub-contention 2(i), that Mr Taylor breached his duties by reason of the failure to obtain sufficient audit evidence in a number of respects, in breach of paragraph 6 of ASA 500 *Audit Evidence.*

225. Paragraph 4 of ASA 500 (as in force at the time of the audits) provided as follows:

> "Objective
> 4. The objective of the auditor is to design and perform audit procedures in such a way as to enable the auditor to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion."

226. Paragraph 6 of ASA 500 provided as follows:

> **"Requirements**
>
> **Sufficient Appropriate Audit Evidence**
>
> 6. The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence. (Ref: Para. A1-A25)"

227. "Audit evidence" is defined in paragraph 5 as "information used by the auditor in arriving at the conclusions on which the auditor's opinion is based".

228. Paragraph A31 of ASA 500 provides the following explanatory material regarding the reliability of audit evidence:

"Reliability

A31. The reliability of information to be used as audit evidence, and therefore of the audit evidence itself, is influenced by its source and its nature, and the circumstances under which it is obtained, including the controls over its preparation and maintenance where relevant. Therefore, generalisations about the reliability of various kinds of audit evidence are subject to important exceptions. Even when information to be used as audit evidence is obtained from sources external to the entity, circumstances may exist that could affect its reliability. For example, information obtained from an independent external source may not be reliable if the source is not knowledgeable, or a management's expert may lack objectivity. While recognising that exceptions may exist, the following generalisations about the reliability of audit evidence may be useful:

- The reliability of audit evidence is increased when it is obtained from independent sources outside the entity.
- The reliability of audit evidence that is generated internally is increased when the related controls, including those over its preparation and maintenance, imposed by the entity are effective.
- Audit evidence obtained directly by the auditor (for example, observation of the application of a control) is more reliable than audit evidence obtained indirectly or by inference (for example, enquiry about the application of a control).
- Audit evidence in documentary form, whether paper, electronic, or other medium, is more reliable than evidence obtained orally (for example, a contemporaneously written record of a meeting is more reliable than a subsequent oral representation of the matters discussed).
- Audit evidence provided by original documents is more reliable than audit evidence provided by photocopies or facsimiles, or documents that have been filmed, digitised or otherwise transformed into electronic form, the reliability of which may depend on the controls over their preparation and maintenance."

229. The contentions regarding failure to obtain sufficient appropriate audit evidence involve a number of disparate matters and are best considered individually.

Facts and parties' submissions - Sub-contention 2(i) – applicable accounting standards

230. The SAFA included the following facts which were admitted by Mr Taylor.

231. In workpaper xc100 – Revenue Understanding and Walkthrough, the Audit Team noted in relation to the recognition of revenue from the Services:

> "Billing operates differently for project management services. Customers are billed in line with the billing terms on the underlying service agreement between iSignthis and the customer. Once a billing milestone is hit, an invoice will be raised and issued. Revenue from this service is currently recognised in line with the billing process i.e. when an invoice has been raised. Given that the progress of the project is not typically in line with the billing (e.g. a significant portion of the billing

is usually up front upon signing of an agreement), revenue does not appear to be recognised in accordance with stage of completion per AASB 15."

232. Accounting Standard AASB 15 had not yet come into effect. Accounting Standard AASB 15 *Revenue* was to replace Accounting Standard AASB 118 *Revenue* and Accounting Standard AASB 111 *Construction Contracts* for annual periods beginning on or after 1 January 2019 or earlier by election. No election had been made by iSignthis, consequently AASB 15 did not apply to the FY18 financial statements.

233. The workpaper noted that the fees payable under each of the Service Agreements related to four categories of "services":

    (a) In relation to the category "Trading Platform License per agreed Specification", the workpaper concluded that "This consists of software, services, development and integration of the trading platform to the relevant customer, and makes up the majority of the fees charged in each agreement. Given that this represents fees for a service that is provided over a period of time, rather than simply being a point of sale exchange of goods/services, this is considered to fall under the scope of AASB 111 *Construction Contracts*, whereby revenue is recognised in accordance with the stage of completion of the underlying project".

    (b) The Audit Team concluded that income relating to the other three items specified in each of the Service Agreements ("Training", "End Licensee Support" and "CRM Maintenance") was income from services. The Audit Team concluded that revenue from "Training" should be recognised when the training was provided. The Audit Team concluded that revenue from "End Licensee Support" and "CRM Maintenance" should be recognised over the specified period during which those services were to be supplied.

234. The parties submitted that GT Audit did not perform an adequate evaluation that revenue from the "Trading Platform Licence" component of the Services should be recognised and disclosed under AASB 111, rather than AASB 118 (the general revenue recognition standard that was current in FY18).

235. In this regard, the parties accepted that no work was done to evaluate whether, in substance, the "Trading Platform License" component of each of the Service Agreements in fact constituted a "construction contract" for the purposes of AASB 111 rather than an obligation to supply a good (ie existing software) or a non-construction contract service for the purposes of AASB 118.

236. The parties submitted that the failure to design and perform audit procedures to ensure that AASB 111 applied to the Services constituted a failure to comply with paragraphs 4 and 6 of ASA 500.

237. The parties submitted that Mr Taylor admitted a failure to comply with paragraph 6 of ASA 500 by reason of the above matters.

Consideration - Sub-contention 2(i) – applicable accounting standards

238. We accept the matters of fact summarised above. The matter set out in paragraph 235 is admitted by Mr Taylor and is a matter of fact capable of admission.

239. The Audit Team had determined "the occurrence of revenue to be a key audit matter due to the application of judgement due to the complexity and customised nature of the arrangements entered into with customers".

240. In the circumstances, we accept that the auditor failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in relation to the applicability of AASB 111, bearing in mind that "audit evidence" in this context means "information used by the auditor in arriving at the conclusions on which the auditor's opinion is based".

241. We agree with the parties' joint submissions that the auditor was in breach of ASA 500, although the breach is more accurately described as a failure by the auditor to comply with paragraph 6 of ASA 500, rather than paragraph 4. In the circumstances, we are satisfied that Mr Taylor failed to ensure that the Audit was carried out in accordance with the auditing standards, in this respect.

Facts and parties' submissions - Sub-contention 2(i) – verification of the contractual arrangements between the iSignthis Group and the customers for the Services

242. The SAFA records the following facts.

243. The Audit Team obtained copies of the Service Agreements for Corp Destination, IMMO and FCorp. In workpaper xl10 – ISX Project Management Revenue v2, the Audit Team noted the following deficiencies in the Service Agreements (which were also noted as a control deficiency and a significant control deficiency respectively in the Audit Findings Report):

    (a) The copies of the Service Agreements provided for IMMO, FCorp and Corporate [sic] Destination were unsigned by both ISX and the merchant at the date of testing and the variation letter relating to the Corp Destination Service Agreement was not signed by the counterparty; and

    (b) On review of the Service Agreements in place with FCorp and Corporate [sic] Destination, the fees per Appendix A of the respective reports did not sum to the total commitment disclosed within the same agreement, and upon which revenue was invoiced.

244. However, further deficiencies in the Service Agreements were not noted in the Audit File, including:

    (a) The "Services" which were to be provided under the Service Agreement were described in Appendix A in brief terms as follows:

> "The Service Provider shall act as development and support independent contractor and shall provide the Company with such Services as follows:

a. License, Software, Services, Development, Integration & Maintenance.

b. Technical support services.

c. 6 Months Software Support

d. Training".

(b) The fee schedule in Appendix A allocated by far the largest component of the total fee to "Trading Platform License per agreed Specification". The Audit File does not indicate that any "agreed Specification" was requested or obtained by the Audit Team.

(c) The fee schedule in Appendix A stated that a percentage of the fees for "Trading Platform License per agreed Specification", "Training" and "End Licensee Support" was payable "upon End User Licensee "Go Live"", but the point at which "Go Live" would be reached, or how it would be reached, was not specified in the Service Agreements.

(d) Appendix A stated under the subheading "Terms" that "Mainentance [sic] and Support Fees for items (d) and (e)" are due "monthly in arrears" (in the Corp Destination Service Agreement) or "in advance, non refundable" (in the FCorp and IMMO Service Agreements), but there was no item (e) in the list of services immediately above the subheading.

(e) Appendix B of all three Service Agreements contained provisions requiring monthly invoicing and monthly payments of fees which were inconsistent with the fee arrangements stated in Appendix A.

(f) The warranty in clause 2.6 of each Service Agreement appeared to be inconsistent with the representation given by management of iSignthis that the provision of the Services had been outsourced. Clause 2.6 read:

> "The Service Provider [ie, Authenticate BV] hereby declares and warrants that with the exception of any material furnished to him by the Company, he will be the sole author of the Services provided to Company; the Services provided will be original and not copied in whole or in part from any other work."

(g) During the FY18 Audit, Mr Taylor:

i. was aware that the Service Agreements that had been provided to the Audit Team were unsigned; and

ii. saw at least one of the unsigned Service Agreements.

245. The parties submitted that, having been made aware of discrepancies in the Service Agreements and the fact that the agreements were unsigned, Mr Taylor should have, but did not, require further work to be done in relation to the verification of the contractual arrangements between the iSignthis Group and the customers for the Services. This failure constituted a contravention of paragraphs 4 and 6 of ASA 500 because the audit procedures that were performed to verify

the existence and details of the contractual arrangements between the iSignthis Group and the customers for the Services did not result in sufficient appropriate audit evidence of those matters.

246. The parties submitted that Mr Taylor admitted a failure to comply with paragraph 6 of ASA 500 by reason of the above deficiencies

Consideration Sub-contention 2(i) – verification of the contractual arrangements between the iSignthis Group and the customers for the Services

247. We accept the facts set out above from the SAFA and note that these are largely supported by documentary evidence.

248. We accept that, in the circumstances set out above, the auditor failed to conduct the audit in accordance with the requirements of paragraph 6 of ASA 500. The mere fact that audit procedures do not result in sufficient appropriate evidence will not always establish a contravention. However, we are satisfied that there was a contravention in the present case. It needs to be borne in mind that the objective of the auditor is to design and perform audit procedures in such a way as to enable the auditor to obtain sufficient appropriate evidence to be able to draw reasonable conclusions on which to base the auditor's opinion (ASA 500 para 4). Where, as here:

(a) The auditor had determined "the occurrence of revenue to be a key audit matter due to the application of judgement due to the complexity and customised nature of the arrangements entered into with customers"[19];

(b) The audit team and Mr Taylor were aware of the discrepancies in the Service Agreements and the fact that agreements were unsigned; and

(c) On the face of the agreements, there were other discrepancies

the audit procedures designed and performed by the auditor were not adequate to obtain sufficient appropriate audit evidence.

249. In the circumstances, we are satisfied that Mr Taylor failed to perform the duties of an auditor in failing to ensure that the Audit was conducted in accordance with ASA 500 para 6 in this respect.

Facts - Sub-contention 2(i) – occurrence and accuracy of reported revenue and receivables

250. The parties contended that there were several additional deficiencies in audit procedures performed to verify the occurrence and accuracy of the reported revenue and receivables, as summarised in sub-headings (a) to (f) below.

251. The parties relied, in each case, on the agreed facts in the SAFA. We deal with these first.

[19] SAFA [50]

(a) Testing invoices and receipts

252. The parties relied upon the agreed facts in paragraphs 66 to 68 of the SAFA which were to the following effect[20].

253. The Audit Team obtained a schedule of "payments received by ISX in relation to project management revenue services provided" (**Payments Received Schedule**), recorded relevant details of that schedule in a workpaper and stated: "We have verified each payment through to receipt in the bank statement in order to gain comfort that the underlying services are being rendered and revenue has occurred". Details of the testing conducted is recorded in workpapers xl10, xl7, xl3 and 'Trade Debtors'.

254. On the basis of the work recorded in the Audit File, the Audit Team did not:

    (a) Indicate who had prepared the Payments Received Schedule;

    (b) Investigate or record the processes and controls regarding the preparation of the Payments Received Schedule, if any, to ensure accuracy; or

    (c) Adequately test that the cash receipts recorded in the Payments Received Schedule were accurately recorded in the general ledger, and in accordance with the Service Agreements.

255. As a result, the Audit Team failed to identify deficiencies in the Payments Received Schedule including the following:

    (a) The Payments Received Schedule indicated that, of the ten amounts received, four were paid into a bank account with ABN Amro and six had been paid into an "EMA bank account". In relation to the latter amounts, the audit workpaper stated:

        > "While some of the cash received is received through ISX standard bank accounts, payment for these services can also be made via ISX's EMA (emoney account) service, a transactional banking facility through which the merchants can deposit funds. This functions [sic] However, we are still able to track these payments to the Københavns Andelskasse accounts through which ISX operate this facility."

    (b) The "EMA bank account" referred to in that note was a bank account held with Københavns Andelskasse (**KBH Bank**) by iSignthis's subsidiary, iSignthis eMoney Ltd. As noted below, the audit team recorded that Todd Richards stated that the funds in the EMA bank account that were identified by him as relating to the IMMO Service Agreement were deposited in error into the EMA bank account. The EMA bank account was used by iSignthis eMoney for the purposes of receiving funds deposited by merchants.

    (c) Audit Workpaper xl10 – worksheet xl10a indicates that the amounts recorded in the Payments Received Schedule were received from 15 May 2018 to 6 August 2018, but the Audit File contains only the ABN Amro and

[20] Joint Submissions para 68

KBH Bank statements for June 2018 and not for May, July or August 2018. Auditing Standard ASA 230 *Audit Documentation* at ASA 230.09 requires the identifying characteristics of the documentation in order for a reasonable auditor to undertake the same procedures, not the actual documents to be retained on the Audit File.

(d) The June 2018 bank statements revealed that:

i. There were two receipts in the ABN Amro statement identified as being deposited by IMMO – one for €163,000 on 7 June 2018 and €110,000 on 6 June 2018. These receipts combined are €273,000.

ii. The Payments Received Schedule recorded in workpaper xl10 tab 2 shows a receipt of €136,500 for IMMO Brand A on 19 June 2018 and a receipt of €136,500 for IMMO Brand B on 7 June 2018. The total of these two receipts is €273,000, split equally (€136,500) between IMMO Brand A and IMMO Brand B.

iii. In relation to the amount of €179,000 stated in the Payments Received Schedule as having been received on 15 June 2018 in respect of the Fcorp Services transaction, the description on the ABN Amro statement was "Name: IMMO SERVIS GROUP s.r.o Desc: ACCORDING TO AGREEMENT".

iv. The amounts shown on the Payments Received Schedule as having been received into the KBH Bank account on 20, 22 and 28 June 2018 were recorded in the KBH Bank statement as relating to "Desc: 1/TRX – SYSTEMS DOO NOVI SAD", "Margeteks Project LP" and "Anjalli Limited" respectively.

(e) The following explanation was recorded for the fact that amounts were received from entities other than the customers in respect of the Services:

> "PDW Todd Richards - he explained that Fcorp, Corp Destination, and IMMO Servis Group are interrelated in terms of directors/shareholders, and payments have been allocated per one based on the sales team overseas delegating which individual debtor balance each payment is in reference to."

(f) Workpaper xl10 – ISX Project Management Revenue contained a fuller explanation of the same matter, as follows:

> "The structure of ISX's agreements with its customers are such that payments received are not always directly from the merchant themselves, but often by their customers. Based on our understanding of the business and its customers, this is not considered unusual . . .
>
> Per discussion with Todd Richards (CFO), each of the three merchants with which ISX generate project management revenue have an arrangement in place through which one merchant may pay on behalf of another. As such, management cannot allocate a receipt of payment to a specific project, and instead can only track receipt of payment on a holistic basis. We have therefore performed our work around occurrence of the project revenue as a whole rather than on a customer by customer basis."

(g) The Audit File does not expressly record that work was done to verify Mr Richards' assertion.

(b) failure to appropriately reconcile a schedule provided by iSignthis (the "PBC Schedule")

256. The parties relied upon the agreed facts in paragraph 69 of the SAFA which was to the following effect[21].

257. Audit workpaper xl7 – Cost of Sales – tab 2 recorded information provided by Mr Richards in relation to the Services in the "PBC Schedule" showing revenue and expenses for the Services transactions (**PBC Schedule**). The PBC Schedule revealed discrepancies between the receipts from the Services customers and the terms of the Services Agreements and invoiced amounts. The Audit File does not contain any explanation of the discrepancies in the schedule.

(c) failure to obtain sufficient appropriate audit evidence that funds received into a bank account belonging to iSignthis eMoney in which funds were held for merchants in fact represented amounts receivable by Authenticate BV for the Services transactions

258. The parties relied upon the agreed facts in paragraphs 70 to 72 of the SAFA which were to the following effect[22].

259. The Audit Team prepared a document (iSignthis eMoney Audit Trail – worksheet IEM) in relation to accounts held on behalf of merchants, which indicated that amounts totalling €636,132 were received by iSignthis eMoney Ltd into the account with KBH Bank (comprising funds held on behalf of merchants). These amounts, individually, were shown on the Payments Received Schedule as relating to the IMMO Brand A Services Agreement. The KBH Bank statement for June 2018 described the amounts as follows:

Date	Text	Amount
19.06.2018	1/TRX – SYSTEMS DOO NOVI SAD	279,335.50
20.06.2018	1/TRX – SYSTEMS DOO NOVI SAD	315,751.50
22.06.2018	Anjalli Limited	19,991.93
28.06.2018	Margeteks Product LP	21,032.93

260. The amount of €636,132 was then transferred to Authenticate BV via intercompany journal entry. Mr McDonald noted "Funds were received into the KBH account for project revenue billed by Authenticate BV (funds received from

[21] Joint Submissions para 68
[22] Joint Submissions para 68

IMMO), when these should have gone to Authenticate's ABN Amro account"; and raised issues on that document (in red) regarding this process, in particular the receipt of the funds into a merchant funds account held by iSignthis eMoney. That document was not included in the Audit File.

261. Audit Workpaper Consolidated Primary – Intermediate – Funds Held On Behalf of Merchant – Current Asset relates to the same journal entries and receipts. It does not state the issues that had been raised by Mr McDonald (in red) and does not indicate that those issues had been resolved, nor is there any evidence that the remaining points on that worksheet were taken into account in relation to the auditing of revenue from the Services transactions.

(d) failure to adequately reconcile discrepancies between amounts recorded as income in the general ledger with the fee schedules in the Service Agreements

262. The parties relied upon the agreed facts in paragraphs 74 to 77 of the SAFA which were to the following effect[23].

263. Workpaper xl10 – ISX Project Management Revenue v2 recorded the following variances between amounts recorded as income in the general ledger and amounts stated as payable in the fee schedule in the relevant Services Agreement:

Customer	**Per GL**	**Per Agreement**	**Variance**
Fcorp	736,154	667,538	68,615
IMMO	1,384,615	1,384,308	308
Corporate Destination	810,038	741,423	68,615
			137,538

264. The Audit Team noted that the variances for FCorp ($68,615) and Corp Destination ($68,615) reflected differences between the "total fees per the fee schedule in the agreement and the 'total commitment' (i.e. total fee) figure within the same document".

265. The Audit Team noted:

> "Per discusions (sic) with Todd Richards (CFO), this is a result of an error in the drafting of agreements, for which the fees for trading platform license integration work were not correctly stated in the fee schedule per the agreement. Per our work around receipt of payment we are satisfied that ISX's customers are paying based on the (higher) total commitment figure. We are therefore satisfied that this additional revenue has occured (sic) and does not result in an adjustment being required. However, an (sic) MLP has been raised in respect of the need to ensure such

[23] Joint Submissions para 68

schedules are reviewed thoroughly by management prior to execution in order to avoid possible disputes with customers over fees receivable moving forward."

266. The Audit Findings Report cited these two discrepancies as "instances whereby the fee schedule per the contract appendix did not sum to the total commitment disclosed within the same agreement, upon which revenue was invoiced" and classified this as evidence of a "significant" control deficiency, stating that "such errors in agreements have the potential to be a source of payment disputes with customers, and pose a risk of material misstatement".

