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SUPERANNUATION FUND v CIMIC GROUP LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 33

Rule 16.32



Amended Defence

No. VID 564 of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

Miciulis Superannuation Pty Ltd (ACN 146 559 426) as trustee for the Miciulis Superannuation Fund

Applicant

and

CIMIC Group Limited (ACN 004 482 982)

Respondent

Introduction

In this pleading, save as expressly and specifically dealt with below, the respondent (**CIMIC**) adopts defined terms and headings used in the further amended statement of claim dated 7 October 2022 (**statement of claim**) for convenience only and without conveying any

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admission of their content. All references to currency using the symbol '\$' are references to Australian Dollars unless otherwise stated.

To the Applicant's (*Miciulis*) statement of claim, CIMIC says by way of defence:

A. PARTIES

1. As to paragraph 1:

- (a) It admits that the Applicant purports to bring this proceeding on behalf of those persons identified in paragraph 2 of the statement of claim.
- (b) It refers to and repeats paragraphs 2 and 3 below.
- (c) It otherwise does not know and therefore cannot admit the allegations in paragraph 1.

2. As to paragraph 2:

- (a) It admits that the Applicant purports to bring this proceeding on behalf of those persons identified in the paragraph.
- (b) It says the Applicant acquired interests in 4,000 CIMIC shares on or about 27 June 2018.
- (c) It denies that any person suffered loss or damage by reason of the conduct of CIMIC pleaded in the statement of claim and refers to and repeats paragraphs 4A to 4K below.
- (d) It admits the Applicant is not a person or entity to whom any of paragraphs 2(c)(i) to (v) applies.
- (e) It otherwise does not know and therefore cannot admit the allegations in paragraph 2(c).

3. As to paragraph 3:

- (a) It says that immediately prior to the commencement of this proceeding, there were more than 7 persons meeting the criteria in paragraphs 2(a) and 2(c) of the statement of claim.
- (b) It refers to and repeats paragraph 2(c) above.
- (c) It otherwise denies the allegations.

4. As to paragraph 4:

- (a) Subject to reference at trial to the full terms and effect of each of the relevant provisions of the ASIC Act, the Australian Consumer Law and the ASX Listing Rules and other legislation identified in the paragraph, it admits the allegations in paragraph 4 for the period prior to May 2022.
- (b) It says that on 23 February 2022, HOCHTIEF Aktiengesellschaft, through its wholly owned subsidiary HOCHTIEF Australia Holdings Limited (**HOCHTIEF**), announced an unconditional and final takeover offer for all remaining shares in CIMIC.

Particulars

ASX Market Announcement of 23 February 2022 entitled 'CIMIC Group Limited (ASX: CIM) – Intention to Make Takeover Bid'.

- (c) It says that at the close of trading on 6 May 2022, the securities of CIMIC were suspended from quotation following the despatch of compulsory acquisition notices by HOCHTIEF.

Particulars

ASX Market Announcement of 6 May 2022 entitled 'CIMIC Group Limited (ASX: CIM) – Suspension from Quotation'.

- (d) It says that at the close of trading on 11 May 2022, CIMIC was removed from the Official List of the Australian Stock Exchange following the compulsory acquisition of its remaining securities by HOCHTIEF.

Particulars

ASX Market Announcement of 11 May 2022 entitled 'CIMIC Group Limited (ASX: CIM) – Removal from Official List'.

Release by certain Group Members in earlier representative proceedings

4A. It says that:

(a) At all relevant times:

- (i) BICC carried on a contracting and construction business throughout the Middle East through various subsidiaries.
- (ii) CIMIC owned 45% of the shares in BICC via a subsidiary, LMENA.

(b) BICC's company name was changed as follows:

- (i) Until 5 May 2010, BICC was called Al Habtoor Engineering Enterprises Company LLC.
- (ii) Between 5 May 2010 and 22 November 2016, BICC was called Al Habtoor Leighton LLC (**HLG**).
- (iii) Between 22 November 2016 and 7 December 2017, BICC was called HLG Contracting LLC (**HLG Contracting**).
- (iv) Since 7 December 2017, the company name has been BICC.

4B. On 30 October 2013, Inabu Pty Ltd (**Inabu**), as trustee for the Alidas Superannuation Fund, commenced a representative proceeding (the **Inabu Proceeding**) against

Leighton (as CIMIC was then called) under Part IVA of the *Federal Court of Australia Act* on behalf of group members who purchased shares in Leighton between 16 August 2010 and 11 April 2011 (the ***Inabu Relevant Period***).

- 4C. In the Inabu Proceeding Inabu alleged, in summary, that, during the Inabu Relevant Period Leighton knew, or ought to have known, that its investment in HLG was impaired and its estimated profit for the 2011 financial year would be substantially reduced and it further alleged that Leighton made representations about HLG and its forecast profit in respect of which it lacked reasonable grounds.

Particulars

The statement of claim in the Inabu Proceeding was filed on 30 October 2013 (the ***Inabu Statement of Claim***).

- 4D. On or about 16 May 2014, Leighton and Inabu (and Inabu's solicitors and litigation funder) entered into a deed to settle the proceedings, subject to the Court's approval (the ***Settlement Deed***).

Particulars

The Settlement Deed is in writing and is dated 16 May 2014. CIMIC will refer to its full terms and effect at trial.

- 4E. There were terms of the Settlement Deed, amongst others, that:
- (a) On and from the Settlement Date, Leighton and its Related Entities shall have no further liability to any Group Member in relation to any and all Claims arising from, connected with or related to:
 - (i) any matter which is or ever has been the subject of the Inabu Proceeding;
 - (ii) the circumstances or allegations giving rise to or referred to in the Inabu Proceeding;
 - (iii) losses allegedly suffered by Inabu or any Group Member arising or resulting from or connected with any disclosures (or non-disclosures) or representations made by Leighton or its Related Entities in relation to:
 - 1. The BAL Project, the VDP Project or HLG;

2. The financial results of Leighton for the 2010 and 2011 financial years;
 3. Any profit or results forecast or guidance for Leighton in respect of the 2011 financial year;
- (iv) Inabu's and/or any Group Members' costs of, or incidental to, the Proceeding.
- (the **Release**).

Particulars

Settlement Deed clause 11.2

- (b) 'Claim' includes any claim or liability of any kind (including one which is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not the subject of a court order).
- (c) 'Group Member(s)' means the persons on whose behalf Inabu commenced the Inabu Proceeding as described in paragraph 1 of the Inabu Statement of Claim.

Particulars

Settlement Deed clause 1.1

- (d) 'Settlement Date' means the date on which some or all of the Settlement Sum is transferred from the Escrow Account to the Distribution Fund in accordance with clause 7.4.

Particulars

Settlement Deed clause 1.1

- 4F. On 25 August 2014, the Federal Court made orders which, amongst other things, approved the settlement and authorised group members (being those who met the definition of group members in the Inabu Statement of Claim save for those who opted out of the Inabu Proceeding as at 18 July 2014) (the **Inabu Bound Group Members**) to enter into and give effect to the Settlement Deed.

Particulars

See orders 1, 9 and 10 of the orders of Justice Jacobson dated 25 August 2014.

- 4G. The Settlement Date for the purposes of the Settlement Deed was 1 September 2014.
- 4H. The Inabu Statement of Claim included, or referred to, the following matters, circumstances or allegations:
- (a) that HLG had received interest free loans from Leighton in the following amounts:
 - (i) approximately \$38 million in the period leading up to 30 June 2010;
 - (ii) approximately \$76 million m in the period from 1 July 2010 to 31 December 2010; and
 - (iii) approximately \$68 million in the period from 31 December 2010 to 14 February 2021;
 - (b) that by no later than 18 March 2011, HLG had requested an additional \$230m loan from Leighton;
 - (c) that at various times during the Inabu Relevant Period Leighton knew, or ought to have known, that HLG was being provided with substantial operational funds by Leighton on an interest free basis;
(each an ***Inabu Shareholder Loan Matter***).

Particulars

See paragraphs 82, 83, 87, 89(e) and 90 to 94 of the Inabu Statement of Claim.

- (d) that HLG was owed money for legacy projects and specifically:

- (i) in the period from 1 July 2010 to 31 December 2010, no significant payments were received by HLG for outstanding payments on pre-acquisition projects;
- (ii) HLG was owed substantially overdue money for construction projects and it was negotiating recovery of payments for outstanding projects, and for certain projects recovery was not expected for a number of years;
- (iii) HLG had been required to negotiate settlements in relation to payment for some projects it had performed work in relation to, which settlements involved the deferral of HLG's payments;
- (iv) by no later than 16 January 2011, HLG was owed more than A\$1.08 billion in respect of work that had been performed and was still seeking payment in respect of work completed 18 months previously,

Particulars

See paragraphs 80, 81(b), (c) and (d), 85, 88 and 90 of the Inabu Statement of Claim.

- (e) that at various times during the Inabu Relevant Period Leighton knew, or ought to have known, it was likely that HLG would have difficulty in obtaining payment for projects in respect of which it had already completed work;
(each an *Inabu Legacy Project Matter*).

41. In this proceeding, the statement of claim:

- (a) alleges loss arising or resulting from or connected with CIMIC's alleged failure to disclose information in relation to HLG (the *Alleged HLG Non-Disclosure Loss*);

Particulars

See paragraph 130 of the statement of claim, which defines the alleged Middle East Contravening Conduct.

See also paragraphs 133 to 135 of the statement of claim, which allege loss by reason of the Middle East Contravening Conduct.

- (b) alleges loss arising or resulting from or connected with disclosures or representations by CIMIC in relation to HLG (the ***Alleged HLG Representation Loss***);

Particulars

See the following paragraphs of the statement of claim:

- 108 to 112 which allege the True and Fair View Representations.
- 113 to 115 which allege the Guidance Representations.
- 117 to 120 which allege Dividends Representations.
- 130A, 131, 134 and 135 which allege loss by reason of the representations.

- (c) includes claims arising from or connected with or related to one or more of the Inabu Shareholder Loans Matters (the ***Shareholder Loans Claims***).

Particulars

Paragraph 11D of the statement of claim refers to the First Shareholder Loan Agreement dated 20 May 2010 and the Second Shareholder Loan Agreement dated 12 April 2011 and defines those agreements as the Shareholder Loans.

The Shareholder Loans comprise part of the February 2018 Middle East Information ([89S(g)], the April 2018 Middle East Information [91(e)], the July 2018 Middle East Information [95AY(e)], October 2018 Middle East Information [95B(d)], the February 2019 Middle East Information [95H(j)], the April 2019 Middle East Information [95N(e) and (f)], the July 2019 Middle East Information [97(g)], the September 2019 Middle East Information [103(c), (d), (e)], the October 2019 Middle East Information [107B(b)] and the December 2019 Middle East Information [107H(f)].

The Shareholders Loans are also particularised as a basis for alleging CIMIC lacked reasonable grounds in making the Guidance Representations at paragraph 115 of the statement of claim and the Dividends Representations at paragraph 119 of the statement of claim.

- (d) includes claims arising from or connected with or related to one or more of the Inabu Legacy Projects Matter (the ***Legacy Project Claims***).

Particulars

Paragraph 14(b) of the statement of claim defines the Legacy Project Receivables as 'a series of legacy projects in the Middle East' (and by reference to statements in CIMIC's 2016 Half Year Report).

Paragraph 89R defines the Legacy Project Receivables Risk as the escalating risk that BICC would not recover the outstanding Legacy Project Receivables amounts at all.

The Legacy Project Receivables and/or the Legacy Project Receivables Risk comprise part of the February 2018 Middle East Information ([89S(b and (c))], the April 2018 Middle East Information [91(d), (e) and (f)], the July 2018 Middle East Information [95AY(d), (e) and (f)], the October 2018 Middle East Information [95B(d) and (e)], the February 2019 Middle East Information [95H(j) and (k)], the April 2019 Middle East Information [95N(f) and (g)], the July 2019 Middle East Information [97(g) and (h)], September 2019 Middle East Information [103(f)], the October 2019 Middle East Information [107B(b) and (c)] and the December 2019 Middle East Information [107H(f) and (g)].

The Legacy Projects Receivables Risk is also particularised as a basis for alleging CIMIC lacked reasonable grounds in making the True and Fair View Representations (paragraph 110), the Guidance Representations (paragraph 115) and the Dividends Representations (paragraph 119).

Further, some of the legacy projects referred to in the statement of claim are the same legacy projects in respect of which receivables were outstanding during the Inabu Relevant Period. For example, paragraph 89N of the statement of claim refers to a Project Data Report [CIM.102.032.5332] listing legacy projects as at November 2017. The first project listed is the 'Al Shaqab Equestrian Centre'. That was a project in respect of which receivables were outstanding during the Inabu Relevant Period.

4J. By reason of the matters pleaded at paragraphs 4A to 4I above, with effect from 1 September 2014, Inabu Bound Group Members released CIMIC from any further liability in relation to:

- (a) the Alleged HLG Non-Disclosure Loss and the Alleged HLG Representation Loss; and
- (b) further or alternatively, the Shareholder Loans Claims and the Legacy Project Claims,

and the Inabu Bound Group Members are bound by that release.

- 4K. By reason of the matters pleaded at paragraph 4J above, CIMIC is not liable to Group Members (as defined in the statement of claim) who are also the Inabu Bound Group Members in relation to the Alleged HLG Non-Disclosure Loss, the Alleged HLG Representation Loss and further or alternatively, the Shareholder Loans Claims and the Legacy Project Claims.

B. APPLICATION OF SECTION 674(2) OF THE CORPORATIONS ACT

5. It admits the allegations in paragraph 5.

6. As to paragraph 6:

- (a) It says that:

- (i) At all material times ASX Listing Rule 3.1 provided:

Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities the entity must immediately tell ASX that information.

- (ii) At all material times ASX Listing Rule 3.1A provided:

Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information

3.1A.1 One or more of the following 5 situations applies:

- *It would be a breach of a law to disclose the information;*
- *The information concerns an incomplete proposal or negotiation;*
- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- *The information is generated for the internal management purposes of the entity; or*
- *The information is a trade secret; and*

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and

3.1A.3 A reasonable person would not expect the information to be disclosed.

(b) It otherwise denies the allegations.

7. As to paragraph 7:

(a) It says that at all material times section 677 of the Corporations Act provided:

For the purposes of sections 674 and 675, a reasonable person would be taken to expect information to have a material effect on the price or value of ED securities of a disclosing entity if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the ED securities.

(b) It says that at all material times, ASX Listing Rule 19.3 provided:

Expressions that are not specifically defined in the listing rules, but are given a particular meaning in the Corporations Act, have the same meaning in the listing rules.

(c) It otherwise denies the allegations.

8. Subject to reference at trial to the full terms and effect of ASX Listing Rule 19.12, it admits the allegations in paragraph 8.

9. As to paragraph 9:

(a) It refers to paragraph 4 above and says that there existed a market of investors and potential investors in CIMIC Securities on the ASX prior to 6 May 2022.

(b) It otherwise denies the allegations.

C. CIMIC'S OPERATIONS

C.1 Financial Year

10. As to paragraph 10:

- (a) It says that since 1 January 2012, it has reported on a 1 January to 31 December financial year.
- (b) It says that it issued a six-month report covering the period 30 June 2011 to 31 December 2011 and prior to 30 June 2011, it reported on a June to July financial year.
- (c) It says that since at least 1 January 2006, HLG (later renamed BICC) has reported on a 1 January to 31 December financial year.
- (d) It otherwise denies the allegations.

C.2 CIMIC'S Subsidiaries and Divisions

10A. As to paragraph 10A, it says that:

- (a) from at least 1 January 2015 CPB Contractors (previously named Leighton Contractors Pty Ltd) was wholly owned by CIMIC, and was referred to by CIMIC in its financial statements as a material subsidiary and one of its 'operating companies';
- (b) from at least 1 January 2015 Leighton Asia was wholly owned by CIMIC, and was referred to by CIMIC in its financial statements as a material subsidiary and one of its 'operating companies';
- (c) from at least 1 January 2015 Thiess was wholly owned by CIMIC, and was referred to by CIMIC in its financial statements as a material subsidiary and one of its 'operating companies'; and

(d) from around 21 December 2016 UGL was wholly owned by CIMIC, and was referred to by CIMIC in its financial statements as a material subsidiary and one of its 'operating companies'.

(e) It otherwise denies the allegations.

10B. As to paragraph 10B:

(a) It says that from 16 July 2007 to the end of the Relevant Period, LMENA was wholly owned by LMENA Pty Ltd, which was wholly owned by CIMIC.

(b) It says that from 14 April 2016 to the end of the Relevant Period, Sedgman was wholly owned by CIMIC.

(c) It says that from 19 August 2014 to the end of the Relevant Period, Pacific Partnerships was wholly owned by CIMIC.

(d) It says that from 4 September 2014 to the end of the Relevant Period, EIC Activities was wholly owned by CIMIC.

(e) It otherwise denies the allegations.

10C. As to paragraph 10C:

(a) It says that from around 5 September 2007 to the end of the Relevant Period, LMENA held 45% of the shares in HLG; and

(b) It says that, by reason of paragraphs 10B(a) and 10C(a) above, CIMIC indirectly held 45% of shares in HLG for the period from around 5 September 2007 to the end of the Relevant Period.

(c) It otherwise denies the allegations.

10D. As to paragraph 10D:

- (a) It says that it reported a 'Construction' operating segment in its financial statements from 11 February 2015, which included CPB Contractors and Leighton Asia as part of this segment.
- (b) It says that it reported a 'Mining and Mineral Processing' operating segment in its financial statements from 19 July 2016 to 30 June 2020, comprising Thiess and Sedgman.
- (c) It says that it reported a 'Services' operating segment in its financial statements from 8 February 2017, comprising UGL until 9 February 2021, and comprising UGL and Sedgman after 9 February 2021.
- (d) It says that it reported a 'Corporate' segment in its financial statements from 29 September 2010, which included Pacific Partnerships and EIC Activities from 23 July 2015, and BICC from 15 July 2018 to 9 February 2021, as part of this segment.
- (e) It otherwise denies the allegations.

10E. As to paragraph 10E:

- (a) It admits that during the Relevant Period there was a department within CIMIC referred to as 'Treasury' (***Treasury Department***).
- (b) It says that the Treasury Department's roles and responsibilities included managing working capital.
- (c) It says that since 1 June 2016, Scott McAlpine has held the position of Executive General Manager, Treasury.
- (d) It says that the Treasury Department was one department, among others, which was under Stefan Camphausen's supervision as CFO of CIMIC.
- (e) It says that in his role as Executive General Manager, Treasury, Scott McAlpine reported to Stefan Camphausen.

- (f) It refers to and repeats paragraph 13 below.
- (g) It otherwise denies the allegations.

10F. As to paragraph 10F:

- (a) It says that during the Relevant Period there was a department within CIMIC referred to as either 'Financial Planning and Accounting' (**FP&A**) or 'FP&A and Analysis' (**FP&A Department**).
- (b) It says that the FP&A Department's roles and responsibilities included financial reporting and modelling for CIMIC.
- (c) It says that from 1 June 2017 to 4 January 2021, Derek Kerr held the position of Executive General Manager, Finance, and was responsible for the FP&A Department.
- (d) It says that the FP&A Department was one department, among others, which was under Stefan Camphausen's supervision as CFO of CIMIC.
- (e) It says that in his role as Executive General Manager, Finance, with responsibility for the FP&A Department, Derek Kerr reported to Stefan Camphausen.
- (f) It otherwise denies the allegations.

C.3 BICC

Structure and governance

11. Subject to reference at trial to the full terms and effect of CIMIC's 3 September 2007 media release entitled 'Leighton to acquire 45% of Al Habtoor Engineering', it admits the allegations in paragraph 11.

11A. As to paragraph 11A, it admits the allegation.

11B. As to paragraph 11B:

- (a) Subject to reference at trial to the full terms and effect of the HLG Shareholders Agreement, it admits the agreement contained terms substantively in the form set out in paragraphs 11B(a) to (e).
- (b) It otherwise denies the allegations.

11C. As to paragraph 11C:

- (a) As to paragraph 11C(a), it admits the allegation.
- (b) As to paragraph 11B(b), it says that on 24 May 2019, the BICC Board of Directors accepted the resignation of Moustafa Fahour as Chief Executive Officer and Managing Director, and otherwise admits the allegation.

Particulars

- Resolution of the BICC Board of Directors, passed 24 May 2019 [BIC.012.002.0058].
- (c) As to paragraph 11C(c), it refers to and repeats the matters in subparagraph (b) above and says:
- (i) On 24 May 2019, the BICC Board of Directors approved the appointment of Paul Russell as Acting Chief Executive Officer and Managing Director of BICC.
 - (ii) Between 24 May and 2 September 2019, BICC director and shareholder resolutions were passed affirming the appointment of Paul Russell as an Acting Director of BICC.
 - (iii) It otherwise denies the allegation in paragraph 11C.

Particulars

- Resolution of the BICC Board of Directors, passed 24 May 2019 [BIC.012.002.0058].
- Resolution of the BICC Board of Directors, passed 9 July 2019 [BIC.003.010.0843].
- BICC Shareholders Resolution, passed 2 September 2019 [BIC.012.002.0060].

Shareholder Loans

11D. Subject to reference at trial to the full terms and effect of each of the alleged shareholder loans, it admits paragraph 11D.

Debt Facilities and CIMIC Financial Guarantees

11E. As to paragraph 11E:

- (a) As to paragraph 11E(a), subject to reference at trial to the full terms and effects of the facility agreement between HLG and UNB dated 28 November 2004 and each of the associated facility offer letters, it admits that on or about 28 November 2004, HLG entered into a facility agreement with UNB, which agreement was renewed by the facility offer letters dated, among others, 4 September 2012, 7 April 2014, 27 July 2014, 30 March 2015 and 23 November 2016.
- (b) As to paragraph 11E(b), subject to reference at trial to the full terms and effect of the credit facilities agreement between HLG and UNB dated 25 March 2014, it admits the allegations.
- (c) It says that the UNB Guarantee dated 30 November 2016 stated that the maximum aggregate amount recoverable under the guarantee pursuant to the UNB Facility Agreements, was limited to AED 1,764,100,000 in addition to interest, costs, chargers and expenses.
- (d) It otherwise denies the allegations.

11F. Subject to reference at trial to the full terms and effect of the Letter of Guarantee to UNB dated 30 November 2016, it admits the allegations in paragraph 11F.

11G. As to paragraph 11G:

- (a) Subject to reference at trial to the full terms and effect of the UNB Guarantee, it admits that the guarantee contained terms substantively in the form set out in paragraphs 11G(a) to (d).
- (b) It otherwise denies the allegations.

11H. As to paragraph 11H:

- (a) It says that on or about 14 June 2017, HLG (as Borrower) entered into the HSBC Syndicated Loan Agreement, the full terms and effect of which it will refer to at trial. Pursuant to the HSBC Syndicated Loan Agreement, the Lenders (as defined therein) agreed to make available to HLG three loan facilities (Facility A, Facility B and Facility C (as defined therein)).
- (b) It otherwise denies the allegation in paragraph 11H.

11I. As to paragraph 11I:

- (a) Subject to reference at trial to the full terms and effect of the HSBC Syndicated Loan Agreement, it admits that the agreement contained terms substantively in the form set out in paragraphs 11I(a) to (g).
- (b) It otherwise denies the allegations.

