

NOTICE OF FILING

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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

Defence to ~~Second~~Third Further Amended Statement of Claim

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 ~~second~~third further amended statement of claim dated 5 April 2024 ~~25 August 2023~~ (**statement of claim**) for convenience only and without conveying any admission of their content.

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

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To the Applicant's 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 5A to 5K 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 seven 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' [CIM.020.001.0022].

- (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' [CIM.020.001.0021].

- (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 (**ASX**) 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' [CIM.020.001.0020].

5 As to paragraph 5, it admits the allegations.

Release by certain Group Members in earlier representative proceedings

5A. 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.
- 5B. On 30 October 2013, Inabu Pty Ltd (**Inabu**), as trustee for the Alidas Superannuation Fund, commenced a representative proceeding (the **Inabu Proceeding**) against Leighton Holdings Limited (**Leighton**) (as CIMIC was then called) under Part IVA of the *Federal Court of Australia Act 1976* (Cth) on behalf of group members who purchased shares in Leighton between 16 August 2010 and 11 April 2011 (the **Inabu Relevant Period**).
- 5C. 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**) [CIM.019.001.0128].

- 5D. 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 [CIM.019.001.0022]. CIMIC will refer to its full terms and effect at trial.

- 5E. There were terms of the Settlement Deed, among 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:
 - (A) The BAL Project, the VDP Project or HLG;
 - (B) The financial results of Leighton for the 2010 and 2011 financial years;
 - (C) 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 [CIM.019.001.0022].

- (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 [CIM.019.001.0022].

- (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 [CIM.019.001.0022].

- 5F. On 25 August 2014, the Federal Court made orders which, among 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

Orders 1, 9 and 10 of the orders of Justice Jacobson dated 25 August 2014 [CIM.019.001.0001].

- 5G. The Settlement Date for the purposes of the Settlement Deed was 1 September 2014.
- 5H. 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 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 2011;
- (b) that by no later than 18 March 2011, HLG had requested an additional \$230 million 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

Paragraphs 82, 83, 87, 89(e) and 90 to 94 of the Inabu Statement of Claim [CIM.019.001.0128].

- (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; and
- (iv) by no later than 16 January 2011, HLG was owed more than \$1.08 billion in respect of work that had been performed and was still seeking payment in respect of work completed 18 months previously; and

Particulars

Paragraphs 80, 81(b), (c) and (d), 85, 88 and 90 of the Inabu Statement of Claim [CIM.019.001.0128].

- (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,

Particulars

Paragraphs 90 to 93 of the Inabu Statement of Claim [CIM.019.001.0128].

(each an *Inabu Legacy Project Matter*).

5I. 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

Paragraph 362 of the statement of claim, which defines the alleged Middle East Contravening Conduct.

See also paragraphs 366 to 369 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:

- 345 to 349 which allege the True and Fair View Representations.
- 350 to 353 which allege the Guidance Representations.
- 363, 364, 368 and 369 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***); and

Particulars

Paragraph 22 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 [171(b)], the July 2018 Middle East Information [212(a)], the February 2019 Middle East Information [261(a)], the July 2019 Middle East Information [307(a)] and the October 2019 Middle East Information [338(a)].

The Shareholders Loans are also particularised as a basis for alleging CIMIC lacked reasonable grounds in making the True and Fair View Representations at paragraph 347 of the statement of claim and the Guidance Representations at paragraph 352 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 41(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 [CIM.500.001.2644]).

The Legacy Project Receivables are particularised as a basis for the February 2018 Middle East Information [171], the July 2018 Middle East Information [212], the February 2019 Middle East Information [261], the July 2019 Middle East Information [307] and the October 2019 Middle East Information [338].

The Legacy Projects Receivables are also particularised as a basis for alleging CIMIC lacked reasonable grounds in making the Guidance Representations (paragraph 352).

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 148 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.

- 5J. By reason of the matters pleaded at paragraphs 5A to 5I 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.

- 5K. By reason of the matters pleaded at paragraph 5J 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

6 It admits the allegations in paragraph 6.

7 As to paragraph 7:

- (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.

8 As to paragraph 8:

- (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.

9 Subject to reference at trial to the full terms and effect of ASX Listing Rule 19.12, it admits the allegations in paragraph 9.

10 As to paragraph 10:

- (a) It refers to and repeats 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

11 As to paragraph 11:

- (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

12 As to paragraph 12:

- (a) It says that 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) It says that 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) It says that 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'.