(e) failure to obtain sufficient appropriate audit evidence that the Services transactions had been completed as at 30 June 2018;

267. The parties relied upon the agreed facts in paragraphs 78 to 82 of the SAFA which were to the following effect[24].

268. The Audit Team requested certificates of completion for all three customers. Two of the certificates were provided promptly.

269. The certificate from IMMO was provided by Mr Richards to Mr McDonald (cc Mr Krafft) on 2 August 2018. The email from Mr Richards forwarded an email addressed to Mr Andrew Karantzis, to which the certificate was attached. That email had been sent to Mr Andrew Karantzis from "IMMO SERVIS <immoservisgroup@gmail.com>". After receiving the email from Mr Richards, Mr McDonald forwarded it to Mr Krafft with a message: "IMMO – this one has an e-mail address from IMMO, when I suggested we shoot them an e-mail to verify it did not go down well". The Audit Team immediately reported to Mr Taylor that Mr Richards had responded negatively to Mr McDonald's suggestion that confirmations be verified or obtained by GT Audit contacting the customers directly, and Mr Taylor discussed that with Mr McDonald. Mr Taylor met with Mr Richards that same day and they agreed that the certificates would be sought and obtained by the iSignthis Group and provided to GT Audit.

270. The third certificate, from Corp Destination, was signed by the customer and dated 14 August 2018 and was provided to the Audit Team by management of iSignthis on or before 5 September 2018, but not until after the FY18 Audit Report had been signed and iSignthis had announced its financial results for FY18 to the ASX. Audit Workpaper xI10 – ISX Project Management Review v2.xlsx was updated on 5 September 2018 (after the FY18 Audit Report was signed) to record the receipt of a Certificate of Practical Completion (dated 14 August 2018) for Services provided to Corp Destination.

271. Prior to signing the FY18 Audit Report:

(a) Mr Taylor received a letter signed by Mr Karantzis and Mr Richards dated 28 August 2018 which stated:

[24] Joint Submissions para 68

> "We are satisfied that the work required under all contracts with customers for the provision of integration, establishment, project and platform services has been satisfactorily completed by the Group at 30 June 2018."

(b) The Audit Team had been informed by Mr Richards that they were chasing the Corp Destination certificate and were experiencing delays due to the European Summer but expected that receipt of the Corp Destination certificate was imminent.

(c) The Audit Findings Report stated that:

> "…we identified some contracts where there was no sign formal [sic] off by the customer on the achievement of milestones, in particular at completion. This is a particular issue where revenue is recognised at completion of the work, but the payment from the customer is not required until they go live."

(d) The Audit Finding Report identified this as a control deficiency and recommended that:

> "management establish a procedure to obtain confirmation from the customer that the work has been completed in respect to milestones, in particular the final milestone. This will provide appropriate evidence to support the recognition of revenue."

(f) Testing of large manual journal entries

272. The parties relied upon the agreed facts in paragraphs 83 to 86 of the SAFA which were to the following effect[25].

273. The Audit Findings Report identified a significant risk of fraud arising from management override of controls and indicated that part of the audit work that was done to "gain reasonable assurance that management override of controls has not resulted in a material misstatement or fraudulent activities within the financial statement" involved the testing of a sample of journal entries.

274. Audit Workpaper xB6 – Authenticate Pty Journal Entry Testing tab 3 "Large Amounts" noted journal entries relating to "Authenticate BV's provision of [Services] to merchants". Under "GT Comment" reference was made to the testing performed at workpapers xI10 – ISX Project Management Revenue v2 and xI7 – Cost of Goods Sold and the following was noted:

> "We have verified each to underlying agreement as part of our revenue testing, raising a significant control deficiency in relation to the absence of signatures and a control deficiency in relation to the drawing up of schedules within these. Based on our work performed around these extracted transactions elsewhere in the voyager file, we are satisfied that they are not indicative of management override of controls."

[25] Joint Submissions para 68

275. Audit Workpaper xB6 references Audit Workpaper xl10 where the work was conducted and details of the certificates of practical completion are recorded, including the date of receipt of the Corp Destination certificate.

276. Audit Workpaper xB6 – Authenticate Pty Journal Entry Testing was completed by Mr McDonald on 27 August 2018 and was subject to final review by Mr Krafft on 28 August 2018. Mr Taylor did not sign off the workpaper as reviewed.

The parties' submissions - Sub-contention 2(i) - occurrence and accuracy of reported revenue and receivables in relation to the matters in (a) to (f) above

277. The parties submitted that each of the matters in (a) to (f) above were deficiencies in the audit procedures that were performed to verify the occurrence and accuracy of the reported revenue and receivables from the Services transactions.

278. The parties submitted that

(a) In crucial respects management assertions were relied upon as explanations of deficiencies in the audit evidence that was obtained. Mr Taylor did not adequately evaluate the reliability of the audit evidence that had been provided in the form of management assertions;

(b) Mr Taylor should have, but did not, require further audit tests to be conducted when audit evidence obtained from one source was found to be inconsistent with audit evidence obtained from another; and

(c) A material misstatement of revenue was identified, indicating that the auditor did not consider that sufficient appropriate audit evidence had been obtained that the reported revenue was free of material misstatement. Rather than treating the deficiency of sufficient appropriate audit evidence as requiring an adjustment to the reported revenue or, failing that, as requiring a qualification to the audit report, the identified misstatement was impermissibly netted against a material misstatement of expenses in stating, in the Audit Findings Report, that there was no misstatement of either revenue or expenses.

279. The parties went on to submit that Mr Taylor admitted in SAFA paragraph [101] that although some evidence was obtained by GT Audit in respect of the revenue under the Service Agreements:

(a) The Service Agreements that were sighted were not original or, at least, were not signed;

(b) Mr Taylor relied on management explanations about the services provided pursuant to the Service Agreements that were sighted, particularly as those agreements did not clearly explain the services;

(c) There was no clearly independent third-party documentation;

(d) 'Certificates of practical completion' were obtained from management and were copies or electronic records (and had some discrepancies in them); and

(e) There were ineffective controls within iSignthis.

280. In paragraph 79 of the Joint Submissions, the parties submitted that Mr Taylor admitted a failure to comply with paragraph 6 of ASA 500 by reason of the above deficiencies.

Consideration - Sub-contention 2(i) – occurrence and accuracy of reported revenue and receivables in relation to the matters in (a) to (f) above

281. We accept the matters of fact in the SAFA which are set out above in relation to each of the matters (a) to (f). Those matters are facts which are capable of admission and are admitted by Mr Taylor, and were supported by the documents tendered.

282. Except in the case of Item (f), we are satisfied that, in each respect, there was a failure to comply with paragraph 6 of ASA 500. The specific respects in which there was a failure are demonstrable from a reading of the detailed facts in each of sections (a) to (e) above. No explanation or mitigation of the circumstances was established. We accept the characterisation of the facts in the parties' submissions in paragraph 278 above.

283. In relation to item (f), we are simply unable, on the basis of the SAFA, the material tendered and the submissions made above, to reach a conclusion on this aspect.

284. In the circumstances, we are satisfied that the Audit was not carried out in accordance with paragraph 6 of ASA 500 (except in relation to the matter raised in item (f) above), and we are satisfied that Mr Taylor failed in his duties as an auditor in not ensuring that this was done.

Sub-contention 2(vii) – contravention of paragraph 11(a) of ASA 450

285. Sub-contention 2(vii) is that contrary to paragraph 11(a) of ASA 450 *Evaluation of Misstatements Identified During the Audit*, Mr Taylor failed to adequately determine whether uncorrected misstatements were material, individually or in aggregate.

Facts

286. The parties relied upon the agreed facts in paragraphs 87 to 99 of the SAFA which were to the following effect[26].

287. The Audit Team noted that the following journal entries would be required to correct misstatements identified during (referred to in the Audit File as 'PAJEs', which is an acronym for the term "proposed adjusting journal entries"):

[26] Joint Submissions para 68

	Dr	Revenue	101,538	
	Dr	Accrued Expenses	96,000	
PAJE	Cr	Deferred Revenue	101,538	
	Cr	Cost of Sales	96,000	
	Being adjustment to recognise deferred element of six-month maintenance and support fees at 30 June 2018			

Note that the above PAJE includes a corresponding entry in relation to the costs iSignthis have incurred in relation to maintenance and support fees - see work performed at xl7

	Dr	Revenue	769,423	
	Dr	Accrued Expenses	726,962	
PAJE	Cr	Deferred Revenue	769,423	
	Cr	Cost of Sales	726,962	
	Being adjustment to recognise deferred element of Corporate Destination project revenue and associated costs			

Note that the above PAJE includes a corresponding entry in relation to the costs iSignthis have incurred in relation to project revenue - see work performed at xl7

Net Profit Effect of PAJEs raised	48,000	*Below TE, maintained as PAJE for audit findings*

288. The acronym "TE" refers to the term "tolerable error".

289. The debit to "Revenue" and the credit to "Deferred Revenue" in the first PAJE reflected the Audit Team's view that iSignthis should recognise revenue from "End Licensee support" and "CRM Maintenance" (elements of the fees payable under the Service Agreements) of $101,538 over the six-month period the Services were to be provided rather than 'up front' (see paragraph 60.2 above).

290. The debit to "Revenue" and the credit to "Deferred Revenue" in the second PAJE reflected the Audit Team's view prior to receipt of the certificate of completion (which was not received by the time the FY18 Audit Report was signed) or Management Representation Letter that the proposed inclusion of revenue of $769,423 in the statement of profit and loss and other comprehensive income for the iSignthis consolidated entity in the FY18 Financial Report was not sufficiently supported by audit evidence and was therefore a misstatement. Following receipt of the Management Representation Letter, Mr Taylor exercised his judgment to conclude that the proposed inclusion of revenue of $769,423 in the statement of profit or loss and other comprehensive income for the iSignthis consolidated entity in the FY18 Financial Report was sufficiently supported by audit evidence and was therefore not a misstatement.

291. The amount of $769,423 constituted the amount that had been included in respect of the Service Agreement with Corp Destination, excluding the amount that was the subject of the proposed adjustment to Revenue and Deferred Revenue for "End Licensee support" and "CRM Maintenance" in the first PAJE.

292. The debits and credits to "Accrued Expenses" and "Cost of Sales" in the two PAJEs related to the reversal of expenses corresponding to the revenue that would be reversed if the PAJEs were in fact processed.

293. In relation to the PAJEs, the Audit Team noted:

> "If we are to raise an adjustment in respect of recognition of revenue for Corporate Destination (sic), a corresponding error should be raised for the expense side of the transaction;

Given the net profit effect of these adjustments would only represent the margin amount which is below our tolerable error, it has been considered appropriate to classify this as a PAJE in our audit findings."

294. The Audit Team considered that it would not be necessary for the iSignthis Group to process the PAJEs because the net misstatement of $48,000 was "below our tolerable error". This was the reason relied upon in the Audit Findings Report, which disclosed the net amount of $48,000 as an uncorrected misstatement and stated (in relation to that and other identified misstatement) that "we have discussed with management the above uncorrected misstatements, and are satisfied that both individually and in aggregate, they are not material to the financial report as a whole". The receipt of the Management Representation Letter was a further reason why the adjustment was not ultimately booked.

295. The adjustments identified in the PAJEs were not made.

296. Mr Taylor issued the Audit Findings Report to iSignthis management on behalf of GT Audit on 24 August 2018. A "Schedule of uncorrected misstatements" in the report disclosed only one uncorrected misstatement, described as: "Recognition of the deferred element of income for Project Management Services provided to customers at 30 June 2018 and associated costs".

297. The Schedule of uncorrected misstatements indicated that:

(a) The effect of making correcting entries would be to increase "Liability" by $48,000 and reduce "Net Profit" (i.e. increase the total loss) by $48,000;

(b) The "total balance per financials" of the category described as "Liability" was $11,372,000 and the "total balance per financials" of the category described as "Net Profit" was a negative amount of $5,413,000; and

(c) The "percentage difference of total balance", representing the amount of the potential adjustment to the total balance of "Liability" and "Net profit" was 0.4% of "Liability" and 0.9% of negative "Net profit".

298. The Schedule of uncorrected misstatements stated that: "We have discussed with management the above uncorrected misstatements and are satisfied that both individually and in aggregate, they are not material to the financial report as a whole".

299. The Audit File does not record evaluations of whether the uncorrected misstatements:

(a) Were material to individual account balances; or

(b) Would have the effect of increasing management compensation.

The parties' submissions

300. The parties referred to the terms ASA 450 paragraph 11(a) and the requirement that the auditor "shall determine whether uncorrected misstatements are material, individually or in aggregate".

301. They submitted that para 1 of ASA 320 makes it clear that if a misstatement is identified during an audit, the auditor's obligations in relation to the evaluation of that misstatement are not governed by ASA 320; they are governed by ASA 450.

302. They went on to submit that AUASB document Framework for Assurance Engagements[27] explains the concept of a material misstatement as follows:

> "Misstatements, including omissions, are considered to be material if they, individually or in the aggregate, could reasonably be expected to influence relevant decisions of intended users taken on the basis of the subject matter information. The assurance practitioner's consideration of materiality is a matter of professional judgement, and is affected by the assurance practitioner's perception of the common information needs of intended users as a group. Unless the engagement has been designed to meet the particular information needs of specific users, the possible effect of misstatements on specific users, whose information needs may vary widely, is not ordinarily considered."

303. They submitted that the relevant criterion for assessing whether an individual misstatement was material was whether the misstatement, individually or in aggregate with other identified misstatements, "could reasonably be expected to influence economic decisions of users taken on the basis of the financial report". And in applying that test, the "surrounding circumstances" and the "size or nature" of the misstatement are relevant.

304. It was submitted that each of the amounts listed in the extract at paragraph 287 above was an amount that, in the judgement of the Audit Team, was not supported by sufficient appropriate audit evidence. Consequently, each of those amounts was a "misstatement" for the purposes of ASA 450 and, as the misstatements had not been corrected, each was an "uncorrected misstatement" for the purposes of ASA 450.

305. The parties submitted that in stating his conclusions in the Audit Findings Report, Mr Taylor did not evaluate whether the uncorrected misstatements individually or in aggregate were material to the account balances to which they related. Instead, in the Audit Findings Report, Mr Taylor evaluated only one uncorrected misstatement, being the net amount of $48,000, and concluded that it was not material as it was "below our tolerable error". However, the uncorrected misstatements were indeed material in relation to various account balances, for the following reasons:

    (a) First, the individual effect of the $769,423 misstatement of revenue and the $726,962 misstatement of cost of sales, and the aggregate effect of the misstatements on each of the account balances, all exceeded the $271,000 materiality threshold that had been set for the audit. Nothing in ASA 450 permits the netting of identified misstatements of revenue and expenses, or of balance sheet accounts, in determining whether the identified misstatements are material;

[27] AUASB Framework for Assurance Engagements issued under s 227B of the ASIC Act in June 2014 with effect from 1 January 2015 at [68].

(b) Secondly, the "surrounding circumstances" and the "size or nature" of the misstatements indicated that the misstatements were material. The fact that an overstatement of revenue by $870,961 would result in the conversion of an additional one third of the Performance Shares was a relevant "surrounding circumstance"; and the misstatement, if not corrected, would "influence economic decisions of users taken on the basis of the financial report" because the audited revenues for the second half of FY18 formed the basis upon which the directors of iSignthis determined that all three milestones for the conversion of the Performance Shares had been met, and the issuing of new ordinary shares would affect the relative interests of existing holders of ordinary shares in iSignthis.

306. The parties submitted that in view of those considerations, Mr Taylor was not justified in considering that the aggregate misstatement of revenue was not a material misstatement merely because the net profit effect of that misstatement and a corresponding misstatement of cost of sales was below the "tolerable error" that was set for the audit.

307. The parties noted that Mr Taylor admitted that by failing to properly evaluate whether the uncorrected misstatements individually or in aggregate were material, he did not comply with paragraph 11(a) of ASA 450.

Consideration

308. We accept the above facts as matters which were capable of being admitted and were admitted by Mr Taylor, and consistent with the documents. We accept the parties' submissions in relation to Sub-contention 2(vii).

309. ASA 450 is entitled "Evaluation of Misstatements identified during the audit". Paragraph 11 appears under the sub-heading "Evaluating the effect of uncorrected misstatements" and provides:

> "11. The auditor shall determine whether uncorrected misstatements are material, individually or in aggregate. In making this determination, the auditor shall consider:
>
> (a) The size and nature of the misstatements, both in relation to particular classes of transactions, account balances or disclosures and the financial report as a whole, and the particular circumstances of their occurrence; and (Ref: Para. A13-A17, A19-A20)
>
> (b) ..."

310. We consider that the agreed facts show that the auditor failed to determine whether the uncorrected misstatements individually or in aggregate were material and that Mr Taylor was not entitled to evaluate only one uncorrected misstatement, being the net amount of $48,000, and conclude that it was not material as it was below "tolerable error".

311. In the circumstances, the Audit was not conducted in accordance with paragraph 11(a) of ASA 450 and Mr Taylor failed to perform the duties of an auditor in not ensuring that this was done.

Sub-contention 2(viii) – contravention of paragraph 15 of ASA 200 - absence of professional scepticism

312. Sub-contention 2(viii) contends that, contrary to paragraph 15 of ASA 200, Mr Taylor failed to audit revenue, receipts and receivables relating to the Services with an appropriate level of professional scepticism.

Facts and parties' submissions

313. This sub-contention relies on the facts already set out in connection with Sub-contentions 2(i) and 2(vii).

314. The parties submit that by reason of the matters set out in relation to Sub-contentions 2(i) and 2(vii), Mr Taylor failed to perform the risk assessment and evaluation procedures with an appropriate level of professional scepticism and did not comply with paragraph 15 of ASA 200.

315. They note that this is admitted by Mr Taylor.[28]

Consideration

316. We have already discussed the requirements of paragraph 15 of ASA 200 and paragraphs A20 to 22 of the application section of the standard at paragraph 193 above.

317. Paragraph 15 of ASA 200 requires the auditor to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

318. Mr Taylor has admitted the factual circumstances upon which Sub-contentions 2(i) and 2(vii) were based. Those circumstances included the fact that the audit team determined "the occurrence of revenue to be a key audit matter due to the application of judgement due to the complexity and customised nature of the arrangements entered into with customers",[29] the discrepancies in the Service Agreements, the fact that the Service Agreements were unsigned, the absence of a certificate of completion, the discrepancies recorded as income in the general ledger with the fee schedules in the Service Agreements, the reliance on management assertions, the existence of the uncorrected material misstatement of revenue and the other matters set out above in relation to each of Sub-contentions 2(i) and 2(vii).

319. We are satisfied that the nature of the contraventions of paragraph 2 of ASA 500 and paragraph 11(a) of ASA 450 which are admitted by Mr Taylor and found by us to be established, in the circumstances just described, show that the risk assessment and evaluation procedures were not performed with an appropriate level of professional scepticism and a failure by the auditor to plan and perform the Audit with professional scepticism, in contravention of paragraph 15 of ASA 200.

[28] SAFA [102.3].
[29] SAFA [50].

320. In the circumstances, we are satisfied that Mr Taylor failed to perform the duties of an auditor in not ensuring that the Audit was carried out in accordance with the auditing standards, in this respect.