11J. As to paragraph 11J:

- (a) It says that on or about 14 June 2017, CIMIC and subsidiaries of CIMIC executed a Deed of Guarantee in favour of HSBC and each of the lenders under the HSBC Syndicated Facilities Agreement (defined as Finance Parties) in relation to the HSBC Syndicated Facility Agreement.
- (b) It otherwise denies the allegations.

11K. As to paragraph 11K:

- (a) Subject to reference at trial to the full terms and effect of the HSBC Syndicated Guarantee, it admits that the agreement contained terms substantively in the form set out in paragraphs 11K(a) to (b).
- (b) It otherwise denies the allegations.

11L. As to paragraph 11L:

- (a) It says that at all material times, CIMIC included in its annual reports a section entitled 'contingent liabilities' which included bank guarantees given by CIMIC.
- (b) It otherwise denies the allegations.

12. As to paragraph 12:

- (a) It refers to and repeats paragraph 4A above.
- (b) It says that from September 2007 to 30 June 2009, CIMIC accounted for its investment in BICC (then HLG) using the equity method and reported on its share of profit from BICC as part of the 'Asia' or 'overseas' primary geographical segment, as applicable, together with various other businesses.

Particulars

- Interim Financial Report for the six months ended 31 December 2007 pages 26 and 28.
 - 2008 Annual Report for the year ended 30 June 2008 pages 27, 28, 36
 - Interim Financial Report for the six months ended 31 December 2008 pages 27 and 30.
 - Concise Financial Report for year ended 30 June 2009 page 58.
 - Interim Financial Report for the six months ended 31 December 2008 pages 27 and 30.
 - 2009 Annual Report pages 39 and 40.
- (c) It says that from 1 July 2009 to 30 June 2010, CIMIC accounted for its investment in BICC (then HLG) using the equity method and reported on its share of revenue

from BICC as part of the Leighton International segment, with various other Leighton Group businesses.

Particulars

- Interim Financial Report for the six months ended 31 December 2009 pages 13 and 15.
- Concise Financial Report for the year ended 30 June 2010 pages 40 and 41.

- (d) It says that from 1 July 2010 to 30 June 2011, CIMIC accounted for its investment in BICC (then HLG) using the equity method and reported on its share of revenue from BICC as a separate segment as its performance was reported separately to the CIMIC CEO, the Chief Operating Decision Maker (**CODM**).

Particulars

- Concise Financial Report for the year ended 30 June 2011 pages 105 and 106.

- (e) It says that from 1 July 2011 to 30 June 2012, CIMIC accounted for its investment in BICC (then HLG) using the equity method and reported on its share of revenue from BICC as part of the Leighton Middle East & Africa segment, with other Leighton Group businesses.

Particulars

- Interim Financial Report for the six months ended 31 December 2011 pages 32 and 45.
- Concise Financial Report for the year ended 30 June 2012 pages 11, 14 and 15.

- (f) It says that from 1 July 2012 to 31 December 2017, CIMIC accounted for its investment in BICC (or HLG or HLG Contracting, as it was previously called) using the equity method and reported on its share of revenue from BICC as a separate segment as its results were presented to the CODM as a single and separate segment.

Particulars

- Concise Financial Report for the year ended 31 December 2012 pages 33 and 45 to 48.
- Interim Financial Report for the six months ended 30 June 2013 pages 12, 13 and 17.
- Concise Financial Report for the year ended 31 December 2013 pages 127 to 129 and 146 to 148.
- Interim Financial Report for the six months ended 30 June 2014 pages 11, 12, 17 and 18.
- Concise Financial Report for the year ended 31 December 2014 pages 80 to 83 and 101 to 103.
- Interim Financial Report for the six months ended 30 June 2015 pages 12 to 14, 21 and 22.
- Concise Financial Report for the year ended 31 December 2015 pages 82 to 85 and 99 to 101.
- Interim Financial Report for the six months ended 30 June 2016 pages 13, 14 and 21 to 25.
- Concise Financial Report for the year ended 31 December 2016 pages 120 to 122, 126 to 128 and 137 to 139.
- Interim Financial Report for the six months ended 30 June 2017 pages 12, 13 and 20 to 23.
- Concise Financial Report for the year ended 31 December 2017 pages 196, 197, 200 to 202 and 210 to 212.

- (g) It says that from 1 January 2018 to the end of the Relevant Period, CIMIC accounted for its investment in BICC using the equity method and reported on its share of revenue from BICC within the Corporate segment results, together with other businesses.

Particulars

- Interim Financial Report for the six months ended 30 June 2018 pages 20 to 22.

- (h) It says that a new accounting standard AASB 15, which included an increased threshold for the recognition of revenue, took effect from 1 January 2018. Upon the commencement of the new accounting standard, the carrying value of BICC was reduced to zero.

- (i) It otherwise denies the allegations.

C.4 CIMIC OFFICERS

13. As to paragraph 13:

- (a) It says that Marcelino Fernandez Verdes was the Executive Chairman of CIMIC from 11 June 2014 to 6 November 2020.
- (b) It says that Michael Wright was the Chief Executive Officer and Managing Director of CIMIC from 1 December 2017 to 4 February 2020.
- (c) It says that Stefan Camphausen was the Chief Financial Officer of CIMIC from 1 June 2017 to 5 January 2021.
- (d) It says that Ignacio Segura Surinach has been the Deputy Chief Executive Officer and Chief Operating Officer since 1 November 2017.
- (e) It says that Roman Garrido was CIMIC's Chief Safety, Strategy and Governance Officer from 1 April 2018 to 21 May 2019.
- (f) It says that Brad Davey was CIMIC's Chief Legal and Risk Officer from 1 April 2018 to 9 March 2022.
- (g) It says that George Sassine has been CIMIC's Executive General Manager, Corporate Advisory & Group Property since 30 July 2015.
- (h) It says that Scott McAlpine has been the Executive General Manager of Treasury since 1 June 2016.
- (i) It denies that Messrs Garrido, Davey, Sassine or McAlpine were, during the Relevant Period, officers of CIMIC within the meaning of section 9 of the Corporations Act and ASX Listing Rule 19.3.
- (j) To the extent that it responds to allegations referring or relating to Messrs Garrido, Davey, Sassine or McAlpine in this Amended Defence, it refers to and repeats paragraph (i) above.
- (k) It says that, so far as it is alleged any person other than the persons listed in paragraphs (a) to (h) was a CIMIC Officer, the allegation is embarrassing and liable to be struck out.

- (l) It otherwise does not know and therefore cannot admit the allegations in paragraph 13.

13A. As to paragraph 13A:

- (a) It refers to and repeats paragraphs 5, 8 and 13 above.
- (b) It says that at trial it will refer to the full terms and effect of ASX Listing Rule 19.12.
- (c) It otherwise denies the allegations.

D. ANNOUNCEMENTS MADE BY CIMIC BETWEEN 2016 AND MID-2019

D.1 2016 Announcements

13B. As to paragraph 13B:

- (a) Subject to reference at trial to the full terms and effect of the 2015 Annual Report, it admits the allegations in paragraph 13B and refers to paragraph 13BA below.
- (b) It says that the 2015 Annual Report stated that as at 31 December 2015, \$165.3 million of cash at bank and cash on hand was classified as restricted cash in relation to the sale of receivables during the reporting period.

Particulars

2015 Annual Report page 67.

13BA. It says that:

- (a) On 10 February 2016, CIMIC held a teleconference with analysts (the **10 February 2016 Earnings Call**).

- (b) During the 10 February 2016 Earnings Call, CIMIC's Chief Financial Officer, said, amongst other things, that:
- (i) 'where you're seeing different working capital management initiatives, factoring is one of them. It's an instrument that has been used in all the companies in Europe for a long time. We use that as a way to optimise our financial position, but at the same time, is showing that those certifications are backed by cash and consequently is something that we do in the operating activities, but we are not disclosing that particular number'; and
 - (ii) 'we have not disclosed the number, but I believe and it's my experience that with the size of this company, we are not going to be more than AUD300 million or around AUD300 million, something like that. So let's say it depends on the moments, but let's say, well -- if the Company's increasing, obviously you can increase this, but let's say around AUD300 million, AUD400 million, something like that.'.

Particulars

10 February 2016 Earnings Call pages 10 and 11.

13C. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 22 April 2016 entitled 'CIMIC's CPB Contractors Awarded Level Crossing Removals Contract', it admits the allegations in paragraph 13C.

14. As to paragraph 14:

- (a) It says that:
 - (i) On 19 July 2016 CIMIC published and lodged with the ASX its Half Year Report for the six months ended 30 June 2016 (**2016 Half Year Report**).
 - (ii) The 2016 Half Year Report stated:

<p><i>Legacy project receivables</i></p>	<p><i>There continues to be a delay in payment from clients in the MENA region, particularly for projects in progress at the time the Group invested in HLG. It is assumed of the remaining unprovided legacy project receivables, 52% will be collected within twenty-four months and 48% collected subsequently (31 December 2015: 56% and 44% respectively)</i></p>
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Particulars

2016 Half Year Report page 22.

- (b) Subject to reference at trial to the full terms and effect of the 2016 Half Year Report, it admits that the 2016 Half Year Report stated the matters in paragraphs 14(a) and (c) to (e).
- (c) It otherwise denies the allegations.

14A. As to paragraph 14A:

- (a) Subject to reference at trial to the full terms and effect of the 2016 Half Year Report, it admits the allegations in paragraph 14A and refers to paragraph 14AA below.
- (b) It says that the 2016 Half Year Report stated that as at 30 June 2016, \$178.9 million (31 December 2015: \$165.3 million) of cash at bank and cash on hand was classified as restricted cash in relation to the sale of receivables during the reporting period.

Particulars

2016 Half Year Report page 5.

14AA. It says that:

- (a) On 19 July 2016, CIMIC held a teleconference with analysts (the **19 July 2016 Earnings Call**).
- (b) It says that during the 19 July 2016 Earnings Call, CIMIC's Chief Financial Officer had the following exchange with analyst Nick Robinson:

ROBINSON: ... on the balance sheet you've got a note about restricted cash, AUD179 million, which it looks like it's something to do with factoring. Can you disclose how much factoring there was in the half? Is that, stripped of cash, the entire amount?

MURIEL: You are correct; the restricted cash relates to factoring. And we are in similar levels at the end of last year.

ROBINSON: So there was no -- that note there is indicative of the entire factored component?

MURIEL: No. Probably we gave some information last year that we were moving between AUD300 million to AUD400 million and we are inside those numbers.

Particulars

19 July 2016 Earnings Call pages 14 and 15.

15. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 26 August 2016 entitled 'Update on HLG Shareholders', it admits the allegations in paragraph 15.
- 15A. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 25 November 2016 entitled 'CIMIC's CPB Contractors Wins Water Treatment Plant Upgrade', it admits the allegations in paragraph 15A.
16. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 1 December 2016 entitled 'Completion of Change of Shareholder in HLG', it admits the allegations in paragraph 16.

D.2 2017 Announcements

17. As to paragraph 17:

(a) It says that:

(i) On 8 February 2017 CIMIC published and lodged with the ASX its 2016 Annual Report (**2016 Annual Report**).

(ii) The 2016 Annual Report stated:

<i>Legacy project receivables</i>	<i>There continues to be a delay in payment from clients in the MENA region, particularly for projects in progress at the time the Group invested in HLG Contracting. It is assumed of the remaining unprovided legacy project receivables, 55% will be collected within twenty-four months and 45% collected subsequently (31 December 2015: 56% and 44% respectively)</i>
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Particulars

2016 Annual Report page 127.

(iii) The 2016 Annual Report stated that CIMIC had pledged the following security against borrowings by HLG under facilities totalling US\$239.7 million (equivalent to \$332.9 million):

1. letters of credit of US\$85.4 million (equivalent to \$118.6 million); and
2. guarantees of US\$154.3 million (equivalent to \$214.3 million).

Particulars

2016 Annual Report page 127.

(b) Subject to reference at trial to the full terms and effect of the 2016 Annual Report, it admits that the 2016 Annual Report stated the matters in paragraphs 17(a) to (e) and (g) to (i).

(c) It otherwise denies the allegations.

18. Subject to reference at trial to the full terms and effect of CIMIC’s ASX release on 8 February 2017 entitled 'Analyst and Investor Presentation – Full Year Results', it admits the allegations in paragraph 18.

18A. As to paragraph 18A:

(a) Subject to reference at trial to the full terms and effect of the 2016 Annual Report, it admits the allegations in paragraph 18A.

(b) It says that the 2016 Annual Report stated that as at 31 December 2016, \$166.7 million (31 December 2015: \$165.3 million) of cash at bank in relation to the sale of receivables during the reporting period was classified as restricted cash.

Particulars

2016 Annual Report page 105.

18B. Subject to reference at trial to the full terms and effect of CIMIC’s ASX release on 8 February 2017 entitled 'CIMIC’s Thiess Awarded \$650 million Solomon Extension', it admits the allegations in paragraph 18B.

19. As to paragraph 19:

(a) It says that:

(i) On 17 July 2017 CIMIC published and lodged with the ASX its Half Year Report for the six months ended 30 June 2017 (**2017 Half Year Report**).

(ii) The 2017 Half Year Report stated:

<p><i>Legacy project receivables</i></p>	<p><i>There continues to be a delay in payment from clients in the MENA region, particularly for projects in progress at the time the Group invested in HLG Contracting. It is assumed of the remaining unprovided legacy project receivables,</i></p>
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	<i>approximately half will be collected within twenty-four months and approximately half collected subsequently.</i>
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- (b) Subject to reference at trial to the full terms and effect of the 2017 Half Year Report, it admits that the 2017 Half Year Report stated the matters in paragraphs 19(a) and (c) to (f).

Particulars

2017 Half Year Report page 22.

- (c) It otherwise denies the allegations.

19A. As to paragraph 19A:

- (a) Subject to reference at trial to the full terms and effect of the 2017 Half Year Report, it admits the allegations in paragraph 19A.
- (b) It says that the 2017 Half Year Report stated that as at 30 June 2017, \$191.2 million (31 December 2016: \$166.7 million) of cash at bank and cash on hand was classified as restricted cash in relation to the sale of receivables during the reporting period

Particulars

2017 Half Year Report page 5.

- 19B. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 18 July 2017 entitled 'CIMIC's CPB Contractors Preferred for Metro Tunnel Rail Systems', it admits the allegations in paragraph 19B.
- 19C. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 18 December 2017 entitled 'CIMIC's CPB Contractors Wins \$312m Metro Tunnel Rail Works', it admits the allegations in paragraph 19C.

D.3 2018 Announcements

20. Subject to reference at trial to the full terms and effect of CIMIC's 2017 Annual Report dated 7 February 2018 (**2017 Annual Report**), CIMIC's Analyst Investor Presentation dated 7 February 2018 and CIMIC's ASX release on 7 February 2018, it admits the allegations in paragraph 20.
21. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 7 February 2018 entitled 'Analyst and Investor Presentation – Full Year Results 2017', it admits the allegations in paragraph 21.
22. As to paragraph 22:
- (a) It says that on 7 February 2018, CIMIC held a teleconference with analysts (the **7 February 2018 Earnings Call**).
 - (b) It says that during the 7 February 2018 Earnings Call, CIMIC's Executive Chairman said, amongst other things, that CIMIC's 'factoring stands between 500 million and 600 million'.

Particulars

Transcript of the 7 February 2018 Earnings Call at page 3.

- (c) Subject to reference at trial to the full terms and effect of the transcript to the 7 February 2018 Earnings Call, it admits the matters stated in paragraphs 22(a) to (d).
- 22A. As to paragraph 22A, subject to reference at trial to the full terms and effect of the transcript of the 7 February 2018 Earnings Call, it admits the allegation.
23. As to paragraph 23:
- (a) It says that in FY18, a new accounting standard AASB 9 took effect which included revised guidance on the classification and measurement of financial

instruments, including a new expected credit loss model for calculation of impairment of financial assets.

(b) It says that:

(i) On 7 February 2018 CIMIC published and lodged with the ASX its 2017 Annual Report.

(ii) The 2017 Annual Report stated:

1. In relation to the impact of new accounting standard AASB 9:

a. That the new expected credit loss model under AASB 9 might lead to a currently estimated adjustment reducing equity by around \$500 million (after tax) with regards to the non-current loan receivables from BICC.

Particulars

2017 Annual Report page 252 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2017).

b. That external independent advice was utilised in determining the estimated expected credit loss upon application of AASB 9.

Particulars

2017 Annual Report page 252 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2017).

2. In relation to the key assumptions used in CIMIC’s value in use calculation of the recoverable amount of its investments in BICC:

<i>Legacy project</i>	<i>There continues to be a delay in payment from</i>
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<i>receivables</i>	<i>clients in the MENA region, particularly for projects in progress at the time the Group invested in HLG Contracting. It is assumed of the remaining unprovided legacy project receivables, approximately half will be collected within the medium term and approximately half collected subsequently</i>
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Particulars

2017 Annual Report page 201.

- (c) Subject to reference at trial to the full terms and effect of the 2017 Annual Report, it otherwise admits the allegations in paragraph 23(a) to (d) and (f) to (j).
- (d) It otherwise denies the allegations.

24. As to paragraph 24:

- (a) Subject to reference at trial to the full terms and effect of the 2017 Annual Report, it admits the allegations in paragraph 24.
- (b) It further says that the 2017 Annual Report stated that:
 - (i) CIMIC had introduced a supply chain financing program to facilitate early payment of supplier's invoices in exchange for a small settlement amount.

Particulars

2017 Annual Report page 98.

- (ii) CIMIC's Operating Companies had introduced an innovative Early Payment Program (EPP) which utilises supply chain financing to enable payment of invoices within 10 business days in exchange for a small settlement discount. The EPP provides suppliers with inexpensive

financing as the program is backed by CIMIC's strong credit rating. The EPP improves supplier's cash-flow as it facilitates access to payments more quickly and, if suppliers are paid in another currency, to mitigate the impact of exchange rate fluctuations.

Particulars

2017 Annual Report page 104.

- (iii) As at 31 December 2017, 267.7 million (31 December 2016: \$166.7 million) of cash at the bank in relation to the sale of receivables was classified as restricted cash.

Particulars

2017 Annual Report pages 98 and 180.

- (c) It otherwise denies the allegations.
25. Subject to reference at trial to the full terms and effect of the transcript of the Executive Chairman's address to shareholders dated 13 April 2018, it admits the allegations in paragraph 25.
- 25A. Subject to reference at trial to the full terms and effect of CIMIC's first quarter 2018 results dated 17 April 2018, it admits the allegations in paragraph 25A.
- 25B. As to paragraph 25B:
- (a) It says that on 16 July 2018, CIMIC published and lodged with the ASX a document entitled 'CIMIC's CPB Contractors Preferred for \$1b Metro Tunnel Works' (***CPB Preferred MTR Works Announcement***).
 - (b) The CPB Preferred MTR Works Announcement stated, amongst other things, that: 'Revenue to CPB Contractors for the design and construct contract will be confirmed at contractual close, expected in the coming months.'

Particulars

CPB Preferred MTR Works Announcement page 1.

- (c) Subject to reference at trial to the full terms and effect of the CPB MTR Works Announcement, it admits the allegations in paragraphs 25B(a) to (b).
 - (d) It otherwise denies the allegations.
26. Subject to reference at trial to the full terms and effect of CIMIC's 2018 Half Year Report dated 18 July 2018 (**2018 Half Year Report**), CIMIC's Analyst Investor Presentation dated 18 July 2018 and CIMIC's ASX release on 18 July 2018 entitled 'First Half 2018 Results', it admits the allegations in paragraph 26.
27. Subject to reference at trial to the full terms and effect of CIMIC's Analyst Investor Presentation dated 18 July 2018 and CIMIC's ASX release on 18 July 2018 entitled 'First Half 2018 Results', it admits the allegations in paragraph 27.
28. Subject to reference at trial to the full terms and effect of the 2018 Half Year Report, it admits the allegations in paragraph 28.
29. As to paragraph 29:
- (a) Subject to reference at trial to the full terms and effect of the 2018 Half Year Report, it admits the allegations in paragraph 29.
 - (b) It says that the 2018 Half Year Report stated that as at 30 June 2018, \$416.4 million (31 December 2017: \$267.7 million) of cash at bank in relation to the sale of receivables during the reporting period was classified as restricted cash.

Particulars

2018 Half Year Report page 7.

- 29A. As to paragraph 29A:

- (a) It says that on 18 July 2018, CIMIC held a teleconference with analysts (**18 July 2018 Earnings Call**).
- (b) It says that during the 18 July 2018 Earnings Call, CIMIC's Chief Executive Officer had the following exchange with analyst Daniel Wong:

WONG: ... [T]here's been reports in the media in Asia that there were some constraints on some of the projects. Can you share some light or update on the progress at the moment?

WRIGHT: ... [R]egarding Hong Kong, I guess you are referring to, when you talked about the Asia business? I mean, there's a lot of media speculation and I guess we don't comment on media speculation that is going on up there.

WONG: ... Did you have any update as to the current – the progress of the project? Or were there any more constraints on the project?

WRIGHT: We've got many projects in Hong Kong and Singapore and other places throughout Asia, I guess. Our teams remain on the ground executing the projects in accordance with our scheduled program in cooperation with our clients, as we do. Nothing else to add, really, to that. It's business as usual for us. We will keep executing and performing.

WONG: Right ... do you see this as being a long-term issue for the business up in Asia?

WRIGHT: No, we don't.

WONG: Like, in terms of perhaps in the legal battle or, you know –?

WRIGHT: We don't know. We don't see it as a long-term issue. We don't see it as an issue. I mean, it's media speculation at the moment. As I said, we are executing our projects on the ground, as we always do and as we have done for 40 years up in Hong Kong. And we will continue to do so.

Particulars

18 July 2018 Earnings Call page 7.

- (c) Subject to reference at trial to the full terms and effect of the transcript to the 18 July 2018 Earnings Call, it admits the matters stated in paragraphs 29A(a) to (c).
- (d) It otherwise denies the allegations.

- 29B. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 28 September 2018 entitled 'CIMIC's CPB Contractors Awarded \$1b Metro Tunnel Works', it admits the allegations in paragraph 29B.
- 29C. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 4 October 2018 entitled 'CIMIC's Leighton Asia Wins A\$110m Building Project in India', it admits the allegations in paragraph 29C.
30. Subject to reference at trial to the full terms and effect of the CIMIC Analyst and Investor Presentation dated 23 October 2018 and CIMIC's ASX release on 23 October 2018 entitled 'NPAT up 13%, Operating Cash Flow Up 16%, Guidance Confirmed', it admits the allegations in paragraph 30.
31. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 23 October 2018 entitled 'Analyst and Investor Presentation – 9m Results 2018', it admits the allegations in paragraph 31.
- 31A. As to paragraph 31A:
- (a) It says that on 21 November 2018, CIMIC published and lodged with the ASX a document entitled 'CIMIC Group Companies win \$1.37bn Sydney Metro Works' (***Sydney Metro Win Announcement***).
 - (b) The Sydney Metro Win Announcement stated, amongst other things, that: 'The NSW Government has awarded a contract providing revenue of \$1.376 billion to the joint venture between CPB Contractors and UGL'.

Particulars

Sydney Metro Win Announcement page 1.

- (c) Subject to reference at trial to the full terms and effect of the Sydney Metro Win Announcement, it admits the matters stated in paragraph 31A(a).
- (d) It otherwise denies the allegations.