- (d) It says that 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.
- 13 As to paragraph 13:
 - (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.
- 14 As to paragraph 14:
 - (a) It says that from around 5 September 2007 to the end of the Relevant Period, LMENA held 45% of the shares in HLG.
 - (b) It says that, by reason of paragraphs 13(a) and 14(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.
- 15 As to paragraph 15:
 - (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.

16 As to paragraph 16:

- (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 35 below.
- (g) It otherwise denies the allegations.

17 As to paragraph 17:

- (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

- 18 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 18.
- 19 As to paragraph 19, it admits the allegations.
- 20 As to paragraph 20:
- (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 20(a) to (e).
 - (b) It otherwise denies the allegations.
- 21 As to paragraph 21:
- (a) It says that between 1 January 2017 and 23 January 2020, the directors of HLG nominated by LMENA were:
 - (i) until 25 May 2017, Jose Antonio Lopez Monis Plaza;
 - (ii) until 1 December 2017, Adolfo Valderas, with Will Kidman as the alternate from 31 May 2016 and Michael Wright as the alternate from around October 2017;

- (iii) between 7 December 2017 and 4 February 2020, Michael Wright, with Stefan Camphausen as the alternate from 12 December 2017;
 - (iv) until around April 2017, Abdul Rahman Jarrah as acting CEO and managing director;
 - (v) between 25 May 2017 and 24 May 2019, Moustafa Fahour as CEO and managing director; and
 - (vi) from 24 May 2019 to 17 May 2021, Paul Russel as acting CEO and managing director.
- (b) It otherwise denies the allegations.

Shareholder Loans

22 Subject to reference at trial to the full terms and effect of each of the alleged Shareholder Loans, it admits paragraph 22.

Debt Facilities and CIMIC Financial Guarantees

UNB Facility Agreements

23 As to paragraph 23:

- (a) As to paragraph 23(a), subject to reference at trial to the full terms and effect of the UNB Facility Agreements, 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 and 30 March 2015.
- (b) As to paragraph 23(b), subject to reference at trial to the full terms and effect of the credit facilities agreements between HLG and UNB dated 25 March 2014 and 30 March 2015, it admits the allegations.
- (c) It otherwise denies the allegations.

24 Subject to reference at trial to the full terms and effect of the UNB Facility Agreements, CIMIC admits paragraph 24.

25 As to paragraph 25:

- (a) It says that on or about 23 November 2016, HLG and UNB entered into a facility agreement the terms of which were set out in a facility offer letter.
 - (b) Subject to reference at trial to the full terms and effect of the facility offer letter dated 23 November 2016, it says that the facility offer letter amended the UNB Facility Agreements substantively to the effect in paragraphs 25(a) and (b).
 - (c) It otherwise denies the allegations.
- 26 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 26.
- 27 As to paragraph 27:
- (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 27(a) to (d).
 - (b) It otherwise denies the allegations.
- 28 As to paragraph 28:
- (a) It says that on or about 15 November 2017, HLG and UNB entered into a facility agreement the terms of which were set out in a facility offer letter.
 - (b) Subject to reference at trial to the full terms and effect of the facility offer letter dated 15 November 2017, it says that the facility offer letter amended the UNB Facility Agreements substantively to the effect in paragraph 28.
 - (c) It otherwise denies the allegations.

Particulars

Facility Offer Letter / Agreement dated 15 November 2017 [CIM.104.029.4780].

HSBC Syndicated Loan Agreement

- 29 As to paragraph 29:
- (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 allegations.

30 As to paragraph 30:

(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 30(a) to (g).

(b) It otherwise denies the allegations.

31 As to paragraph 31:

(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.

32 As to paragraph 32:

(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 32(a) and (b).

(b) It otherwise denies the allegations.

33 As to paragraph 33:

(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, to HLG (later renamed BICC) and to other subsidiaries.

(b) It otherwise denies the allegations.

34 As to paragraph 34:

(a) It refers to and repeats paragraph 5A 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

Half Year Report for the six months ended 31 December 2007, at pages 26 and 28 [CIM.013.001.0001].

2008 Annual Report for the year ended 30 June 2008, at pages 27, 28, 36 [CIM.013.001.0040].

Half Year Report for the six months ended 31 December 2008, at pages 27 and 30 [CIM.013.001.0232].

2009 Annual Report, at page 58 [CIM.013.001.0273].

- (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

Half Year for the six months ended 31 December 2009, at pages 13 and 15 [CIM.013.001.0475].