PART H - CONTENTION 4: AUDITING OF EXPENSES IN RESPECT OF THE SERVICES

321. By Contention 4[30], ASIC contended that Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor in the following respects in relation to the auditing of expenses, payments, creditors and accruals in respect of the Services:

(a) Contrary to paragraph 6 of ASA 500, Mr Taylor failed to ensure that sufficient appropriate evidence was obtained to support the completeness, accuracy and occurrence of expenses and accruals recognised in the FY18 Financial Report **(Sub-contention 4(i)**);

(b) Contrary to paragraph 11 of ASA 500, Mr Taylor did not appropriately determine what modifications or additions to audit procedures were necessary to support the completeness, accuracy and occurrence of expenses and accruals recognised in the FY18 Financial Report, having obtained audit evidence from one source that was inconsistent with that obtained from another (**Sub-contention 4(ii)**);

(c) Contrary to paragraphs 7 and A31 of ASA 500, Mr Taylor did not adequately evaluate the reliability of the information to be used as audit evidence to obtain sufficient appropriate audit evidence regarding the expenses and accruals recognised in the FY18 Financial Report (**Sub-contention 4(iii)**);

(d) Contrary to paragraph 11(a) of ASA 450 , Mr Taylor failed to adequately determine whether uncorrected misstatements of expenses and accruals recognised in the FY18 Financial Report were material, individually or in aggregate (**Sub-contention 4(iv)**); and

(e) Contrary to paragraph 15 of ASA 200, Mr Taylor failed to plan and perform the audit of the expenses and accrued expenses with professional scepticism (**Sub-contention 4(v)**).

322. ASIC did not press Sub-contention 4(iii) at the Hearing.

Sub-contention 4(i) and 4(ii) - failure to ensure that sufficient appropriate evidence was obtained re expenses and accruals – ASA 500 para 6 – failure to determine modifications to audit procedures where inconsistent evidence – ASA 500 para 11

323. The parties dealt with Sub-contentions 4(i) and 4(ii) together.

324. As just indicated,

(a) Sub-contention 4(i) asserts that Mr Taylor failed to ensure that sufficient appropriate evidence was obtained to support the completeness, accuracy

[30] ASIC did not press Contention 3.

and occurrence of expenses and accruals recognised in the FY18 Financial Report, in contravention of paragraph 6 of ASA 500; and

(b) Sub-contention 4(ii) asserts that Mr Taylor did not appropriately determine what modifications or additions to audit procedures were necessary to support the completeness, accuracy and occurrence of expenses and accruals recognised in the FY18 Financial Report, having obtained audit evidence from one source that was inconsistent with that obtained from another, contrary to paragraph 11 of ASA 500.

Facts

325. The parties relied upon the following agreed facts in relation to Sub-contentions 4(i) and 4(ii)[31].

Audit steps

326. Audit Workpaper xl7 indicates that the following work was done in auditing costs relating specifically to the Services:

> - Reconciled the PBC schedule total for Project Management Service expenses to the GL for completeness, any items that were included in the GL but not PBC Schedule were discussed with client and any significant balances tested separately…
>
> - Accuracy checked the PBC schedule for Project Management Expenditure
>
> - Selected one customer from Project Management Services expense and accuracy tested all invoices and accruals associated with the projects platform by checking the underlying contract with the provider.
>
> - Assessed cut off is appropriate with Project Management Services expenditure

327. Audit Workpaper xl7 also records that additionally the Audit Team agreed payments to bank statements.

Reconciling and checking the accuracy of the PBC Schedule for Services

328. Audit Workpaper xl 7 (tab 2) contains the PBC Schedule provided by iSignthis management showing revenue and expenses for the Services projects.

329. The Audit Team's reconciliation between the expenses shown in the PBC Schedule and the expenses in the general ledger relating to Services projects was performed on an *in globo* basis because it sought to ensure that the schedule agreed to the general ledger balance, as follows:

> "GT WORK:
>
> GT Reconciliation to the GL
> Total cost of sales per PBC 1,815,100 EUR
> Total cost of sales per GL related to

[31] Joint Submissions para 95

Projects with Merchants	1,815,100	EUR
Variance	-	”

330. There were the following discrepancies between the PBC Schedule and the general ledger:

(a) A payment of €242,845 to Finosoft on 28 June 2018, which was recorded in the general ledger, was identified by Mr Richards as a payment in respect of “FCorp Services”. That payment was not recorded in the PBC Schedule. The Audit File does not contain an explanation as to why that payment was not included in the PBC Schedule.

(b) The PBC Schedule recorded payments of €429,420 for FCorp, which did not include the €242,845 referred to above. The PBC Schedule showed that total estimated costs (paid and accrued) for the FCorp Services project were €442,000. The Audit File does not contain an explanation for the fact that the payments of €429,420 for the FCorp project per the PBC Schedule plus the payment of €242,845 for the FCorp project per the general ledger exceeded the total expenses recorded for the FCorp project per the PBC Schedule and the general ledger.

(c) For costs relating to Services:

i. Of the six payments identified in the PBC Schedule as relating to Services, only one was included in the payments identified on tabs 3 and 4 of the Audit Workpaper xl7 as general ledger payments relating to Services;

ii. Of the two items in the list of general ledger payments identified in tabs 3 and 4 of the Audit Workpaper xl7 as payments relating to Services, only one was included in the list of payments in the PBC Schedule; and

iii. Consequently, the payments identified in the PBC Schedule as relating to the Services transactions and the payments in the general ledger that were identified as relating to the Services transactions had only one item in common and six differences.

331. The differences may have been attributable to the fact that only one payment had been made prior to 30 June 2018 and the PBC Schedule did not include the payment of €242,845 to Finosoft on 28 June 2018 but that was not evident on the basis of the audit work recorded in the Audit Workpaper as the dates of the payments were not recorded on the workpaper.

332. In respect of the accrued amounts and the paid amounts shown in the PBC Schedule, the Audit Workpaper stated:

> “Still owing to creditors – amounts paid above are ones paid in July as well, hence why its not exactly equalling the accrual raised at year end.”

333. The details of the Payments Received Schedule recorded in Audit Workpaper xl10 included references to invoices but not to the amounts invoiced. Those

details were included in a table in Audit Workpaper xl7 which more fully recorded the information provided by Mr Richards in the PBC Schedule. The table in Audit Workpaper xl7 revealed that receipts from the Project Management Services customers did not match the terms of the Project Management Services Agreements and invoiced amounts, as follows:

Customer and invoice	Amount invoiced €	Received – ABN €	Received – KBH €
Corporate Destination - Invoice CDP-001 (Progress 1)	291,975	200,000.00	
IMMO Brand A – Invoice IM-001	218,400	136,500.00	279,355.40
IMMO Brand A – Invoice IM-002	109,200		315,751.50
IMMO Brand A – Invoice IM-005	96,000		19,991.93
IMMO Brand A – Invoice IM-007	26,400		21,032.93
IMMO Brand B – Invoice IM-003	218,400	136,500.00	
Fcorp Services – Invoice FSL-001	239,250	179,000.00	110,000.00
Fcorp Services – Invoice FSL-002	119,625		33,018.46

334. The Audit File does not contain any explanation as to:

(a) Why all of the amounts received in respect of particular invoices differed markedly from the invoiced amounts;

(b) Why, when the invoices were for whole Euros (and mainly in round hundreds of Euros), five of the amounts received included a specific number of Euro cents; or

(c) Why the total of the amounts received (EUR 1,431,150.22) exceeded the total of the amounts invoiced (EUR 1,319,250).

Accuracy testing all invoices and accruals of one selected customer

335. Estimated costs relating to the Service Agreement with IMMO were selected for testing. The Audit Team obtained a copy of the agreement with a supplier, Gibi Tech (the Gibi Tech Agreement), under which Authenticate BV acquired the services that were provided to IMMO.

336. The Gibi Tech Agreement was in similar terms to the Service Agreement with IMMO.

337. The following matters were not noted on the Audit File:

(a) The ‘Services’ which are to be provided under the contract are described in Appendix A in brief terms.

(b) The fee schedule in Appendix A allocates by far the largest component of the total fee to "Trading Platform License per agreed Specification". The Audit File does not indicate that any "agreed Specification" was requested or obtained by the Audit Team.

(c) The fee schedule in Appendix A stated that a percentage of the fees for "Trading Platform License per agreed Specification", "Training" and "Integration support to iSignthis" was payable "upon End User Licensee "Go Live"", but the point at which "Go Live" would be reached, or how it would be reached, was not specified in the agreement.

(d) In Appendix A, the final item in the list of "Fees" is: '(f) Items e) and f) non refundable, payable in advance per Terms below'. Unlike the other items in the list, item (f) is not itself a service, and it contains a nonsensical reference to itself.

(e) Appendix B contained provisions requiring monthly invoicing and monthly payments of fees which was inconsistent with the fee arrangements stated in Appendix A.

(f) The Gibi Tech Agreement was not signed by Authenticate BV (or any person for any entity within the iSignthis Group) and the signature of a representative of Gibi Tech was dated '26/7/18', which was well after the end of FY18 and more than eight weeks after the agreement was purportedly entered into.

338. Audit Workpaper xc100 - Revenue Walkthrough and Understanding stated that legal agreements were reviewed by Norton Rose before being executed. The Audit File does not contain any evidence that the Audit Team required or obtained any information to verify that statement in relation to the Gibi Tech Agreement.

339. Audit Workpaper xl7 (tab 1) shows that the Audit Team compared the fees stated in Appendix A of the Gibi Tech Agreement with payments and accruals that had been recorded in the PBC Schedule as payments in relation to the IMMO Services project. The workpaper noted that the following three amounts were entered in the PBC Schedule as payments in relation to the IMMO Services project:

(a) A payment of €173,152.68 annotated "Wideplan USD$200,000 ABN AMRO";

(b) A payment of €172,811.00 annotated "KBH to EMMA"; and

(c) A payment of €171,317.00 annotated "KBH to EMMA".

340. The Audit Team noted elsewhere on the same tab of the Audit Workpaper that the following amounts were paid and accrued in relation to the Gibi Tech Agreement:

Paid: €172,811.00

Accrued: €711,189.00

Total: €884,000.00

341. The Audit Team selected the "paid" amount of €172,811.00 for testing and stated in Audit Workpaper xl7: Cost of Sales:

> "Audit sighted invoice #0510 dated 20 June 2018 and agreed total balance 172,811 EUR."

342. The invoice was issued by MediaNova Ltd, Marshall Islands. The invoice included the following details:

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
250.00	Marketing services prepayment	$800	$200,000.00
Total due Euro			172,811.00€

343. The Gibi Tech Agreement states Trading Platform License per agreed Specification €395,000 / each brand of which up to €100,000 per brand may be allocated to Media Nova for Media SEO (or Search Engine Optimization) and Integration services, which will be subject to confirmation and separate invoice. This was noted on Audit Workpaper xl7. The selected invoice was identified by the Audit Team as an expense relating to the supply of Services under the Gibi Tech Agreement given that the invoice was from MediaNova and was for an amount of €172,811 being under the maximum amount provided for in the Gibi Tech Agreement. The Audit Workpaper does not comment on the fact that the invoice specified that it was for "marketing services", yet the Gibi Tech Agreement contained no provision relating to the supply of marketing services.

344. The Audit Team did not sight any purchase orders in relation to the expense of €172,811.00 that was selected for testing.

345. A workpaper in relation to accounts held on behalf of merchants indicates that the payment on the invoice issued by MediaNova was made by iSignthis eMoney Ltd out of a bank account with KBH Bank comprising funds held on behalf of merchants, and the cost was transferred from iSignthis eMoney Ltd to Authenticate BV via intercompany journal entry.

Assessing cut-off

346. In relation to the Gibi Tech Agreement, audit workpaper xl7 states:

> "Audit has determined that the total expense related to this project must be taken up either as an expense from invoice(s) received or as an accrual, as both Brand 1 and Brand 2 billing and receipts been tested at xl10."

347. Of the evidence obtained in the auditing of Services expenses:

(a) Only two invoices (both for amounts paid) that were represented by management of iSignthis as relating to Services were produced to and sighted by the Audit Team and, on its face, one (invoice #0510 issued by MediaNova, discussed above) did not relate to the supply of Services.

(b) The Audit File does not contain evidence that an invoice was received from or any payment made to Gibi Tech before or after 30 June 2018 in relation to the IMMO project even though:

i. the Gibi Tech Agreement which was seen by the Audit Team stated that 50% of fees for trading platform license, training and integration support (an amount totalling at least €418,000) was due for payment within seven days of each brand purchase order; and

ii. total fees payable by 30 June 2018 under the Gibi Tech Agreement at the milestone stated in the certificate of practical completion (ie completion of the project) were at least €731,500.

(c) On the basis that the certificate of practical completion for the IMMO Services transaction and the Management Representation Letter confirmed the work had been delivered, Mr Taylor concluded that it was appropriate to recognise the corresponding expense.

348. The entire cost of the Services (€1,815,100) apart from two amounts paid (totalling €415,656 representing 23% of total project costs), ie a net amount of €1,399,444 or $1,935,887, represented accrued expenses rather than paid expenses or liabilities to creditors.

349. The invoice dated 20 June 2018 from MediaNova Ltd for €172,811 stated that the amount payable was a "prepayment" for services.

350. No payments of expenses for Corp Destination were made before or after year end and prior to the date of signing the FY18 Audit Report.

351. The Audit File does not contain evidence that any steps were taken (other than testing one invoice from MediaNova, which referred to a "prepayment") to obtain evidence from the suppliers of the Project Management Services regarding the stage of completion of the projects or to support a conclusion that the costs of those supplies would be in accordance with the estimated costs (ie there would be no variations).

Other facts

352. In some respects, the parties relied upon other agreed facts set out in the SAFA, including the facts in paragraphs 78 to 82 of the SAFA (see paragraph 267*ff* above).

Admissions

353. Mr Taylor admitted that there was insufficient appropriate audit evidence obtained regarding the expenses that were reported by iSignthis relating to the Service Agreements. Although some evidence was obtained by GT Audit:

(a) There was no clearly independent third-party documentation;

(b) There were ineffective controls within iSignthis; and

(c) He relied on management representations.

Parties' submissions

354. The parties jointly made submissions as follows.

355. They submitted that GT Audit did not perform an adequate evaluation of whether the expenses relating to the Trading Platform Licence component of the Services should be recognised and disclosed under AASB 111. The question of whether those expenses from the Services transactions should be reported under AASB 111 depended upon whether the "Trading Platform Licence" components of the Service Agreements were "construction contracts" as defined in AASB 111. No work was done to evaluate whether, in substance, the "Trading Platform License" component of each of the Services Agreements in fact constituted a "construction contract" for the purposes of AASB 111, rather than an obligation to supply a good (ie existing software) or a non-construction contract service for the purposes of AASB 118. The failure to design and perform audit procedures to ensure that AASB 111 applied to the Services constituted a contravention of paragraphs 4 and 6 of ASA 500.

356. The parties submitted that expenses in respect of each of the Services transactions were individually material to the FY18 Financial Report. In addition, as the work required by each Service Agreement was outsourced, evidence of the performance of the work required by each Service Agreement was relevant to the recognition of revenue from the Service Agreement because the revenue in respect of the Trading Platform Licence component of each Services customer was recognised under AASB 111 on a percentage of completion basis. Given the fact that a material risk of misstatement of revenue had been recognised as significant, the audit team should have performed substantive audit procedures to obtain evidence supporting the performance of each Service Agreement. However, the audit team did not plan to perform substantive testing of the expenses relating to all of the Services transactions. This failure constituted a contravention of paragraphs 4 and 6 of ASA 500 because the audit procedures that were designed were insufficient to obtain sufficient appropriate audit evidence to verify the full performance of the Services transactions by 30 June 2018.

357. The parties submitted that there were a number of deficiencies in the audit procedures that were performed to verify the occurrence and accuracy of the reported expenses from the Services transactions. In this regard, the most serious deficiencies were:

(a) A failure to obtain sufficient appropriate audit evidence that the Services transactions had been completed as at 30 June 2018,

(b) A failure to appropriately reconcile a schedule provided by iSignthis (the "PBC Schedule") stating amounts paid for the Services transactions with (a) amounts in the general ledger identified by iSignthis as amounts paid in respect of the Services transactions; and (b) amounts recorded in bank statements which were said by iSignthis to relate to the Services transactions;

(c) A failure to identify deficiencies in the Gibi Tech Agreement that was selected for testing, such deficiencies being similar to those in the Service Agreements;

(d) A failure to obtain sufficient appropriate audit evidence to explain how an invoice issued by Media Nova Ltd, a Marshall Islands company, for services described as "Marketing services prepayment" could be identified as an expense under the Gibi Tech Agreement relating to the performance of services to IMMO by 30 June 2018 (as asserted by iSignthis);

(e) A failure to obtain sufficient appropriate audit evidence to confirm that the amount paid to Media Nova from an account belonging to iSignthis eMoney in which funds were held for merchants constituted payment by Authenticate BV to Gibi Tech for the performance of the Services; and

(f) A series of failures identified in paragraphs 89 to 93 of the SAFA (see paragraph 289 to 293 above) which resulted in acceptance of iSignthis' assertions, without sufficient appropriate audit evidence, that all of the services that had been outsourced to Fino Software and Gibi Tech had been performed in full by 30 June 2018 even though more than 75% of the cost of those services was unpaid and apparently uninvoiced at 30 June 2018, which was contrary to the terms of the outsourcing contracts.

358. The parties submitted that in crucial respects, management assertions were uncritically relied upon as explanations of deficiencies in the audit evidence that was obtained. Mr Taylor did not adequately evaluate the reliability of the audit evidence that had been provided in the form of management assertions.

359. They submitted that Mr Taylor should have, but did not, require further audit tests to be conducted when audit evidence obtained from one source was found to be inconsistent with audit evidence obtained from another.

360. It was submitted that a material misstatement of expenses was identified, indicating that the auditor did not consider that sufficient appropriate audit evidence had been obtained that the reported expenses were free of material misstatement. Rather than treating the deficiency of sufficient appropriate audit evidence as requiring an adjustment to the reported expenses or, failing that, as requiring a qualification to the audit report, the identified misstatement was impermissibly netted against a material misstatement of revenue in reaching a conclusion, in the Audit Findings Report, that no adjustment was required.

361. The parties relied upon Mr Taylor's admissions in paragraph 353 above.

362. It was submitted that Mr Taylor further admitted that, by reason of the deficiencies noted in paragraphs 355 to 357above, he failed to comply with paragraphs 6 and 11 of ASA 500.[32]

363. In relation to specific breaches of ASAs, the parties noted that Mr Taylor admitted that:

[32] SAFA [133.1] and [133.2].

(a) Contrary to paragraph 6 of ASA 500, he failed to ensure that sufficient appropriate evidence was obtained to support the completeness, accuracy and occurrence of expenses and accruals recognised in the FY18 Financial Report; and

(b) Contrary to paragraph 11 of ASA 500 Audit Evidence, he did not appropriately determine what modifications or additions to audit procedures were necessary to support the completeness, accuracy and occurrence of expenses and accruals recognised in the FY18 Financial Report, having obtained audit evidence from one source that was inconsistent with that obtained from another.

Consideration

364. In Sub-contentions 4(i) and 4(ii), the relevant standard was ASA 500, paragraphs 6 and 11.

365. As already recorded above, paragraph 6 of ASA 500 provided as follows:

> **"Requirements**
>
> **Sufficient Appropriate Audit Evidence**
>
> 6. The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence. (Ref: Para. A1-A25)"

366. Paragraph 11 of ASA 500 provided as follows:

> "**Inconsistency in, or Doubts over Reliability of, Audit Evidence**
>
> 11. If:
>
> (a) audit evidence obtained from one source is inconsistent with that obtained from another; or
>
> (b) the auditor has doubts over the reliability of information to be used as audit evidence,
>
> the auditor shall determine what modifications or additions to audit procedures are necessary to resolve the matter, and shall consider the effect of the matter, if any, on other aspects of the audit. (Ref: Para. A57)"

367. Paragraph A31 of ASA 500, which relates to the reliability of audit evidence, is set out at paragraph 228 above.

368. We accept, as accurate, the factual matters set out above and relied upon by the parties. These matters were derived from the SAFA and were capable of admission, and were admitted by Mr Taylor.