31B. As to paragraph 31B:

- (a) It says on 11 December 2018, CIMIC published and lodged with the ASX a document entitled 'CIMIC Group Companies Preferred to Deliver Taswater's Capital Works' (***Taswater Capital Works Announcement***).
- (b) The Taswater Capital Works Announcement stated, amongst other things, that: 'The joint venture between UGL and CPB Contractors will generate revenue to CIMIC Group of more than \$600 million (to be confirmed at contract execution) over an initial four-year period'.

Particulars

Taswater Capital Works Announcement page 1.

- (c) Subject to reference at trial to the full terms and effect of the Taswater Capital Works Announcement, it admits the matters stated in paragraph 31B(a).
- (d) It otherwise denies the allegations.

D.4 2019 Announcements

- 32. Subject to reference at trial to the full terms and effect of CIMIC's 2018 Annual Report dated 5 February 2019 (***2018 Annual Report***), CIMIC's Analyst Investor Presentation dated 5 February 2019 and CIMIC's ASX release on 5 February 2019 entitled 'FY18 Results', it admits the allegations in paragraph 32.
- 33. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 5 February 2019 entitled 'Analyst and Investor Presentation – Full Year Results 2018', it admits the allegations in paragraph 33.
- 34. As to paragraph 34:
 - (a) Subject to reference at trial to the full terms and effect of the 2018 Annual Report, it admits the allegations in paragraphs 34(a) to (c).

- (b) It says that the 2018 Annual Report did not state:
 - (i) The extent or value of the factoring or supply chain factoring arrangements.
 - (ii) That the factoring and supply chain factoring arrangements did or may impact upon its cash results or other financial results.
 - (iii) The extent of the impact of the factoring and supply chain factoring arrangements on its cash results or other financial results.
- (c) It refers to and repeats paragraphs 21, 22, 24, 27, 29 and 31 above and 36 below.

35. As to paragraph 35:

- (a) It says that the 2018 Annual Report did not include the results for BICC as a standalone individual segment but instead included its results within the Corporate segment because the 'BICC segment did not meet the size threshold of a reportable segment at 31 December 2018'.

Particulars

2018 Annual Report page 161 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018).

- (b) It says that the 2018 Annual Report stated:
 - (i) That the CIMIC Group has trade and other receivables relating to BICC totalling US\$454.9 million (31 December 2017: US\$816.1 million) equivalent to \$640.7 million (31 December 2017: \$1,046.3 million) with an expected repayment date of 30 September 2021.

Particulars

2018 Annual Report page 161 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018).

- (ii) That the change in method from recognition of incurred losses to recognition of expected credit losses for impairment of financial assets under AASB 9 had led to an adjustment reducing non-current receivables by \$487.4 million with regards to the non-current loan receivables from BICC.

Particulars

2018 Annual Report page 142 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018).

- (iii) That the higher recognition threshold and constraint criteria in AASB 15 had led to a reduction in the investment of \$245.6 million.

Particulars

2018 Annual Report page 142 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018).

- (iv) That CIMIC continued to guarantee BICC's facilities, with a secured and drawn amount of US\$621.4 million (equivalent value of \$889.2 million) it had guaranteed compared with US\$326.1 million (equivalent value of \$418.1 million) in FY17.

Particulars

2018 Annual Report page 179 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018).

- (c) Subject to reference at trial to the full terms and effect of the 2018 Annual Report, it admits the allegations in paragraph 35(b) and (f).
- (d) It otherwise denies the allegations.

- (a) Subject to reference at trial to the full terms and effect of the 2018 Annual Report, it admits the allegations in paragraph 36.
- (b) It says that the 2018 Annual Report stated that as at 31 December 2018, \$580.4 million (31 December 2017: \$267.7 million) of cash at bank in relation to the sale of receivables and contract milestone receipts during the reporting period was classified as restricted cash.

Particulars

2018 Annual Report page 160.

37. As to paragraph 37:

- (a) It says that CIMIC's Chief Financial Officer stated during the teleconference with analysts on 5 February 2019 in relation to the strategic review of BICC that it had progressed and it had yielded further outcomes during 2018.
- (b) It otherwise, subject to reference at trial to the full terms and effect of the transcript of the CIMIC Analyst and Investor Presentation dated 5 February 2019, admits the allegations in paragraph 37.

38. Subject to reference at trial to the full terms and effect of the Executive Chairman's address and transcript of CIMIC's annual general meeting on 11 April 2019, it admits the allegations in paragraph 38.

39. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 11 April 2019 concerning the 2019 annual general meeting, it admits the allegations in paragraph 39.

40. As to paragraph 40:

- (a) Subject to reference at trial to the full terms and effect of CIMIC's Analyst and Investor Presentation dated 16 April 2019 and CIMIC's ASX release on 16 April

2019 of its first quarter 2019 results, it admits the allegations in paragraphs 40(a) to (d) and 40(g).

- (b) It says that CIMIC's first quarter 2019 results included net cash of \$1,575 million (or \$1.575 billion), up 74% from March 2018.
- (c) It says that CIMIC's first quarter 2019 results included net capital expenditure of \$160.3 million.
- (d) It otherwise denies the allegations.

41. Subject to reference at trial to the full terms and effect of CIMIC's Analyst and Investor Presentation dated 16 April 2019 and CIMIC's ASX release on 16 April 2019 of its first quarter 2019 results, it admits the allegations in paragraph 41.

E. ALLEGED CASH FLOW DISCLOSURE CONTRAVENTIONS

41AA. It says that:

- (a) CIMIC sold certified invoices to third party financial institutions and, as a result, CIMIC received payment in relation to the transactions the subject of those invoices sooner than it would have done had those invoices been paid in the ordinary course by CIMIC's trade debtors (**Factoring**).
- (b) As a result of Factoring, at any point in time there was a difference between, on the one hand, the amount CIMIC had received from the sale of invoices and, on the other hand, the amount which the third party financial institution had received from CIMIC's trade debtors in respect of those same invoices (the **Factoring Balance**).
- (c) CIMIC and certain of its suppliers each entered into arrangements with third parties pursuant to which the suppliers' invoices to CIMIC were paid earlier than was otherwise required under the payment terms for those invoices (**Reverse Factoring**).

- (d) As a result of Reverse Factoring, at any point in time there was an amount owed by CIMIC to third parties in respect of invoices which had been the subject of Reverse Factoring arrangements (the **Reverse Factoring Balance**).

41AB. As part of the management of its working capital, CIMIC entered into the following Factoring arrangements:

- (a) It entered into Factoring agreements with various financial institutions pursuant to which it sold certified invoices on a non-recourse basis to that financial institution (**Receivables Purchase Agreements**). Substantially all of the risks and rewards relating to the relevant receivable were transferred to the purchaser on the sale of the certified receivable.
- (b) It entered into Factoring agreements with Greensill pursuant to which it sold and assigned the right, title and interest of certified invoices to Greensill (**Receivables Transfer Agreements**). Substantially all of the risks and rewards relating to the relevant receivable were transferred to the purchaser on the sale of the certified receivable.
- (c) During the period February 2018 to July 2019, Receivables Purchase Agreements were in force, from time to time, with Bank of Tokyo, Mitsubishi UFJ Ltd, National Australia Bank, Commonwealth Bank of Australia, HSBC and SCB.
- (d) During the period December 2017 to March 2019, Receivables Transfer Agreements were in force, from to time.

41AC. During the period January 2017 to July 2019, as part of the management of its working capital, CIMIC entered into the following Reverse Factoring arrangements:

- (a) CIMIC entered into agreements with suppliers pursuant to which CIMIC was to be provided with, and obliged to pay for, goods or services and such agreements included terms and conditions outlining the goods and services, timing of delivery or performance of service, warranty, indemnity and insurances costs, costs of remediating defects, and payment terms.

- (b) Two third parties, Greensill and the Australia and New Zealand Banking Group Ltd (**ANZ**), each entered into agreements with certain CIMIC's suppliers pursuant to which the supplier assigned the right to receive payment of the invoice issued to CIMIC to Greensill or ANZ.
- (c) CIMIC entered into agreements with each of Greensill and ANZ pursuant to which the obligation to pay the invoice referred to in paragraph (b) above was assigned to Greensill or ANZ.

41AD. During the period January 2017 to January 2020, CIMIC engaged Deloitte as an independent auditor to:

- (a) Audit its 31 December 2017 Financial Report, 31 December 2018 Financial Report and 31 December 2019 Financial Report and for each of those financial reports, Deloitte prepared and provided a report to CIMIC's Audit and Risk Committee (**ARC**) and provided an auditor's declaration in CIMIC's respective annual reports.
- (b) Review its 2017 Half Year Report, 2018 Half Year Report and 2019 Half Year Report dated 17 July 2019 (**2019 Half Year Report**) and Deloitte concluded that there was no matter that made Deloitte believe that the interim financial report was not in accordance with the Corporations Act.

Particulars

Deloitte's report to the ARC dated 5 February 2018 for FY17 provided at page 30:

We concur with management's treatment of receivables factoring and supply chain financing at 31 December 2017.

Deloitte's report to the ARC dated 4 February 2019 for FY18 provided at page 28:

We have reviewed the disclosures related to receivables factoring and supply chain financing in the 31 December 2018 financial report. We concur with management's treatment of receivables factoring and supply chain financing at 31 December 2018.

Deloitte's report to the ARC dated 4 February 2020 for FY19 provided at page 26:

We have reviewed the disclosures related to receivables factoring and supply chain financing in the 31 December 2019 financial report. We concur with management's treatment of receivables factor and supply chain financing at 31 December 2019.

In relation to the reviews undertaken by Deloitte of the Half Year Reports, see:

- page 32 of the 2017 Half Year Report;
- page 39 of the 2018 Half Year Report; and
- page 39 of the 2019 Half Year Report.

41AE. During the period December 2017 to December 2019, CIMIC:

- (a) had working capital facilities of no less than \$2,775 million, of which it drew upon no more than \$750 million at any given point in time;
- (b) held cash and cash equivalents of no less than of \$1,750 million;
- (c) had positive operating cash flow (both before and after factoring) in each financial year; and
- (d) was awarded a year-on-year Baa2/Stable credit rating by Moody's and BBB/A-2 credit rating by S&P Global.

41AF. It says that

- (a) On or around 10 August 2015, the document entitled 'Market Disclosure and Communications Framework' was approved by the Executive Chairman and the Chief Executive Officer of CIMIC.
- (b) On 14 September 2017, the email entitled 'Important – SM2 factoring updates' was emailed by Stefan Camphausen to Adolfo Valderas, Juan Santamaria, Michael Wright, Dianne Cassidy and Sarah Cooper-Woolley.
- (c) Ahead of the ARC and Board meetings on 6 February 2018, the paper entitled 'Treasury & Insurance Update', which included the slides entitled 'Working Capital Update', was made available to ARC members and CIMIC Board members.

- (d) Ahead of the Analyst and Investor Presentation held on 7 February 2018, the document entitled 'Investor Q&A' was prepared.
- (e) Ahead of the ARC and Board meetings on 12 April 2018, the paper entitled 'Treasury & Insurance Update', which included the slides entitled 'Working Capital Update', was made available to ARC members and CIMIC Board members.
- (f) On 16 May 2018, the spreadsheet entitled 'PPE Additions Cheat Sheet' was emailed by Harnek Soor to Emilio Grande, Tim Martel, Derek Kerr and Kaushali Bhatt.
- (g) On 8 July 2018, the spreadsheet entitled 'PPE Additions Cheat Sheet' was emailed by Derek Kerr to Emilio Grande.
- (h) On 11 July 2018, the report entitled 'Risk Management Report' relating to 2Q18 was emailed by Brad Davey to Louise Griffiths, Lyn Nikolopoulos and Michael Wright.
- (i) Ahead of the ARC and Board meetings on 18 July 2018, the Paper entitled 'Treasury & Insurance Update', which included the slides entitled 'Working Capital Update', was made available to ARC members and CIMIC Board members.
- (j) On 9 August 2018, the spreadsheet entitled 'LAIO Financial Highlights – FY18 v FY17' was emailed by Tamara Kidd to Stefan Camphausen, Emilio Grande and Derek Kerr.
- (k) On or around 21 August 2018, the spreadsheet entitled 'Monthly Performance Report – ConCo Asia' was emailed by Stefan Camphausen to Michael Wright, Pedro Vicente, Victoria Crasti, Juan Santamaria, Stuart Charlton, Derek Kerr, Tamara Kidd and Emilio Grande.
- (l) On 10 October 2018, the spreadsheet entitled 'WIH Summary Sep-18 draft 20181010' was emailed by Tamara Kidd to Frances Huang.

- (m) On 13 October 2018, the spreadsheet entitled 'PPE Additions Cheat Sheet' was emailed by Derek Kerr to Stefan Camphausen.
- (n) On 19 October 2018, the spreadsheet entitled 'LAIO Financial Highlights – FY18 v FY17' was emailed by Katrina Diep to Derek Kerr, Tamara Kidd, Frances Huang and Ashleen Nolan.
- (o) On 20 October 2018, the report entitled 'Risk Management Report' relating to 3Q18 was emailed by Michael Wright to Louise Griffiths, Brad Davey and Lyn Nikolopoulos.
- (p) Ahead of the ARC and Board meetings on 23 October 2018, the Paper entitled 'Treasury Update', which included the slides entitled 'Working Capital Update', was made available to ARC members and CIMIC Board members.
- (q) On 4 December 2018, the spreadsheet entitled 'Group Financial Highlights – FY18 v FY17' was emailed by Stefan Camphausen to Michael Wright, Ignacio Segura, Dianne Cassidy and Derek Kerr.
- (r) On or around 21 December 2018, the document entitled 'CIMIC Group Companies to Deliver Taswater's Capital Works' was published and lodged by CIMIC with the ASX.
- (s) On 21 January 2019, the spreadsheet entitled 'LAIO Financial Highlights – FY18 v FY17' was emailed by Stefan Camphausen to Michael Wright, Ignacio Segura and Dianne Cassidy.
- (t) On 22 January 2019, the spreadsheet entitled 'Group Financial Highlights – FY18 v FY17' was emailed by Stefan Camphausen to Dianne Cassidy, Michael Wright, Ignacio Segura and Derek Kerr.
- (u) On 22 January 2019, the spreadsheet entitled 'TPL Highlights Q4 Actual 18/01/2019' was emailed by Frances Huang to Tamara Kidd.

- (v) On 4 February 2019, the report entitled 'Risk Management Report' relating to 4Q18 was emailed by Brad Davey to Louise Griffiths, Lyn Nikolopoulos, Dianne Cassidy and Michael Wright.
- (w) Ahead of the ARC and Board meetings on 5 February 2019, the paper entitled 'Treasury Update', which included the slides entitled 'Working Capital Update', was made available to ARC members and CIMIC Board members.
- (x) On 22 March 2019, the Camphausen FY18 Factoring Spreadsheet was emailed by Stefan Camphausen to Ángel Muriel Bernal, an updated version of which was sent on 25 March 2019 by Stefan Camphausen to Ángel Muriel Bernal.
- (y) On 7 April 2019, the spreadsheet entitled 'Group Financial Highlights – FY19 v FY18' was emailed by Derek Kerr to Stefan Camphausen.
- (z) Ahead of the ARC and Board meetings on 10 April 2019, the papers entitled 'Treasury & Insurance Update', which included the slides entitled 'Working Capital Update', was made available to ARC members and CIMIC Board members.
- (aa) On 16 April 2019, Marcelino Fernández Verdes, Michael Wright and Stefan Camphausen were listed as presenters for the presentation entitled 'Analyst and Investor 1Q Results 2019'.
- (bb) On 30 April 2019, GMT Research published a newsletter entitled 'CIMIC Group (CIM AU) – Engineering profits'.
- (cc) On 4 May 2019, Fairfax Media published an article entitled 'Construction giant CIMIC targeted over \$800m profit boost'.
- (dd) On 6 May 2019, Fairfax Media published an article entitled 'Investor sees CIMIC as overvalued, not overblown'.

- (ee) On 6 May 2019, the Camphausen FY18 and 1Q19 Factoring Spreadsheet was emailed by Stefan Camphausen to Derek Kerr, Justin Grogan, Cameron Smith, Scott McAlpine and Miryam Meza.
- (ff) On 17 May 2019, the spreadsheet entitled 'TPL Financial Highlights – Q2 FY19 Forecast' was emailed by Carla Scodeller to Stefan Camphausen, Derek Kerr and Tim Martel.
- (gg) On 20 May 2019, the internal presentation entitled 'Factoring and Supply Chain Financing' emailed by Justin Grogan to Stefan Camphausen.
- (hh) On 21 May 2019, the internal presentation entitled 'Factoring and Supply Chain Financing' was emailed by Stefan Camphausen to Michael Wright and Ignacio Segura.
- (ii) On 28 May 2019, the internal presentation entitled 'Factoring and Supply Chain Financing' was emailed by Stefan Camphausen to Ángel Muriel Bernal.
- (jj) Ahead of the ARC and Board meetings on 17 July 2019, the papers entitled 'Treasury Update', which included the slides entitled 'Working Capital Update', was made available to ARC members and CIMIC Board members.
- (kk) On 17 July 2019, CIMIC published a report entitled 'Half Year Report 2019'.
- (ll) On 17 July 2019, Thomas Reuters published a document entitled 'Edited Transcript – CIM.AX – Half Year 2019 CIMIC Group Ltd Earnings Call'.
- (mm) On or around 17 July 2019, the document entitled 'CIMIC Group Half Year Results' was published and lodged by CIMIC with the ASX.
- (nn) On 23 July 2019, Thomas Reuters published a document entitled 'Edited Transcript – HOT.DE – Half Year 2019 Hochtief AG Earnings Call'.

- (oo) On 6 August 2019, the spreadsheet entitled 'Group Financial Highlights – FY19 v FY18' was emailed by Carla Scodeller to Stefan Camphausen and Derek Kerr, which was subsequently forwarded by Derek Kerr to Michael Wright.

E.1 Alleged FY17 Cash Flow Information and Contraventions

41A. As to paragraph 41A:

- (a) It says at 31 December 2015:
 - (i) The Factoring Balance was \$334 million.
 - (ii) It had not entered into any Reverse Factoring arrangements.
- (b) It says at 31 December 2016:
 - (i) The Factoring Balance was \$373 million.
 - (ii) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$80 million.
 - (iii) The Reverse Factoring Balance was approximately \$86 million.
- (c) It says at 31 December 2017:
 - (i) The Factoring Balance was \$558 million.
 - (ii) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$177 million.
 - (iii) The Reverse Factoring Balance was approximately \$258 million.
- (d) It otherwise denies the allegations.

True Position – February 2018

42. As to paragraph 42:

- (a) It refers to and repeats paragraphs 41AA to 41AC and 41AE above.
- (b) It says that in FY17:
 - (i) Its operating cash flow was \$1,523.4 million.
 - (ii) Its EBITDA was \$1,513.7 million.
 - (iii) The Factoring Balance was as follows as at the following dates:
 - 1. As at 31 December 2016, approximately \$373 million.
 - 2. As at 31 December 2017, approximately \$574 million.
 - (iv) The difference between the amounts in subparagraphs (iii)1 and (iii)2 above is \$201 million.
 - (v) In February 2019, the Factoring Balances referred to in subparagraph (iii) and (iv) above were revised following a re-statement of certain historical mining invoices. Prior to this re-statement, those invoices were accounted for on the basis that CIMIC held an interest of 100% in the relevant entity, whereas CIMIC in fact held an interest of less than 100%. Following the restatement (which took account of CIMIC's actual interest) the difference between the Factoring Balances was \$185 million (not \$201 million).
 - (vi) As at 31 December 2017 the Reverse Factoring Balance was approximately \$258 million.
 - (vii) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (iv) above) is \$1,338.4 million and that sum

divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is 88.4%.

- (c) It otherwise denies the allegations.

FY17 Cash Flow Information

43. As to paragraph 43:

- (a) It refers to and repeats paragraph 41AF and 42 above.
- (b) It otherwise denies the allegations.

44. As to paragraph 44:

- (a) It denies paragraphs 44(a) and (b) and refers to and repeats paragraphs 13B, 13BA, 14A, 14AA, 18A, 19A, 20, 22, 24 and 43 above.
- (b) As to paragraph 44(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 6 May 2019, alternatively 17 July 2019, of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information was generated for the internal management purposes of CIMIC.

Particulars

The information was contained in board papers, ARC papers and other internal communications and documents relating to CIMIC's working capital arrangements.

CIMIC refers to and repeats paragraphs 41AF(b) to (d) above.

2. The information was confidential prior to 6 May 2019, alternatively 17 July 2019, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 1 above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

3. A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in subparagraphs 1 and 2 above.

(c) It otherwise denies the allegations.

45. It denies the allegations in paragraph 45 and refers to and repeats paragraphs 42 to 44 above.

46. It denies the allegations in paragraph 46 and refers to and repeats paragraphs 25A, 26, 29A, 30, 31, 32, 33, 41 and 44 above and paragraph 77A below.

47. It denies the allegations in paragraph 47 and refers to and repeats paragraphs 42 to 46 above.

E.2 Alleged 1Q18 Cash Flow Information and Contraventions

True Position – April 2018

47A. As to paragraph 47A:

- (a) It refers to and repeats paragraphs 41AA to 41AC and 41AE above.
- (b) It says that in the period 1 January 2018 to 31 March 2018:
 - (i) Its operating cash flow was \$118.2 million.
 - (ii) Its EBITDA was \$368.4 million.
 - (iii) The Factoring Balance was as follows at the following dates:
 - 1. As at 31 December 2017, approximately \$574 million.
 - 2. As at 31 March 2018, approximately \$767 million.
 - (iv) The difference between the amounts in subparagraph (iii)1 and (iii)2 above is \$193 million.
 - (v) Following the re-statement referred to in paragraph 42(b)(v) above, the Factoring Balances referred to in subparagraph (iii)1 and (iii)2 above were revised with the effect that the difference between the two amounts was \$195 million (not \$193 million).
 - (vi) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$199 million.

- (vii) As at 31 March 2018 the Reverse Factoring Balance was approximately \$284 million.
 - (viii) Its EBITDA cash conversion was 32.1%.
 - (ix) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (v) above) is -\$76.8 million and that sum divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is -20.8%.
- (c) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
- (i) 'substantial components of its working capital and financing arrangements';
 - (ii) 'significant cash flow and working capital pressures';
 - (iii) 'cash flow and working capital pressures'; and
 - (iv) 'would likely decrease substantially as factoring and reverse factoring arrangements came to a conclusion or were substantially reduced'.
- (d) It says that its reported Cash Flow Metrics incorporated the use of Factoring and Reverse Factoring.
- (e) It otherwise denies the allegations.

1Q18 Cash Flow Information

47B. As to paragraph 47B:

- (a) It refers to and repeats paragraph 41AF and 47A above.

- (b) It otherwise denies the allegations.

47C. As to paragraph 47C:

- (a) It denies paragraphs 47C(a) and (b) and refers to and repeats paragraphs 13B, 13BA, 14A, 14AA, 18A, 19A, 20, 22, 24, 25A and 47B above.
- (b) As to paragraph 47C(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 6 May 2019, alternatively 17 July 2019, of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information was generated for the internal management purposes of CIMIC.

Particulars

The information was contained in board papers, ARC papers and other internal communications and documents relating to CIMIC's working capital arrangements.

CIMIC refers to and repeats paragraphs 41AF(d), (e) and (f) above.

2. Further or alternatively, the information alleged at paragraphs 47B(f), (g) and (l) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraphs 47B(f), (g) and (l) involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. The information was confidential prior to 6 May 2019, alternatively 17 July 2019, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 1 above are confidential. The information was known only to employees and directors CIMIC who owed duties of confidentiality.