2010 Annual Report, at pages 40 and 41 [CIM.013.001.0555].

- (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

2011 Annual Report, at pages 105 and 106 [CIM.013.001.0835].

- (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

Half Year Report for the six months ended 31 December 2011, at pages 32 and 45 [CIM.012.001.0730].

Half Year Report for the six months ended 30 June 2012, at pages 11, 14 and 15 [CIM.013.001.1045].

- (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

2012 Annual Report, at pages 33 and 45 to 48 [CIM.012.001.0089].

Half Year Report for the six months ended 30 June 2013, at pages 12, 13 and 17 [CIM.012.001.0389].

C2013 Annual Report, at pages 127 to 129 and 146 to 148 [CIM.013.001.1133].

Half Year Report for the six months ended 30 June 2014, at pages 11, 12, 17 and 18 [CIM.013.001.1603].

2014 Annual Report, at pages 80 to 83 and 101 to 103 [CIM.013.001.1447].

Half Year for the six months ended 30 June 2015, at pages 12 to 14, 21 and 22 [CIM.013.001.1840].

2015 Annual Report, at pages 82 to 85 and 99 to 101 [CIM.013.001.1683].

2016 Half Year Report, at pages 13, 14 and 21 to 25 [CIM.002.001.0008].

2016 Annual Report, at pages 120 to 122, 126 to 128 and 137 to 139 [CIM.002.001.0061].

2017 Half Year Report, at pages 12, 13 and 20 to 23 [CIM.002.001.0286].

2017 Annual Report, at pages 196, 197, 200 to 202 and 210 to 212 [CIM.002.001.0335].

- (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

2018 Half Year Report, at pages 20 to 22 [CIM.002.001.0653].

- (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 AND EMPLOYEES

35 As to paragraph 35:

- (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 Sanchez 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 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 35(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 35.
- 36 As to paragraph 36:
- (a) It refers to and repeats paragraph 35 above.
 - (b) It says that Adolfo Valderas was CIMIC's Chief Executive Officer and Managing Director from October 2016 until 30 November 2017.
 - (c) It says that, so far as it is alleged any person other than the persons listed in paragraphs 36(a) to (g) was a CIMIC Officer, the allegation is embarrassing and liable to be struck out.
 - (d) It otherwise does not know and therefore cannot admit the allegations in paragraph 36.
- 37 As to paragraph 37:
- (a) It refers to and repeats paragraphs 6, 9, 35 and 36 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.
- 38 As to paragraph 38:
- (a) It refers to and repeats paragraphs 17(c) and (e) above.
 - (b) It says:

- (i) Emilio Grande was Deputy CFO of CIMIC from around January 2018 to November 2018, and CFO of UGL from 15 November 2018 to 4 January 2021.
 - (ii) In his role as Deputy CFO of CIMIC, Emilio Grande reported to Stefan Camphausen.
 - (iii) Carlos Mendes was Executive General Manager, Finance Special Projects from 14 October 2013 to 4 November 2022.
 - (iv) In his role as Executive General Manager, Finance Special Projects, Carlos Mendes reported to the Deputy CFO of CIMIC.
 - (v) Tamara Kidd was General Manager, Financial Planning and Analysis from at least December 2016 to at least February 2020.
 - (vi) In her role as General Manager, Financial Planning and Analysis, Tamara Kidd reported to the Executive General Manager, Finance.
 - (vii) Christopher Granda was Technical Business Manager from 1 March 2015 to around 24 October 2020, and then Business Improvement and Analytics Manager to 1 October 2021.
 - (viii) In his role as Technical Business Manager, Christopher Granda reported to Adolfo Valderas. In his role as Business Improvement and Analytics Manager, he reported to Carlos Mendes.
 - (ix) Colin Young has been engaged as a consultant by CIMIC in relation to Special Projects within Group Strategy, Investments & Acquisitions since October 2016.
 - (x) Colin Young reported variously to Stefan Camphausen, Roman Garrido Sanchez, George Sassine and Ignacio Segura Surinach.
- (c) It says that the persons listed in paragraphs 38(a) to (f) had various responsibilities. Those responsibilities to some degree touched on or related to BICC.
- (d) It says that, so far as it is alleged any person other than the persons listed in paragraphs 38(a)-(f) had responsibilities in relation to BICC and reported to one

or more of the CIMIC Officers, the allegation is embarrassing and liable to be struck out.