369. We are satisfied that the evidence establishes that there was, in contravention of paragraph 6 of ASA 500, a failure to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence to support the completeness, accuracy and occurrence of expenses and accruals recognised in the FY18 Financial Report, in particular, in relation to:

(a) The failure to design and perform audit procedures to ensure that AASB 111 applied to the Services (see paragraphs 231*ff* above);

(b) The failure to perform substantive testing of the expenses relating to all of the Services transactions to obtain sufficient appropriate audit evidence to verify the full performance of the Services transactions by 30 June 2018 (see paragraph 356 above);

(c) The failure to obtain sufficient audit evidence that the Services transactions had been completed as at 30 June 2018 (see paragraph 267*ff* above);

(d) The failure to appropriately reconcile the PBC Schedule (see paragraphs 328*ff* above);

(e) The failure to identify deficiencies in the Gibi Tech Agreement that was selected for testing (see paragraphs 335*ff* above);

(f) The failure to obtain sufficient appropriate audit evidence to explain how an invoice issued by Media Nova Ltd, a Marshall Islands company, for services described as "Marketing services prepayment" could be identified as an expense under the Gibi Tech Agreement relating to the performance of services to IMMO by 30 June 2018 (as asserted by iSignthis) (see paragraph 343 above);

370. We are also satisfied that, in circumstances where audit evidence obtained from one source was inconsistent with that obtained from another, (see eg paragraphs 330 and 333*ff* above) there was a failure by the auditor to determine what modifications of additions to audit procedures were necessary to resolve the matter, in contravention of paragraph 11 of ASA 500.

371. In the circumstances, we are satisfied that Mr Taylor failed to perform the duties of an auditor in not ensuring that the audit was carried out in accordance with the auditing standards, as detailed above.

Sub-contention 4(iv) – Failure to determine whether uncorrected misstatements were material – ASA 450 par 11(a)

372. Sub-contention 4(iv) is a contention that the auditor failed to determine whether uncorrected misstatements are material individually or in aggregated.

Facts and parties' submissions

373. Relevant agreed facts from the SAFA have already been set out in relation to Sub-contention 2(vii) above (see paragraphs 287*ff* above).

374. As noted in that section, the Audit Team raised, despite assertions from iSignthis to the contrary, that:

(a) Elements of the Services provided to all three customers had not in fact been completed by 30 June 2018;

(b) The entire amount of revenue and expenses relating to the Corp Destination Service Agreement constituted a misstatement; and.

(c) Those misstatements of expenses and accrued expenses ($822,962 in each case) were material in relation to both expenses and accrued expenses.

375. The parties submitted that, for the reasons given at paragraphs 305 above regarding misstatements of revenue, Mr Taylor was not justified in considering that the aggregate misstatement of expenses was not a material misstatement merely because the net profit effect of that misstatement and a corresponding misstatement of cost of sales was below the "tolerable error" that was set for the audit.

376. Mr Taylor admitted that contrary to paragraph 11(a) of ASA 450, he failed to adequately determine whether uncorrected misstatements of expenses and accruals recognised in the FY18 Financial Report were material, individually or in aggregate.

Consideration

377. We refer to our consideration of the similar submissions in connection with Sub-contention 2(vii) above at paragraphs 308*ff*. We consider that the agreed facts show that the auditor failed to determine whether the uncorrected misstatements individually or in aggregate were material.

378. In the circumstances, the audit was not conducted in accordance with paragraph 11(a) of ASA 450 and Mr Taylor failed to perform the duties of an auditor in not ensuring that this was done.

Sub-contention 4(v) – Mr Taylor failed to plan and perform the audit of the expenses and accrued expenses with professional scepticism – ASA 200 para 15

379. Sub-contention 4(v) is a contention that, contrary to paragraph 15 of ASA 200, the auditor failed to plan and perform the audit of the expenses and accrued expenses with professional scepticism.

Facts and parties' submissions

380. Sub-contention 4(v) relies upon the matters already set out above in relation to Sub-contentions 4(i), 4(ii) and 4(iv).

381. The parties submitted that, by reason of the matters set out in relation to Sub-contentions 4(i), 4(ii) and 4(iv), Mr Taylor failed to audit the expenses relating to performance of the Service Agreements with an appropriate level of professional scepticism and did not comply with paragraph 15 of ASA 200.

382. The parties noted that this was admitted by Mr Taylor.[33]

[33] SAFA [133.4].

Consideration

383. We have discussed the requirements of paragraph 15 of ASA 200 and paragraphs A20 to A22 of the application section of the standard at paragraphs 193 above.

384. As already noted, paragraph 15 of ASA 200 requires the auditor to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

385. Mr Taylor has admitted the factual circumstances upon which Sub-contentions 4(i), 4(ii) and 4(iv) were based. Those circumstances included the failure to obtain sufficient appropriate audit evidence that the Services transactions had been completed as at 30 June 2018, the failure to reconcile the PBC Schedule stating amounts paid for the Services transactions with amounts recorded in the general ledger and amounts recorded in the bank statements, the deficiencies in relation to the testing of the Gibi Tech Agreement, the uncritical reliance on management assertions, the existence of the uncorrected material misstatement of expenses and accruals and the other matters set out above in relation to each of Sub-contentions 4(i), 4(ii) and 4(iv).

386. We are satisfied that the nature of the contraventions of paragraph 6 and 11 of ASA 500 and paragraph 11(a) of ASA 450, which are admitted by Mr Taylor and found by us to be established, in the circumstances just described, show a failure by the auditor to plan and perform the audit with professional scepticism, in contravention of paragraph 15 of ASA 200.

387. In the circumstances, we are satisfied that Mr Taylor failed to perform the duties of an auditor in not ensuring that the audit was carried out in accordance with the auditing standards, in this respect.

PART I - CONTENTION 6: AUDITING OF RELATED PARTY DISCLOSURES IN THE FY18 FINANCIAL REPORT

388. By Contention 6, ASIC contended that Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor in the following respects in relation to the auditing of related party disclosures:

(a) Contrary to paragraph 15 of ASA 200, Mr Taylor failed to plan and perform the audit of the related party disclosures with professional scepticism (**Sub-contention 6(i)**).

(b) Contrary to paragraph 6 of ASA 500, Mr Taylor failed to obtain sufficient appropriate evidence to support the accuracy, completeness and presentation of the disclosures in Note 24: *Related party transactions* having regard to the requirements set out in paragraphs 13, 17, 18 and 19 of AASB 124: *Related Party Disclosures* (**Sub-contention 6(ii)**).

(c) Contrary to paragraph 20 of ASA 550 *Related Parties*, Mr Taylor failed to design and perform appropriate further audit procedures to obtain sufficient appropriate audit evidence about the risks of material misstatement

associated with related party relationships and transactions (**Sub-contention 6(iii)**).

(d) Contrary to paragraph 25(a) of ASA 550, Mr Taylor failed to adequately evaluate whether the identified related party relationships and transactions had been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework (**Sub-contention 6(iv)**).

(e) Contrary to paragraphs 12 and 13 of ASA 700 *Forming an Opinion and Reporting on a Financial Report*, Mr Taylor failed to adequately evaluate whether the related party disclosures in the FY18 Financial Report were prepared, in all material respects, in accordance with the requirements of the applicable financial framework (**Sub-contention 6(v)**).

389. ASIC did not press Sub-contentions 6(iii) or 6(v) at the hearing. Mr Taylor has admitted each of the other contraventions.[34]

390. Sub-contention 6(i) relied upon the matters alleged in Sub-contentions (ii) and (iv). Accordingly, we will deal with the latter Sub-contentions before dealing with Sub-contention 6(i).

Sub-contention 6(ii) – failure to obtain sufficient appropriate evidence to support the accuracy etc of related party disclosure

391. By Sub-contention 6(ii), ASIC contended that Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor in relation to the auditing of related party disclosures because, contrary to paragraph 6 of ASA 500, Mr Taylor failed to obtain sufficient appropriate evidence to support the accuracy, completeness and presentation of the disclosures in Note 24: *Related party transactions* having regard to the requirements set out in paragraphs 13, 17, 18 and 19 of AASB 124: *Related Party Disclosures*.

Facts and parties' submissions

392. This, and other Sub-contentions in Contention 6, concerns the Related Party Disclosures in the FY18 Financial Report.

393. The following facts were admitted by Mr Taylor.

Ultimate controlling party

394. It was not in dispute that Mr Karantzis was the managing director of iSignthis and had a significant shareholding interest in iSignthis (BVI), which was disclosed in Note 24 as the "parent entity" of iSignthis. This suggested that Mr Karantzis might be the "ultimate controlling party" of iSignthis.

395. The Audit File does not contain evidence that audit procedures were undertaken to determine whether Mr Karantzis was the "ultimate controlling party" of iSignthis for the purpose of the disclosure of related party transactions in Note 24.

[34] SAFA [142.1]-[142.3].

396. No audit evidence was included in the Audit File to support a conclusion that Mr Karantzis was not the ultimate controlling party of iSignthis Ltd (which was implied by the fact that Mr Karantzis was not disclosed as the ultimate controlling party, as was required by paragraph 13 of AASB 124 if Mr Karantzis was in fact the ultimate controlling party).

Performance shares as related party transaction

397. If the revenue targets were met in respect of the Performance Shares by iSignthis, the Performance Shares would be converted into ordinary shares which shares would be issued to a related party, namely iSignthis (BVI) (a company associated with the directors and management of iSignthis).

398. The Audit File does not contain evidence that the Audit Team considered the consequences of the Performance Share arrangement on the disclosure of related party transactions.

399. Mr Taylor admitted that if revenue targets for the conversion of the Performance Shares were met by 30 June 2018, the new ordinary shares would be issued to iSignthis (BVI), an entity in which related parties had an interest. The issuing of shares to iSignthis (BVI) was therefore a "related party transaction", but this was not disclosed as such in the FY18 Financial Report.

General

400. In relation to specific breaches of Auditing Standards, Mr Taylor admitted that contrary to paragraph 6 of ASA 500, he failed to obtain sufficient appropriate evidence to support the accuracy, completeness and presentation of the disclosures in Note 24: *Related party transactions* having regard to the requirements set out in paragraphs 13, 17, 18 and 19 of AASB 124: *Related Party Disclosures*.

Consideration

401. We accept the factual position set out above as accurate.

402. AASB 124 is the Australian Accounting Standard dealing with "Related Party Disclosures". Paragraph 1 states its objective as follows:

> "Objective
>
> 1 The objective of this Standard is to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances, including commitments, with such parties."

403. Paragraph 13 of AASB 124 provides:

> **"Disclosures**
>
> **All entities**

13 Relationships between a parent and its subsidiaries shall be disclosed irrespective of whether there have been transactions between them. An entity shall disclose the name of its parent and, if different, the ultimate controlling party. If neither the entity's parent nor the ultimate controlling party produces consolidated financial statements available for public use, the name of the next most senior parent that does so shall also be disclosed.

Aus13.1 When any of the parent entities and/or ultimate controlling parties named in accordance with paragraph 13 is incorporated or otherwise constituted outside Australia, an entity shall:

(a) identify which of those entities is incorporated overseas and where; and

(b) disclose the name of the ultimate controlling entity incorporated within Australia."

404. Paragraphs 18-19 of AASB 124 provide:

"18 If an entity has had related party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements. These disclosure requirements are in addition to those in paragraph 17. At a minimum, disclosures shall include:

(a) the amount of the transactions;

(b) the amount of outstanding balances, including commitments, and:

(i) their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement; and

(ii) details of any guarantees given or received;

(c) provisions for doubtful debts related to the amount of outstanding balances; and

(d) the expense recognised during the period in respect of bad or doubtful debts due from related parties.

18A Amounts incurred by the entity for the provision of key management personnel services that are provided by a separate management entity shall be disclosed.

19 The disclosures required by paragraph 18 shall be made separately for each of the following categories:

(a) the parent;

(b) entities with joint control of, or significant influence over, the entity;

(c) subsidiaries;

(d) associates;

(e) joint ventures in which the entity is a joint venturer;

(f) key management personnel of the entity or its parent; and

(g) other related parties."

405. As already referred to a number of times, Paragraph 6 of ASA 500 requires the auditor to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence. "Audit evidence" is defined in paragraph 5 as "information used by the auditor in arriving at the conclusions on which the auditor's opinion is based".

406. Mr Taylor's admission in relation to this matter was not an admission of a failure to design and perform appropriate audit procedures for the purpose of obtaining sufficient appropriate audit evidence, but an admission that he "failed to obtain sufficient audit evidence". Nevertheless, the facts support the former proposition. The Audit File does not contain evidence that audit procedures were undertaken to determine whether Mr Karantzis was the "ultimate controlling party" of iSignthis for the purpose of the disclosure of related party transactions and the Audit File does not contain evidence that the Audit Team considered the consequences of the Performance Share arrangement on the disclosure of related party transactions.

407. In the circumstances, we are satisfied on the facts referred to above that the auditor failed to design and perform audit procedures which were appropriate in the circumstances for the purpose of obtaining sufficient appropriate evidence to support the accuracy, completeness and presentation of the disclosures in Note 24: *Related party transactions* having regard to the requirements set out in paragraphs 13, 17, 18 and 19 of AASB 124.

408. Therefore, we are satisfied that Mr Taylor failed to perform the duties of an auditor in failing to ensure that the audit was carried out in accordance with the auditing standards.

Sub-contention 6(iv) – failure to evaluate adequately whether related party relationships appropriate disclosed – ASA 550 par 25(a)

409. By Sub-contention 6(iv), ASIC contends that Mr Taylor failed to adequately evaluate whether the identified related party relationships and transactions had been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework, contrary to paragraph 25(a) of ASA 550.

Parties' submissions

410. The parties made the following submissions.

Applicable Auditing Standards and Accounting standards

411. As to the question of applicable Auditing Standards and Accounting Standards, the parties submitted as follows.

412. ASA 550 *Related Parties* deals with the auditor's responsibilities relating to related party relationships and transactions in an audit of a financial report.

413. Paragraph 25(a) of ASA 550 provides for a specific application of ASA 700 in respect of related party transactions and relationships. It provides as follows:

> "In forming an opinion on the financial report in accordance with ASA 700, the auditor shall evaluate: (Ref: Para. A46)
>
> (a) Whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework; … (Ref: Para. A47)"

414. The term "applicable financial reporting framework" is defined in paragraph 13(a) of ASA 200 as:

> "the financial reporting framework adopted by management and, where appropriate, those charged with governance in the preparation of the financial report that is acceptable in view of the nature of the entity and the objective of the financial report, or that is required by law or regulation."

415. Financial accounting disclosures mandated by the Australian Accounting Standards are part of the "applicable financial reporting framework" as those standards are legislative instruments issued by the Australian Accounting Standards Board under s 334 of the Corporations Act.

416. Australian Accounting Standard AASB 124 *Related Party Disclosures* requires the disclosure of certain relationships and also transactions between the reporting entity and related parties. Under the heading "Purpose of Related Party Disclosures", the following statements are included in paragraphs 6 – 8:

> "6. A related party relationship could have an effect on the profit or loss and financial position of an entity. …
>
> 7. . . . The mere existence of the relationship may be sufficient to affect the transactions of the entity with other parties. …
>
> 8. For these reasons, knowledge of an entity's transactions, outstanding balances, including commitments, and relationships with related parties may affect assessments of its operations by users of financial statements, including assessments of the risks and opportunities facing the entity."

417. Paragraphs 13 and Aus13.1 of AASB 124 require that the identity of the "parent entity" be disclosed and requires that if the parent entity of the reporting entity is incorporated overseas, that fact and the jurisdiction within which the parent is incorporated must be disclosed. Paragraph 13 of AASB 124 also requires disclosure of the "ultimate controlling party" of the reporting entity, if different from the parent of the reporting entity.

418. Paragraph 18 of AASB 124 requires certain disclosures to be made if the reporting entity "has had related party transactions during the periods covered by the financial statements". Paragraph 19 of AASB 124 requires the disclosures to be made separately for transactions with different categories of related parties, including "the parent" and "key management personnel".

419. A related party is defined in paragraph 9 of AASB 124 as:

> "a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the 'reporting entity').
>
> (a) A person or a close member of that person's family is related to a reporting entity if that person:
>
> (i) has control or joint control of the reporting entity;
>
> (ii) has significant influence over the reporting entity; or
>
> (iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.
>
> (b) An entity is related to a reporting entity if any of the following conditions applies:
>
> (i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others)
>
> . . . "

420. A related party transaction is defined in paragraph 9 of AASB 124 as:

> "a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged."

421. The term "key management personnel" is defined in paragraph 9 of AASB 124 as:

> "those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity."

Disclosure of iSignthis of Performance Shares transaction

422. The parties made the following submissions concerning the disclosure of the Performance Shares transaction.

423. Note 24 in the FY18 Financial Report was headed "Related party transactions".

424. Messrs Hart, Karantzis, Minehane, who had indirect interests in the Performance Shares, were "key management personnel" of iSignthis because they were directors of iSignthis. Mr Richards was also a member of the key management personnel of iSignthis on the basis that he was responsible, jointly with the

directors and the chief executive, for "controlling" the activities of iSignthis; and this is acknowledged in the remuneration report in the FY18 Financial Report.[35]

425. The obligation of iSignthis to issue 336,666,667 ordinary shares as a result of the achievement of the milestones for the conversion of all three classes of Performance Shares by 30 June 2018 constituted the incurrence of an obligation by iSignthis in favour of iSignthis (BVI). It was therefore a related party transaction for the purposes of AASB 124.

426. The obligation of iSignthis to issue ordinary shares to its parent, iSignthis (BVI), was not disclosed in Note 24. The obligation to issue ordinary shares was noted in Note 30: Share-based payments and under the heading "Shareholder information" but the fact that the shares were to be issued to iSignthis (BVI), the parent company of iSignthis, was not disclosed, and Note 30 did not disclose that Messrs Hart, Karantzis, Minehane and Richards held interests in iSignthis (BVI).

427. Note 24 stated, under the subheading "Key management personnel":

> "Disclosures relating to key management personnel are set out in note 20 and the remuneration report included in the directors' report."

428. Therefore, the remuneration report in the directors' report formed part of the disclosure of related party transactions for the purposes of Australian Accounting Standard AASB 124 *Related Party Disclosures*. The FY18 Audit Report confirms that the remuneration report was audited.

429. A note below a table under the heading "Additional disclosure relating to key management personnel" on page 18 of the Directors' Report (which may be part of the remuneration report) states that

> "During the 2015 financial year, iSignthis Ltd (the "acquiree") completed the acquisition of iSignthis B.V. and ISX IP Ltd (together known as iSignthis")("acquirer"). The acquiree (iSignthis Ltd) issued a total of 311,703,933 fully paid ordinary shares to the acquirer as consideration for the transaction. These members [referring to Messrs Egerton-Warburton, Hart, Karantzis, Minehane and Richards] (excluding Mr Barnaby Egerton-Warburton) of the Key Management Personnel hold an interest in the acquirer"

430. The statement that iSignthis (the listed entity) issued shares to the companies that it acquired is both illogical and inconsistent with the Prospectus and Supplementary Prospectus which stated that shares in the listed entity (then named Otis) were issued to iSignthis (BVI), a company incorporated in the British Virgin Islands, in consideration for the acquisition of shares in iSignthis BV and ISX IP Ltd.

431. In order for a user of the FY18 Financial Report to determine that Messrs Hart, Karantzis, Minehane and Richards held indirect interests in the Performance Shares, and therefore in the ordinary shares in iSignthis Ltd that would be issued on conversion of the Performance Shares, it would have been necessary to read Note 30 of the FY18 Financial Report together with the inaccurate statement on page 18 of the Directors' Report which described iSignthis B.V. and ISX IP Ltd

[35] Pages 14-18 and 45 of the FY18 Financial Report

(rather than iSignthis (BVI)) as the "acquirer" (rather than the vendor), and described iSignthis Ltd as the "aquiree" (rather than the "acquirer"), and stated that Messrs Hart, Karantzis, Minehane and Richards held interests in the "acquirer", and it would further have been necessary to mentally correct the errors in the statement on page 18 of the Director's Report.

432. This disclosure did not meet the requirement in paragraph 13(d) of ASA 700 that the information in the financial report be "understandable". Nor did it satisfy the requirement in paragraph 25(a) of ASA 550 that "the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework".