4. A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 3 above.

(c) It otherwise denies the allegations.

47D. It denies the allegations in paragraph 47D and refers to and repeats paragraphs 47A to 47C above.

47E. It denies the allegations in paragraph 47E and refers to and repeats paragraphs 26, 29A, 30, 31, 32, 33, 41 and 47C above and paragraph 77A below.

47F. It denies the allegations in paragraph 47F and refers to and repeats paragraphs 47A to 47E above.

E.3 Alleged 1H18 Cash Flow Information and Contraventions

True Position – July 2018

48. As to paragraph 48:

- (a) It refers to and repeats paragraphs 41AA to 41AC and 41AE above.
- (b) It says that in the period 1 April 2018 to 30 June 2018:
 - (i) Its operating cash flow was \$605.4 million.
 - (ii) Its EBITDA was \$425.9 million.
 - (iii) The Factoring Balance was as follows at the following dates:
 - 1. As at 31 March 2018, approximately \$767 million.
 - 2. As at 30 June 2018, approximately \$1,022 million.
 - (iv) The difference between the amounts in subparagraphs (iii)1 and (iii)2 above is \$255 million.
 - (v) Following the re-statement referred to in paragraph 42(b)(v) above, the Factoring Balances referred to in subparagraphs (iii)1 and (iii)2 above were revised, however the difference between the two amounts was not affected and remained as \$255 million.
 - (vi) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$312 million.
 - (vii) As at 30 June 2018 the Reverse Factoring Balance was approximately \$425 million.

- (viii) Its EBITDA cash conversion was 142.1%.

 - (ix) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (iv) above) is \$350.4 million and that sum divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is 82.3%.
- (c) It says that in the period 1 January 2018 to 30 June 2018:
- (i) Its operating cash flow was \$723.6 million.

 - (ii) Its EBITDA was \$794.3 million.

 - (iii) The Factoring Balance was as follows at the following dates:
 - 1. As at 31 December 2017, approximately \$574 million.

 - 2. As at 30 June 2018, approximately \$1,022 million.

 - (iv) The difference between the amounts in subparagraphs (iii)1 and (iii)2 above is \$448 million.

 - (v) Following the re-statement referred to in paragraph 42(b)(v) above, the Factoring Balances referred to in subparagraphs (iii)1 and (iii)2 above were revised with the effect that the difference between the two amounts was \$450 million (not \$448 million).

 - (vi) It entered into Reverse Factoring transactions for supplier invoices with a total value of approximately \$511 million.

 - (vii) As at 30 June 2018 the Reverse Factoring Balance was approximately \$425 million.

 - (viii) Its EBITDA cash conversion was 91.1%.

- (ix) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (v) above) is \$273.6 million and that sum divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is 34.4%.
- (d) It says that its reported Cash Flow Metrics incorporated the use of Factoring and Reverse Factoring, the levels of which varied from time to time.
- (e) It refers to and repeats paragraph 47A(c) above.
- (f) It otherwise denies the allegations.

1H18 Cash Flow Information

49. As to paragraph 49:

- (a) It refers to and repeats paragraph 41AF and 48 above.
- (b) It otherwise denies the allegations.

50. As to paragraph 50:

- (a) It denies paragraphs 50(a) and (b) and refers to and repeats paragraphs 13B, 13BA, 14A, 14AA, 18A, 19A, 20, 22, 24, 25A, 26, 29A and 49 above.
- (b) As to paragraph 50(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning

of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 6 May 2019, alternatively 17 July 2019, of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information was generated for the internal management purposes of CIMIC.

Particulars

The information was contained in board papers, ARC papers and other internal communications and documents relating to CIMIC's working capital arrangements.

CIMIC refers to and repeats paragraphs 41AF(d) to (j) above.

2. Further or alternatively, the information alleged at paragraphs 49(a)(iv), (v) and (x) and 49(b)(iv)(v) and (x) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraphs 49(a)(iv), (v) and (x) and 49(b)(iv)(v) and (x) involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. The information was confidential prior to 6 May 2019, alternatively 17 July 2019, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 1 above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

4. A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 3 above.

- (c) It otherwise denies the allegations.
51. It denies the allegations in paragraph 51 and refers to and repeats paragraphs 48 to 50 above.
52. It denies the allegations in paragraph 52 and refers to and repeats paragraphs 30, 31, 32, 33, 41 and 50 above and paragraph 77A below.
53. It denies the allegations in paragraph 53 and refers to and repeats paragraphs 48 to 52 above.

E.4 Alleged 3Q18 Cash Flow Information and Contraventions

True Position – October 2018

54. As to paragraph 54:
 - (a) It refers to and repeats paragraphs 41AA to 41AC and 41AE above.
 - (b) It says that in the period 30 June 2018 to 30 September 2018:
 - (i) Its operating cash flow was \$341.3 million.
 - (ii) Its EBITDA was \$439.1 million.
 - (iii) The Factoring Balance was as follows at the following dates:

1. As at 30 June 2018, approximately \$1,022 million.
 2. As at 30 September 2018, approximately \$1,491 million.
- (iv) The difference between the amounts in subparagraphs (iii)1 and (iii)2 above is \$469 million.
- (v) Following the re-statement referred to in paragraph 42(b)(v) above, the Factoring Balances referred to in subparagraphs (iii)1 and (iii)2 above were revised with the effect that the difference between the two amounts was \$455 million (not \$469 million).
- (vi) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$441 million.
- (vii) As at 30 September 2018 the Reverse Factoring Balance was approximately \$557 million.
- (viii) Its EBITDA cash conversion was 77.7%.
- (ix) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (b)(v) above) was -\$113.7 million and that sum divided by the EBITDA (as referred to in subparagraph (b)(ii) above) and expressed as a percentage is -25.9%.
- (c) It says that its reported Cash Flow Metrics incorporated the use of Factoring and Reverse Factoring, the levels of which varied from time to time.
- (d) It refers to and repeats paragraph 47A(c) above.
- (e) It otherwise denies the allegations.

3Q18 Cash Flow Information

55. As to paragraph 55:

- (a) It refers to and repeats paragraph 41AF and 54 above.
- (b) It otherwise denies the allegations.

56. As to paragraph 56:

- (a) It denies paragraphs 56(a) and (b) and refers to and repeats paragraphs 13B, 13BA, 14A, 14AA, 18A, 19A, 20, 22, 24, 25A, 26, 29A, 30, 31 and 56 above.
- (b) As to paragraph 56(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 6 May 2019, alternatively 17 July 2019, of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information was generated for the internal management purposes of CIMIC.

Particulars

The information was contained in board papers, ARC papers and other internal communications and documents relating to CIMIC's working capital arrangements.

CIMIC refers to and repeats paragraphs 41AF(d) to (p).

2. Further or alternatively, the information alleged at paragraph 55(l) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 55(l) involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. The information was confidential prior to 6 May 2019, alternatively 17 July 2019, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 1 above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

4. A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 3 above.

57. It denies the allegations in paragraph 57 and refers to and repeats paragraphs 54 to 56 above.
58. It denies the allegations in paragraph 58 and refers to and repeats paragraphs 32, 33, 41, 42 and 56 above and paragraph 77A below.

59. It denies the allegations in paragraph 59 and refers to and repeats paragraphs 54 to 59 above.

E.5 Alleged FY18 Cash Flow Information and Contraventions

True Position – February 2019

60. As to paragraph 60:

- (a) It refers to and repeats paragraphs 41AA to 41AC and 41AE above.
- (b) It says that in the period 1 October 2018 to 31 December 2018:
 - (i) Its operating cash flow was \$794 million.
 - (ii) Its EBITDA was \$468.4 million.
 - (iii) The Factoring Balance was as follows at the following dates:
 - 1. As at 30 September 2018, approximately \$1,463 million.
 - 2. As at 31 December 2018, approximately \$1,953 million.
 - (iv) The difference between the amounts in (iii)1 and (iii)2 is \$490 million.
 - (v) Its EBITDA cash conversion was 169.5%.
 - (vi) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (iv) above) was \$304 million and that sum divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is 64.9%.
- (c) It says that in the period 1 January 2018 to 31 December 2018:

- (i) Its operating cash flow was \$1,858.9 million.
 - (ii) Its EBITDA was \$1,701.8 million.
 - (iii) The Factoring Balance was as follows at the following dates:
 - 1. As at 31 December 2017, approximately \$558 million.
 - 2. As at 31 December 2018, approximately \$1,953 million.
 - (iv) The difference between the amounts in subparagraphs (iii)1 and (iii)2 above is \$1,395 million.
 - (v) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$1,423 million.
 - (vi) As at 31 December 2018 the Reverse Factoring Balance was approximately \$561 million.
 - (vii) Its EBITDA cash conversion was 109.2%.
 - (viii) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (iv) above) was \$463.9 million and that sum divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is 27.3%.
- (d) It says that its reported Cash Flow Metrics incorporated the use of Factoring and Reverse Factoring, the levels of which varied from time to time.
- (e) It refers to and repeats paragraph 47A(c) above.
- (f) It otherwise denies the allegations.

FY18 Cash Flow Information

61. As to paragraph 61:

- (a) It refers to and repeats paragraphs 41AF and 60 above.
- (b) It otherwise denies the allegations.

62. As to paragraph 62:

- (a) It denies paragraphs 62(a) and (b) and refers to and repeats paragraphs 13B, 13BA, 14A, 14AA, 18A, 19A, 20, 22, 24, 25A, 26, 29A, 30, 31, 32, 33 and 61 above.
- (b) As to paragraph 62(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 6 May 2019, alternatively 17 July 2019, of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information was generated for the internal management purposes of CIMIC.

Particulars

The information was contained in board papers, ARC papers and other internal communications and documents relating to CIMIC's working capital arrangements.

CIMIC refers to and repeats paragraphs 41AF(d) to (w) and (ee) above.

2. Further or alternatively, the information alleged at paragraphs 61(a)(iv), (v) and (x) and 61(b)(vi), (vii) and (xiii) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraphs 61(a)(iv), (v) and (x) and 61(b)(vi), (vii) and (xiii) involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. The information was confidential prior to 6 May 2019, alternatively 17 July 2019, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 1 above are confidential. The information was known only to employees and directors CIMIC who owed duties of confidentiality.

4. A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 3 above.

- (c) It otherwise denies the allegations.

63. It denies the allegations in paragraph 63 and refers to and repeats paragraphs 60 to 62 above.
64. It denies the allegations in paragraph 64 and refers to and repeats paragraphs 41 and 62 above and paragraph 77A below.
65. It denies the allegations in paragraph 65 and refers to and repeats paragraphs 60 to 64 above.

E.6 Alleged 1Q19 Cash Flow Information and Contraventions

True Position – April 2019

66. As to paragraph 66:
- (a) It refers to and repeats paragraphs 41AA to 41AC and 41AE above.
 - (b) It says that in the period 1 January 2019 to 31 March 2019:
 - (i) Its operating cash flow was \$247.5 million.
 - (ii) Its EBITDA was \$502.3 million.
 - (iii) The Factoring Balance was as follows at the following dates:
 - 1. As at 31 December 2018, approximately \$1,953 million.
 - 2. As at 31 March 2019, approximately \$2,153 million.
 - (iv) The difference between the amounts in subparagraphs (iii)1 and (iii)2 above is \$200 million.
 - (v) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$404 million.

- (vi) As at 31 December 2018 the Reverse Factoring Balance was approximately \$595 million.
 - (vii) Its EBITDA cash conversion was 49.3%.
 - (viii) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (iv) above) is \$47.5 million and that sum divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is 9.5%.
- (b) It says that its reported Cash Flow Metrics incorporated the use of Factoring and Reverse Factoring, the levels of which varied from time to time.
 - (c) It refers to and repeats paragraph 47A(c) above.
 - (d) It otherwise denies the allegations.

1Q19 Cash Flow Information

67. As to paragraph 67:

- (a) It refers to and repeats paragraphs 41AF and 66 above.
- (b) It otherwise denies the allegations.

68. As to paragraph 68:

- (a) It denies paragraphs 68(a) and (b) and refers to and repeats 13B, 13BA, 14A, 14AA, 18A, 19A, 20, 22, 24, 25A, 26, 29A, 30, 31, 32, 33, 41 and 67 above.
- (b) As to paragraph 68(c), it says that if the alleged information was information which:

- (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
- (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 6 May 2019, alternatively 17 July 2019, of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information was generated for the internal management purposes of CIMIC.

Particulars

The information was contained in board papers, ARC papers and other internal communications and documents relating to CIMIC's working capital arrangements.

CIMIC refers to and repeats paragraphs 41AF(y), (z), (ee), (hh) and (ii) above.

2. Further or alternatively, the information alleged at paragraphs 67(f), (g) and (m) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraphs 67(f), (g) and (m) involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. The information was confidential prior to 6 May 2019, alternatively 17 July 2019, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 1 above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

4. A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 3 above.

- (c) It otherwise denies the allegations.

69. It denies the allegations in paragraph 69 and refers to and repeats paragraphs 66 to 68 above.

70. It denies the allegations in paragraph 70 and refers to and repeats paragraph 68 above and 77A below.

71. It denies the allegations in paragraph 71 and refers to and repeats paragraphs 66 to 70 above.

E.7 Clarification Statement

71A. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 6 May 2019 entitled 'Clarification Statement' it admits the allegations in paragraph 71A.

71B. As to paragraph 71B:

- (a) It says that on 3 May 2019 its shares: opened at \$50.55, closed at \$50.04, had a high of \$51.15, had a low of \$44.65 and had a volume weighted average price (**VWAP**) of \$50.30.

- (b) It says that on 6 May 2019 its shares: opened at \$48.78, closed at \$46.50, had a high of \$48.97, had a low of \$44.65 and had a VWAP of \$46.52.
- (c) It says that on 7 May 2019 its shares: opened at \$46.00, closed at \$45.00, had a high of \$46.37, had a low of \$44.69 and had a VWAP of \$45.35.
- (d) It says that on 8 May 2019 its shares: opened at \$44.30, closed at \$44.74, had a high of \$44.74, had a low of \$42.50 and had a VWAP of \$44.25.
- (e) It otherwise denies the allegations.

E.8 Alleged June 2019 Cash Flow Information and Contraventions

True Position – June 2019

71C. As to paragraph 71C:

- (a) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'receipts from receivables factoring had materially declined';
 - (ii) 'receivables factoring would provide no material support, alternatively limited support'; and
 - (iii) 'would decrease materially'.
- (b) It refers to and repeats paragraphs 41AA to 41AC and 41AE above
- (c) It says that in the period 1 April 2019 to 30 June 2019:
 - (i) Its operating cash flow was approximately \$278.5 million.
 - (ii) Its EBITDA was \$521.5 million.

- (iii) The Factoring Balance was as follows on the following dates:
 - 1. As at 31 March 2019, approximately \$2,153 million.
 - 2. As at 30 June 2019, approximately \$1,995 million.
 - (iv) The difference between the amounts in subparagraphs (iii)1 and (iii)2 above is \$158 million.
 - (v) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$534 million.
 - (vi) As at 30 June 2019 the Reverse Factoring Balance was approximately \$662 million.
 - (vii) Its EBITDA cash conversion was 53.4%.
 - (viii) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (iv) above) was \$120.5 million and that sum divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is 23.1%.
- (d) It says that in the period 1 January 2019 to 30 June 2019:
- (i) Its operating cash flow was approximately \$528.6 million.
 - (ii) Its EBITDA was \$1,023.8 million.
 - (iii) The Factoring Balance was as follows on the following dates:
 - 1. As at 31 December 2018, approximately \$1,953 million.
 - 2. As at 30 June 2019, approximately \$1,995 million.

- (iv) The difference between the amounts in subparagraphs (iii)1 and (iii)2 above is -\$42 million.
 - (v) The total sum of supplier invoices the subject of Reverse Factoring arrangements was approximately \$938 million.
 - (vi) As at 30 June 2019 the Reverse Factoring Balance was approximately \$662 million.
 - (vii) Its EBITDA cash conversion was 51.6%.
 - (viii) Its operating cash flow less the increase in the Factoring Balance (as referred to in subparagraph (iv) above) was \$570.6 million and that sum divided by the EBITDA (as referred to in subparagraph (ii) above) and expressed as a percentage is 55.7%.
- (e) It otherwise denies the allegations.

June 2019 Cash Flow Information

71D. As to paragraph 71D:

- (a) It refers to and repeats paragraphs 41AF and 71C above.
- (b) It otherwise denies the allegations.

71E. As to paragraph 71E:

- (a) It denies paragraphs 71E(a) and (b) and refers to and repeats paragraphs 13B, 13BA, 14A, 14AA, 18A, 19A, 20, 22, 24, 25A, 26, 29A, 30, 31, 32, 33, 41 and 71D above.
- (b) As to paragraph 71E(c), it says that if the alleged information was information which:

- (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
- (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior 17 July 2019, of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information was generated for the internal management purposes of CIMIC.

Particulars

The information was contained in board papers, ARC papers and other internal communications and documents relating to CIMIC's working capital arrangements.

CIMIC refers to and repeats paragraphs 41AF(ee) to (kk) and (oo) above.

2. Further or alternatively, the information alleged at paragraphs 71D(b) and 71D(c) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraphs 71D(b) and (c) involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. The information was confidential prior to 17 July 2019, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 1 above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

4. A reasonable person would not expect that information to be disclosed prior to 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 3 above.

- (c) It otherwise denies the allegations.

71F. It denies the allegations in paragraph 71F and refers to and repeats paragraphs 71C to 71E above.

71G. It denies the allegations in paragraph 71G and refers to and repeats paragraphs 71A and 71E above and 77A below.

71H. It denies the allegations in paragraph 71H and refers to and repeats paragraph 71G above.

F. ALLEGED CASH FLOW REPRESENTATIONS

72. It denies the allegations in paragraph 72 and refers to and repeats paragraphs 13B, 13BA, 14A, 14AA, 18A, 19A, 20, 21, 22, 24, 25, 25A, 26, 27, 29, 29A, 30, 31, 32, 33, 34, 35, 38 and 41 above and 77A below.

73. It denies the allegations in paragraph 73 and refers to and repeats paragraph 72 above.

74. It denies the allegations in paragraph 74 and refers to and repeats paragraph 72 above.

75. As to paragraph 75:

- (a) It refers to and repeats paragraph 72 above.

(b) If any or all of the alleged Cash Generation Representations were made (which is denied) then it denies that such representations were in respect to a future matter.

(c) It refers to and repeats paragraph 115 below.

(d) It otherwise denies the allegations.

76. It denies the allegations in paragraph 76 and refers to and repeats paragraphs 72 to 75 above.

G. ALLEGED CASH FLOW CORRECTIVE DISCLOSURES

77. [Not used]

77A. On 11 July 2019, CIMIC published and lodged with the ASX a document entitled 'S&P Global Ratings announcement', which stated that CIMIC's use of receivables factoring significantly increased in 2018 to A1.9 billion as of December 2018 from A\$600 million in 2017.

Particulars

CIMIC release to the ASX on 11 July 2019 entitled 'CIMIC Group rating affirmed by Standard & Poor's', see page 3 of the S&P announcement.

78. Subject to reference at trial to the full terms and effect of the 2019 Half Year Report, it admits the allegations in paragraph 78.

79. Subject to reference at trial to the full terms and effect of the 2019 Half Year Report, it admits the allegations in paragraph 79.

79A. Subject to reference at trial to the full terms and effect of the Executive Chairman's address and transcript of CIMIC's Analyst and Investor Presentation on 17 July 2019, it admits the allegations in paragraph 79A.

80. [Not used]

81. As to paragraph 81:

- (a) It says that on 16 July 2019 its shares closed at \$45.27.
- (b) It says that on 17 July 2019 its shares: opened at \$45.58, closed at \$45.78, had a high of \$45.80, had a low of \$44.97 and had a VWAP of \$45.51.
- (c) It says that on 18 July 2019 its shares opened at \$41.10, closed at \$37.09, had a high of \$41.10, had a low of \$36.03 and had a VWAP of \$37.70.
- (d) It says that on 19 July 2019 its shares opened at \$37.32, closed at \$36.57, had a high of \$37.85 and had a VWAP of \$36.71.
- (e) It says that on 22 July 2019 its shares opened at \$36.40, closed at \$35.66, had a high of \$36.54, had a low of \$35.62 and had a VWAP of \$35.91.
- (f) It otherwise denies the allegations.

H. ANNOUNCEMENTS MADE BY CIMIC AFTER MID-2019

82. As to paragraph 82:

- (a) It says that the 2019 Half Year Report stated that CIMIC continued to hold shareholder loans relating to BICC totalling US\$465 million, compared with an amount of \$641 million at 31 December 2018, and otherwise denies the allegations in paragraph 82(c).
- (b) Subject to reference at trial to the full terms and effect of the 2019 Half Year Report, it admits the allegations in paragraphs 82(a) and (b) and 82(d) and (e).

83. Subject to reference at trial to the full terms and effect of CIMIC's 2019 Half Year Report, it admits the allegations in paragraph 83.

84. Subject to reference at trial to the full terms and effect of the transcript of CIMIC's Analyst and Investor Presentation dated 17 July 2019, it admits the allegations in paragraph 84.
85. Subject to reference at trial to the full terms and effect of CIMIC's Analyst and Investor Presentation dated 17 July 2019 and CIMIC's ASX release on 17 July 2019 entitled 're Half Year 2019 Results', it admits the allegations in paragraph 85.
86. Subject to reference at trial to the full terms and effect of CIMIC's Analyst and Investor Presentation dated 17 July 2019 and CIMIC's ASX release on 17 July 2019 entitled 're Half Year 2019 Results', it admits the allegations in paragraph 86.
87. Subject to reference at trial to the full terms and effect of CIMIC's Analyst and Investor Presentation dated 23 October 2019 and CIMIC's ASX release on 23 October 2019 entitled 're Third Quarter FY19 Results', it admits the allegations in paragraph 87.
88. Subject to reference at trial to the full terms and effect of CIMIC's Analyst and Investor Presentation dated 23 October 2019 and CIMIC's ASX release on 23 October 2019 entitled 're Third Quarter FY19 Results', it admits the allegations in paragraph 88.
89. Subject to the reference at trial to the full terms and effect of CIMIC's Analyst and Investor Presentation dated 23 October 2019 and CIMIC's ASX release on 23 October 2019 entitled 're Third Quarter FY19 Results', it admits the allegations in paragraph 89.

I. ALLEGED MIDDLE EAST DISCLOSURE CONTRAVENTIONS

89AA. It refers to and repeats paragraphs 11 to 11L above and says that during the Relevant Period:

- (a) The balance of the shares (55%) in BICC were owned by Riad Tawfiq Al-Sadik (**RTS**).
- (b) As at 1 January 2018, CIMIC's receivables from shareholder loans to BICC was \$559 million, compared to \$1,072.1 million at 22 January 2020.

Particulars

2018 Annual Report page 234; CIMIC's 2019 Annual Report page 164.

- (c) As at January 2018, CIMIC guaranteed BICC's financial obligations with a secured and drawn amount of \$739 million.

Particulars

HLG Exposure Update dated 19 February 2018 [CIM.104.031.4690].

- (d) As at 22 January 2020, CIMIC guaranteed BICC's financial obligations with a secured and drawn amount of \$1,443 million.

Particulars

Memorandum from CIMIC Finance dated December 2019 entitled 'Overview of the Financial Impact of the Middle East Exit' [CIM.108.067.0744].