- (e) It otherwise does not know and therefore cannot admit the allegations.

D ANNOUNCEMENTS MADE BY CIMIC BETWEEN 2016 AND MID-2019

D.1 2016 ANNOUNCEMENTS

39 As to paragraph 39:

- (a) Subject to reference at trial to the full terms and effect of the 2015 Annual Report, it admits the allegations in paragraph 39 and refers to and repeats paragraph 39A 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, at page 67 [CIM.013.001.1683].

39A. It says that:

- (a) On 9 February 2016, CIMIC held a teleconference with analysts (the **9 February 2016 Earnings Call**).
- (b) During the 9 February 2016 Earnings Call, CIMIC's Chief Financial Officer, said, among 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

9 February 2016 Earnings Call, at pages 10 and 11 [CIM.100.002.5072].

- 39B. On 25 February 2016, Actividades de Construcción y Servicios, S.A. (**ACS**), a company listed on stock exchanges in Spain, the majority shareholder of Hochtief and the ultimate parent entity of CIMIC, published a document entitled '2015 Results Report' in which it stated, among other things, that as at 31 December 2015 its factoring and securitisation balance amounted to €757 million.

Particulars

ACS 2015 Results Report, at page 13.

- 40 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 40.
- 40A. On 12 May 2016, ACS published a document entitled '1Q16 Results Report' in which it stated, among other things, that as at 31 March 2016 its factoring and securitisation balance amounted to €687 million.

Particulars

ACS 1Q16 Results Report, at page 12.

- 41 As to paragraph 41:

(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, in relation to CIMIC's investment in HLG:

The key assumptions used in the value in use calculation:

<i>Discount rate</i>	<i>16% (31 December 2015: 15%)</i>
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<i>Growth rate</i>	<i>3% (31 December 2015: 3%) for cash flows beyond five years. This rate does not exceed the expected long-term average growth rate for the Middle East & North Africa ("MENA") region</i>
<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. 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>
<i>Borrowings</i>	<i>Borrowings obtained to fund working capital will be progressively repaid during the forecast period</i>
<i>Forecast cash flow</i>	<i>The calculation uses five year cash flow projections based on forecasts provided by HLG's management, risk adjusted downward by the Group. Cash flows beyond five years are extrapolated using the estimated growth rate</i>

Particulars

2016 Half Year Report, at page 22 [CIM.500.001.2644].

- (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 41(a), (c) and (d).
 - (c) It otherwise denies the allegations.
- 42 As to paragraph 42:
- (a) Subject to reference at trial to the full terms and effect of the 2016 Half Year Report, it admits the allegations in paragraph 42 and refers to and repeats paragraph 42A 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, at page 5 [CIM.500.001.2644].

42A. It says that:

- (a) On 19 July 2016, CIMIC held a teleconference with analysts (the **19 July 2016 Earnings Call**).
- (b) 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, at pages 14 and 15 [CIM.100.002.5054].

- 43 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 43.
- 43A. On 29 July 2016, ACS published a document entitled '1H16 Results Report' in which it stated, among other things, that as at 30 June 2016 its factoring and securitisation balance amounted to €828 million.

Particulars

ACS 1H16 Results Report, at page 12; ACS's 1H16 report is incorrectly dated 29 June 2016.

- 43B. On 14 November 2016, ACS published a document entitled '3Q16 Results Report' in which it stated, among other things, that as at 30 September 2016, its factoring and securitisation balance remained stable to the prior period, not considering the balance in the prior period of Urbaser, a waste management entity that was sold by ACS on or around 7 December 2016.

Particulars

ACS 3Q16 Results Report, at page 14; Media release entitled 'ACS closes the sale of Urbaser' dated 7 December 2016.

- 44 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 44.
- 45 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 45.

D.2 2017 ANNOUNCEMENTS

46 As to paragraph 46:

(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, in relation to CIMIC's investment in HLG:

The key assumptions used in the value in use calculation:

<i>Discount rate</i>	<i>15% (31 December 2015: 15%)</i>
<i>Growth rate</i>	<i>3% (31 December 2015: 3%) for cash flows beyond five years. This rate does not exceed the expected long-term average growth rate for the Middle East & North Africa ("MENA") region</i>
<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>

<i>Borrowings</i>	<i>Borrowings obtained to fund working capital will be progressively repaid during the forecast period</i>
<i>Forecast cash flow</i>	<i>The calculation uses five year cash flow projections based on forecasts provided by HLG Contracting's management, risk adjusted downward by the Group. Cash flows beyond five years are extrapolated using the estimated growth rate</i>

Particulars

2016 Annual Report, at page 127 [CIM.002.001.0061].

- (iii) The 2016 Annual Report stated that, in relation to material joint ventures, reference was to be had to Note 8: *Trade and other receivables* for further details relating to loans and other receivables provided to HLG Contracting.