433. Mr Taylor admits that "if revenue targets for the conversion of the Performance Shares were met by 30 June 2018, the new ordinary shares would be issued to iSignthis (BVI), an entity in which related parties had an interest. The issuing of shares to iSignthis (BVI) was therefore a "related party transaction", but this was not disclosed as such in the FY18 Financial Report".[36]

Incorporation overseas

434. As to the issue of iSignthis Ltd being incorporated overseas, the parties submitted that whilst Note 24 identified iSignthis Ltd as the "parent entity", contrary to paragraph Aus 13.1 of AASB 124, it did not disclose that the "iSignthis Ltd", to which it referred, was incorporated in the British Virgin Islands.

Ultimate controlling party

435. As to the question if the ultimate controlling entity, the parties submitted that Note 24 did not make any disclosure of an ultimate controlling party. The Audit File did not contain any evidence that audit procedures were undertaken to determine whether Mr Karantzis was the "ultimate controlling party" of iSignthis for the purpose of the disclosure of related party transactions in Note 24.

Consideration

436. We accept the matters of fact which are set out above in connection with Sub-contention 6(iv). These matters were either set out as agreed facts in the SAFA or were included within the Joint submissions and, in any event, are supported by the documentary evidence tendered at the hearing.

437. Sub-contention 6(iv) alleges a breach by the auditor of paragraph 25(a) of ASA 550.

438. ASA 550 is entitled "Auditing Standard ASA 550 Related Parties". Paragraphs 1 to 7 deal with the scope of the standard and the responsibilities of the auditor in relation to related parties:

> **"Introduction**
>
> **Scope of this Auditing Standard**

[36] SAFA [141].

1. This Auditing Standard deals with the auditor's responsibilities relating to related party relationships and transactions in an audit of a financial report. Specifically, it expands on how ASA 315,[1] ASA 330,[2] and ASA 240[3] are to be applied in relation to risks of material misstatement associated with related party relationships and transactions.

Nature of Related Party Relationships and Transactions

2. Many related party transactions are in the normal course of business. In such circumstances, they may carry no higher risk of material misstatement of the financial report than similar transactions with unrelated parties. However, the nature of related party relationships and transactions may, in some circumstances, give rise to higher risks of material misstatement of the financial report than transactions with unrelated parties. For example:

   - Related parties may operate through an extensive and complex range of relationships and structures, with a corresponding increase in the complexity of related party transactions.
   - Information systems may be ineffective at identifying or summarising transactions and outstanding balances between an entity and its related parties.
   - Related party transactions may not be conducted under normal market terms and conditions; for example, some related party transactions may be conducted with no exchange of consideration.

Responsibilities of the Auditor

3. Because related parties are not independent of each other, many financial reporting frameworks establish specific accounting and disclosure requirements for related party relationships, transactions and balances to enable users of the financial report to understand their nature and actual or potential effects on the financial report. Where the applicable financial reporting framework establishes such requirements, the auditor has a responsibility to perform audit procedures to identify, assess and respond to the risks of material misstatement arising from the entity's failure to appropriately account for or disclose related party relationships, transactions or balances in accordance with the requirements of the framework.

4. Even if the applicable financial reporting framework establishes minimal or no related party requirements, the auditor nevertheless needs to obtain an understanding of the entity's related party relationships and transactions sufficient to be able to conclude whether the financial report, insofar as it is affected by those relationships and transactions: (Ref: Para. A1)

   (a) Achieves fair presentation (for fair presentation frameworks); or (Ref: Para. A2)

   (b) Is not misleading (for compliance frameworks). (Ref: Para. A3)

5. In addition, an understanding of the entity's related party relationships and transactions is relevant to the auditor's evaluation of whether one or more fraud risk factors are present as required by ASA 240,4 because fraud may be more easily committed through related parties.

6. Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial report may not be detected, even though the audit is properly planned and performed in accordance with the Australian Auditing Standards.5 In the context of related parties, the potential effects of inherent limitations on the auditor's ability to detect material misstatements are greater for such reasons as the following:

- Management may be unaware of the existence of all related party relationships and transactions, particularly if the applicable financial reporting framework does not establish related party requirements.
- Related party relationships may present a greater opportunity for collusion, concealment or manipulation by management.

7. Planning and performing the audit with professional scepticism as required by ASA 2006 is therefore particularly important in this context, given the potential for undisclosed related party relationships and transactions. The requirements in this Auditing Standard are designed to assist the auditor in identifying and assessing the risks of material misstatement associated with related party relationships and transactions, and in designing audit procedures to respond to the assessed risks."

439. Paragraph 25 of ASA 550 provides as follows:

"Evaluation of the Accounting for and Disclosure of Identified Related Party Relationships and Transactions

25. In forming an opinion on the financial report in accordance with ASA 700,12 the auditor shall evaluate: (Ref: Para. A46)

(a) Whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework; and (Ref: Para. A47)

(b) Whether the effects of the related party relationships and transactions:

(i) Prevent the financial report from achieving fair presentation (for fair presentation frameworks); or

(ii) Cause the financial report to be misleading (for compliance frameworks)."

440. The question raised by this Sub-contention is whether the identified related party relationships and transactions had been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework.

441. We accept that the "applicable financial reporting framework" included financial accounting disclosures mandated by the Australian Accounting Standards, see s 334 and 296 of the Corporations Act. In the circumstances, we accept that the provisions of the Accounting Standards referred to at paragraphs 416*ff* above formed part of the applicable financial reporting framework in the present case.

442. The Financial report for iSignthis Ltd for the FY18 contained a note, Note 24 in that Report, which stated:

> **Note 24 Related party transactions**
> *Parent entity*
> iSignthis Ltd is the parent entity.
>
> *Subsidiaries*
> Interests in subsidiaries are set out in note 26.
>
> *Key management personnel*
> Disclosures relating to key management personnel are set out in note 20 and the remuneration report included in the directors' report.
>
> *Transactions with related parties*
> The following transactions occurred with related parties:
>
> Payment for goods and services:
> Fees paid to Southern Ocean Pty Ltd for Marketing and advertising services (an entity associated with Mr Karantzis)
> Purchase of Intellectual property from BXWIP Holding Co Pty Ltd
> Incorporation and wind down costs for BXWIP Holding Co Pty Ltd
>
> During the prior financial year the consolidated entity purchased Intellectual Property (Patents) from a third party in the amount of USD$91,000 (AUD$124,063). The purchase was completed whereby an entity (incorporated specifically for this transaction for commercial purposes) associated with Mr Barnaby Egerton-Warburton (BXWIP Holding Co Pty Ltd) purchased the Intellectual Property which was then immediately reassigned to the consolidated entity. It is noted that the purchase consideration above was paid directly to a solicitor and as such no cash transaction occurred between the consolidated entity and BXWIP Holding Co Pty Ltd and thus no benefit was provided to Mr Barnaby Egerton-Warburton.
>
> *Receivable from and payable to related parties*
> There were no trade receivables from or trade payables to related parties at the current and previous reporting date.
>
> *Loans to/from related parties*
> During the year the consolidated entity entered into formal, short term, interest bearing loan agreements with Etherstack Pty Limited a wholly owned subsidiary of Etherstack Plc of which Mr Scott Minehane is a director. A total of $484,246 was advanced in two separate tranches to Etherstack Pty Limited and subsequently repaid during the year. A total of $10,220 interest was paid as part of the agreements. The transactions were completed at arm's length.
>
> *Terms and conditions*
> All transactions were made on normal commercial terms and conditions and at market rates."

443. Note 20 (referred to in Note 24) provided as follows:

> **"Note 20. Key management personnel disclosures**
>
> *Directors*
>
> The following persons were directors of iSignthis Ltd during the financial year:
> Mr Timothy Hart (Non-Executive Chairman)
> Mr Nickolas John Karantzis (Managing Director and CEO)
> Mr Scott Minehane (Non-Executive Director)
> Mr Barnaby Egerton-Warburton (Non-Executive Director)

Other key management personnel
The following person also had the authority and responsibility for planning, directing and controlling the major activities of the consolidated entity, directly or indirectly, during the financial year:
Mr Todd Richards CFO and Company Secretary

Compensation
The aggregate compensation made to directors and other members of key management personnel of the consolidated entity is set out below:

	Consolidated	
	2018	**2017**
	$	**$**
Short-term employee benefits	645,079	636,798
Post-employment benefits	32,804	37,525
Share-based payments	155,445	7,893
	833,328	682,216"

444. The Remuneration Report (also referred to in Note 24) included the following:

"Additional disclosures relating to key management personnel

Shareholding

The number of shares in the company held during the financial year by each director and other members of key management personnel of the consolidated entity, including their personally related parties, is set out below:
…

Ordinary shares

Mr Barnaby Egerton-Warburton …
Mr Timothy Hart * …
Mr Nickolas John Karantzis * …
Mr Scott Minehane * …

*During the 2015 financial year iSignthis Ltd (the "acquiree") completed the acquisition of iSignthis B.V. and ISX IP Ltd (together known as "iSignthis") ("acquirer"). The acquiree (iSignthis Ltd) issued a total of 311,703,933 fully paid ordinary shares to the acquirer as consideration for the transaction. These members (excluding Mr. Barnaby Egerton-Warburton) of the Key Management Personnel hold an interest in the acquirer."

445. The Statement of Profit or Loss in the Financial Report contained, under the heading "Expenses"

"	**Note**	**2018**	**2017**
		$	**$**
…			
Share based payments	**30**	(312,380)	(979,347)"

446. Note 30 included the following:

"As part of the part consideration for the acquisition of 100% of issued capital of iSignthis B.V. and ISX IP Ltd (together known as "iSignthis") the vendor also issued 336,666,667 performance shares (on a post consolidation basis) based on achievement of the following milestones within three (3) of completing the transaction:

(i) 112,222,222 Class A Performance Shares – on achievement of annual revenue of at least $5,000,000. Annual revenue will be calculated on annualised basis over a 6 month reporting period. Class A Performance Shares will expire if unconverted within three (3) years of completing the transaction;

(ii) 112,222,222 Class B Performance Shares – on achievement of annual revenue of at least $7,500,000. Annual revenue will be calculated on annualised basis over a 6 month reporting period. Class B Performance Shares will expire if unconverted within three (3) years of completing the transaction; and

(iii) 112,222,223 Class C Performance Shares – on achievement of annual revenue of at least $10,000,000. Annual revenue will be calculated on annualised basis over a 6 month reporting period. Class C Performance Shares will expire if unconverted within three (3) years of completing the transaction. As at the date of this audited report, all three milestones have been met. The Performance Rights will therefore convert and be issued as fully paid ordinary shares per the terms outlined in the Prospectus dated December 2014 as soon as practically possible."

447. Paragraphs 18 and 19 of AASB 124 provided:

"18 If an entity has had related party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements. These disclosure requirements are in addition to those in paragraph 17. At a minimum, disclosures shall include:

(a) the amount of the transactions;

(b) the amount of outstanding balances, including commitments, and:

(i) their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement; and

(ii) details of any guarantees given or received;

(c) provisions for doubtful debts related to the amount of outstanding balances; and

(d) the expense recognised during the period in respect of bad or doubtful debts due from related parties.

18A Amounts incurred by the entity for the provision of key management personnel services that are provided by a separate management entity shall be disclosed.

19 The disclosures required by paragraph 18 shall be made separately for each of the following categories:

(a) the parent;

(b) entities with joint control of, or significant influence over, the entity;

(c) subsidiaries;

(d) associates;

(e) joint ventures in which the entity is a joint venturer;

(f) key management personnel of the entity or its parent; and

(g) other related parties."

448. The Definitions of "Related Party", "Related Party Transaction" and "Key Management "Personnel" in paragraph 9 of AASB 124 are set out in paragraphs 419*ff* above.

449. In our view, iSignthis Ltd and iSignthis (BVI) were members of the same group and thus "related parties". iSignthis Ltd and Messrs Hart, Karantzis, Minehane and Richards were related parties because they were "key management personnel" of insignia Ltd.

450. The issue of shares was, in our view, a "transfer of resources" between iSignthis Ltd and iSignthis BV and thus a "related party transaction" within paragraph 9 of AASB 124. The word "resources" in this context appears to involve a concept of the widest meaning, so as to include "property" and "interests in property". Construed this way, the issue of shares would be included within the term "transfer of resources". It is not so clear that the Performance Share transaction involved a transfer of an "obligation", as the parties contended, but it is not necessary to decide this. The parties clearly contended (and Mr Taylor admitted) that the transaction was a "related party transaction".

451. The obligation of iSignthis Ltd to issue the ordinary shares as a result of the achievement of the milestones for the conversion of the Performance Shares was a related party transaction "during the period covered by the financial statements" for FY18 (within paragraph 18 of AASB 124) because the agreement obliged iSignthis Ltd to issue shares (ie transfer resources) to iSignthis BV by reason of events occurring within the period covered by the financial statements (namely the achievement of the milestones).

452. In our view, the financial report did not appropriately account for and disclose the identified related party relationships and transactions in accordance with the applicable financial reporting framework (cf ASA 550 para 25(a)):

(a) Note 24 was misleading in referring to "Transactions with Related Parties" and then making no reference to the Performance Share Transaction;

(b) The disclosure in the remuneration report misleadingly suggested that the relevant transaction had been completed during 2015;

(c) Moreover, that disclosure wrongly referred to the recipient of the ordinary shares as iSignthis BV, rather than iSignthis (BVI);

(d) In circumstances where there clearly was a "related party transaction", there was no appropriate disclosure of the nature of the related party relationship (between iSignthis Ltd and iSignthis (BVI)) or information about the related party transaction necessary for users to understand the potential effect of the relationship on the financial statements (cf paragraph 18 of AASB 124); and

(e) Contrary to paragraph Aus 13.1 of AASB 124, the financial report did not disclose that the "parent entity" described as "iSignthis Limited" (which has been referred to as iSignthis (BVI) in these reasons) was incorporated in the British Virgin Islands.

453. Mr Taylor admitted that he failed to ensure that the disclosures regarding related parties and related party transactions in the FY18 Financial Report were in accordance with the applicable financial reporting framework. It was an agreed fact that the Audit File does not contain evidence that the Audit Team considered the consequences of the Performance Shares arrangement on the disclosure of related party transactions[37].

454. In those circumstances, we are satisfied that:

(a) The auditor, in forming the opinion on the financial report, did not evaluate whether the identified related party relationships and transactions were appropriately disclosed in accordance with the applicable financial reporting framework, in contravention of ASA 550 paragraph 25(a); and

(b) Mr Taylor failed to ensure that the audit was carried out in accordance with the Auditing Standards.

Sub-contention 6(i) – failure to plan and perform audit with appropriate level of scepticism – ASA 200 para 15

455. Sub-contention 6(i) contends that, on the basis of the matters referred to in Sub-contentions 6(ii) and 6(iv), Mr Taylor failed to plan and perform the audit of the related party disclosures in the FY18 Financial Report with an appropriate level of professional scepticism and did not comply with paragraph 15 of ASA 200.

456. This is admitted by Mr Taylor[38].

457. We are satisfied, on the basis of the matters already discussed above in relation to Sub-contentions 6(i) and 6(ii), that the auditor failed to plan and perform the audit of the related party disclosures in the FY18 Financial Report with an appropriate level of professional scepticism and did not comply with paragraph 15 of ASA 200. The operation of the Performance Shares Transaction and the evaluation of the related party disclosures were clearly very important issues

[37] SAFA para 140.
[38] SAFA para 142.3

requiring consideration by the auditor in terms of circumstances which might "cause the financial report to be materially misstated", or potentially fraud.

458. In the circumstances, we are satisfied that Mr Taylor failed to ensure that the Audit was carried out in accordance with the Auditing Standards in this respect.

PART J - CONTENTION 7: STEPS TAKEN IN RESPECT OF THE AUDITOR'S RESPONSIBILITIES RELATING TO FRAUD

459. Contention 7 relates to alleged failures in respect of the Auditor's responsibilities relating to fraud. The Contention involved the following Sub-contentions:

(a) Contrary to paragraph 24 of ASA 240 *The Auditor's Responsibilities Relating to Fraud in an Audit of a Financial Report*, Mr Taylor failed to adequately evaluate and assess whether the risk assessment procedures and related activities recorded in the Fraud Memo indicated fraud risk factors were present (**Sub-contention 7(i)**).

(b) Contrary to paragraph 25 of ASA 240, Mr Taylor failed to adequately evaluate and assess, in accordance with paragraph 25 of ASA 315, the risks of material misstatement due to fraud at the financial report level and at the assertion level for classes of transactions, account balances and disclosures (**Sub-contention 7(ii)**).

(c) Contrary to paragraph 31 of ASA 315, Mr Taylor failed to revise the fraud risk assessment having obtained evidence that was inconsistent with the evidence on which Mr Taylor originally based the assessment (**Sub-contention 7(iii)**).

(d) Contrary to paragraph 35 of ASA 240, Mr Taylor failed to adequately evaluate whether uncorrected misstatements were indicative of fraud or error (**Sub-contention 7(iv)**).

(e) Contrary to paragraph 15 of ASA 200, Mr Taylor failed to plan and perform the evaluation of the risk of fraud with professional scepticism in relation to the possible influence of the Performance Share arrangement on the risk of fraud (**Sub-contention 7(v)**).

(f) Contrary to paragraph 17 of ASA 220 *Quality Control for an Audit of a Financial Report and Other Historical Financial Information* Mr Taylor failed to adequately review the Fraud Memo (**Sub-contention 7(vi)**).

460. ASIC did not press Sub-contentions 7(i), 7(ii) or 7(iv) at the Hearing.

461. Mr Taylor admitted the other contraventions.[39]

462. As Sub-contention 7(v) is based upon the matters alleged in Sub-contentions 7(iii) and 7(vi), we shall deal with those Sub-contentions before dealing with Sub-contention 7(v)

[39] SAFA [154.1]-[154.3].

Sub-contention 7(iii) – Failure to revise the fraud risk assessment having obtained inconsistent evidence

463. Sub-contention 7(iii) contends that Mr Taylor failed to revise the fraud risk assessment having obtained evidence that was inconsistent with the evidence on which Mr Taylor originally based the assessment, contrary to paragraph 31 of ASA 315.

Facts

464. The following agreed facts were admitted by Mr Taylor.

465. The Audit File includes a memorandum headed "iSignthis Ltd, Fraud Memorandum for the year ending 30 June 2018" (**Fraud Memo**).

466. The Fraud Memo was a working paper prepared in April 2018 and its purpose was to:

(a) Obtain an understanding of management's assessment of the risk that the financial statements may be materially misstated as a result of fraud, and the accounting and internal control systems in place to address such risk and prevent and detect error;

(b) Document the results of team discussions and enquiries with management concerning fraud;

(c) Document the fraud risk factors identified that indicate the possibility of either fraudulent financial reporting or misappropriation of assets, and the Audit Team's response; and

(d) Document circumstances that the Audit Team have encountered that may indicate that there is a material misstatement in the financial statements resulting from fraud or error and the audit procedures performed to determine whether the financial statements are materially misstated.

467. The Fraud Memo contains the following comments, which were a record of the "topics that were discussed (between Brad Krafft and Todd Richards, CFO of iSignthis) to assess and document the risk factors that relate to (a) misstatements arising from fraudulent financial reporting":

"(i) Management bonuses are not contingent upon operating results, financial position, or cash flow for the period under audit.

(ii) Management is primarily dominated by John Karantzis (JK) and Todd Richards (TR).

(iii) The Company has a strong Board who provide an additional level of oversight and governance to ensure decisions being made by JK and TR are appropriate.

(iv) Management outsources their primary accounting function to and financial statement preparation to Leydin Freyer. Management is confident in the IT and accounting knowledge at the firm.

(v) As transactions are outsourced to a third-party, and based on the audit team's prior knowledge of management, we conclude the risk is low and therefore not significant.