89AB. It refers to and repeats paragraph 41AD above and says that in respect of its audit of CIMIC's 31 December 2017 Financial Report, 31 December 2018 Financial Report and 31 December 2019 Financial Report, Deloitte concurred with the accounting treatment adopted in respect of CIMIC's investment in BICC.

Particulars

Deloitte's report to the ARC dated 5 February 2018 for FY17 provided at page 22:

The carrying value of the HLG investment, recoverability of the shareholder loans to HLG and resolution of legacy issues are predicated on HLG continuing as a going concern. This is supported by HLG's cash flow forecast and access to funding through the company's refinanced bank facility

We concur with the accounting treatment adopted.

Deloitte's report to the ARC dated 4 February 2019 for FY18 provided at page 21:

We reviewed the third party credit rating report and obtained Moody's expected loss tables used by management in determining the expected credit loss.

Additionally, Deloitte valuation specialists assisted in assessing the reasonableness of the cash flow forecasts and other assumptions included in the valuation model.

We concur with the accounting treatment adopted.

Deloitte's report to the ARC dated 4 February 2020 for FY19 provided at page 11:

Our procedures included, amongst others:

- *evaluating the estimates and judgements in management's assessment of asset impairments and provisions;*
- *assessing the sufficiency as well as the terms and conditions of the syndicated banking arrangement entered into by CIMIC to fund the expected payment of financial guarantee contracts of certain of BICC's financial undertakings; and*
- *assessing the appropriateness of the relevant disclosures in the financial statements.*

We concur with the accounting treatment adopted.

89AC. Since August 2016 until 22 January 2020, CIMIC, and BICC itself, have undertaken an ongoing strategic review of BICC which included the following matters from time to time:

- (a) consolidation and rollover of existing bank debt to improve BICC's liquidity and funding;
- (b) focus on tendering discipline to rebuild BICC's opportunity pipeline and order book;
- (c) resolution of project claims to de-leverage BICC's balance sheet;
- (d) ongoing reduction of staff and overheads to streamline BICC's operating model; and
- (e) searching for a new long-term local partner to provide stability to the business,

(together, the **Strategic Review**).

Particulars

ASX announcement from CIMIC dated 26 August 2016, entitled 'ASX Market Announcements'.

89AD. From August 2019, the Strategic Review included the following:

- (a) CIMIC engaged HSBC to assist it with a proposed full or partial disposal of BICC, or a full or partial replacement of the other current BICC shareholders (the **M&A Process**).
- (b) CIMIC and BICC jointly engaged Moelis & Co (**Moelis**), a global investment bank, to provide financial advice in relation to BICC's existing debt financing and liabilities and a proposed restructuring of its debt (the **Debt Restructure Process**), and to provide financial advice in relation to the proposed sale of BICC to a third party.

Particulars

Letter of engagement between Moelis, CIMIC and BICC, dated 2 October 2019.

- (c) In September 2019, CIMIC engaged PwC to provide an independent assessment of BICC (the **Independent Business Review**) including a review of its historical trading performance and current state analysis, and its financial forecasts.

Particulars

PwC Report dated 2020, entitled 'Independent Business Review'.

89AE. The following events took place on or after 13 January 2020:

- (a) On 13 January 2020, BICC's CEO, Paul Russell, requested a meeting of the BICC Board.

Particulars

Email from Paul Russell to the BICC Board dated 13 January 2020 [BIC.003.012.8249].

- (b) On 22 January 2020, at 3pm Sydney time, BICC held a Board meeting at which:
- (i) Moelis provided a presentation on the Debt Restructure Process and a slide deck prepared by Moelis was tabled.
 - (ii) HSBC provided a presentation to the Board on the M&A Process and an updated paper prepared by HSBC was tabled.
 - (iii) The Board discussed an urgent critical need for funding.
 - (iv) Michael Wright, then a CIMIC representative on BICC's Board, indicated that CIMIC would not be able to justify injecting further shareholder loan funding.
 - (v) RTS' representative indicated that he was highly unlikely to provide funding to BICC.
 - (vi) Michael Wright indicated that in light of matters discussed at the meeting he would need to convene an urgent CIMIC Board meeting.

Particulars

Minutes of BICC Board meeting dated 22 January 2020 [BIC.003.001.6587]; Moelis Presentation [BIC.003.012.7792]; HSBC Presentation [BIC.003.012.7737].

- (c) On 22 January 2020 at 6.46pm Sydney time, CIMIC's Continuous Disclosure Committee held a meeting.

Particulars

Minutes of Continuous Disclosure Committee meeting held on 22 January 2020 [CIM.007.005.0250].

- (d) On 22 January 2020 at 7.35pm Sydney time, CIMIC's Board held a meeting and resolved, amongst other things:
- (i) That CIMIC would exit its investment in BICC in the Middle East.
 - (ii) To allow BICC to pursue the Debt Restructure Process, and upon consideration of the fact that CIMIC's exposure to BICC was not recoverable, to approve the forgiveness of the CIMIC shareholder loans and guarantees representing all of CIMIC's exposure in relation to BICC.
 - (iii) That CIMIC would not declare a final dividend for FY19.
 - (iv) To confirm the FY19 NPAT guidance of around \$800 million (excluding the BICC impact).
 - (v) To approve an ASX release to the market prior to market open the next morning.

Particulars

Minutes of CIMIC Board meeting held on 22 January 2020 [CIM.004.001.8632].

I.1 Alleged February 2018 Middle East Disclosure Contraventions

Shareholder Loans

89A. As to paragraph 89A:

- (a) It says on or about 30 December 2017, LMENA and HLG entered into the First Restructured Shareholder Loan Agreement.

- (b) Subject to reference at trial to the full terms and effect of the First Restructured Shareholder Loan Agreement, it admits that the agreement contained terms substantively in the form set out in paragraphs 89A(a) to (c).
- (c) It otherwise denies the allegations.

89B. As to paragraph 89B:

- (a) It says on or about 30 December 2017, LMENA and HLG entered the Second Restructured Shareholder Loan Agreement, pursuant to which they agreed to amend the terms applicable to AED 127,700,000 of the principal loaned by LMENA to HLG under the First Shareholders Agreement.
- (b) Subject to reference at trial to the full terms and effect of the Second Restructured Shareholder Loan Agreement, it admits that the agreement contained terms substantively in the form set out in paragraphs 89B(a) to (c).
- (c) It otherwise denies the allegations.

89C. As to paragraph 89C:

- (a) It says that on or about 30 December 2017, LMENA and HLG entered the Third Restructured Shareholder Loan Agreement, pursuant to which they agreed to amend the terms applicable to AED 481,900,000 of the principal loaned by LMENA to HLG under the Third Shareholders Agreement.
- (b) Subject to reference at trial to the full terms and effect of the Third Restructured Shareholder Loan Agreement, it admits that the agreement contained terms substantively in the form set out in paragraphs 89C(b) to (c).
- (c) It otherwise denies the allegations.

89D. As to paragraph 89D, it admits the allegations.

89E. As to paragraph 89E:

- (a) Subject to reference at trial to the full terms and effect of the documents particularised at paragraph 89E, it admits that in January 2018, KPMG assessed HLG's indicative credit rating on a standalone basis as at the end of FY17 using the Moody's rating methodology for the global construction industry, as Caa3.
- (b) It otherwise denies the allegations.

89F. As to paragraph 89F:

- (a) It says that in or about January 2018, CIMIC management determined to record a credit loss adjustment against the Shareholder Loans at \$487 million (being 46.6% of the gross value of the loans), noting that there had not been a default event to date.
- (b) It says that this credit loss was to be recognised pursuant to the AASB 9 standard.
- (c) It otherwise denies the allegations.

Call Option

89G. Subject to reference at trial to the full terms and effect of the KPMG reported dated 7 February 2018 entitled 'CIMIC Group Limited – Valuation of HLG Contracting LLC option as at 31 December 2017', it admits the allegations in paragraph 89G.

89H. As to paragraph 89H:

- (a) It says that from 7 February 2018 to 22 January 2020, it classified the Call Option as a derivative asset in accordance with AASB 9.

Particulars

- (b) It otherwise denies the allegations.

89I. As to paragraph 89I:

- (a) It says on 7 February 2018, KPMG emailed Carlos Mendes a draft report entitled 'Valuation of HLG Contracting LLC option as at 31 December 2017, which valued the Call Option between \$52 million and \$82 million as at 31 December 2017.
- (b) It otherwise denies the allegations.

HLG's Performance

89J. As to paragraph 89J:

- (a) It says that on 20 November 2017, Michael Wright emailed Michael Cooper and Stefan Camphausen the HLG Board Report, dated November 2017.
- (b) Subject to reference at trial to the full terms and effect of the HLG Board Report, dated November 2017, it admits that the HLG Board Report, dated November 2017 substantively stated the matters in paragraphs 89J(a) and (b).
- (c) It otherwise denies the allegations.

89K. As to paragraph 89K:

- (a) It says that on 15 December 2017, George Sassine emailed Michael Wright and Stefan Camphausen the HLG Contracting LLC - Draft 2018 Business Plan, dated December 2017.
- (b) Subject to reference at trial to the full terms and effect of the HLG Contracting LLC - Draft 2018 Business Plan, it admits that the HLG Contracting LLC - Draft 2018 Business Plan stated the matters in paragraphs 89K(a) to (i).
- (c) It otherwise denies the allegations.

89L. As to paragraph 89L:

- (a) It says that on 24 January 2018, Moustafa Fahour emailed Stefan Camphausen, Roman Garrido Sanchez, George Sassine, Michael Charlton and Michael Wright the HLG Contracting LLC Monthly Report – November 2017.
- (b) Subject to reference at trial to the full terms and effect of the HLG Contracting LLC Monthly Report – November 2017, it admits that the HLG Contracting LLC Monthly Report – November 2017 stated the matters in paragraphs 89L(a) to (g).
- (c) It otherwise denies the allegations.

89M. As to paragraph 89M:

- (a) It says that the papers for the ARC meeting in February 2018 contained the HLG Contracting Valuation Report, dated 2 February 2018.
- (b) Subject to reference at trial to the full terms and effect of the HLG Contracting Valuation Report, dated 2 February 2018, it admits that the HLG Contracting Valuation Report, dated 2 February 2018, stated the matters in paragraphs 89M(a) to (f).
- (c) It otherwise denies the allegations.

Legacy Project Receivables

89NA. It refers to paragraphs 11, 12(h) and 17 and says that:

- (a) From February 2011 to February 2018 each Annual Report and Half Year report published by CIMIC contained a statement concerning 'legacy project receivables' to the effect that there continued to be a delay in payments, particularly for projects in progress at the time CIMIC invested in HLG in 2007.

Particulars

- Interim Financial Report for the six months ended 31 December 2010, page 15.
 - 2011 Annual Report, page 32.
 - Interim Financial Report for the six months ended 30 June 2012, page 15.
 - 2012 Annual Report, page 33.
 - Interim Financial Report for the six months ended 30 June 2013, page 18.
 - 2013 Annual Report, page 137.
 - Interim Financial Report for the six months ended 30 June 2014, page 18.
 - 2014 Annual Report, page 80.
 - Interim Financial Report for the six months ended 30 June 2015, page 22.
 - 2015 Annual Report, page 82.
 - Interim Financial Report for the six months ended 30 June 2016, page 22.
 - 2016 Annual Report, page 127.
 - Interim Financial Report for the six months ended 30 June 2017, page 22.
- (b) The projects considered to be 'legacy projects' changed from time to time and selecting these projects involved subjective evaluation.
- (c) 'Legacy project receivables' included receivables for projects entered into after CIMIC invested in HLG for which there was an outstanding receivable for a prolonged period.
- (d) Over the Relevant Period, the distinction between 'legacy project receivables' and other receivables was less relevant as objective distinctions were adopted, including 'completed and ongoing projects' and 'certified and uncertified receivables'.

89N. As to paragraph 89N:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says on 31 January 2018, Ram Kumar Paranjothi emailed Colin Young the HLG Uncertified Revenue Report as at November 2017, and row 39 of that document was labelled 'Total Projects – Legacy' and contained the following data:

- (i) under the column heading 'Uncertified Revenue: Project to Date (PTD)' the figure AED 1,867,517,000; and
 - (ii) under the column heading 'Due: Certified Debtors – (Excl Adv)', the figure AED 640,803,000.
- (c) It otherwise denies the allegations.

Cash Requests

89O. As to paragraph 89O:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 89O and 89P, it admits that in January 2018:
 - (i) BICC provided it with information about BICC's cash flow, including forecast net cash flow; and
 - (ii) BICC sought CIMIC's approval to request draw downs under the HSBC Syndicated Facility.
- (b) It says that in January 2018, BICC drew down AED 81 million under the HSBC Syndicated Facility.
- (c) It otherwise denies the allegations.

89P. As to paragraph 89P, it refers to and repeats paragraph 89O above and otherwise denies the paragraph.

CIMIC's Exposure to HLG

89Q. As to paragraph 89Q:

- (a) It refers to and repeats paragraph 89AA above.
- (b) It says that on 19 February 2018, Colin Young emailed Stefan Camphausen, George Sassine, Roman Garrido Sanchez, Emilio Grande, Scott McAlpine and

Christopher Granda the HLG - Exposure Update, dated 19 February 2018, the full terms and effect of which it will refer to at trial.

- (c) It says that on 11 October 2019, George Sassine sent an email to Emilio Grande and Colin Young the BICC - Exposure Estimate, the full terms and effect of which it will refer to at trial.
- (d) It otherwise denies the allegations.

True Position – February 2018

89R. As to paragraph 89R:

- (a) It refers to and repeats paragraphs 89J to 89P above.
- (b) It says that on 20 June 2017, George Sassine emailed Adolfo Valderas a document entitled 'Key Issues at HLG', dated 20 June 2017, the full terms and effect of which it will refer to at trial.
- (c) It says that on 3 November 2017, Moustafa Fahour emailed Michael Wright, the full terms and effect of which it will refer to at trial.
- (d) It says that on 24 March 2020, Stefan Camphausen emailed CIMIC personnel the HLG Receivable Preliminary Impact Assessment, dated January 2018, the full terms and effect of which it will refer to at trial.
- (e) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'critically degraded';
 - (ii) 'escalating risk';
 - (iii) 'materially declined'; and

- (iv) 'significant challenges'.

- (f) It otherwise denies the allegations.

February 2018 Middle East Information

89S. As to paragraph 89S:

- (a) It refers to and repeats paragraphs 11D and 89R above.

- (b) It says that on 8 January 2018, Robert Caggiano emailed Derek Kerr and Colin Young, the full terms and effect of which it will refer to at trial.

- (c) It says that CIMIC reported assessments made in accordance with AASB 9 in its 2017 Annual Report, the full terms and effect of which it will refer to at trial.

- (d) It says that the papers for the ARC meeting in February 2018 contained the draft FY17 Audit Report from Deloitte to the ARC for the year ended 31 December 2017, dated 5 February 2018, the full terms and effect of which it will refer to at trial.

- (e) It says that CIMIC publishes from time to time a Market Disclosure and Communications Framework that sets out the principles, policy and procedures adopted by CIMIC regarding CIMIC's disclosure of information, the full terms and effect of which it will refer to at trial.

- (f) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'critically degraded';

 - (ii) 'escalating risk';

 - (iii) 'materially declined'; and

(iv) 'significant challenges'.

(g) It otherwise denies the allegations.

89T. As to paragraph 89T:

(a) It denies paragraphs 89T(a) and (b), refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23 and 89S above and it further says that credit ratings are generally available upon registration or subscription with a credit agency such as Moody's or S&P Global.

(b) As to paragraph 89T(c), it says that if the alleged information was information which:

(i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and

(ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 89S, including an 'escalating risk', 'critically degraded', 'materially declined' and 'significant challenges', involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of its occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in ARC papers, CIMIC internal reports, third party reports commissioned by CIMIC management, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

- (c) It otherwise denies the allegations.

89U. As to paragraph 89U, it denies the allegations and refers to and repeats paragraphs 89S and 89T above.

89V. As to paragraph 89V, it denies the allegations and refers to and repeats paragraphs 22, 23, 28, 35, 37, 82, 84 and 89U above.

89W. As to paragraph 89W, it denies the allegations and refers to and repeats paragraphs 89S to 89V above.

I.2 Alleged April 2018 Middle East Disclosure Contraventions

HLG's Performance

89X. As to paragraph 89X:

- (a) It says that on 21 February 2018, Ram Kumar Paranjothi emailed Colin Young and Christopher Granda the HLG Contracting LLC Monthly Report – December 2017.
- (b) It says that on 22 February 2018, David Wood emailed Emilio Grande and George Sassine the HLG Contracting LLC Monthly Report – December 2017.
- (c) It says that on 22 February 2018, Colin Young emailed Stefan Camphausen and George Sassine the HLG Contracting LLC Monthly Report – December 2017.
- (d) Subject to reference at trial to the full terms and effect of the HLG Contracting LLC Monthly Report – December 2017, it admits that the HLG Monthly Report – December 2017 stated the matters in paragraphs 89X(a) to (g).
- (e) It otherwise denies the allegations.

89Y. As to paragraph 89Y:

- (a) It says that on 8 March 2018, Moustafa Fahour emailed Michael Wright, Stefan Camphausen, Roman Garrido Sanchez, George Sassine and Michael Charlton the HLG Contracting LLC Monthly Report – January 2018.
- (b) It says that on 8 March 2018, Michael Charlton emailed Colin Young and Christina Ilinkovski the HLG Contracting LLC Monthly Report – January 2018.
- (c) Subject to reference at trial to the full terms and effect of the HLG Contracting LLC Monthly Report – January 2018, it admits that the HLG Contracting LLC

Monthly Report – January 2018 stated the matters in paragraphs 89Y(a) to (e), (g) and (h).

(d) It otherwise denies the allegations.

89Z. As to paragraph 89Z:

(a) It says that on 10 April 2018, Moustafa Fahour emailed Michael Wright, Stefan Camphausen, George Sassine and Roman Garrido Sanchez the HLG Contracting LLC Monthly Report – February 2018.

(b) It says that on 10 April 2018, Dianne Cassidy emailed Ignacio Segura the HLG Contracting LLC Monthly Report – February 2018.

(c) Subject to reference at trial to the full terms and effect of the HLG Contracting LLC Monthly Report – February 2018, it admits that the HLG Contracting LLC Monthly Report – February 2018 stated the matters in paragraphs 89Z(a) to (e), (g) and (h).

(d) It otherwise denies the allegations.

Legacy Project Receivables

89ZA. As to paragraph 89ZA:

(a) It refers to and repeats paragraph 89NA above.

(b) It says that on 22 February 2018 Vijay Divate emailed Colin Young and Christopher Granda the HLG Contracting LLC Uncertified Revenue & Overdue Report as at December 2017, and row 40 of that document was labelled 'Total Projects – Legacy' and contained the following data:

(i) under the column heading 'Uncertified Revenue: Project to Date (PTD)' the figure AED 1,869,989,000; and

- (ii) under the column heading 'Due: Certified Debtors – (Excl Adv)', the figure AED 583,480,000.
- (c) It otherwise denies the allegations.

89ZB. As to paragraph 89ZB:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 9 March 2018, Christopher Granda emailed Emilio Grande and Colin Young the HLG Contracting LLC Uncertified Revenue & Overdue Report as at January 2018, and row 40 of that document was labelled 'Total Projects – Legacy' and contained the following data:
 - (i) under the column heading 'Uncertified Revenue: Project to Date (PTD)' the figure AED 1,864,562,000; and
 - (ii) under the column heading 'Due: Certified Debtors – (Excl Adv)', the figure AED 492,075,000.
- (c) It otherwise denies the allegations.

CIMIC's Exposure to HLG

89ZC. As to paragraph 89ZC:

- (a) It refers to and repeats paragraphs 89AA and 89Q above.
- (b) It says that on 31 May 2018, Colin Young emailed Emilio Grande the HLG Status Update as at 30 April 2018, the full terms and effect of which it will refer to at trial.
- (c) It otherwise denies the allegations.

True Position – April 2018

90. As to paragraph 90:

- (a) It refers to and repeats paragraphs 89E, 89J, 89K, 89M, 89R, 89S, 89X to 89Z and 89ZB above, and 91 to 95 below.
- (b) It says that on 21 March 2018, Gavan Williams emailed Roman Garrido Sanchez, the full terms and effect of which it will refer to at trial.
- (c) It says that on 22 March 2018, Roman Garrido Sanchez forwarded to Michael Wright, Stefan Camphausen and George Sassine the email from Gavan Williams dated 21 March 2018, the full terms and effect of which it will refer to at trial.
- (d) It says that the papers for the ARC meeting in April 2018 contained the document entitled '1Q18 Group Risk Management Report', the full terms and effect of which it will refer to at trial.
- (e) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'materially declined';
 - (ii) 'significant challenges';
 - (iii) 'critically degraded';
 - (iv) 'escalating risk';
 - (v) 'further deterioration'; and
 - (vi) 'significant increase in risk'.
- (f) It otherwise denies the allegations.

91. As to paragraph 91:

- (a) It refers to and repeats paragraphs 89A to 89D, 89J to 89N, 89R, 89X, 89Y, 89ZB, 89ZC and 90 above.
- (b) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'materially declined';
 - (ii) 'significant challenges';
 - (iii) 'critically degraded';
 - (iv) 'escalating risk';
 - (v) 'further deterioration'; and
 - (vi) 'significant increase in risk'.
- (c) It otherwise denies the allegations.

92. As to paragraph 92:

- (a) It denies paragraphs 92(a) and (b), refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23 and 91 above and it further says that credit ratings are generally available upon registration or subscription with a credit agency such as Moody's or S&P Global.
- (b) As to paragraph 92(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and

- (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 91, including 'materially declined', 'significant challenges', 'critically degraded', an 'escalating risk', 'further deterioration', and 'significant increase in risk', involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of its occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in ARC papers, CIMIC internal reports, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

5. A reasonable person would not expect that information to be disclosed prior to 22 January 2020.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 4 above.

(c) It otherwise denies the allegations.

93. As to paragraph 93, it denies the allegations and refers to and repeats paragraphs 90 to 92 above.
94. As to paragraph 94, it denies the allegations and refers to and repeats paragraphs 28, 35, 37, 82, 84 and 93 above.
95. As to paragraph 95, it denies the allegations and refers to and repeats paragraphs 90 to 94 above.

I.3 Alleged July 2018 Middle East Disclosure Contraventions

BICC's Performance

95AA. As to paragraph 95AA:

- (a) It says that on 16 April 2018, Moustafa Fahour emailed Michael Wright, Stefan Camphausen, Roman Garrido Sanchez, George Sassine and Michael Charlton the HLG Board Report, dated April 2018.
- (b) Subject to reference at trial to the full terms and effect of the HLG Board Report, dated April 2018, it admits that the HLG Board Report, dated April 2018, stated the matters in paragraphs 95AA(a) to (f).
- (c) It otherwise denies the allegations.

95AB. As to paragraph 95AB:

- (a) It says that on 3 May 2018, Moustafa Fahour emailed Michael Wright, Stefan Camphausen, George Sassine, Roman Garrido Sanchez the HLG Contracting LLC Monthly Report – March 2018, the full terms and effect of which it will refer to at trial.
- (b) It says that on 3 May 2018, Stefan Camphausen emailed Emilio Grande, Colin Young and Carlos Mendes the HLG Contracting LLC Monthly Report – March 2018, the full terms and effect of which it will refer to at trial.
- (c) It otherwise denies the allegations.