Particulars

2016 Annual Report, at page 127 [CIM.002.001.0061].

- (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 46(a) to (e), (g) and (h).
- (c) It otherwise denies the allegations.
- 47 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 47.
- 48 As to paragraph 48:
- (a) Subject to reference at trial to the full terms and effect of the 2016 Annual Report, it admits the allegations in paragraph 48.
- (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, at page 105 [CIM.002.001.0061].

- 48A. On 28 February 2017, ACS published a document entitled '2016 Results Report' in which it stated, among other things, that as at 31 December 2017, its factoring and securitisation balance amounted to €784 million.

Particulars

ACS 2016 Results Report, at page 15.

- 48B. On 11 May 2017, ACS published a document entitled '1Q17 Results Report' in which it stated, among other things, that as at 31 March 2017, its factoring and securitisation balance amounted to €732 million.

Particulars

ACS 1Q17 Results Report, at page 12.

- 49 Subject to reference at trial to the full terms and effect of CIMIC's ASX release on 8 July 2017 entitled 'CIMIC's Thiess Awarded \$650 million Solomon Extension', it admits the allegations in paragraph 49.

- 50 As to paragraph 50:

(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, in relation to CIMIC's investment in HLG:

The key assumptions used in the value in use calculation:

<i>Discount rate</i>	<i>15% (31 December 2016: 15%)</i>
<i>Growth rate</i>	<i>3% (31 December 2016: 3%) for cash flows beyond five years. This rate does not exceed the expected long-term average growth rate for the Middle East & North Africa ("MENA") region</i>
<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,</i>

	<i>approximately half will be collected within twenty-four months and approximately half collected subsequently.</i>
<i>Borrowings</i>	<i>Borrowings obtained to fund working capital will be progressively repaid during the forecast period</i>
<i>Forecast cash flow</i>	<i>The calculation uses five year cash flow projections based on forecasts provided by HLG's management, risk adjusted downward by the Group. Cash flows beyond five years are extrapolated using the estimated growth rate</i>

- (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 50(a) and (c) to (e).

Particulars

2017 Half Year Report, at page 22 [CIM.118.014.3190].

- (c) It otherwise denies the allegations.

51 As to paragraph 51:

- (a) Subject to reference at trial to the full terms and effect of the 2017 Half Year Report, it admits the allegations in paragraph 51.
- (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, at page 5 [CIM.118.014.3190].

- 52 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 52.
- 52A. On 28 July 2017, ACS published a document entitled '1H17 Results Report' in which it stated, among other things, that as at 30 June 2017, its factoring and securitisation balance amounted to €881 million.

Particulars

ACS 1H17 Results Report, at page 12.

- 52B. On 13 November 2017, ACS published a document entitled '3Q17 Results Report' in which it stated, among other things, that as at 30 September 2017, its commercial discount and securitisation balance amounted to €972 million.

Particulars

ACS 3Q17 Results Report, at page 13.

- 53 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 53.

D.3 2018 ANNOUNCEMENTS

- 54 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 54.
- 55 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 55.
- 56 As to paragraph 56:
- (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, among 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 [CIM.001005.0011].

- (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 56(a) to (d).

57 As to paragraph 57, subject to reference at trial to the full terms and effect of the transcript of the 7 February 2018 Earnings Call, it admits the allegations.

58 As to paragraph 58:

(a) It says that in financial year 2018, 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:

(A) In relation to the impact of new accounting standard AASB 9:

(1) 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, at page 252 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2017) [CIM.002.001.0335].