(vi) Management could perpetrate and conceal fraudulent financial reporting within operating expenses, which will be substantively detail-tested; we believe the planned procedures will sufficiently address this risk. Further, based on the fact that their accounting function is outsourced to a third party, the moral integrity of management and oversight by the board, the audit team deems this risk to be low.

(vii) The audit team concludes that this risk does not exist in the period under audit as they have recorded no revenues associated with contracts – the only revenue recorded is due to interest income for cash & cash equivalents. The audit team does note a risk, however, of misstatement due to improper revenue recognition, which has been flagged as an RPR and will be addressed in substantive testing.

(viii) As accounting is outsourced to a third-party, segregation of duties issues are mitigated– note payment approvals required from ISX (i.e. not outsourced). "

468. The Fraud Memo also contains the following comments, which were a record of the topics that "were discussed [between Brad Krafft and Todd Richards, CFO of iSignthis] to assess and document the risk factors that relate to . . . (b) misstatements arising from the misappropriation of assets":

"(ii) Fraudulent financial reporting

Management noted no knowledge nor suspiscion (sic) of fraudulent activity during the year.

…

(vii)Material misstatement due to fraud related to revenue recognition

The Group has generated revenue during the period however they are still in the early stage of business therefore fraud risk from revenue recognition is not seen as a risk.

…

(viii) Whether there are subsidiary locations, business segments, types of transactions, account balances or financial statement categories where the possibility of error may be high, or where fraud risk factors may exist, and how they are being addressed by management

The Company holds two locations in the Netherlands (Authenticate BV and iSignthis BV) that use accounting software Exact, and the Cyprus use Intelisoft, rather than MYOB. Error could arise in the conversion of financial data from one software to another, or due to misapplication of accounting practices. However, the Leydin Freyer team perform a thorough review of interim financial information and year-end financial information in preparation of the consolidated financial statements. Further, the LF team have access to the accounting systems themselves.

Though activity in foreign operations are minimal in the current year, the audit team has flagged a financial statement risk assocaited (sic) with monitoring foreign operations as significant within Voyager."

469. The Fraud Memo was prepared early in the audit process before revenue other than revenue from OT Markets and Nona Marketing was received (see paragraphs 133*ff* above). It was not subsequently updated to note that there was a significant increase in the activities and revenue of the iSignthis Group in the

financial year, or that the statement in item (viii) that "activity in foreign operations are minimal this year" was wrong.

470. The Fraud Memo went on to record the consideration given by Mr Krafft and Mr Richards to fraud risk factors and the views of the Audit Team as follows:

> "The following conditions that are present when fraud occurs have been considered and, with each condition, addressed as it relates to Micro-X as follows:
>
> **Incentive/Pressure**:
>
> The Company is listed on the ASX, which provides them the incentive to produce strong results in the form of product development costs in order to attract investors to raise capital, as the Company has no reliable source of income/funds other than raising capital for the period under audit.
>
> **Opportunity**:
>
> Opportunity is mitigated by outsourced accounting function, unless management overrode the financial reporting process and performed any top-side adjustments to the financial statements, but this would not occur within revenue reporting, as no revenue was recorded during the period other than interest income.
>
> **Rationalisation/Attitude**:
>
> No issues with current staff have reflected potential for employees' attitudes to resort to fraud. The Board are very focussed on ensuring they maintain a strong corporate image."

471. The statements that "the Company has no reliable source of income/funds other than raising capital for the period under audit" and "no revenue was recorded during the period other than interest income" were inaccurate.

472. At all material times, the Audit Team was aware of the fraud risk factors relating to the Performance Shares.

473. The following specific fraud risk factors were evident on the Audit File, and were obtained during the audit and were inconsistent with the evidence set out in the Fraud Memo[40]:

(a) Risk of improper revenue recognition;

(b) Heightened risk over project management revenue due to only commencing in May 2018, this was developing at the time of planning and responses adjusted through fieldwork;

(c) Recorded revenue and receivables not valid;

(d) Contract accounting not consistent with terms;

(e) General journal risks including:

i. Accounts with numerous entries where such activity is out of the ordinary;

[40] Joint Submissions para 150-152.

ii. Accounts with large entries where such amounts are out of the ordinary; and

iii. Entries by persons who ordinarily would not be expected to prepare entries,

(f) Significant estimates and how management identifies those transactions, events and conditions that may give rise to the need for accounting estimates.

474. The Audit File indicates that Mr Taylor reviewed the Fraud Memo on 20 June 2018.

The parties' submissions

475. The parties referred to paragraph 31 of ASA 315, which provides as follows:

> "… In circumstances where … new information is obtained, … which is inconsistent with the audit evidence on which the auditor originally based the assessment, the auditor shall revise the assessment and modify the further planned audit procedures accordingly."

476. The parties submitted that the evidence on which the fraud risk assessment for the FY18 Audit was originally based was that set out in the Fraud Memo. However, evidence obtained during the Audit, set out in paragraph 473 , was inconsistent with the evidence set out in the Fraud Memo, as noted in paragraph 469 and indicated a possibility of fraud. Despite that inconsistency, Mr Taylor did not re-evaluate of the risk of fraud.

477. Mr Taylor admits that by failing to re-evaluate the risk of fraud, he did not comply with paragraph 31 of ASA 315.[41]

Consideration

478. Paragraphs 25 to 27 of ASA 315 dealing with the auditor's obligation to identify and assess the risks of material misstatement are set out at paragraph 172 above. Paragraph 31 of ASA 315 provides:

> ***"Revision of Risk Assessment***
>
> 31. The auditor's assessment of the risks of material misstatement at the assertion level may change during the course of the audit as additional audit evidence is obtained. In circumstances where the auditor obtains audit evidence from performing further audit procedures, or if new information is obtained, either of which is inconsistent with the audit evidence on which the auditor originally based the assessment, the auditor shall revise the assessment and modify the further planned audit procedures accordingly. (Ref: Para. A152) "

479. The Fraud Memo originally recorded that the risk factors that relate to "misstatements arising from fraudulent financial reporting" did not exist in the

[41] SAFA [154.1].

period under audit as the company had no revenues associated with contracts and that the only revenue recorded was due to interest income. The audit evidence subsequently obtained, showing "project management revenue due to only commencing in May 2018", was clearly inconsistent with this. As already referred to in the summary of facts, most of the revenue was only earned in the last few months of the financial year.

480. Mr Taylor admits that that he failed to revise the assessment.

481. In the circumstances, we are satisfied that the auditor did not revise the assessment notwithstanding that new information had been obtained which was inconsistent with the audit evidence on which the assessment was originally based, and that the failure to do so was in breach of ASA 315 paragraph 31.

482. In the circumstances, Mr Taylor failed to ensure that the audit was conducted in accordance with the Auditing Standards, in this respect.

Sub-contention 7(vi) – failure to obtain satisfaction through review, that sufficient audit evidence obtained – ASA 220 par 17

483. Sub-contention 7(vi) contends that Mr Taylor failed to adequately review the Fraud Memo, contrary to paragraph 17 of ASA 220 *Quality Control for an Audit of a Financial Report and Other Historical Financial Information*

Facts and parties' submissions

484. The parties made the following submissions in support of the contentions in Sub-contention 7(vi).

485. Mr Taylor signed off the Fraud Memo indicating that he had reviewed it. As set out in paragraphs 147 and 149 of the SAFA, (reproduced at paragraph 469 and 471 above) the memo contained statements that were clearly entirely inaccurate and did not reflect what Mr Taylor knew or should have shown to be the true position when he reviewed the memo.

486. When further audit procedures revealed further errors in the Fraud Memo, as set out at paragraph 151 of the SAFA (reproduced at 473 above), Mr Taylor did not require that the assessment and documentation of fraud risk be updated to take account of the audit evidence that had been obtained.

487. Mr Taylor admitted that by failing to adequately review the Fraud Memo, he failed to comply with paragraph 17 of ASA 220.[42]

Consideration

488. ASA 220 paragraphs 15 to 17 provides:

> ***"Engagement Performance***

[42] SAFA [154.2].

Direction, Supervision and Performance

15. The engagement partner shall take responsibility for:

(a) The direction, supervision and performance of the audit engagement in compliance with Australian Auditing Standards, relevant ethical requirements, and applicable legal and regulatory requirements; and (Ref: Para. A13-A15, A20)

(b) The auditor's report being appropriate in the circumstances.

Reviews

16. The engagement partner shall take responsibility for reviews being performed in accordance with the firm's review policies and procedures. (Ref: Para. A16-A17, A20)

17. On or before the date of the auditor's report, the engagement partner shall, through a review of the audit documentation and discussion with the engagement team, be satisfied that sufficient appropriate audit evidence has been obtained to support the conclusions reached and for the auditor's report to be issued. (Ref: Para. A18-A20)"

489. This Sub-contention raises a duty which is directly imposed upon the Engagement Partner.

490. It was agreed (and admitted by Mr Taylor) that Mr Taylor was the "Engagement Partner" for the purposes of the Audit and ASA 220[43].

491. It follows from the facts just summarised above, that Mr Taylor could not have been adequately or properly satisfied, through a review of the audit documentation and discussion with the engagement team, that sufficient appropriate audit evidence had been obtained to support the conclusions reached and for the auditor's report to be issued.

492. In the circumstances, Mr Taylor, as engagement partner, breached his duty under paragraph 17 of ASA 220. For reasons already developed at paragraphs 88 and 101 above, we consider that this was a failure to perform, adequately or properly, a duty of an auditor.

Sub-contention 7(v) – Failure to plan and perform the evaluation of fraud risk with an appropriate level of professional scepticism – ASA 200 par 15

493. Sub-contention 7(v) asserts that Mr Taylor failed to plan and perform the evaluation of the risk of fraud with professional scepticism in relation to the possible influence of the Performance Share arrangement on the risk of fraud Contrary to paragraph 15 of ASA 200.

Facts and parties' submissions

[43] SAFA para 8.3

494. The parties submitted, simply, that reason of the matters set out in relation to Sub-contentions 7(iii) and 7(vi), Mr Taylor failed to plan and perform the evaluation of fraud risk with an appropriate level of professional scepticism and did not comply with paragraph 15 of ASA 200, and that this was admitted by Mr Taylor.[44]

Consideration

495. The relevant circumstances establish that the auditor and Mr Taylor were required to do a lot more than was done in relation to the risk of fraud by reason of the Performance Share arrangement.

496. It needs to be recalled that the terms upon which the Performance Shares were issued was that they would convert into ordinary shares if iSignthis Ltd's revenue in the period up to 30 June 2018 achieved a certain level in any six-monthly reporting period up to 30 June 2018. If these requirements were not met, the Performance Shares would convert to a single ordinary share.

497. As already noted above:

(a) None of the milestones for the conversion of Performance Shares were met in the six-month periods ending 30 June 2015, 31 December 2015, 30 June 2016, 31 December 2016, 30 June 2017 or 31 December 2017;

(b) In fact, on 28 February 2018, iSignthis reported to the ASX that its revenue for the first half of the FY18 year (ie the six-month period ending 31 December 2017) was $799,499, one third of the minimum revenue level required, and one sixth of the revenue level required to achieve conversion of all the Performance Shares;

(c) However, iSignthis recorded revenue of $6,338,969 for the year ended 30 June 2018.

498. All of this was, or should have been known by the auditor and Mr Taylor. The auditor and Mr Taylor should have realised that these circumstances presented a stark picture:

(a) Directors of the issuer (certainly Mr Karantzis) had a personal interest in the issue of shares through their interest in iSignthis (BVI)[45];

(b) By the start of the last possible six-month period, the company had achieved nowhere near the revenue required to achieve the milestones for the issue of the shares; and

(c) In the final months of the financial year, the company achieved a huge increase in revenue resulting in the issue of the shares.

499. The obligation under paragraph 15 of ASA 200 required the auditor to plan and perform the audit with professional scepticism, which required being alert to

[44] SAFA [154.3].
[45] This was recorded in the Remuneration Report

conditions that may indicate possible fraud and being alert to audit evidence which contradicted other audit evidence (see Para A18 of the Application section of ASA 200).

500. Here, there were conditions which might indicate possible fraud in relation to the Performance Share arrangement and the auditor obtained evidence relevant to the operation of that arrangement (the increase in revenue) which contradicted the position recorded in the Fraud Memo.

501. In the circumstances, we are satisfied that the auditor failed to plan and perform the Audit with professional scepticism in relation to the possible influence of the Performance Share arrangement on the risk of fraud, contrary to paragraph 15 of ASA 200. Accordingly, we are satisfied that Mr Taylor failed to ensure that the Audit was performed in accordance with the auditing standards in this respect.

PART K – CONTENTION 9: THE AUDITOR'S REPORT

502. In the Amended Concise Outline, ASIC contends that by signing an unqualified audit report and making the statements noted in paragraphs 157 and 158 of the SAFA, Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor in the following respects:

(a) Contrary to paragraph 11 of ASA 700 *Forming an Opinion and Reporting on a Financial Report*, Mr Taylor failed to conclude appropriately as to whether the auditor has obtained reasonable assurance about whether the financial report as a whole was free from material misstatement, whether due to fraud or error (**Sub-contention 9(i)**).

(b) Contrary to paragraphs 12 to 14 of ASA 700 *Forming an Opinion and Reporting on a Financial Report*, Mr Taylor failed to evaluate appropriately whether the financial report was prepared, in all material respects, in accordance with the requirements of the applicable financial reporting framework (**Sub-contention 9(ii)**).

(c) Contrary to paragraph 13 of ASA 701 *Communicating Key Audit Matters in the Independent Auditor's Report*, Mr Taylor, having identified in the FY18 Audit Report, in accordance with paragraph 11 of ASA 701, that "the occurrence of revenue" was a key audit matter, made statements under the heading "How the matter was addressed in the audit" that were not supported by the audit procedures actually conducted and/or were misleading (**Sub-contention 9(iii)**).

503. ASIC did not press Sub-contention 9(ii) of its Amended Concise Outline at the Hearing.

504. Mr Taylor admitted the other contraventions.[46]

[46] SAFA [161.1] and [161.2].

Sub-contention 9(i) – failure to conclude appropriately whether the auditor obtained reasonable assurance report free from material misstatement – ASA 700 para 11

505. Sub-contention 9(i) contended that by signing an unqualified audit report and making the statements noted in paragraphs 157 and 158 of the SAFA, Mr Taylor failed, contrary to paragraph 11 of ASA 700 *Forming an Opinion and Reporting on a Financial Report*, to conclude appropriately as to whether the auditor has obtained reasonable assurance about whether the financial report as a whole was free from material misstatement, whether due to fraud or error.

Facts and parties' submissions

506. As already noted above, the FY18 Audit Report was signed by Mr Taylor and was unqualified. Mr Taylor's signature on the FY18 Audit Report was dated 28 August 2018. Mr Taylor answered all questions in the "Partner Review" audit program for the FY18 Audit and signed off the "Partner Review" on 21 September 2018.

507. As recorded at paragraph 31, under the heading "Basis for opinion", the FY18 Audit Report stated:

> "We conducted our audit in accordance with Australian Auditing Standards
>
> . . . .
>
> We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion."

508. The parties submitted that for reasons stated above in relation to each Specific Contention, particularly Specific Contentions 2 and 4, the audit evidence that was obtained was not sufficient or appropriate to provide a basis for the opinion expressed in the FY18 Audit Report. Specifically, the audit evidence was inadequate to allow a conclusion to be drawn that the financial report was free of material misstatement of revenue and expenses in respect of the Services transactions.

509. Mr Taylor admitted that:

(a) there was insufficient appropriate audit evidence relating to the Service Agreements[47];

(b) he failed contrary to paragraph 11 of ASA 700, he failed to conclude appropriately as to whether the auditor has obtained reasonable assurance about whether the financial report as a whole was free from material misstatement, whether due to fraud or error.

Consideration

47 SAFA [160].

510. Paragraphs 10 to 11 of ASA 700 provide:

> ***"Requirements***
>
> ***Forming an Opinion on the Financial Report***
>
> 10. The auditor shall form an opinion on whether the financial report is prepared, in all material respects, in accordance with the applicable financial reporting framework.8,9
>
> 11. In order to form that opinion, the auditor shall conclude as to whether the auditor has obtained reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error. That conclusion shall take into account:
>
> (a) The auditor's conclusion, in accordance with ASA 330, whether sufficient appropriate audit evidence has been obtained;10
>
> (b) The auditor's conclusion, in accordance with ASA 450, whether uncorrected misstatements are material, individually or in aggregate;11 and
>
> (c) The evaluations required by paragraphs 12–15 of this Auditing Standard."

511. Relevantly, paragraphs 10 and 11 required the auditor:

(a) To form an opinion on whether the financial report was prepared, in all material respects, in accordance with the applicable financial reporting framework;

(b) In order to form that opinion, to conclude as to whether the auditor has obtained reasonable assurance about whether the financial report as a whole is free from material misstatement whether due to fraud or error; and

(c) In drawing that conclusion, to take into account the auditor's conclusion in accordance with ASA 330 whether sufficient appropriate audit evidence has been obtained.

512. In our view, the evidence, including the evidence in relation to Contentions 2 and 4, support the conclusion that the audit evidence that was obtained was not sufficient or appropriate to provide a basis for the opinion expressed in the FY18 Audit Report.

513. It is not clear if Mr Taylor admits that the auditor, in forming the opinion, did not, in fact, conclude that sufficient audit evidence had been obtained (in which case, it seems to us, that the auditor clearly breached ASA 700 paragraphs 10 and 11) or whether Mr Taylor admits that although the auditor *did* conclude that sufficient audit evidence was obtained (at least in a formal sense), the conclusion was not justified in view of the significant failings in relation to the adequacy of the audit evidence.

514. It seems to us that the latter position is probably the true situation. If so, complex issues of law (which were not argued before us) arise.

515. There is extensive case law about the validity of conclusions or opinions in various contexts, including where statutory or contractual provisions mandate the formation of specific conclusions or opinions. As a broad overview, in order to form a valid opinion or conclusion:

(a) At a minimum, the conclusion or opinion must be honest and genuine;

(b) It would normally be necessary to undertake a real and genuine consideration of the matters relevant to the formation of the conclusion or opinion; and

(c) The conclusion or opinion must not have been formed on the basis of a misunderstanding of the nature of the opinion to be formed or on the basis of irrelevant matters,

(see the discussion in *United Petroleum Pty Ltd v Coastal Services Centres Pty Ltd* [2024] NSWCA 97).

516. In our view, a valid conclusion about whether sufficient appropriate audit evidence has been obtained in accordance with ASA 330 requires a real consideration of relevant issues and the available evidence. We consider that the evidence in this matter (and Mr Taylor's admissions) show that this did not take place. The parties' submissions contended that "the audit evidence that was obtained was not sufficient or appropriate to provide a basis for the opinion expressed in the FY18 Audit Report" (see paragraph 166 of the Joint Submissions). In the circumstances, we are satisfied that the auditor failed to comply with paragraphs 10 and 11 of ASA 700.

517. In the circumstances, we are satisfied that Mr Taylor failed to ensure that the audit was carried out in accordance with the auditing standards in this respect.

Sub-contention 9(iii) – Statements relating to "Key Audit matters" not supported by the audit procedures actually undertaken – ASA 701 para 13

518. By Sub-contention 9(iii), ASIC contended that by signing an unqualified audit report and making the statements noted in paragraphs 157 and 158 of the SAFA, Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor, in that, having identified in the FY18 Audit Report, in accordance with paragraph 11 of ASA 701, that "the occurrence of revenue" was a key audit matter, he made statements under the heading "How the matter was addressed in the audit" that were not supported by the audit procedures actually conducted and/or were misleading, contrary to paragraph 13 of ASA 701 *Communicating Key Audit Matters in the Independent Auditor's Report*, Mr Taylor,

Facts and parties' submissions

519. The parties made submissions as to the requirements of ASA 701 as follows.

520. ASA 701 deals with "the auditor's responsibility to communicate key audit matters in the auditor's report".[48] Paragraph 2 of ASA 701 states that "[t]he purpose of communicating key audit matters is to enhance the communicative value of the auditor's report by providing greater transparency about the audit that was performed". The term "key audit matters" is defined in paragraph 8 of ASA 701 as "[t]hose matters that, in the auditor's professional judgement, were of most significance in the audit of the financial report of the current period".