95AC. As to paragraph 95AC:

- (a) It says that on 5 June 2018, Ram Kumar Paranjothi emailed Colin Young, Christopher Granda, Roman Garrido Sanchez and Emilio Grande the BICC Monthly Report – April 2018, the full terms and effect of which it will refer to at trial.
- (b) It says that on 5 June 2018, Group Reporting emailed Tamara Kidd the BICC Monthly Report – April 2018, the full terms and effect of which it will refer to at trial.
- (c) It otherwise denies the allegations.

95AD. As to paragraph 95AD:

- (a) It says that on 29 June 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the HLG Contracting LLC Monthly Report – May 2018.
- (b) It says that on 29 June 2018, Group Reporting emailed Tamara Kidd the BICC Monthly Report – May 2018, the full terms and effect of which it will refer to at trial.
- (c) Subject to reference at trial to the full terms and effect of the HLG Contracting LLC Monthly Report – May 2018, it admits that the HLG Contracting LLC Monthly Report – May 2018 stated the matters in paragraphs 95AD(a) to (e), (g) and (h).
- (d) It otherwise denies the allegations.

Legacy Project Receivables

95AE. As to paragraph 95AE:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 5 June 2018, Christopher Granda emailed Ignacio Segura and Dianne Cassidy a further HLG Project Data Report, dated March 2018, the full terms and effect of which it will refer to at trial.
- (c) It says that on 23 July 2019, Christopher Granda emailed Ignacio Segura and Dianne Cassidy the HLG Project Data Report, dated March 2018, the full terms and effect of which it will refer to at trial.
- (d) It says that:
 - (i) the HLG Project Data Reports referred to at subparagraphs (a) and (b) above contained a worksheet entitled 'Uncert. Rev & Overdue – Mar 18';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';

- (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,913,501,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 538,676,000.
- (e) It otherwise denies the allegations.

95AF. As to paragraph 95AF:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 29 June 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BICC Project Data Report as at May 2018, the full terms and effect of which it will refer to at trial.
- (c) It says that:
 - (i) the BICC Project Data Report as at May 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – May18';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,917,287,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 529,770,000.
- (d) It otherwise denies the allegations.

Cash Requests – March, April and May 2018

95AG. As to paragraph 95AG:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 95AG to 95AJ, it admits that:
 - (i) in each of March, April and May 2018 BICC provided CIMIC with information about BICC's cash flow, including forecast net cash flow; and
 - (ii) in each of April and May 2018, BICC requested funds from CIMIC.

- (b) It says that on 3 April 2018, CIMIC transferred AED 60 million to BICC for the acquisition of BICC's 50% share in the Al Dhafra Recycling Plant.

- (c) It says that it transferred the following amounts to BICC:
 - (i) on 16 April 2018, the sum of AED 20 million;
 - (ii) on 24 April 2018, the sum of AED 67 million; and
 - (iii) on 29 May 2018, the sum of AED 32 million.

- (d) It otherwise denies the allegations.

95AH. As to paragraph 95AH, it refers to and repeats paragraph 95AG above and otherwise denies the paragraph.

95AI. As to paragraph 95AI, it refers to and repeats paragraph 95AG above and otherwise denies the paragraph.

95AJ. As to paragraph 95AJ, it refers to and repeats paragraph 95AG above and otherwise denies the paragraph.

Additional Debt Facilities – Greensill Facility A and Facility B

95AK. Subject to reference at trial to the full terms and effect of the Greensill Facility A Agreement, it admits the allegations in paragraph 95AK.

95AL. As to paragraph 95AL:

- (a) Subject to reference at trial to the full terms and effect of the Greensill Facility A Agreement, it admits the guarantee contained terms substantively in the form set out in paragraphs 95AL(b), (d), (f) and (g).
- (b) It says that it will rely on the Greensill Facility A Agreement at trial as to its full terms and effect.
- (c) It otherwise denies the allegations.

95AM. Subject to reference at trial to the full terms and effect of the Greensill Facility A Guarantee and the amended supplemental deed dated 25 June 2018, it admits the allegations in paragraph 95AM.

95AN. As to paragraph 95AN:

- (a) Subject to reference at trial to the full terms and effect of the Greensill Facility A Guarantee, it admits the guarantee contained terms substantively in the form set out in paragraph 95AN(a).
- (b) It says it will rely on the Greensill Facility A Guarantee at trial as to its full terms and effect.
- (c) It otherwise denies the allegations.

95AO. Subject to reference at trial to the full terms and effect of the Greensill Facility B Agreement, it admits the allegations in paragraph 95AO.

95AP. As to paragraph 95AP, it will rely on Greensill Facility B Agreement at trial as to its full terms and effect and otherwise denies the allegation.

95AQ. Subject to reference at trial to the full terms and effect of the Greensill Facility B Guarantee, it admits the allegations in paragraph 95AQ.

95AR. As to paragraph 95AR:

(a) It says it will rely on the Greensill Facility B Guarantee at trial as to its full terms and effect.

(b) It otherwise denies the allegations.

Cash Requests – June 2018

95AS. As to paragraph 95AS:

(a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 95AS to 95AV, it admits that:

(i) In each of June and July 2018, BICC provided CIMIC with information about BICC's cash flow, including forecast net cash flow.

(ii) In June 2018, BICC requested funds from CIMIC.

(iii) In July 2018, BICC sought CIMIC's approval to request draw downs under the Greensill Facilities.

(b) It says that BICC drew down the following amounts under the Greensill Facilities:

(i) on 28 June 2018, BICC drew down AED 189.2 million;

(ii) on 6 July 2018, BICC drew down AED 77.5 million; and

(iii) on 27 July 2018, BICC drew down AED 66.9 million;

(c) It says that the following amounts were transferred between CIMIC and BICC:

- (i) on 14 June 2018, CIMIC transferred AED 22.6 million to BICC; and
 - (ii) on 25 June 2018, CIMIC transferred AED 46.0 million to BICC;
- (d) On 28 June 2018, BICC transferred CIMIC AED 187.6 million. It otherwise denies the allegations.

95AT. As to paragraph 95AT, it refers to and repeats paragraph 95AS above and otherwise denies the paragraph.

95AU. As to paragraph 95AU, it refers to and repeats paragraph 95AS above and otherwise denies the paragraph.

95AV. As to paragraph 95AV, it refers to and repeats paragraph 95AS above and otherwise denies the paragraph.

CIMIC's Exposure to BICC

95AW. As to paragraph 95AW:

- (a) It refers to and repeats in paragraphs 89AA and 89Q above.
- (b) It says that on 10 September 2018, Stefan Camphausen emailed Michael Wright, Ignacio Segura, Dianne Cassidy and Derek Kerr the BICC – Update, dated 10 September 2018, the full terms and effect of which it will refer to at trial.
- (c) It otherwise denies the allegations.

True Position – July 2018

95AX. As to paragraph 95AX:

- (a) It refers to and repeats paragraphs 89E, 89K, 89M, 89R, 89S, 90, 95AA to 95AV above.

- (b) It says that on 25 July 2018, Roman Garrido Sanchez emailed Michael Wright, Ignacio Segura, Stefan Camphausen, George Sassine and Emilio Grande, the full terms and effect of which it will refer to at trial.
- (c) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'immense pressure';
 - (ii) 'significant challenges';
 - (iii) 'declined substantially';
 - (iv) 'reliant';
 - (v) 'critically degraded';
 - (vi) 'escalating risk'; and
 - (vii) 'further deterioration'.
- (d) It otherwise denies the allegations.

July 2018 Middle East Information

95AY. As to paragraph 95AY:

- (a) It refers to and repeats paragraphs 11D, 95AW and 95AX above.
- (b) It says that on 24 May 2018, Stefan Camphausen emailed Colin Young and Emilio Grande, the full terms and effect of which it will refer to at trial.
- (c) It says that on 24 May 2018, Stefan Camphausen emailed Colin Young and Emilio Grande a document entitled 'Overview of BIC Contracting LLC', dated May 2018, the full terms and effect of which it will refer to at trial.

- (d) It says that on 24 May 2018, Stefan Camphausen emailed Colin Young and Emilio Grande a document entitled 'HLG – Project Ford', dated 14 May 2018, the full terms and effect of which it will refer to at trial.
- (e) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'immense pressure';
 - (ii) 'significant challenges';
 - (iii) 'declined substantially';
 - (iv) 'reliant';
 - (v) 'critically degraded';
 - (vi) 'escalating risk'; and
 - (vii) 'further deterioration'.
- (f) It otherwise denies the allegations.

95AZ. As to paragraph 95AZ:

- (a) It denies paragraphs 95AZ(a) and (b) and refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23, 28 and 95AY above.
- (b) As to paragraph 95AZ(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and

- (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),
- (iii) then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:
 1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 95AY, including 'immense pressure', 'significant challenges', 'declined substantially', 'reliant', 'critically degraded', an 'escalating risk', and 'further deterioration', involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of its occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in ARC papers, CIMIC internal reports, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

- (c) It otherwise denies the allegations in 95AZ.

95AZA. It denies the allegations in paragraph 95AZA and refers to and repeats paragraphs 95AY and 95AZ above.

95AZB. It denies the allegations in paragraph 95AZB and refers to and repeats paragraphs 28, 35, 37, 82, 84 and 95AZA above.

95AZC. It denies the allegations in paragraph 95AZC and refers to and repeats paragraphs 95AY to 95AZB above.

I.4 Alleged October 2018 Middle East Disclosure Contravention

BICC's Performance

95AZD. As to paragraph 95AZD:

- (a) It says that on 5 August 2018, Qaisir Mahmood emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report – June 2018, the full terms and effect of which it will refer to at trial.
- (b) It otherwise denies the allegations.

95AZE. As to paragraph 95AZE:

- (a) It says that on 2 September 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report – July 2018, the full terms and effect of which it will refer to at trial.

- (b) It says that on 2 September 2018, Group Reporting emailed Tamara Kidd the BIC Contracting LLC Monthly Report – July 2018, the full terms and effect of which it will refer to at trial.
- (c) It otherwise denies the allegations.

95AZF. As to paragraph 95AZF:

- (a) It says that on 26 September 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report – August 2018.
- (b) It says that on 26 September 2018, Group Reporting emailed Tamara Kidd the BIC Contracting LLC Monthly Report – August 2018, the full terms and effect of which it will refer to at trial.
- (c) Subject to reference at trial to the full terms and effect of BIC Contracting LLC Monthly Report – August 2018, it admits that the BIC Contracting LLC Monthly Report – August 2018 stated the matters in paragraphs 95AZF(a) to (d), (g) and (h).
- (d) It otherwise denies the allegations.

Legacy Project Receivables

95AZG. As to paragraph 95AZG:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 5 August 2018, Qaisir Mahmood emailed Christopher Granda and Colin Young the BICC Project Data Report as at June 2018, the full terms and effect of which it will refer to at trial.

- (c) It says that on 5 August 2018, Group Reporting emailed Tamara Kidd the BICC Project Data Report as at June 2018, the full terms and effect of which it will refer to at trial.
- (d) It says that:
 - (i) the BICC Project Data Report as at June 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – Jun18';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,918,049,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 521,954,000.
- (e) It otherwise denies the allegations.

95AZH. As to paragraph 95AZH:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 2 September 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BICC Project Data Report as at July 2018, the full terms and effect of which it will refer to at trial.
- (c) It says that on 2 September 2018, Group Reporting emailed Tamara Kidd the BICC Project Data Report as at July 2018, the full terms and effect of which it will refer to at trial.

- (d) It says that:
- (i) the BICC Project Data Report as at July 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – Jul18';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,920,525; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 521,888.
- (e) It otherwise denies the allegations.

95AZI. As to paragraph 95AZI:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 30 September 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young and Roman Garrido Sanchez the BICC Project Data Report as at August 2018, the full terms and effect of which it will refer to at trial.
- (c) It says that:
 - (i) the BICC Project Data Report as at August 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – Aug18';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';

- (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,917,413; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 514,647.
- (d) It otherwise denies the allegations.

Cash Requests

95AZJ. As to paragraph 95AZJ:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 95AZJ to 95AZO, it admits that in each of July, August, September and October 2018:
 - (i) BICC provided CIMIC with information about BICC's cash flow, including forecast net cash flow; and
 - (ii) BICC sought CIMIC's approval to request draw downs under the Greensill Facilities.
- (b) It says that BICC drew down the following amounts under the Greensill Facilities:
 - (i) on 15 August 2018, BICC drew down AED 55.6 million;
 - (ii) on 6 September 2018, BICC drew down AED 37.9 million;
 - (iii) on 25 September 2018, BICC drew down AED 89.8; and
 - (iv) on 17 October 2018, BICC drew down AED 84.4 million.

(c) It otherwise denies the allegations.

95AZK. As to paragraph 95AZK, it refers to and repeats paragraph 95AZJ above and otherwise denies the paragraph.

95AZL. As to paragraph 95AZL, it refers to and repeats paragraph 95AZJ above and otherwise denies the paragraph.

95AZM. As to paragraph 95AZM, it refers to and repeats paragraph 95AZJ above and otherwise denies the paragraph.

95AZN. As to paragraph 95AZN, it refers to and repeats paragraph 95AZJ above and otherwise denies the paragraph.

95AZO. As to paragraph 95AZK, it refers to and repeats paragraph 95AZJ above and otherwise denies the paragraph.

CIMIC's Exposure to BICC

95AZP. As to paragraph 95AZP:

(a) It refers to and repeats paragraphs 89AA and 89Q above.

(b) It otherwise denies the allegations.

True Position – October 2018

95A. As to paragraph 95A:

(a) It refers to and repeats paragraphs 89E, 89K, 89S, 90A to 90D, 95AA, 95AY, 95AZD to 95AZF and 95AZJ to 95AZO above.

(b) It says that at CIMIC's Board meeting on 18 July 2018 and 23 October 2018, Michael Wright, CIMIC's then CEO, provided an update on BICC and this is

recorded in the minutes of each meeting, the full terms and effect of the report it will refer to at trial.

- (c) It says that an internal report entitled 'Risk Management Report – Q3 2018' was made available to each member of the ARC ahead of the ARC meeting on 23 October 2018 and each member of CIMIC's Board ahead of the CIMIC Board meeting on 23 October 2018 and it will refer to the full terms and effect of the report at trial.
- (d) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'immense pressure';
 - (ii) 'escalation of the risk'; and
 - (iii) 'further deterioration'.
- (e) It otherwise denies the allegations.

October 2018 Middle East Information

95B. As to paragraph 95B:

- (a) It refers to and repeats paragraphs 13(e) to (h), 95A and 95AY above.
- (b) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'immense pressure';
 - (ii) 'escalation of the risk'; and
 - (iii) 'further deterioration'.

- (c) It otherwise denies the allegations.

95C. As to paragraph 95C:

- (a) It denies paragraphs 95C(a) and (b) and refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23, 28 and 95B above.
- (b) As to paragraph 95C(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 95B, including 'immense pressure', 'an escalation of the risk', and 'further deterioration', involved supposition and/or was

vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of its occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in Board minutes, Board papers, ARC papers CIMIC internal reports, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

5. A reasonable person would not expect that information to be disclosed prior to 22 January 2020.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 4 above.

95D. It denies the allegations in paragraph 95D and refers to and repeats paragraphs 95A to 95C above.

95E. It denies the allegations in paragraph 95E and refers to and repeats paragraphs 35, 37, 82, 84 and 95D above.

95F. It denies the allegations in paragraph 95F and refers to and repeats paragraphs 95A to 95E above.

I.5 Alleged 2019 February Middle East Disclosure Contraventions

BICC's Performance – September 2018

95FA. As to paragraph 95FA:

- (a) It says that on 25 October 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report - September 2018.
- (b) It says that on 25 October 2018, Group Reporting emailed Tamara Kidd the BIC Contracting LLC Monthly Report - September 2018.
- (c) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Monthly Report - September 2018, it admits that the BIC Contracting LLC Monthly Report - September 2018 stated the matters in paragraphs 95FA(a) to (e), (g), and (h).
- (d) It otherwise denies the allegations.

95FB. As to paragraph 95FB:

- (a) It says that on 25 October 2018, Moustafa Fahour emailed Michael Wright and Stephan Camphausen the BICC Board Report, dated November 2018.
- (b) Subject to reference at trial to the full terms and effect of the BICC Board Report, dated November 2018, it admits that the BICC Board Report, dated November 2018, stated the matters in paragraphs 95FB(a) to (g).
- (c) It otherwise denies the allegations.

Additional Debt Facilities – HSBC Multi-Option Facility

95FC. As to paragraph 95FC, it says:

- (a) On or about 30 October 2018, BICC (as original borrower) entered into a multi-option facility agreement with HSBC (as original financier), and says it will rely on the HSBC Multi-Option Facility Agreement at trial as to its full terms and effect.
- (b) It otherwise denies the allegations.

95FD. As to paragraph 95FD, it will rely on the HSBC Multi-Option Facility Agreement at trial as to its full terms and effect and otherwise denies the allegations.

95FE. Subject to reference at trial to the full terms and effect of the HSBC MOFA Guarantee, it admits the allegation at paragraph 95FE that CIMIC and a number of CIMIC subsidiaries executed a Deed of Guarantee in favour of HSBC in relation to the HSBC Multi-Option Facility.

95FF. As to paragraph 95FF:

- (a) Subject to reference at trial to the full terms and effect of the HSBC MOFA Guarantee, it admits that the guarantee contains terms substantively in the form set out in paragraphs 95FF(a) and (b).
- (b) It otherwise denies the allegations.

Cash Requests

95FG. As to paragraph 95FG:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 95FG to 95FL, it admits that in each of November and December 2018 and January 2019:
 - (i) BICC provided CIMIC with information about BICC's cash flow, including forecast net cash flow; and
 - (ii) BICC sought CIMIC's approval to request draw downs under the Greensill Facilities.

- (b) It says that BICC drew down the following amounts under the Greensill Facilities:
- (i) on 9 November 2018, BICC drew down AED 159.9 million;
 - (ii) on 9 December 2018, BICC drew down AED 11.8 million;
 - (iii) on 18 December 2018, BICC drew down AED 73.5 million;
 - (iv) on 9 January 2019, BICC drew down AED 8.1 million; and
 - (v) on 21 January 2019, BICC drew down AED 112.1 million.
- (c) It says that BICC repaid the following amounts under the Greensill Facilities:
- (i) on 20 December 2018, BICC made a repayment of the first maturity of AED 11 million; and
 - (ii) on 18 January 2019, BICC made a repayment of maturity of AED 7.4 million
- (d) It otherwise denies the allegations.

95FH. As to paragraph 95FH, it refers to and repeats paragraph 95FG above and otherwise denies the paragraph.

95FI. As to paragraph 95FI, it refers to and repeats paragraph 95FG above and otherwise denies the paragraph.

95FJ. As to paragraph 95FJ, it refers to and repeats paragraph 95FG above and otherwise denies the paragraph.

95FK. As to paragraph 95FK, it refers to and repeats paragraph 95FG above and otherwise denies the paragraph.

95FL. As to paragraph 95FL, it refers to and repeats paragraph 95FG above and otherwise denies the paragraph.

Legacy Project Receivables

95FM. As to paragraph 95FM:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 25 October 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BICC Project Data Report as at September 2018, the full terms and effect of which it will refer to at trial.
- (c) It says that on 25 October 2018, Group Reporting emailed Tamara Kidd the BICC Project Data Report as at September 2018, the full terms and effect of which it will refer to at trial.
- (d) It says that:
 - (i) the BICC Project Data Report as at September 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – Sep18';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,940,276,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 495,324,000.
- (e) It otherwise denies the allegations.

95FN. As to paragraph 95FN:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 28 November 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BICC Project Data Report as at October 2018, the full terms and effect of which it will refer to at trial.

- (c) It says that on 28 November 2018, Group Reporting emailed Tamara Kidd the BICC Project Data Report as at October 2018, the full terms and effect of which it will refer to at trial.
- (d) It says that:
 - (i) the BICC Project Data Report as at October 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – Oct18';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,937,463,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 494,682,000.
- (e) It otherwise denies the allegations.

95FO. As to paragraph 95FO:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 23 January 2019, Ram Kumar Paranjothi emailed Carlos Mendes the BICC Project Data Report as at November 2018, the full terms and effect of which it will refer to at trial.
- (c) It says that on 30 January 2019, Carlos Mendes emailed Colin Young the BICC Project Data Report as at November 2018, the full terms and effect of which it will refer to at trial.
- (d) It says that:
 - (i) the BICC Project Data Report as at November 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – Nov18';

- (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,143,210,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 770,511,000.
- (e) It otherwise denies the allegation.

95FP. As to paragraph 95FP:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 1 February 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young the draft BICC Project Data Report as at December 2018, the full terms and effect of which it will refer to at trial.
- (c) It says that on 22 September 2019, Qaisir Mahmood emailed Christopher Granda the BICC Project Data Report as at December 2018, the full terms and effect of which it will refer to at trial.
- (d) It says that:
 - (i) the BICC Project Data Report as at December 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – Dec18';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,144,181,000; and

(iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 478,196,000.

(e) It otherwise denies the allegations.

BICC's Performance – Late 2018

95FQ. As to paragraph 95FQ:

(a) It says that on 28 November 2018, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report - October 2018, the full terms and effect of which it will refer to at trial.

(b) It says that on 28 November 2018, Group Reporting emailed Tamara Kidd the BIC Contracting LLC Monthly Report - October 2018, the full terms and effect of which it will refer to at trial.

(c) It otherwise denies the allegations.

95FR. As to paragraph 95FR:

(a) It says that on 18 January 2019, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report - November 2018, the full terms and effect of which it will refer to at trial.

(b) It otherwise denies the allegations.

95FS. As to paragraph 95FS:

(a) It says that on 1 February 2019, Ram Kumar Paranjothi emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report - December 2018.

- (b) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Monthly Report - December 2018, it admits that the BIC Contracting LLC Monthly Report - December 2018 stated the matters in paragraphs 95FS(a) to (h).
- (c) It otherwise denies the allegations.

BICC Valuation and Credit Rating

95FT. As to paragraph 95FT:

- (a) It says that KPMG prepared the BIC Contracting LLC Credit Rating and Peer Benchmarking Analysis, dated January 2019.
- (b) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Credit Rating and Peer Benchmarking Analysis, dated January 2019, it admits that the BIC Contracting LLC Credit Rating and Peer Benchmarking Analysis, dated January 2019 assessed BICC's indicative credit rating on a standalone basis and using the Moody's rating methodology for the global construction industry, as Caa3.
- (c) It otherwise denies the allegations.

95FU. As to paragraph 95FU:

- (a) It refers to and repeats paragraph 89M above.
- (b) It says that the papers for the ARC meeting in February 2019 contained the BIC Contracting LLC Valuation Report, dated January 2019.
- (c) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Valuation Report, dated January 2019, it admits that the BIC Contracting LLC Valuation Report, dated January 2019, stated the matters in paragraphs 95FU(a) to (f).

- (d) It otherwise denies the allegations.

CIMIC's Exposure to BICC

95FV. As to paragraph 95FV:

- (a) It refers to and repeats paragraphs 89AA and 89Q above.
- (b) It says that on 11 March 2019, Colin Young emailed Stefan Camphausen, George Sassine, Roman Garrido Sanchez and Christopher Granda the BICC Exposure Update, dated 11 March 2019.
- (c) Subject to reference at trial to the full terms and effect of the BICC Exposure Update, dated 11 March 2019, it admits that the BICC Exposure Update, dated 11 March 2019, stated the matters in paragraphs 95FV(a) and (c).
- (d) It otherwise denies the allegations.