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

Particulars

2017 Annual Report, at page 252 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2017) [CIM.002.001.0335].

(B) In relation to the key assumptions used in CIMIC's value in use calculation of the recoverable amount of its investments in BICC:

The key assumptions used in the value in use calculation:

<i>Discount rate</i>	<i>16% (31 December 2016: 15%)</i>
<i>Growth rate</i>	<i>3% (31 December 2016: 3%) for cash flows beyond five years. This rate does not exceed the expected long-term average growth rate for the Middle East & North Africa ("MENA") region</i>
<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, approximately half will be collected within the medium term and approximately half collected subsequently</i>
<i>Borrowings</i>	<i>Borrowings obtained to fund working capital will be progressively repaid during the forecast period</i>
<i>Forecast cash flow</i>	<i>The calculation uses five year cash flow projections based on forecasts provided by HLG Contracting's management, risk adjusted downward by the Group. Cash flows beyond five years are extrapolated using the estimated growth rate</i>

Particulars

2017 Annual Report, at page 201 [CIM.002.001.0335].

- (C) The 2017 Annual Report stated that, in relation to material joint ventures, reference was to be had to Note 8: *Trade and other receivables* for further details relating to loans provided to HLG Contracting.

Particulars

2017 Annual Report, at page 201 [CIM.002.001.0335].

- (c) Subject to reference at trial to the full terms and effect of the 2017 Annual Report, it otherwise admits the allegations in paragraph 58(a), (b) and (d) to (i).
- (d) It otherwise denies the allegations.

59 As to paragraph 59:

- (a) Subject to reference at trial to the full terms and effect of the 2017 Annual Report, it admits the allegations in paragraph 59.
- (b) It further says that the 2017 Annual Report stated that as at 31 December 2017, \$267.7 million (31 December 2016: \$166.7 million) of cash at bank in relation to the sale of receivables was classified as restricted cash.

Particulars

2017 Annual Report, at page 180 [CIM.002.001.0335].

- (c) It otherwise denies the allegations.

59A. On 28 February 2018, ACS published a document entitled '2017 Results Report' in which it stated, among other things, that as at 31 December 2017, its commercial discount and securitisation balance amounted to €1,150 million.

Particulars

ACS 2017 Results Report, at page 13.

60 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 60.

61 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 61.

61A. On 10 May 2018, ACS published a document entitled '1Q18 Results Report' in which it stated, among other things, that as at 31 March 2018, its commercial discount and securitisation balance amounted to €1,251 million.

Particulars

ACS 1Q18 Results Report, at page 12.

62 Subject to reference at trial to the full terms and effect of CIMIC's ASX release entitled 'CIMIC's CPB Contractors Preferred for \$1b Metro Tunnel Works', it admits the allegations in paragraph 62.

63 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 63.
- 64 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 64.
- 65 Subject to reference at trial to the full terms and effect of the 2018 Half Year Report, it admits the allegations in paragraph 65.
- 66 As to paragraph 66:
- (a) Subject to reference at trial to the full terms and effect of the 2018 Half Year Report, it admits the allegations in paragraph 66.
- (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, at page 7 [CIM.002.001.0653].

- 67 As to paragraph 67:
- (a) It says that on 18 July 2018, CIMIC held a teleconference with analysts (the **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, at page 7 [CIM.001.005.0074].

- (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 67(a) to (c).
 - (d) It otherwise denies the allegations.
- 67A. On 26 July 2018, ACS published a document entitled '1H18 Results Report' in which it stated, among other things, as at 30 June 2018, its commercial discount and securitisation balance amounted to €1,454 million.

Particulars

ACS 1H18 Results Report, at page 13.

- 68 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 68.
- 69 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 69.
- 70 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 70.

71 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 71.

71A. On 14 November 2018, ACS published a document entitled '3Q18 Results Report' in which it stated, among other things, that as at 30 September 2018, its commercial discount and securitisation balance amounted to €1,729 million.

Particulars

ACS 3Q18 Results Report, at page 14.

72 As to paragraph 72:

(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, among 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, at page 1 [CIM.017.001.0173].

(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 72(a).

(d) It otherwise denies the allegations.

73 Subject to reference at trial to the full terms and effect of CIMIC's ASX release entitled 'CIMIC Group Companies Preferred to Deliver Taswater's Capital Works', it admits the allegations in paragraph 73.

D.4 2019 ANNOUNCEMENTS

74 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 74.

- 75 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 75.
- 76 As to paragraph 76:
- (a) Subject to reference at trial to the full terms and effect of the 2018 Annual Report, it admits the allegations in paragraphs 76(a) and (b).
 - (b) It says that the 2018 Annual Report did not state:
 - (i) The extent or value of the factoring arrangements.
 - (ii) That the factoring arrangements did or may impact upon its cash results or other financial results.
 - (iii) The extent of the impact of the factoring arrangements on its cash results or other financial results.
 - (c) It refers to and repeats paragraphs 54, 56, 59, 64, 66 and 71 above and 78 below.
 - (d) It otherwise denies the allegations.
- 77 As to paragraph 77:
- (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, at page 161 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018) [CIM.002.001.0754].