521. Paragraph 13 of ASA 701 provides as follows:

> "13. The description of each key audit matter in the Key Audit Matters section of the auditor's report shall include a reference to the related disclosure(s), if any, in the financial report and shall address:
>
> (a) Why the matter was considered to be one of most significance in the audit and therefore determined to be a key audit matter; and
>
> (b) How the matter was addressed in the audit."

522. Paragraphs 157 and 158 of the SAFA stated:

> "157. Under the heading "Key audit matters", the FY18 Audit Report stated:
>
> Key audit matters are those matters that, in our professional judgement, were of most significance in our audit of the financial report of the current period.
>
> 158. Under the headings "Key audit matter" and "How our audit addressed the key audit matter" the FY18 Audit Report included the following:
>
> Revenue recognition – Note 5 . . . .
>
> Our procedures included, amongst others . . . .
>
> - Obtaining an understanding and assessing the reasonableness of each revenue stream to assess the appropriateness of policies and procedures in place regarding revenue recognition in accordance with accounting standards AASB 118 *Revenue* and AASB 111 *Construction Contracts*
> - For revenue recorded under AASB 111:
>   - Assessing management's estimate of the stage of completion of each project at 30 June 2018 through corroboration to underlying supporting documentation;
>   - Performing a recalculation of the percentage of completion for each significant project; . . ."

523. The parties submitted that this included two statements:

(a) Obtaining an understanding and assessing the reasonableness of each revenue stream to assess the appropriateness of policies and procedures in place regarding revenue recognition in accordance with accounting standards AASB 118 Revenue and AASB 111 Construction Contracts; and

[48] ASA 701 [1].

(b) Assessing management's estimate of the stage of completion of each project at 30 June 2018 through corroboration to underlying supporting documentation.

524. The parties submitted that the first statement did not reflect the audit work documented in relation to the revenue from the Services transactions. In particular, the Audit File contained no evidence that any audit work was done to determine whether any procedures were in place to determine the percentage of completion of the Services transactions which were accounted for under AASB 111.

525. The parties submitted that the second statement does not reflect the audit work documented in relation to the revenue from the Services transactions. In particular:

(a) The only documentation which supported the stage of completion of the Services transactions as at 30 June 2018 was the certificates of practical completion in respect of three of the four projects;

(b) Those certificates were obtained from the management of iSignthis and on that basis could not properly be characterised as "underlying supporting documentation" in the "key audit matters" section of the audit report;

(c) The auditor did not accept that the certificates were valid evidence of completion of the "training" and "support" components of the Services, as each of the Service Agreements stated that those services were to be completed over a specified period following the "go live" date, and part of that period had not occurred by 30 June 2018.[49]; and

(d) No certificate of practical completion had been received for the Corp Destination transaction by the time the audit report was signed.

526. Accordingly, it was misleading to suggest that the stage of completion of the Services transactions had been corroborated to underlying supporting documentation.

527. Mr Taylor admits that by including statements about key audit matters in the FY18 Audit Report that were not supported by the audit procedures actually conducted and/or were misleading, he failed to comply with paragraph 13 of ASA 701.[50]

Consideration

528. Paragraph 13 of ASA 701 requires the Key Audit Matters section of the auditor's report to address, amongst other things, how the matter was addressed in the audit. This must be understood as calling for a statement about how the matter was actually addressed, that is, an accurate statement about how the matter was addressed.

[49] SAFA [60.2], [89].
[50] SAFA [161.2].

529. We are satisfied on the evidence that each of the first and second statement was not accurate. In the circumstances, the audit was not performed in accordance with ASA 701 and Mr Taylor failed to ensure that it was.

PART L - THE BOARD'S CONCLUSIONS

530. ASIC contends and Mr Taylor admits that by reason of the failures stated in Contentions 1 to 9 above, Mr Taylor failed to carry out or perform adequately and properly the duties of an auditor in respect of the FY18 Audit.

531. For reasons set out above and elaborated below, we are satisfied that Mr Taylor has failed to carry out or perform adequately and properly the duties of an auditor.

532. We have set out in relation to each Contention above, the specific conclusions dealing with Mr Taylor's failure to perform the duties of an auditor. In the main, those conclusions involve a finding that Mr Taylor failed to comply with his duty as an auditor (and Lead Auditor) to ensure that the Audit was carried out in accordance with auditing standards. In relation to Contention 7(vi), we have found that he failed to perform the duties of an auditor in his capacity as Engagement Partner.

533. The question which the Board has to address is not simply whether Mr Taylor has failed to perform his duties as an auditor. The question is whether Mr Taylor failed to perform those duties "adequately and properly". We are required to test performance of duties and we are required to do so by making an evaluative and subjective judgment, by reference to a benchmark, being accepted professional standards. The question is: has Mr Taylor failed to perform the duties of an auditor adequately and properly, judged by reference to accepted professional standards?

534. In our view the nature and extent of Mr Taylor's failure to perform his duties demonstrate that he failed to meet appropriate professional standards and cause us to conclude that he has failed to perform the duties of an auditor "adequately and properly". As can be seen from the scope of this decision, there were many aspects to Mr Taylor's failures. The failures were, in the main, serious matters. A number of them related to the Performance Share transaction which, on the face of things, gave rise to serious questions about the new sources of income.

PART M - SANCTIONS

535. Where the Board is satisfied that a respondent has failed to carry out or perform adequately and properly the duties of an auditor, s 1292 empowers the Board to:

(a) Cancel, or suspend for a specified period, the registration of the person as an auditor; and

(b) Either in addition to, or in substitution for, the exercise of those powers, to deal with the person in one or more of the following ways:

i. by admonishing or reprimanding the person;

ii. by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct; and

iii. by requiring the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions;

and, if a person fails to give an undertaking when required to do so under paragraph (ii) or (iii), or contravenes an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

536. In the present case, the parties have submitted proposed Consent Orders in the following terms (**Proposed Consent Orders**):

> "**BY CONSENT, THE BOARD ORDERS:**
>
> 1. Pursuant to s 1292(1) of the ***Corporations Act*** *2001* (Cth), the registration of Bradley Taylor as a company auditor be cancelled.
>
> 2. Pursuant to s 1297(1)(a) of the Corporations Act, the order for cancellation in paragraph 1 will come into effect at the end of the day on which the Board gives Mr Taylor a notice of the decision in accordance with s 1296(1)(a) of the Act."

The parties' Joint Submissions

537. The parties' Joint Submissions contained the following submissions concerning the legal principles applicable to the question of sanction:

(a) Section 1292(1)(d) of the Corporations Act provides that the Board may cancel the registration of a person as an auditor where it is satisfied that the person has failed to carry out or perform adequately and properly the duties of an auditor;

(b) The Board's power to cancel or suspend a person's registration under s 1292(1) is discretionary: *Birdseye v Companies Auditors and Liquidators Disciplinary Board* [2002] FCAFC 284 at [10] (Cooper, Carr and Finkelstein JJ);

(c) The Board's power to cancel or suspend serves a protective purpose by protecting the public from persons not fit to remain registered and by deterring other auditors from acting in a similar way: *ASIC v McDermott Re Conalpin Pty Ltd (In Liq)* [2016] FCA 1186 at [44] (Moshinsky J). The CADB has stated, in *Walker* at [20.7], that the protection of the public includes the maintenance of a system under which the public can be confident that the relevant practitioner and all other practitioners will know that breaches of duty will be appropriately dealt with;

(d) One of the principal factors relevant to the Board's consideration of sanctions is the seriousness of the matters that have been found to be established: *ASIC v* ***McVeigh*** (10/VIC08) at [13.4], *Re Young and*

Companies Auditors and Liquidators Disciplinary Board (2000) 34 ACSR 425 [89]; *Walker* at [21.4];

(e) In that regard, an auditor's failure to comply with the duties or functions of a registered company auditor will always be serious because they "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];

(f) The Board has exercised its powers under s 1292 of the Corporations Act in Applications where auditors contravened the applicable professional standards to be met by a registered company auditor. However, as observed by the Board in *Walker* at [21.3], there is a limit to the value of referring to other cases since each turns on its own facts;

(g) A practitioner's recognition and acceptance of breaches of duty, attitude to compliance generally and willingness to improve are relevant matters in the CADB's exercise of its power to order sanctions: *Walker* at [21.3]; *ASIC v Fiorentino* (03/NSW13) at [997(f)], [1005];

(h) In exercising its sanctions power, the personal circumstances of the practitioner are to be given limited consideration by the Board: *ASIC v* ***Williams*** (01/QLD17) at [1338], [1340]; *Walker* at [20.5], [20.7];

(i) The absence of evidence as to whether any person suffered loss as a result of the auditor's conduct is not relevant to the Board's consideration of sanction: *McVeigh* at [14.8];

(j) ASIC's view as the regulator about the proposed orders is relevant on the question of sanction, particularly regarding the deterrent effect of the order, but not determinative: *Wessels* at [49] – [50]. In previous decisions involving proposed consent orders, the CADB has found that the fact that ASIC joined in the proposed orders was a large factor supporting the decision to accept the proposed orders. As observed by the Board in *Loke* at [105]:

> "ASIC is relevantly a guardian of the public interest, and is in a good position to appraise the practicalities of the matter and what part those practicalities should have among considerations in favour of accepting the agreed outcome."

(k) That approach accords with the High Court's explanation of the proper approach to civil regulatory orders in *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482 (***FWBII***). The High Court there reaffirmed the practice of acting upon agreed penalty submissions, as previously explained in ***NW Frozen Foods*** *Pty Ltd v ACCC* (1996) 71 FCR 285 and *Minister for Industry, Tourism and Resources v Mobil Oil Australia Pty Ltd* (2004) ATPR 41-993;

(l) The plurality in *FWBII* (French CJ, Kiefel, Bell, Nettle and Gordon JJ) emphasised at [46] the "important public policy involved in promoting predictability of outcome in civil penalty proceedings" which "assists in

avoiding lengthy and complex litigation and thus tends to free the courts to deal with other matters and to free investigating officers to turn to other areas of investigation that await their attention". Their Honours went on to state at [58]:

> "Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances thus revealed, it is consistent with principle and … highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty."

(m) A further reason for courts acting upon such submissions is that they are advanced by a specialist regulator able to offer "informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance", albeit that such submissions will be considered on their merits in the ordinary way (see *FWBII* at [60]-[61]);

(n) These principles are not confined to agreed submissions on pecuniary penalties but apply equally to agreement on other forms of relief. The High Court's conclusions as to the desirability of acting upon agreed penalty submissions were made in the context of its broader recognition that civil penalties are but one of numerous forms of relief which regulators could choose to pursue as a civil litigant in civil proceedings, including by making submissions as to that relief: *FWBII* at [107] (Keane J). This is consistent with the long-standing judicial support for agreed positions on declarations, injunctions and the like in civil regulatory proceedings, having regard to the public interest: see *NW Frozen Foods* at 290 (Burchett and Kiefel JJ); *ACCC v* ***Coles Supermarkets*** *Australia Pty Ltd* [2014] FCA 1405 at [70] (Gordon J); *ASIC v MobiSuper Pty Ltd* [2021] FCA 855 at [37] (Jackson J);

(o) In considering whether the agreed and jointly proposed penalty is an appropriate penalty, it is necessary to bear in mind that there is no single appropriate penalty. Rather, there is a permissible range of penalties within which no particular figure can necessarily be said to be more appropriate than another. The permissible range is determined by all the relevant facts and consequences of the contravention and the contravener's circumstances: *Volkswagen Aktiengesellschaft v ACCC* (2021) 284 FCR 24 at [127]. Where the penalty proposed by the parties is within the permissible range, the court will not depart from the submitted figure "merely because it might otherwise have been disposed to select some other figure": *FWBII* at [47];

(p) In *Coles Supermarkets*, Gordon J noted at [72] that, once the Court is satisfied that orders are within power and appropriate, it should exercise a degree of restraint when scrutinising the proposed settlement terms, particularly where both parties are legally represented and able to understand and evaluate the desirability of the settlement; and

(q) In *Wessels* at [49]-[50], the Companies Auditors and Liquidators Disciplinary Board referred to essentially the same principles and accepted that they were apposite to the Board's jurisdiction.

538. The parties made submissions to the following effect concerning the application of those legal principles applicable to the question of sanction:

(a) The key consideration for the Board in determining the appropriate sanction is the seriousness of Mr Taylor's failures to carry out or perform his duties and functions as an auditor. For the reasons set out below, the parties jointly submit that the contraventions are sufficiently serious to warrant the exercise of the Board's power under s 1292, to cancel the registration of Mr Taylor as an auditor;

(b) The requirement that a lead auditor who is a registered company auditor be appointed to conduct the audit of a listed company, such as iSignthis, is an important aspect of the regulatory regime administered by ASIC. This requirement is relevant to the efficient operation of Australian capital markets as it provides investors in listed companies with assurance that the financial reports of those companies are reliable and have been prepared in accordance with the Corporations Act, including complying with auditing and accounting standards and providing a true and fair view of the companies' financial position and performance. Compliance with the ASAs is also of fundamental importance in reducing the risk of material misstatement in financial statements. The failure of a registered company auditor to ensure compliance with the relevant ASAs in the conduct of an audit of a listed company has the potential to undermine confidence in the integrity of Australia's capital markets;

(c) The Specific Contentions which were pressed involve failures to comply with a range of standards, including the gathering of sufficient appropriate audit evidence, the need for proper documentation and the application of professional scepticism. The Board previously has noted 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]; see also *McVeigh* at [13.4] – [13.5] (in the liquidator context); and

(d) The parties submitted that the following matters point to a conclusion that Mr Taylor's failures in respect of the FY18 Audit were serious:

i. In assessing the audit risks, Mr Taylor failed to identify and/or sufficiently take account of risks at the assertion level and the financial report level arising from the fact that if specific revenue milestones were achieved in the six-month period prior to 30 June 2018, Performance Shares which were owned by the related party iSignthis (BVI) would convert into ordinary shares comprising more than a third of the issued capital of iSignthis;

ii. Mr Taylor reviewed and signed off the audit of the revenue and expenses from the Services transactions despite:

1. a failure to approach the auditing of revenue on the basis that a high level of assurance would be required where a risk of material

misstatement of revenue owing to fraud or error had been identified as a significant risk;

2. an inadequate assessment that AASB 111 applied to those transactions (which allowed the revenue and expenses from the transactions to be accounted for on a "percentage of completion" basis);

3. an inadequate application of audit procedures (for example, some purported reconciliations were not in fact reconciliations; the deficiencies in the Service Agreements were not acted on; and, repeated reliance was placed on unverified management assertions to explain away deficiencies and inconsistencies in the audit evidence that did not support the audit conclusions that were reached);

4. a failure to insist that an audit procedure that had in fact been performed (the unproductive internet search for the customers for the Services) be documented and an appropriate audit response be formulated;

5. a failure to take account of the almost complete lack of evidence of payments to the outsourced providers of the Services;

6. a failure to insist that critical third party audit evidence (the certificates of practical completion) be obtained directly from customers, and allowing management to provide the certificates even after a member of the Audit Team had indicated that management had reacted aggressively to a suggestion that the certificates be obtained directly from a customer;

7. netting an identified material misstatement of revenue from the Services against a material misstatement of expenses from those transactions, thereby inappropriately justifying (in the Audit Findings Report) not requiring that an identified material misstatement of both revenue and expenses be reported to management for consideration of adjustments.

iii. Mr Taylor demonstrated less than professional approach to the responsibilities of an auditor with respect to fraud risk by signing off the Fraud Memo even though it contained significant obvious errors and inconsistencies, failed to identify obviously significant risk factors, and contained conclusions based on obviously incorrect statements of fact.

iv. Mr Taylor failed to ensure that related party disclosures in the FY18 Financial Report were in accordance with the applicable reporting framework;

v. Throughout the audit, Mr Taylor consistently displayed a lack of professional scepticism;

vi. Mr Taylor signed an unqualified audit report even though he ought to have known, at the time, that identified material misstatements of revenue and expenses had not been properly reported to management

or corrected, and he included statements in the "key audit matters" section of the audit report that were not supported by the audit procedures actually conducted and/or were misleading.

539. At the hearing, Mr Bigos KC for Mr Taylor, whilst accepting the matters referred to above, and consenting to the proposed orders for cancelation, submitted (without objection by ASIC):

(a) That Mr Taylor is aged 56 years, a family man, married with five children in their early teens, who has suffered severely both professionally and personally as a result of this audit, including by losing his role as the head of audit in the Grant Thornton Melbourne office, a very responsible position that he had held for 14 years;

(b) That he lost his career as a result of this audit and received negative attention in the media;

(c) Proceedings against him, including the criminal proceedings, have been ongoing for a number of years;

(d) Despite conducting hundreds of audits over his 20 year career, Mr Taylor was never the subject of a previous complaint, nor had he had an audit fail the regular ASIC inspection process;

(e) There was no allegation of dishonesty against Mr Taylor, nor was there an allegation that he was not a "fit under proper person" under s 1292;

(f) There was no allegation that any loss was suffered by reason of the deficiencies in the audit;

(g) Mr Taylor expressed his sincere contrition and remorse in relation to the deficiencies in the Audit and the breaches of the auditing standards.

540. Upon considering these submissions in the light of the consideration of Mr Taylor's failures, the Panel requested further submissions to address the following questions:

"1. If the Panel has a discretion to impose a sanction which is "appropriate" having regard to all relevant matters (see *Vokswagen Aktiengesellschaft v ASIC* [2021] FCAFC 49 at [131]), and which is within the permissible range of sanctions, determined by reference to all the relevant facts and consequences of the contravention and the contravener's circumstances (see at *Vokswagen* at [127] and Joint Submissions at paragraph [192]), why is an order for cancellation "appropriate" in the present case or within the permissible range of sanctions in the present case, having regard to:

a. The scope of Mr Taylor's failings, in particular, the fact that his failings occurred in relation to a single audit and primarily in relation to one broad issue namely the circumstances arising from the Performance Shares and the Service Agreements (cf cases involving failings over multiple appointments eg *ASIC v McDermott* [2016] FCA 1186 at [46]);

b. The nature of Mr Taylor's failings, in particular, the fact that there appears to be no suggestion of any conscious wrongdoing or dishonesty;

c. The fact that, on the evidence, Mr Taylor has not previously been the subject of complaint, notwithstanding that he has been a registered auditor since 8 September 2000 (see paragraph 1 of the Application) and was Head of Audit at Grant Thorton for 14 years;

d. The fact that Mr Taylor undertook to ASIC and the Federal Court not to perform the duties of a registered auditor on 12 May 2022, and has not done so over the period since that date, a period of nearly three years;

e. The fact that Mr Taylor has acknowledged failure (Joint Submissions para [199.1]);

f. The fact that there appears to be no submission to the effect that Mr Taylor's failings demonstrate that he is not fit to practise, either in terms of competence or in terms of character, nor does there appear to be any submission to the effect that, by reason of Mr Taylor's failings, the Board cannot be satisfied that Mr Taylor would be fit to practise in the future (cf *Young and CALDB* (2000) 34 ACSR 425 at [78]; *Council of the Law Society of NSW v XX* [2025] NSWCA 4 at [15]);

g. The fact that (whilst each case very much depends upon its own facts), there appears to be no other case where cancellation has been ordered by the Board for failings of the type established in the present case, and, indeed, suspension or lesser sanctions have been imposed in cases involving similar failings;

h. (Subject to question 4 below) the fact that there was no submission that Mr Taylor's failings gave rise to any negative consequence.