True Position – February 2019

95G. As to paragraph 95G:

- (a) It refers to and repeats paragraphs 89E, 89K, 89S, 90A to 90D, 95FA to 95FC, 95FG to 95FP and 95FS to 95FU above.
- (b) It says that at the ARC meeting on 5 February 2019, Messrs Camphausen and Wright, CIMIC's then CFO and CEO, provided an update on BICC and this is recorded in the minutes of the meeting, the full terms and effect of which it will refer to at trial.
- (c) It says that on 4 February 2019, Brad Davey emailed the Risk Management Report – Q4 2018 to CIMIC personnel prior to the meeting of the ARC on 5 February 2019, the full terms and effect of which it will refer to at trial.

- (d) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
- (i) 'continued to further deteriorate';
 - (ii) 'severely stressed';
 - (iii) 'reliant';
 - (iv) 'significant challenges';
 - (v) 'critically degraded';
 - (vi) 'escalating risk';
 - (vii) 'potential impairment';
 - (viii) 'with a likelihood of "possible"'; and
 - (ix) 'further deterioration'.
- (e) It otherwise denies the allegations.

February 2019 Middle East Information

95H. As to paragraph 95H:

- (a) It refers to and repeats paragraphs 13(e) to (h), 95FM to 95FP and 95G above.
- (b) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'continued to further deteriorate';

- (ii) 'severely stressed';
 - (iii) 'reliant';
 - (iv) 'significant challenges';
 - (v) 'critically degraded';
 - (vi) 'escalating risk';
 - (vii) 'potential impairment';
 - (viii) 'with a likelihood of "possible"'; and
 - (ix) 'further deterioration'.
- (c) It otherwise denies the allegations.

95I. As to paragraph 95I:

- (a) It denies paragraphs 95I(a) and (b) and refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23, 28, 35, 37 and 95H above.
- (b) As to paragraph 95I(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 95H, including work that 'continued to further deteriorate', a cash position that was 'severely stressed', 'reliant', 'significant challenges', 'critically downgraded', 'an escalating risk', 'potential impairment', 'with a likelihood of "possible"' and 'further deterioration', involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in Board minutes, Board papers, ARC minutes, ARC papers, third party reports commissioned by CIMIC management, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

5. A reasonable person would not expect that information to be disclosed prior to 22 January 2020.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 4 above.

95J. It denies the allegations in paragraph 95J and refers to and repeats paragraphs 95G to 95I above.

95K. It denies the allegations in paragraph 95K and refers to and repeats paragraphs 35, 37, 82, 84 and 95J above.

95L. It denies the allegations in paragraph 95L and refers to and repeats paragraphs 95G to 95K above.

I.6 Alleged April 2019 Middle East Disclosure Contraventions

Additional Debt Facility

95LA. Subject to reference at trial to the full terms and effect of the Revised UNB Facility, it admits the allegation in paragraph 95LA.

95LB. As to paragraph 95LB, it says:

- (a) CIMIC provided a Letter of Guarantee to UNB dated 28 February 2019.
- (b) CIMIC provided a Letter of Guarantee to UNB dated 5 April 2019.

- (c) It will rely on the Letter of Guarantee dated 28 February 2019 to UNB from CIMIC and the Letter of Guarantee dated 5 April 2019 to UNB from CIMIC at trial as to their full terms and effect.
- (d) It otherwise denies the allegations.

95LC. As to paragraph 95LC:

- (a) Subject to reference at trial to the full terms and effect of the Second UNB Guarantee, it admits that the Second UNB Guarantee stated the matters in paragraphs 95LC(a) and (d);
- (b) It otherwise denies the allegations.

Cash Requests

95LD. As to paragraph 95LD:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 95LD to 95LH, it admits that in each of February and March 2019:
 - (i) BICC provided CIMIC with information about BICC's cash flow, including forecast net cash flow.
 - (ii) BICC sought CIMIC's approval to request draw downs under the Greensill Facilities and HSBC MOFA Facility Agreement.
- (b) It says that BICC drew down the following amounts under the Greensill Facilities:
 - (i) on or about 5 February 2019, BICC drew down AED 10.3 million;
 - (ii) on or about 7 February 2019, BICC drew down AED 136 million; and

- (iii) on or about 21 March 2019, BICC drew down AED 78.3 million.
- (c) It says that on or about 15 February 2019, BICC made a repayment of maturity of AED 9.6 million under the Greensill Facilities.
- (d) It says that BICC drew down the following amounts under the HSBC MOFA Facility Agreement:
 - (i) on or about 27 February 2019, BICC drew down AED 58.8 million;
 - (ii) on or about 14 March 2019, BICC drew down AED 107.4 million; and
 - (iii) on or about 21 March 2019, BICC drew down AED 16.5 million.
- (e) It otherwise denies the allegations.

95LE. As to paragraph 95LE, it refers to and repeats paragraph 95LD above and otherwise denies the paragraph.

95LF. As to paragraph 95LF, it refers to and repeats paragraph 95LD above and otherwise denies the paragraph.

95LG. As to paragraph 95LG, it refers to and repeats paragraph 95LD above and otherwise denies the paragraph.

95LH. As to paragraph 95LH, it refers to and repeats paragraph 95LD above and otherwise denies the paragraph.

BICC's Performance

95LI. As to paragraph 95LI:

- (a) It says that on 25 February 2019, Moustafa Fahour emailed Michael Wright and Stephan Camphausen the BICC Board Report, dated March 2019.

- (b) Subject to reference at trial to the full terms and effect of the BICC Board Report, dated March 2019, it admits that the BICC Board Report, dated March 2019, stated the matters in paragraphs 95LI(a) to (d).
- (c) It otherwise denies the allegations.

95LJ. As to paragraph 95LJ:

- (a) It says that on 25 February 2019, Moustafa Fahour emailed Michael Wright, Stefan Camphausen, Dianne Cassidy, Roman Garrido Sanchez, George Sassine and Christina Ilinkovski the 2019 Business Plan, dated February 2019.
- (b) Subject to reference at trial to the full terms and effect of the 2019 Business Plan, dated February 2019, it admits that the 2019 Business Plan, dated February 2019, stated the matters in paragraph 95LJ.
- (c) It otherwise denies the allegations.

95LK. As to paragraph 95LK:

- (a) It says that on 19 March 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report – January 2019, the full terms and effect of which it will refer to at trial.
- (b) It otherwise denies the allegations.

95LL. As to paragraph 95LL:

- (a) It says that on 1 April 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report – February 2019.
- (b) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Monthly Report – February 2019, it admits that the BIC Contracting LLC Monthly Report – February 2019, stated the matters in paragraphs 95LL(a) to (h).

- (c) It otherwise denies the allegations.

Restructured Shareholders Loan

95LM. Subject to reference at trial to the full terms and effect of the Fourth Restructured Shareholder Loan Agreement:

- (a) It admits it entered into the Fourth Restructured Shareholder Loan Agreement on 12 March 2019.
- (b) It otherwise denies the allegations.

Legacy Project Receivables

95LN. As to paragraph 95LN:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 19 March 2019, Qaisir Mahmood emailed Christopher Granda the BICC Project Data Report as at January 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that:
 - (i) the BICC Project Data Report as at January 2019 contained a worksheet entitled 'Uncert. Rev & Overdue – Jan 19';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,145,247,000; and

(iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 475,123,000.

(d) It otherwise denies the allegations.

95LO. As to paragraph 95LO:

(a) It refers to and repeats paragraph 89NA above.

(b) It says that on 1 April 2019 Qaisir Mahmood emailed Christopher Granda and Colin Young the BICC Project Data Report as at February 2019, the full terms and effect of which it will refer to at trial.

(c) It says that:

(i) the BICC Project Data Report as at February 2019 contained a worksheet entitled 'Uncert. Rev & Overdue – Feb 19';

(ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';

(iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,147,236,000; and

(iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 475,123,000.

(d) It otherwise denies the allegations.

CIMIC's Exposure to BICC

95LP. As to paragraph 95LP:

- (a) It refers to and repeats paragraphs 89AA and 89Q above.
- (b) It says that on 4 April 2019, George Sassine emailed Michael Wright, Ignacio Segura, Stefan Camphausen, Louise Griffiths, Lyn Nikolopoulos and Dianne Cassidy the BICC - Exposure Update, dated 3 April 2019.
- (c) Subject to reference at trial to the full terms and effect of the BICC - Exposure Update, dated 3 April 2019, it admits that the BICC - Exposure Update, dated 3 April 2019, stated the matters in paragraphs 95LP(a) and (c).
- (d) It otherwise denies the allegations.

True Position – April 2019

95M. As to paragraph 95M:

- (a) It refers to and repeats paragraphs 89AA to 89AE, 89E, 89S, 95FS, 95LF, 95LG, 95LI, 95LJ and 95LM(a) to (e) above.
- (b) It says that at CIMIC's Board meeting on 10 April 2019, Michael Wright provided an update on BICC and this is recorded in the minutes of the meeting, the full terms and effect of the report of which it will refer to at trial.
- (c) It says that an internal report entitled 'Risk Management Report – Q1 2019' was made available to each member of the ARC ahead of the ARC meeting on 10 April 2019 and each member of CIMIC's Board ahead of the CIMIC Board meeting on 10 April 2019 and it will refer to the full terms and effect of the report at trial.

- (d) It says that on 26 June 2019 Colin Young emailed Qasir Mahmood the document entitled 'Rate calc for BICC', the full terms and effect of which it will refer to at trial.
- (e) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'negatively impacted';
 - (ii) 'materially declined';
 - (iii) 'immense pressure'; and
 - (iv) 'further deterioration in credit risk'.
- (f) It otherwise denies the allegations.

April 2019 Middle East Information

95N. As to paragraph 95N:

- (a) It refers to and repeats paragraphs 13(e) to (h), 95AY, 95LM and 95M above.
- (b) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'negatively impacted';
 - (ii) 'materially declined';
 - (iii) 'immense pressure'; and
 - (iv) 'further deterioration in credit risk'.

- (c) It otherwise denies the allegations.

95O. As to paragraph 95O:

- (a) It denies paragraphs 95O(a) and (b) and refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23, 28, 35, 37 and 95N above.
- (b) It says that the information in paragraph 95N(a) was generally available.
- (c) As to paragraph 95O(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 95N, including prospects being 'negatively impacted', 'materially declined', cash position being under 'immense pressure' and there being a 'further deterioration' in credit risk, involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of its occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in Board minutes, Board papers, ARC papers, CIMIC internal reports, third party reports commissioned by CIMIC management, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

5. A reasonable person would not expect that information to be disclosed prior to 22 January 2020.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 4 above.

95P. It denies the allegations in paragraph 95P and refers to and repeats paragraphs 95M to 95O above.

95Q. It denies the allegations in paragraph 95Q and refers to and repeats paragraphs 82, 84 and 95P above.

95R. It denies the allegations in paragraph 95R and refers to and repeats paragraphs 95M to 95Q above.

I.7 Alleged July 2019 Middle East Disclosure Contraventions

BICC Performance – March and April 2019

95S. As to paragraph 95S:

- (a) It says that on 7 May 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young of CIMIC a draft BIC Contracting LLC Monthly Report – March 2019, the full terms and effect of which it will refer to at trial.
- (b) It otherwise denies the allegations.

95T. As to paragraph 95T:

- (a) It says that on 28 May 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young the draft BIC Contracting LLC Monthly Report – April 2019, the full terms and effect of which it will refer to at trial.
- (b) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Monthly Report – April 2019, it admits that the BIC Contracting LLC Monthly Report – April 2019 stated the matters in paragraphs 95T(a) to (h).
- (c) It otherwise denies the allegations.

Legacy Project Receivables

95U. As to paragraph 95U:

- (a) It refers to and repeats paragraph 89NA above.

- (b) It says that on 7 May 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young the BICC Project Data Report as at March 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that:
- (i) the BICC Project Data Report as at March 2019 contained a worksheet entitled 'Uncert. Rev & Overdue – Mar 19';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,147,593,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 475,123,000.
- (d) It otherwise denies the allegations.

Cash Requests

95V. As to paragraph 95V:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 95V to 95ZC, it admits that in each of April, May, June and July 2019:
- (i) BICC provided CIMIC with information about BICC's cash flow, including forecast net cash flow.
 - (ii) BICC requested funds from CIMIC.
- (b) It says that the following amounts were transferred between CIMIC and BICC:

- (i) in April 2019, CIMIC transferred AED 211.5 million to BICC;
- (ii) in May 2019, CIMIC transferred AED 255 million to BICC;
- (iii) in June 2019, CIMIC transferred AED 192 million to BICC;
- (iv) in June 2019, BICC transferred AED 361.6 million to CIMIC; and
- (v) in July 2019, CIMIC transferred AED 265.4 million to BICC.

(c) It otherwise denies the allegations.

95W. As to paragraph 95W, it refers to and repeats paragraph 95V above and otherwise denies the paragraph.

95X. As to paragraph 95X, it refers to and repeats paragraph 95V above and otherwise denies the paragraph.

95Y. As to paragraph 95Y, it refers to and repeats paragraph 95V above and otherwise denies the paragraph.

95Z. As to paragraph 95Z, it refers to and repeats paragraph 95V above and otherwise denies the paragraph.

95ZA. As to paragraph 95ZA, it refers to and repeats paragraph 95V above and otherwise denies the paragraph.

95ZB. As to paragraph 95ZB, it refers to and repeats paragraph 95V above and otherwise denies the paragraph.

95ZC. As to paragraph 95ZC, it refers to and repeats paragraph 95V above and otherwise denies the paragraph.

Additional Debt Facility – SCB

95ZD. Subject to reference at trial to the full terms and effect of the SCB Facility Agreement, it admits that on or about 28 June 2019, BICC (as borrower) entered into a facility agreement with SCB (as financier).

95ZE. As to paragraph 95ZE:

- (a) Subject to reference at trial to the full terms and effect of the SCB Facility Agreement, it admits that the agreement contained terms substantively in the form set out in paragraphs 89ZE(a), (b) and (e).
- (b) It says that it will refer at trial to the full terms and effect of the SCB Facility Agreement; and
- (c) It otherwise denies the allegations.

95ZF. Subject to reference at trial to the full terms and effect of the SCB Guarantee and the CIMIC Guarantee, it admits the allegation in paragraph 95ZF.

BICC's Performance – May and June 2019

95ZG. As to paragraph 95ZG:

- (a) It says that on 25 June 2019, Colin Young emailed Stefan Camphausen, George Sassine, David Wood, Paul Russell, and Carlos Mendes the 2019 Business Plan Scenarios [Drať] [sic], dated June 2019, the full terms and effect of which it will refer to at trial.
- (b) Subject to reference at trial to the full terms and effect of the 2019 Business Plan Scenarios [Drať] [sic], dated June 2019, it admits that the 2019 Business Plan Scenarios [Drať] [sic], dated June 2019, stated the matters in paragraphs 95ZG(a) and (b)(i).

- (c) As to paragraph 95ZG(b)(ii), it will rely on the 2019 Business Plan Scenarios [Drat][sic], dated June 2019 at trial as to its full terms and effect and otherwise denies the allegation.
- (d) It says that on 25 June 2019, Colin Young emailed Stefan Camphausen, George Sassine, David Wood, Paul Russell and Carlos Mendes the 2019 Business Plan [Drat] [sic], dated June 2019, the full terms and effect of which it will refer to at trial.
- (c) It otherwise denies the allegations.

95ZH. As to paragraph 95ZH:

- (a) It says that on 9 July 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report – May 2019.
- (b) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Monthly Report – May 2019, it admits that the BIC Contracting LLC Monthly Report – May 2019, stated the matters in paragraphs 95ZH(a) to (h).
- (c) It otherwise denies the allegations.

CIMIC's Exposure to BICC

95ZI. As to paragraph 95ZI:

- (a) It refers to and repeats paragraphs 89AA and 89Q above.
- (b) It says that on 9 July 2019, Colin Young emailed George Sassine and Stefan Camphausen the BICC Exposure Update, dated 9 July 2019.
- (c) Subject to reference at trial to the full terms and effect of the BICC Exposure Update, dated 9 July 2019, it admits that the BICC Exposure Update, dated 9 July 2019, substantively stated the matters in paragraphs 95ZI(a), (b) and (d).

- (d) It otherwise denies the allegations.

True Position – July 2019

96. As to paragraph 96:

- (a) It refers to and repeats paragraphs 89AA to 89AE, 89E, 89S, 90D, 95LI, 95M, 95S to 95ZD, 95ZG and 95ZH above.
- (b) It says that at CIMIC's Board meeting on 17 July 2019, Michael Wright provided an update on BICC and this is recorded in the minutes of the meeting, the full terms and effect of the report of which it will refer to at trial.
- (c) It says that an internal committee paper entitled 'Key Judgements and Accounting Matters' was made available to each member of the ARC ahead of the ARC meeting on 17 July 2019 and it will refer to the full terms and effect of the report at trial.
- (d) It says that the papers for the ARC meeting on 17 July 2019 contained the Key Judgements and Accounting Matters Report, dated 17 July 2019, the full terms of and effect of which it will refer to at trial.
- (e) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'critically degraded';
 - (ii) 'escalating risk';
 - (iii) 'immense pressure';
 - (iv) 'severe liquidity issues';
 - (v) 'reliant';

- (vi) 'substantially reduced revenue'; and
 - (vii) 'probable'.
- (f) It otherwise denies the allegations.

July 2019 Middle East Information

97. As to paragraph 97:

- (a) It refers to and repeats paragraphs 13(e) to (h), 89K, 89S, 95ZF and 96 above.
- (b) It says that on 7 June 2019, Stefan Camphausen emailed Michael Wright and Ignacio Segura the draft BICC – Accounting Options dated 7 June 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that on 8 June 2019, Michael Wright forwarded to Adolfo Valderas the draft BICC – Accounting Options dated 7 June 2019, the full terms and effect of which it will refer to at trial.
- (d) It says that on 16 July 2019, Colin Young emailed Emilio Grande a draft document entitled 2019 Strategic Options, dated 10 July 2019, the full terms and effect of which it will refer to at trial.
- (e) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'critically degraded';
 - (ii) 'escalating risk';
 - (iii) 'immense pressure';
 - (iv) 'severe liquidity issues';

- (v) 'reliant';
- (vi) 'substantially reduced revenue'; and
- (vii) 'probable'.

(f) It otherwise denies the allegations.

98. As to paragraph 98:

- (a) It denies paragraphs 98(a) and (b) and refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23, 28, 35, 37, 82, 84 and 97 above.
- (b) As to paragraph 98(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 96, including 'critically degraded, 'an escalating risk', a cash position 'under immense pressure', 'severe liquidity issues', 'reliant', 'substantially reduced revenue' and 'probable', involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in Board minutes, Board papers, ARC minutes, ARC papers, CIMIC internal reports, third party reports commissioned by CIMIC management, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The CEO and CFO of CIMIC also owed obligations of confidentiality to CIMIC as employees of CIMIC.

5. A reasonable person would not expect that information to be disclosed prior to 22 January 2020.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 4 above.

99. It denies the allegations in paragraph 99 and refers to and repeats paragraphs 96 to 98 above.
100. It denies the allegations in paragraph 100 and refers to and repeats paragraphs 82, 84 and 99 above.
101. It denies the allegations in paragraph 101 and refers to and repeats paragraphs 96 to 100 above.

I.8 Alleged September 2019 Middle East Disclosure Contraventions

BICC Performance

101A. As to paragraph 101A:

- (a) It says that on 30 August 2019, David Wood emailed Colin Young the BIC Contracting LLC Monthly Report - June 2019, the full terms and effect of which it will refer to at trial.
- (b) It says that on 2 September 2019, Colin Young emailed Emilio Grande the BIC Contracting LLC Monthly Report – June 2019, the full terms and effect of which it will refer to at trial.
- (c) It otherwise denies the allegations.

101B. As to paragraph 101B:

- (a) It says that on 18 September 2019, David Wood emailed Colin Young and Christopher Granda the BIC Contracting LLC Monthly Report spreadsheet as at July 2019.
- (b) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Monthly Report spreadsheet as at July 2019, it admits that the BIC Contracting

LLC Monthly Report spreadsheet as at July 2019 stated the matters in paragraph 101B(a) to (b).

- (c) It otherwise denies the allegations.

Cash Requests

101C. As to paragraph 101C:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 101C to 101F, it admits that in each of August and September 2019:
- (i) BICC provided CIMIC with information about BICC's cash flow, including forecast cash flow.
 - (ii) BICC requested funds from CIMIC.
- (b) It says that it transferred the following amounts to BICC:
- (i) In August 2019, it transferred AED 146 million to BICC.
 - (ii) In September 2019, it transferred AED 110.3 million to BICC.
- (c) It otherwise denies the allegations.

101D. As to paragraph 101D, it refers to and repeats paragraph 101C above and otherwise denies the paragraph.

101E. As to paragraph 101E, it refers to and repeats paragraph 101C above and otherwise denies the paragraph.

101F. As to paragraph 101F, it refers to and repeats paragraph 101C above and otherwise denies the paragraph.

Provision for Cash Advances

101G. As to paragraph 101G:

- (a) It refers to and repeats the matters in paragraphs 95ZB and 101C above.
- (b) It says that in the period 1 July to 30 September 2019, CIMIC made cash transfers to BICC totalling approximately \$206 million.
- (c) It otherwise denies the allegations.

101H. As to paragraph 101H:

- (a) It says that on or by 30 September 2019 CIMIC raised a risk provision of \$96 million against the exposure in relation to BICC.
- (b) It otherwise denies the allegation.

Restructuring Debt Facilities

101I. As to paragraph 101I:

- (a) It refers to and repeats the matters in paragraph 89AC(b) above.
- (b) It says that CIMIC and BICC engaged Moelis on terms set out in an engagement letter dated 2 October 2019, the full terms and effect of which it will refer at trial.
- (c) It otherwise denies the allegation.

101J. As to paragraph 101J:

- (a) It says that:

- (i) In August 2019 employees of CIMIC sent emails to employees of HSBC, SCB, Societe Generale, and Bank of America Merrill Lynch, the full terms and effect of which it will refer at trial.
 - (ii) Those emails attached a document entitled 'Consent Deed – BIC Contracting LLC [draft version as at 29 August 2019]', the full terms and effect of which it will refer at trial.
- (b) It otherwise denies the allegation.

101K. As to paragraph 101K:

- (a) It says that none of the lenders that CIMIC made requests to on or about 30 August 2019 agreed to a standstill on the terms contained in the documents particularised at paragraph 101J.
- (b) It otherwise denies the allegation.

Legacy Project Receivables

101L. As to paragraph 101L:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 29 July 2019, George Sassine emailed Michael Cooper, Brad Davey and Christina Ilinkovski the BICC Project Data Report as at April 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that:
 - (i) the BICC Project Data Report as at April 2019 contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';

- (ii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,335,676,000; and
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 454,863,000.
- (d) It otherwise denies the allegations.

101M. As to paragraph 101M:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 21 August 2019, Colin Young emailed Lee Hall the BICC Project Data Report as at May 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that:
 - (i) the BICC Project Data Report as at May 2019 contained a worksheet entitled 'Pdata';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,512,749,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 672,688,000.

- (d) It otherwise denies the allegations.