- (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, at page 161 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018) [CIM.002.001.0754].

- (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, at page 142 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018) [CIM.002.001.0754].

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

Particulars

2018 Annual Report, at page 142 (Notes to the Consolidated Financial Statements for the 12 months to 31 December 2018) [CIM.002.001.0754].

- (c) Subject to reference at trial to the full terms and effect of the 2018 Annual Report, it admits the allegations in paragraph 77(b), (e) and (f).
- (d) It otherwise denies the allegations.

78 As to paragraph 78:

- (a) Subject to reference at trial to the full terms and effect of the 2018 Annual Report, it admits the allegations in paragraph 78.
- (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, at page 160 [CIM.002.001.0754].

79 As to paragraph 79:

- (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 79.
- 79A. On 27 February 2019, ACS published a document entitled '2018 Results Report' in which it stated, among other things, that as at 31 December 2018, its commercial discount and securitisation balance amounted to €2,229 million.

Particulars

ACS 2018 Results Report, at page 14.

- 80 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 80.
- 81 As to paragraph 81:
- (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 81(a) to (e) and (h).
 - (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.
- 82 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 82.
- 82A. On 14 May 2019, ACS published on a document entitled '1Q 2019 Results Report' in which it stated, among other things, that as at 31 March 2019, its commercial discount and securitisation balance amounted to €2,368 million.

Particulars

ACS 1Q 2019 Results Report, at page 12.

E ALLEGED CASH FLOW DISCLOSURE CONTRAVENTIONS

83 As to paragraph 83, it admits the allegations.

84 As to paragraph 84, it admits the allegations.

84A. It says that, 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.

84B. 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, at page 30 [CIM.004.001.3549]:

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, at page 28 [CIM.004.001.4251]:

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, at page 26 [CIM.004.005.0574]:

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 factoring and supply chain financing at 31 December 2019.

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

- 2017 Half Year Report, at page 32 [CIM.118.014.3190];
- 2018 Half Year Report, at page 39 [CIM.002.001.0653]; and
- 2019 Half Year Report, at page 39 [CIM.114.010.1965].

84C. 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.

84D. It says that:

- (a) 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.
- (b) Ahead of the ARC and Board meetings on 12 April 2018, the paper entitled '1Q18 Analyst and Investor Presentation 1Q Results 2018', which included the slide entitled 'Strong cash flow generation and EBITDA conversion', was made available to ARC members and CIMIC Board members.
- (c) On 16 May 2018, the spreadsheet entitled 'PPE Additions Cheat Sheet - April 18_Updated' was emailed by Harnek Soor to Emilio Grande, Tim Martel, Derek Kerr, Kaushali Bhatt and Matthew Helou.
- (d) On 8 July 2018, the spreadsheet entitled 'PPE Additions Cheat Sheet - June 18_Updated' was emailed by Derek Kerr to Emilio Grande.
- (e) 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.
- (f) 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.
- (g) Ahead of the ARC and Board meetings on 18 July 2018, the draft Paper entitled 'Analyst and Investor Presentation HY18 Results', which included a slide entitled 'Ongoing strong cash generation and stable EBITDA conversion', was made available to ARC members and CIMIC Board members.
- (h) On 9 August 2018, the spreadsheet entitled 'Financial Highlights – FY18 v FY17' was emailed by Tamara Kidd to Stefan Camphausen, Emilio Grande and Derek Kerr.

- (i) On or around 21 August 2018, the report 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.
- (j) On or around 28 September 2018, the document entitled 'CIMIC's CPB Contractors Awarded \$1b Metro Tunnel Works' was published and lodged by CIMIC with the ASX.
- (k) On or around 4 October 2018, the document entitled 'CIMIC's Leighton Asia Wins A\$110M Building Project in India' was published and lodged by CIMIC with the ASX.
- (l) On 10 October 2018, the spreadsheet entitled 'WIH Summary Sep-18 draft 20181010' was emailed by Frances Huang to Tamara Kidd.
- (m) On 13 October 2018, the spreadsheet entitled '2018_09_PPE Additions Cheat Sheet_Updated' was emailed by Derek Kerr to Stefan Camphausen.
- (n) On 19 October 2018, the spreadsheet entitled 'Financial Highlights – FY18 v FY17' was emailed by Tamara Kidd to Katrina Diep, Frances Huang, Ashleen Nolan and Bryan Chan.
- (o) On 20 October 2018, the report entitled 'Risk Management Report – Q3 2018' 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) Ahead of the ARC and Board meetings on 23 October 2018, the draft Paper entitled 'Analyst and Investor Presentation 9m Results 2018' was made available to ARC members and CIMIC Board members.
- (r) Ahead of the ARC and Board meetings on 23 October 2018, the report entitled 'Risk Management Report – Q3 2018' was made available to ARC members and CIMIC Board members.