2. Why does the primary object of imposing sanctions (ie protection of the public, including by appropriate deterrence to others) justify an order for cancellation in the circumstances of the present case;
3. What, if any, principles inform the Board's discretion in deciding whether an order for suspension, as opposed to an order for cancellation, is the appropriate sanction (cf in a different context *Council of the Law Society of New South Wales v Zhukovska* [2020] NSWCA 163 at [64]-[67] and [109]-[131]);
4. Are the consequences of the failures a matter which the Board can take into account (compare the reference to "consequences of the contravention" in *Aktiengesellschaft v ASIC* [2021] FCAFC 49 at [127] and Joint Submissions paragraph [186]);
5. If the Board was not satisfied that an order for cancellation was an appropriate sanction in the present case, what submissions do the parties make about the appropriate sanction."

541. In response, in their Supplementary Joint Submissions on Relief filed 3 June 2025, the parties maintained that it was appropriate for the Board to cancel Mr Taylor's registration as a company auditor particularly having regard to the seriousness of Mr Taylor's contraventions.

542. The parties made submissions to the following effect:

(a) the process of determining whether an agreed and jointly proposed penalty is an appropriate penalty will involve asking whether that penalty falls within the permissible range in all the circumstances: ***NW Frozen Foods*** *Pty Ltd*

v ACCC (1996) 71 FCR 285 at 291 (Burchett and Kiefel JJ), 299 (Carr J agreeing); ***Volkswagen*** *Aktiengesellschaft v ACCC* (2021) 284 FCR 24 at [128] (Wigney, Beach and O'Bryan JJ);

(b) The relevant question for the Board is whether the proposed sanction is "*an*" appropriate sanction, rather than "*the*" appropriate sanction. This is because there is no single appropriate penalty. Rather, there is a permissible range of penalties within which no particular figure can necessarily be said to be more appropriate than another: *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482 at 504 (French CJ, Kiefel, Bell, Nettle and Gordon JJ) (***FWBII***); *Minister for Industry, Tourism and Resources v* ***Mobil Oil*** *Australia Pty Ltd* [2004] ATPR 41-993 at [51] (Branson, Sackville and Gyles JJ). The following principles are relevant and will apply to the exercise of the Board's discretion to impose an appropriate sanction under s 1292 of the Corporations Act.

i. An agreed and jointly proposed penalty may be considered to be "*an*" appropriate penalty if it falls within the permissible range: *NW Frozen Foods* at 290-291; *Mobil Oil* at [47], [51];

ii. Conversely, a penalty is unlikely to be considered an appropriate penalty if it falls outside the permissible range: *Volkswagen* at [127]. While the Court's task is not limited to simply determining whether a jointly proposed penalty is within the permissible range, this will be a "*highly relevant and perhaps determinative consideration*": *Volkswagen* at [131]. And where a proposed penalty is found to be within the permissible range, the public policy consideration of predictability of outcome will generally be a "*compelling reason*" for the Court to accept the proposed penalty: *Volkswagen* at [131];

iii. Courts should generally recognise the agreed penalty is likely the result of compromise and pragmatism on the part of the regulator, and will reflect the regulator's considered estimation of the penalty necessary to achieve deterrence and the risks and expense of the litigation had it not been settled: *Volkswagen* at [129]; *FWBII* at [109] (Keane J).

(c) In the context of the specific power that may be exercised by the Board under s 1292 of the Corporations Act, the permissible range of sanctions in the circumstances of a particular case must be located within the range available under sub-sections (1) and (9). That is, from taking no action at all, to admonishment, reprimand, requiring an undertaking, suspension, cancellation or some combination of the aforementioned sanctions as contemplated by s 1292(10). In this regard, it is emphasised that the Board's power to cancel the registration of a company auditor is available under s 1292(1) regardless of the specific type of conduct which has enlivened the Board's discretionary powers. Relevantly, this includes where the Application is made under s 1292(1)(d) on the basis a person has failed to perform adequately and properly the duties of an auditor. Whatever the type of established failings, the Board must start from the premise that cancellation is an available sanction and may therefore be an appropriate sanction;

(d) In its task of considering whether cancellation is "*an*" appropriate sanction, paragraph 2 of the Panel Request correctly identifies that the Board must consider the objects of the relevant statutory regime. That is, by reference to the protective purpose of the relevant statutory power;

(e) deterrence is an element of the relevant protective purpose. This includes both specific deterrence (in the sense of seeking to ensure an individual does not engage in similar conduct again) and general deterrence (in the sense of seeking to ensure other industry participants will also not engage in similar conduct and will adhere to proper standards in future): see *ASIC v* ***McVeigh*** (10/VIC08) at [14.13]; *ASIC v Fernandez* (02/VIC13) at [353]; *Re* ***Wolstencroft*** *and CADB* (1998) 54 ALD 773 at [57]-[58];

(f) In determining a sanction that will achieve the relevant protective purpose, one consideration is the maintenance of proper professional standards on the basis that the public must be protected from the continued participation of a person found not to have met the required standard in the relevant industry: see, eg, *Re* ***QXOO/C*** *v CADB* [2000] AATA 1144 at [77]; ***Young*** *v CADB* (2000) 35 ACSR 425 at [79]. The desirability of a cancellation or suspension order in these circumstances recognises "*the public interest in ensuring that the public can be secure, or as secure as is reasonably possible, in the knowledge that those who are entrusted with the auditing of accounts can be properly entrusted with that task*" *Wolstencroft* at [57];

(g) In addition, the parties submit that cancellation or suspension may be justified by reference to the protective purpose where conduct is of such a high degree of seriousness that imposing any lesser sanction would fail to ensure other industry participants are sufficiently deterred from engaging in similar types of conduct. The public must have confidence other practitioners know breaches of duty will be appropriately dealt with: *ASIC v* ***Walker*** (06/VIC07) at [20.7]; *Wolstencroft* at [58].

(h) In response to paragraph 1 of the Panel Request, the parties jointly submit that cancellation is an appropriate sanction to achieve the protective purpose of the statutory regime, a view to securing general deterrence;

(i) one of the principal factors relevant to the Board's consideration of sanctions is the seriousness of the matters that have been found to be established: *McVeigh* at [13.4]; *Young* at [89]; *Walker* at [21.4]. The seriousness of Mr Taylor's failures, as a basis for the parties' joint submission that the conduct was sufficiently serious to warrant the cancellation of Mr Taylor's registration as an auditor, was addressed in the Joint March Submissions. In addition, the parties further submit:

i. The fact that the conversion of the Performance Shares depended on iSignthis's revenue for the last 6 months of FY18 invested the auditing of revenue with special significance. In conducting a risk assessment for the audit, the Audit Team identified a risk of material misstatement of revenue, arising not only from possible fraud but also from possible error. From that point, GT Audit and Mr Taylor had a professional

responsibility to ensure that the audit was conducted in a manner that respected and appropriately responded to the significant risk of misstatement of revenue;

ii. Mr Taylor failed to discharge that responsibility adequately and properly. In this regard, we draw the Panel's attention in particular to the following:

1. The risks of material misstatement of revenue were confined to the revenue arising from 5 transactions, including the 3 Services Transactions. The auditing of expenses relating to the Services Transactions was directly relevant to the auditing of revenue from those transactions because the provision of the Services was outsourced to 2 contractors.
2. Even though the main areas of special concern in the audit were relatively narrow, the audit work done was inadequate. In this regard:
    A. GT Audit and Mr Taylor repeatedly relied on management assertions to explain the lack of independent audit evidence and apparent oddities and inconsistencies in audit evidence.
    B. GT Audit and Mr Taylor took inadequate steps to verify the accuracy of management representations, including where inconsistent management representations were made in respect of the same matters.
    C. GT Audit had not obtained a certificate of practical completion which had been identified as essential evidence to support the recognition of revenue from one of the Services Transactions by the time the audit was signed. No other audit test was designed or performed to address the critical evidence that had not been obtained.
    D. GT Audit identified material misstatements of revenue, expenses, debtors and creditors not only consequent upon the non-receipt of the certificate of practical completion but also arising from inconsistencies between the terms of the Project Management Services Transactions and the asserted completion of the Services Transactions.
    E. Mr Taylor signed an unqualified audit report even though he ought to have known, at the time, that GT Audit had identified material misstatements of revenue and expenses had not been properly reported to management or corrected.
3. Furthermore:
    A. The work done and judgements made by Mr Taylor in respect of the auditor's responsibilities in relation to fraud were inadequate.

B. The FY18 Audit Report was unqualified despite the insufficiency of appropriate audit evidence to support a conclusion that the financial report was free of material misstatement.

C. The FY18 Audit Report also included statements in the "key audit matters" section of the audit report that were not supported by the audit procedures actually conducted and/or were misleading.

iii. When viewed collectively, these were not merely self-contained failures. Rather, they demonstrate that insufficient audit scepticism was applied which was inconsistent with the statutory responsibilities of an auditor of the financial report of a publicly listed company. Conduct of that nature, especially by a person who had Mr Taylor's level of authority and responsibility as Head of Audit for Grant Thornton Australia, undermines a principle on which the financial system rests and is contrary to the purposes for which the auditing standards are issued (see Division 2A of Part 12 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**)), including "to maintain investor confidence in the Australian economy (including its capital markets)" (s 224(c) of the ASIC Act).

(j) The agreed facts with respect to Mr Taylor's conduct demonstrate a misunderstanding of the operation of the Australian Auditing Standards that go to the core of his professional responsibility as an auditor. In this regard, Mr Taylor's conduct did not meet the high standard to which registered auditors must be held, having regard to the significance of their duties and responsibilities;

(k) The view of ASIC as a regulator and "*guardian of the public interest*" (*ASIC v Loke* (16/NSW20) at [105]) is that the scope and seriousness of Mr Taylor's failure to properly and adequately perform the functions of an auditor in relation to the FY18 Audit warrants cancellation. This view is also consistent with Mr Taylor's position, who agrees to cancellation, and who has made a commitment that, following cancellation, he will not seek to become registered in the future: see paragraph 6 of the March Joint Submissions;

(l) For the reasons outlined above, ASIC as the regulator maintain that anything less than cancellation is unlikely to achieve the protective purpose, including by satisfying the need for general deterrence. This is notwithstanding that, as the Board have identified at paragraphs (1)(a)-(e) of the Panel Request, Mr Taylor's conduct occurred in relation to a single audit, was not dishonest, and he has acknowledged that the failures occurred. While these are factors which might ordinarily weigh in favour of a lesser sanction, the parties respectfully submit that in this instance they are outweighed by countervailing considerations going to the seriousness of the conduct;

(m) In response to the matters raised in paragraphs (1)(h) and (4) of the Panel Request, the parties accept, as the Board points out by reference to *Volkswagen* at [127], loss or damage caused by contravening conduct is a recognised factor relevant to the need for deterrence in a civil penalty context: see also, eg *Trade Practices Commission v CSR Ltd* (1991) ATPR 41-076 at 51,152 (French J). Given that deterrence is an aspect of the Board's protective purpose in exercising its discretion under s 1292, the parties accept that loss or damage (if any) as a consequence of the failures in the present case may be a relevant matter which the Board can take into account in determining sanction;

(n) The March Joint Submissions relied on the Board's decision in *McVeigh* at [14.8] as authority for the proposition that an absence of evidence as to loss as a result of the auditor's conduct will have no bearing on the Board's consideration of sanction. It remains the case that there is no evidence in relation to any actual loss or damage (or absence thereof) arising from Mr Taylor's conduct. In these circumstances, the parties submit *actual* loss or damage ought to be treated as a neutral factor. Insofar as the Board does have regard to loss or damage in the exercise of its discretion, the parties submit the *potential* for loss or damage in this case ought to weigh in favour of a higher sanction. iSignthis was at all relevant times a listed public company and there was a corresponding higher level of risk in relation to Mr Taylor's conduct: see *QX00/C* at [64]. These risks elevate the seriousness of the failures and the consequent need for general deterrence;

(o) In respect of paragraph (1)(g) of the Panel Request, as stated at paragraph 183 of the March Joint Submissions, there is a limit to the utility of referring to other cases to inform the Board's consideration of whether cancellation is an appropriate sanction. As the Board correctly identifies, each case must turn on its own facts. While a consistent approach to sanctions is broadly desirable, circumstances will vary significantly from case to case: *Fernandez* at [382]; see also *Walker* at [21.3]. In addition, as stated at paragraph 6 above, the Board must proceed on the basis that cancellation is available (and may therefore be appropriate) regardless of the general type of failings established;

(p) Insofar as paragraphs (1)(g) and (3) of the Panel Request are directed to the question of whether the jointly proposed sanction of cancellation is more appropriate than suspension, the parties respectfully submit that the Board's task in determining whether cancellation is "*an*" appropriate sanction may allow for the possibility of both cancellation and suspension orders falling within a permissible range. Due to the seriousness of Mr Taylor's conduct, the parties submit that the Board ought to be satisfied cancellation would be a more appropriate sanction.

(q) The proposed cancellation order is submitted on a joint basis. It reflects ASIC's considered estimation of the sanction necessary to secure the protective purpose and the risks and expenses of the proceeding had it not been settled;

(r) At paragraph 5 of the Panel Request, the Board seeks submissions in the event it is minded to find cancellation is not an appropriate sanction and instead proceeds to exercise its discretion to impose what it may consider to be the appropriate sanction. It is generally recognised as being preferable for parties to make joint submissions on a single sanction rather a range,[2] and the parties' joint position remains that the Board ought to cancel Mr Taylor's registration as a company auditor; and

(s) However, in the event the Board declines to accept the parties' joint position in accordance with the principles set out in Part B above, the parties submit any sanction imposed ought not be less than an order suspending Mr Taylor's registration as a company auditor for 3 years. This is to ensure the sanction reflects the seriousness of Mr Taylor's conduct and the matters outlined in Part C of these submissions.

Consideration

543. As a general matter, we accept that the parties have correctly summarised the principles which apply to the Board's function in determining an appropriate sanction.

544. The Board has recently summarised the principles in the decision of *Santangelo* already cited above. Key amongst those principles are:

(a) The Board's primary function is to assess whether a respondent should continue to occupy a statutory position involving skill and probity, not to impose punishment for an offence: *Albarran v Members of the Companies Auditors and Liquidators Board* (2007) 231 CLR 350; [2007] HCA 23 at [21];

(b) The longstanding guiding principle adopted by the Board in exercising its powers is "protection of the public", noting that this involves two aspects: *first*, protection of the public from the actions of a person who is found to have been in breach of duties, and *secondly*, protection of the public by encouraging other auditors to adhere to proper standards (see the decision of this Board in *ASIC v McVeigh* 10/VIC08 at paragraph [12]; *ASIC v Fernandez* 02/VIC13 at paragraph at [353]); and

(c) Underpinning the Board's powers is a compelling public interest in the maintenance of a system which recognises that registration as an auditor is a privilege, the continuance of which is conditional upon diligent performance of its attendant duties (cf the statements of Middleton J in *ASIC v Dunner* (2013) 303 ALR 98; [2013] FCA 872 (***Dunner***) at [219])

545. In *Santangelo*, the Board cited the summary of the legal principles articulated by the Hon Brian Tamberlin QC DP (as he then was) in *NHPT v Members of the Companies Auditors and Liquidators Disciplinary Board* [2015] AATA 245 at [18] which bears repetition:

> "(a) The principal purpose of the proceedings is protective rather than punitive and the guiding principle is protection of the public;

(b) The protection of the public includes ensuring that those who are unfit to practise do not continue to hold themselves out as fit to practise;

(c) The protection of the public includes deterrence;

(d) It also includes the maintenance of a system under which the public can be confident that practitioners will know that breaches of duty will be appropriately dealt with and that the regulatory regime applicable to auditors is effective in maintaining high standards of professional conduct;

(e) The impact of the Board's orders on the practitioner is to be given limited consideration, as the prime concern of the Board is the protection of the public;

(f) Relevant matters include the respondent's recognition and acceptance of the breaches of duty, attitude to compliance generally and willingness to improve. Genuine acceptance of failure, contrition and remorse are necessary requirements to rehabilitation; and

(g) If a respondent is not considered fit and proper, suspension is not appropriate unless the Board can be confident that the respondent would be fit and proper after the period of suspension."

546. The particular issue facing the Board in the present case is whether it is appropriate to make the orders which have been proposed by consent.

547. Where the parties propose consent orders, there are further principles which apply as referred to in the parties' submissions above and also referred to in *Santangelo* at paragraph [315] and following.

548. We generally accept the correctness of the parties' submissions set out in paragraph 542 (b) above.

549. We note that those submissions did not address in any great detail, question 3, (the question as to the principles which inform the Board's discretion in deciding whether an order for suspension, as opposed to an order for cancellation, is the appropriate sanction) on the basis that it was not necessary to do so. For the reasons we outline below, we accept that position in the present case.

550. We accept that (adapting the wording in the penalty cases to the sanctions available to the Board):

(a) The question is whether an agreed and jointly proposed sanction is "an" appropriate sanction;

(b) It may be considered to be "*an*" appropriate sanction if it falls within the permissible range;

(c) Conversely, a sanction is unlikely to be considered an appropriate sanction if it falls outside the permissible range;

(d) While the Board's task is not limited to simply determining whether a jointly proposed sanction is within the permissible range, this will be a "*highly relevant and perhaps determinative consideration*";

(e) And where a proposed sanction is found to be within the permissible range, the public policy consideration of predictability of outcome will generally be a "*compelling reason*" for the Board to accept the proposed sanction; and

(f) The Board should generally recognise the agreed sanction is likely the result of compromise and pragmatism on the part of the regulator, and will reflect the regulator's considered estimation of the sanction necessary to achieve deterrence and the risks and expense of the litigation had it not been settled.

551. The point in sub-paragraph (f) of the last paragraph may apply both ways. The agreed sanction may reflect pragmatism on the part of the *Respondent* in avoiding the risks of litigation (and possibly damaging cross-examination).

552. We also consider that the observation of White J in In *Australian Securities and Investments Commission v Rich* (2004) 50 ACSR 500 at [80] are apt. His Honour noted that a court, in considering a period of disqualification agreed to by the parties, should not ask whether it would fix the same period, if the agreed period is in the permissible range.

553. In our view, it cannot be said that cancellation is outside the permissible range of sanctions which would be appropriate in the present case. We do not consider that simply because it is an available sanction, it is within the permissible range. Rather, we accept the parties' submissions about the seriousness of Mr Taylor's failings as set out in paragraph 538(d) and 542(i) above. Mr Taylor's failings were serious and extensive and whilst some may say that a lengthy period of suspension rather than cancellation should be imposed, we consider that cancellation would come within the permissible range of sanctions and is appropriate in all the circumstances.

554. The fact that the parties have joined in proposing the orders to be made by consent is a consideration favouring our discretionary decision to make the orders and this is a particularly powerful consideration when ASIC, which for relevant purposes is a guardian of the public interest, has consented (cf *Re One.Tel Ltd (in liq); ASIC v Rich* (2003) 44 ACSR 682 at [27]).

555. Further, it appears to be the case the Mr Taylor has chosen to accept that cancellation of his registration is appropriate. His counsel made no submission to the effect that he wished to retain his registration or that he would wish to resume practice after a period of suspension. It appeared to be the case that he did not intend to continue to perform the role of an auditor in the future and in those circumstances, it is unlikely that he would maintain his fitness to practise, and it does not seem appropriate to contemplate any sanction but cancellation.

556. Guided by the principles outlined above, we consider that it is appropriate to make the orders in the form of the Proposed Consent Orders and the sanctions proposed by the parties.

557. For the reasons set out above, we have decided to exercise our powers under s 1292 of the Act by making the orders in paragraph 558(1) and (2) below.

558. We make the following orders:

1. Pursuant to s 1292(1) of the Corporations Act, the registration of Mr **Bradley Laurance Willot TAYLOR (Mr Taylor),** with auditor registration number 000202051, as an auditor be cancelled.

2. Pursuant to s 1297(1)(a) of the Corporations Act, the order for cancellation in paragraph 1 will come into effect at the end of the day on which the Board gives Mr Taylor a notice of the decision in accordance with s 1296(1)(a) of the Corporations Act.

Howard K Insall SC
Panel Chairperson
25 June 2025