101N. As to paragraph 101N:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 16 September 2019, Colin Young emailed Christopher Granda the BICC Project Data Report as at June 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that:
 - (v) the BICC Project Data Report as at June 2019 contained a worksheet entitled 'Pdata';
 - (vi) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (vii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,896,216,000; and
 - (viii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 615,617,000.
- (d) It otherwise denies the allegations.

101O. As to paragraph 101O:

- (a) It refers to and repeats paragraph 89NA above.

- (b) It says that on 17 September 2019, Qaisir Mahmood emailed Colin Young and Lee Hall the BICC Project Data Report as at July 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that:
 - (i) the BICC Project Data Report as at July 2019 contained a worksheet entitled 'Uncert. Rev & Overdue – Jul1 19';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,117,660,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 472,171,000.
- (d) It otherwise denies the allegations.

101P. As to paragraph 101P:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 17 September 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young the BICC Project Data Report for BICC's UAE based projects as at August 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that:

- (i) the BICC Project Data Report as at August 2019 referred to at subparagraph (b) above contained a worksheet entitled 'Uncert. Rev & Overdue – Aug1 19';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 1,927,714,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 426,990,000.
- (d) It says that on 16 September 2019, Christopher Granda emailed Colin Young the BIC Project Data Report for its Qatar based projects as at August 2019, the full terms and effect of which it will refer to at trial.
- (e) It says that:
- (i) the BICC Project Data Report as at August 2019 referred to at subparagraph (d) above contained a worksheet entitled 'Uncert. Rev & Overdue – Aug1 19';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing';
 - (iii) for rows with the values 'Completed' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 5,440,000; and
 - (iv) for rows with the values 'Completed' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 56,343,000.

- (f) It otherwise denies the allegations.

CIMIC's Exposure to BICC

101Q. As to paragraph 101Q:

- (a) It refers to and repeats paragraphs 89AA and 89Q above.
- (b) It says that on 13 October 2019, Colin Young emailed Emilio Grande the BICC – Exposure Update, dated 23 September 2019.
- (c) Subject to reference at trial to the full terms and effect of the BICC – Exposure Update, dated 23 September 2019, it admits that the BICC – Exposure Update, dated 23 September 2019 substantively stated the matters in paragraphs 101Q(a), (b) and (d).
- (d) It otherwise denies the allegations.

True Position – September 2019

102. As to paragraph 102:

- (a) It refers to and repeats paragraphs 89AA to 89AE, 89E, 89Q, 89S, 95LI, 101B to 101D and 101O above.
- (b) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'severe liquidity issues'; and
 - (ii) 'probable'.
- (c) It otherwise denies the allegations.

September 2019 Middle East Information

103. As to paragraph 103:

- (a) It refers to and repeats paragraphs 13(e) to (h), 89S and 102 above.
- (b) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'severe liquidity issues'; and
 - (ii) 'probable'.
- (c) It otherwise denies the allegations.

104. As to paragraph 104:

- (a) It denies paragraphs 104(a) and (b) and refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23, 28, 35, 37, 82, 84 and 103 above.
- (b) As to paragraph 104(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 103, including 'severe liquidity issues' and 'probable', involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in ARC papers, CIMIC internal reports, third party reports commissioned by CIMIC management, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

5. A reasonable person would not expect that information to be disclosed prior to 22 January 2020.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 4 above.

105. It denies the allegations in paragraph 105 and refers to and repeats paragraphs 102 to 104 above.
106. It denies the allegations in paragraph 106 and refers to and repeats paragraph 105 above.
107. It denies the allegations in paragraph 107 and refers to and repeats paragraphs 102 to 106 above.

I.9 Alleged October 2019 Middle East Disclosure Contraventions

Cash Requests

107AA. As to paragraph 107AA:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 107AA to 107AB, it admits that in October 2019:
- (i) BICC provided CIMIC with information about BICC's cash flow, including forecast cash flow.
- (ii) BICC requested funds from CIMIC.
- (b) It says that in October 2019, CIMIC transferred AED 81.9 million to BICC.
- (c) It otherwise denies the allegations.

107AB. As to paragraph 107AB, it refers to and repeats paragraph 107AA above and otherwise denies the paragraph.

True Position – October 2019

107A. As to paragraph 107A:

- (a) It refers to and repeats paragraphs 89AA to 89AE, 97(a) to (e), 97(g) and 102 above.
- (b) It says that at the ARC meeting on 23 October 2019, Stefan Camphausen provided an update on the draft presentation entitled 'Key Judgements and Accounting Matters' and this is recorded in the minutes of the meeting, the full terms and effect of the report of which it will refer to at trial.
- (c) It says that at CIMIC's Board meeting on 23 October 2019, Michael Wright provided an update on BICC and this is recorded in the minutes of the meeting, the full terms and effect of the report of which it will refer to at trial.
- (d) It says that an internal report entitled 'Risk Management Report – Q3 2019' was made available to each member of the ARC ahead of the ARC meeting on 23 October 2019 and each member of CIMIC's Board ahead of the CIMIC Board meeting on 23 October 2019 and it will refer to the full terms and effect of the report at trial.
- (e) It says that minutes were recorded of the CDC meeting on 22 January 2020, the full terms and effect of which it will refer to at trial.
- (f) It says that minutes were recorded of CIMIC's Board meeting on 22 January 2020, the full terms and effect of which it will refer to at trial.
- (g) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'negatively impacted'; and
 - (ii) 'probable'.

- (h) It otherwise denies the allegations.

October 2019 Middle East Information

107B. As to paragraph 107B:

- (a) It refers to and repeats paragraphs 13(e) to (h), 89S, 103 and 107A above.
- (b) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:
 - (i) 'negatively impacted'; and
 - (ii) 'probable'.
- (c) It otherwise denies the allegations.

107C. As to paragraph 107C:

- (a) It denies paragraphs 107C(a) and (b) and refers to and repeats paragraphs 14, 14A, 15, 16, 17, 18, 19, 22, 23, 28, 35, 37, 82, 84 and 107B above.
- (b) It says that the information in paragraph 107B(a) was generally available.
- (c) As to paragraph 107C(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 107B, including 'probable' and prospects being 'negatively impacted', involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in Board minutes, Board papers, ARC minutes. ARC papers, CIMIC internal reports, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

5. A reasonable person would not expect that information to be disclosed prior to 22 January 2020.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 4 above.

107D. It denies the allegations in paragraph 107D and refers to and repeats paragraphs 107A to 107C above.

107E. It denies the allegations in paragraph 107E and refers to and repeats paragraph 107D above.

107F. It denies the allegations in paragraph 107F and refers to and repeats paragraphs 107A to 107E above.

I.10 Alleged December 2019 Middle East Disclosure Contraventions

Cash Requests

107FA. As to paragraph 107FA:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 107FA to 107FD, it admits that in each of November and December 2019:
 - (i) BICC provided CIMIC with information about BICC's cash flow, including forecast net cash flow.
 - (ii) BICC requested funds from CIMIC.

- (b) It says that it transferred the following amounts to BICC:
 - (i) in November 2019, it transferred AED 79.7 million to BICC; and
 - (ii) in December 2019, it transferred AED 32.2 million to BICC.

(c) It otherwise denies the allegations.

107FB. As to paragraph 107FB, it refers to and repeats paragraph 107FA above and otherwise denies the paragraph.

107FC. As to paragraph 107FC, it refers to and repeats paragraph 107FA above and otherwise denies the paragraph.

107FD. As to paragraph 107FD, it refers to and repeats paragraph 107FA above and otherwise denies the paragraph.

Legacy Project Receivables

107FE. As to paragraph 107FE:

(a) It refers to and repeats paragraph 89NA above.

(b) It says that on 4 November 2019, Qaisir Mahmood emailed Colin Young the BICC Project Data Report as at September 2019, the full terms and effect of which it will refer to at trial.

(c) It says that on 7 November 2019, Christopher Granda emailed Carlos Mendes the BICC Project Data Report as at September 2019, the full terms and effect of which it will refer to at trial.

(d) It says that:

(i) the BICC Project Data Report as at September 2019 contained a worksheet entitled 'Uncert. Rev & Overdue – Aug1 19';

(ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';

- (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,916,435,000; and
 - (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 615,936,000.
- (e) It otherwise denies the allegations.

107FF. [Not used]

107FG. As to paragraph 107FG:

- (a) It refers to and repeats paragraph 89NA above.
- (b) It says that on 13 December 2019, Lee Hall emailed Colin Young the BICC Project Data Report as at October 2019, the full terms and effect of which it will refer to at trial.
- (c) It says that:
 - (i) the BICC Project Data Report as at October 2019 contained a worksheet entitled 'Pdata';
 - (ii) that worksheet contained a column headed 'Legacy/Current', which contained values 'Completed', 'Ongoing', 'Terminated/Suspended';
 - (iii) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Uncertified Revenue: Project to Date (PTD)' was AED 2,871,349,000; and

- (iv) for rows with the values 'Completed' or 'Terminated/Suspended' in the column headed 'Legacy/Current', the sum of values in the column headed 'Certified Debtors: Certified Debtors – (Excl. Adv)' was AED 648,835,000.

- (d) It otherwise denies the allegations.

BICC Performance

107FH. As to paragraph 107FH:

- (a) It says that on 26 November 2019, Qaisir Mahmood emailed Colin Young and Christopher Granda the BIC Contracting LLC Monthly Report – September 2019, the full terms and effect of which it will refer to at trial.
- (b) It otherwise denies the allegations.

107FI. As to paragraph 107FI:

- (a) It says that on 12 December 2019, Qaisir Mahmood emailed Christopher Granda and Colin Young the BIC Contracting LLC Monthly Report – October 2019.
- (b) Subject to reference at trial to the full terms and effect of the BIC Contracting LLC Monthly Report – October 2019, it admits that the BIC Contracting LLC Monthly Report – October 2019 stated the matters in paragraphs 107FI(a) to (h).
- (c) It otherwise denies the allegations.

107FJ. As to paragraph 107FJ:

- (a) It says that on 19 December 2019, Paul Russell emailed Michael Wright and Stefan Camphausen the BICC Board Report, dated December 2019.

- (b) Subject to reference at trial to the full terms and effect of the BICC Board Report, dated December 2019, it admits that the BICC Board Report, dated December 2019, stated the matters in paragraphs 107FJ(a), (b), and (d) to (f).
- (c) It otherwise denies the allegations.

CIMIC's Exposure to BICC

107FK. As to paragraph 107FK:

- (a) It refers to and repeats paragraph 89AA above.
- (b) It says that on 13 January 2020, Derek Kerr emailed Kaushali Bhatt a BICC Exposure Estimate, the full terms and effect of which it will refer to at trial.
- (c) It says that CIMIC Finance produced a draft document entitled, 'Overview of the Financial Impact of the Middle East Exit', the full terms and effect of which it will refer to at trial.
- (d) It otherwise denies the allegations.

True Position – December 2019

107G. As to paragraph 107G:

- (a) It refers to and repeats paragraphs 89AA to 89AE, 89E, 89S, 107FC, 107FG, 107FI, 107FJ and 107FK above.
- (b) It says that an internal draft presentation entitled 'Q4 FY19 Results' was made available to each member of the ARC ahead of the ARC meeting on 4 February 2020 and it will refer to the full terms and effect of the presentation at trial.
- (c) It says that the following phrases are embarrassing and the subparagraphs using these phrases are liable to be struck out:

- (i) 'reliant';
 - (ii) 'probable'; and
 - (iii) 'negatively impacted'.
- (d) It otherwise denies the allegations.

December 2019 Middle East Information

107H. As to paragraph 107H:

- (a) It refers to and repeats paragraphs 13(e) to (h) and 107G above.
- (b) It otherwise denies the allegations.

107I. As to paragraph 107I:

- (a) It denies paragraphs 107I(a) and (b) and refers to and repeats paragraphs 14, 14A, 17, 18, 19, 22, 23, 28, 35, 37, 82, 84 and 107 above.
- (b) As to paragraph 107I(c), it says that if the alleged information was information which:
 - (i) was not generally available within the meaning of section 676 of the Corporations Act (which is denied); and
 - (ii) if it was generally available, a reasonable person would expect to have a material effect on the price or value of CIMIC's shares within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act (which is denied),

then it was not required to notify the ASX prior to 22 January 2020 of the information under section 674(2)(b) of the Corporations Act or ASX Listing Rule 3.1, because ASX Listing Rule 3.1A applied to that information, since:

1. That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 89AA to 89AE above.

2. Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 107H, including 'reliant', 'probable' and 'negatively impacted', involved supposition and/or was vague, embryonic or imprecise, its veracity was open to doubt and/or the likelihood of it occurring, or its impact, was uncertain.

3. Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

The information is contained in Board papers and ARC papers, CIMIC internal reports, and communications between employees of BICC and CIMIC, including the provision by BICC employees of BICC Board materials and other internal reports. The information was known only to employees of BICC and CIMIC who owed duties of confidentiality.

4. The information was confidential prior to 22 January 2020, and the ASX had not formed the view that the information had ceased to be confidential.

Particulars

The documents at Particulars paragraph 3 above are confidential. The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

5. A reasonable person would not expect that information to be disclosed prior to 22 January 2020.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs 1 to 4 above.

- 107J. It denies the allegations in paragraph 107J and refers to and repeats paragraphs 107G to 107I above.
- 107K. It denies the allegations in paragraph 107K and refers to and repeats paragraph 107J above.
- 107L. It denies the allegations in paragraph 107L and refers to and repeats paragraphs 107G to 107K above.

J. ALLEGED FURTHER MISLEADING STATEMENTS

108. Subject to reference at trial to the full terms and effect of the 2017 Annual Report, the 2018 Half Year Report, the 2018 Annual Report, CIMIC's ASX release on 6 May 2019 entitled 'Clarification Statement' and the 2019 Half Year Report, it admits the allegations in paragraph 108.
109. As to paragraph 109:
- (a) It refers to and repeats paragraphs 14, 15, 16, 17, 18, 19, 23, 28, 37, 39, 72, 82, 84 and 108 above.
- (b) It otherwise denies the allegations.
110. It denies the allegations in paragraph 110 and refers to and repeats paragraphs 90 and 109(a) above, and 115(d) below.
111. As to paragraph 111:

- (a) It refers to and repeats paragraph 108 above.
 - (b) It says that if any of the alleged True and Fair View representations were in respect to a future matter (which is denied) then it refers to and repeats paragraphs 115(a) to 115(h) below.
 - (c) It otherwise denies the allegations.
112. It denies the allegations in paragraph 112 and refers to the matters pleaded in paragraphs 108 to 111 above.
113. As to paragraph 113:
- (a) It refers to and repeats paragraphs 32, 38, 40, 84, 85 and 88 above.
 - (b) It otherwise denies the allegations.
114. As to paragraph 114:
- (a) It refers to the documents identified in paragraphs 32, 38, 40, 77A, 84, 85 and 88 and also the 2019 Half Year Report.
 - (b) It otherwise denies the allegations.
115. As to paragraph 115:
- (a) It refers to and repeats paragraphs 41AD, 89AB and 113 above.
 - (b) It says that it, from time to time, provided guidance and statements subject to market conditions and other qualifications, in relation to its then current expectation of:
 - (i) its likely earnings for the current financial year (***Earnings Guidance Statements***); and

- (ii) its likely ability to deliver shareholder returns in the short and/or longer term (***Shareholder Returns Statements***).
- (c) It says that during the Relevant Period it was CIMIC's practice to review its actual and forecast financial performance during each quarter of the financial year as follows:
- (i) Each of CIMIC's operating entities reported to CIMIC. The Chief Financial Officers of each operating entity had a direct report to CIMIC's Managing Director and a 'dotted-line' report to CIMIC's Chief Financial Officer.
 - (ii) The finance team and Chief Financial Officer of each operating entity sent financial accounts to CIMIC's finance team and Chief Financial Officer for amalgamation into the CIMIC accounts. In addition, the Chief Financial Officer and Managing Director of each operating entity signed a representation letter addressed to CIMIC's Chief Financial Officer and Chief Executive Officer which confirmed that the accounts had been prepared in accordance with accounting standards and statutory requirements.
 - (iii) CIMIC's Treasury department prepared an update which was provided to the ARC and to CIMIC's Board.
 - (iv) From the financial accounts provided by each operating entity, CIMIC's finance team prepared a paper referred to as a 'Key Judgements and Accounting Matters' to present to the ARC.
 - (v) The ARC reviewed the Key Judgements and Accounting Matters paper and made a recommendation to CIMIC's Board whether to adopt the accounts.
 - (vi) The Continuous Disclosure Committee reviewed the Key Judgements and Accounting Matters paper and the representation letters and advised CIMIC's Board if there were any additional matters required to be disclosed.

- (d) It refers to and repeats paragraph 41AD above and says that CIMIC's annual reports contained a statement from Deloitte, CIMIC's external auditor, that the financial report had been audited and was in accordance with the Corporations Act including complying with the Australian Accounting Standards and the Corporations Regulations 2001.

Particulars

2017 Annual Report page 257; 2018 Annual Report page 231; CIMIC's 2019 Annual Report page 234.

- (e) It says that it held its annual general meeting in early April, prior to the release of its actual financial results for the first quarter of that calendar year (**1Q Results**), and that the chairman of the CIMIC Board and senior management including the CEO addressed the annual general meeting.
- (f) It says that the Earnings Guidance Statements and the Shareholder Returns Statements were ordinarily issued:
- (i) at the time it presented its 1Q Results, actual financial results for the first half of that calendar year (**1H Results**), actual financial results for the first nine months of the calendar year (**3Q Results**) and full year results including during a presentation of the financial results to selected analysts and institutional investors (**Analyst and Investor Presentation**) held on each of those four occasions; and
 - (ii) at the annual general meeting in April.
- (g) It says that the Earnings Guidance Statements and the Shareholder Returns Statements:
- (i) Were statements made by CIMIC, and received by the investors or the market generally, in the context of the presentations and reports in which they were contained and in the economic environment prevailing at the time.

- (ii) Were point-in-time assessments made and expressed in light of then prevailing conditions, facts and matters known to CIMIC.
- (iii) Were subject to the uncertainties, risks and variable factors which exist in the market for the provision of CIMIC's services.

Particulars

It refers to and repeats paragraph 113 above.

The presentations at each Analyst and Investor Presentation included disclaimers such as the following:

This presentation, and any oral presentation accompanying it: contains forward looking statements. These statements reflect the current views, expectations and assumptions of the Board of directors of CIMIC and are based on information currently available to the Board, involve risks and uncertainties and do not guarantee future results, performance or events. Any forward looking statements have been prepared on the basis of a number of assumptions which may prove to be incorrect or involve known and unknown risks, uncertainties and other factors, many of which are beyond the control of CIMIC, which may cause actual results, performance or achievements to differ materially from those expressed or implied in the statements. There can be no assurance that actual outcomes will not differ materially from these statements. Any forward looking statement reflects views held only as at the date of this presentation. Subject to any continuing obligations under applicable law or any relevant stock exchange listing rules, CIMIC does not undertake to nor is it under any obligation to, publicly update or revise any of the forward looking statements or change in events, conditions or circumstances on which any such statement is based.

- (h) It says that, prior to the release of 1Q Results, 1H Results, 3Q Results and full year results it routinely reviewed its Earnings Guidance Statements for the purpose of determining whether revised guidance ought to be issued.
- (i) It otherwise denies the allegations.

116. It denies the allegations in paragraph 116 and refers to the matters pleaded in paragraphs 113 to 115 above.

117. As to paragraph 117:

(a) It refers to and repeats paragraphs 33, 38, 39, 41, 86 and 89 above.

(b) It otherwise denies the allegations.

118. As to paragraph 118:

(a) It refers to the documents identified in paragraphs 33, 38, 39, 41, 77A, 86 and 89 above and also the 2018 Annual Report and the 2019 Half Year Report.

(b) It otherwise denies the allegations.

119. As to paragraph 119:

(a) It refers to and repeats paragraph 117 above.

(b) If any of the alleged Dividends Representations (which it denies) were in respect of a future matter (which it denies) then it refers to and repeats paragraphs 115(b) to 115(h) above.

(c) It otherwise denies the allegations.

120. It denies the allegations in paragraph 120 and refers to the matters pleaded in paragraphs 117 to 119 above.

K. ALLEGED MIDDLE EAST CORRECTIVE REPORTS AND DISCLOSURES

121. Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 23 January 2020 entitled 'Update on BICC strategic review and impact on 2019 financial results', it admits the allegations in paragraph 121.

122. As to paragraph 122:

(a) It says that on 22 January 2020: its shares opened at \$34.46, closed at \$34.98, had a high of \$35.20, had a low of \$34.10 and had a VWAP of \$34.72.

- (b) It says that on 23 January 2020 its shares: opened at \$32.00, closed at \$28.03, had a high of \$32.28, had a low of \$27.80 and had a VWAP of \$28.72.
- (c) It says that on 24 January 2020 its shares opened at \$28.40, closed at \$28.88, had a high of \$29.48, had a low of \$28.25 and had a VWAP of \$28.95.
- (d) It says that on 28 January 2020 its shares opened at \$28.80, closed at \$28.21, had a high of \$28.91, had a low of \$28.00 and had a VWAP of \$28.30.
- (e) It otherwise denies the allegations.

L. ALLEGED MARKET EFFECTS

123. It does not know and therefore cannot admit the allegations in paragraph 123.

124. As to paragraph 124:

- (a) It admits the allegations in paragraph 124(a).
- (b) It does not know, and cannot admit, the allegations in paragraph 124(b).
- (c) It otherwise denies the allegations.

125. It does not know and therefore cannot admit the allegations in paragraph 125.

126. As to paragraph 126:

- (a) It refers to and repeats paragraph 80 above.
- (b) It otherwise denies the allegations.

127. As to paragraph 127:

(a) It refers to and repeats paragraph 81 above.

(b) It otherwise denies the allegations.

128. It denies the allegations in paragraph 128 and it refers to and repeats paragraphs 47, 47F, 53, 59, 65, and 71 above.

129. As to paragraph 129:

(a) It refers to and repeats paragraph 122 above.

(b) It otherwise denies the allegations.

130. It denies the allegations in paragraph 130 and refers to and repeats paragraphs 95, 95F, 95L, 95R, 101, 107, 107F and 107L above.

130A. It denies the allegations in paragraph 130A and refers to and repeats paragraphs 76, 112, 116 and 120 above.

131. It denies the allegations in paragraph 131 and refers to and repeats paragraphs 128, 130 and 130A above.

M. ALLEGED RELIANCE

132. It does not know and therefore cannot admit the allegations in paragraph 132.

N. ALLEGED CHANGE OF POSITION

133. It denies the allegations in paragraph 133 and repeats and refers to the matters pleaded in paragraphs 128, 130 and 130A above.

133A. It denies the allegations in paragraph 133A and repeats and refers to the matters pleaded in paragraphs 128, 130 and 130A above.

O. ALLEGED LOSS AND DAMAGE

134. It denies the allegations in paragraph 134 and refers to and repeats paragraphs 4A to 4K, 133 and 133A above.

135. It denies the allegations in paragraph 135 and refers to and repeats paragraphs 4A to 4K and 123 to 134 above.

P. ALLEGED COMMON QUESTIONS OF FACT OR LAW

136. It does not know and therefore cannot admit the questions of law or fact common to the claims of the Group Members, as set out in paragraph 136.

Date: 17 February 2023



Signed by Paul Nicols

Lawyer for the Respondent

This pleading was prepared by B C Ryde of counsel, and settled by J Stoljar of senior counsel.

Certificate of lawyer

I, Paul Nicols, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 17 February 2023



Signed by Paul Nicols

Lawyer for the Respondent