- (s) 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.
- (t) On 21 January 2019, versions 1.3 and 1.4 of the spreadsheet entitled 'Financial Highlights – FY18 v FY17' were emailed by Stefan Camphausen to Michael Wright and Ignacio Segura.
- (u) On 22 January 2019, the spreadsheet entitled 'Version: TPL Highlights Q4 Actual 18/01/2019 v1.7' was emailed by Frances Huang to Tamara Kidd.
- (v) On 22 January 2019, the spreadsheet entitled 'TPL Highlights Q4 Actual V1.7 1801' was emailed by Stefan Camphausen to Michael Wright, Ignacio Segura and Derek Kerr.
- (w) On 4 February 2019, the report entitled 'Risk Management Report – Q4 2018' relating to 4Q18 was emailed by Brad Davey to Louise Griffiths, Lyn Nikolopoulos, and Michael Wright.
- (x) 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.
- (y) Ahead of the ARC and Board meetings on 5 February 2019, the draft Paper entitled 'Analyst and Investor Presentation Full Year Results 2018', which included the slide entitled 'Strong cash generation and EBITDA conversion', was made available to ARC members and CIMIC Board members.
- (z) Ahead of the ARC and Board meetings on 5 February 2019, the report entitled 'Risk Management Report – Q4 2018' was made available to ARC members and CIMIC Board members.
- (aa) On 9 March 2019, an email entitled 'Re: Scenarios 2019. Urgent' was sent by Adolfo Valderas to Michael Wright, Stefan Camphausen, Ignacio Segura, Juan Santamaria, Douglas Thompson, Jason Spears, Emilio Grande, Craig Morton and Stuart Charlton. This email was subsequently forwarded on the same day by Michael Wright to Grant Fraser, Pedro Vicente Maese, Mitchell Bayer, Victoria Crasti, Stefan Camphausen, Ignacio Segura, Juan Santamaria, Douglas Thompson, Jason Spears, Emilio Grande, Craig Morton and Stuart Charlton.

- (bb) On 12 March 2019, an email entitled 'Scenarios 2019 - Thanks' was sent by Michael Wright to Ignacio Segura, Juan Santamaria, Douglas Thompson, Jason Spears, Emilio Grande, Craig Morton, Stuart Charlton, Grant Fraser, Pedro Vicente Maese, Mitchell Bayer, Victoria Crasti, Brad Davey, Stefan Camphausen and Derek Kerr.
- (cc) On 13 March 2019, an email entitled 'Scenarios 2019 – Further reviews' was sent by Michael Wright to Juan Santamaria, Jason Spears, Douglas Thompson, Stefan Camphausen and Ignacio Segura.
- (dd) On 19 March 2019, the spreadsheet entitled '2019 Q1 Cash tracker_19032019' was emailed by Michael Lyttle to Amy Liu, Stefan Camphausen, Ignacio Segura, Scott McAlpine, Michael Azzi, Nick Cain, Douglas Thompson, Craig Morton, Sarah Cooper-Woolley and Catherine Cook.
- (ee) On 20 March 2019, the spreadsheet entitled '2019 Q1 Cash tracker_21032019' was emailed by Catherine Cook to Stefan Camphausen, Michael Wright, Craig Morton, Douglas Thompson and Georgia Thornton.
- (ff) On 20 March 2019, the spreadsheet entitled '2019 Q1 Cash tracker_19032019' was emailed by Stefan Camphausen to Derek Kerr and Tamara Kidd.
- (gg) On 22 March 2019, the spreadsheet entitled '2018 Rating Cash Flow - v2' 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.
- (hh) On 5 April 2019, the spreadsheet '190331 TPL RPA Register v2' was emailed by Michael Lyttle to Scott McAlpine, Michael Azzi, Nick Cain, Amy Liu, Catherine Cook and Shelly Borowiak.
- (ii) On 7 April 2019, the spreadsheet entitled 'Group Financial Highlights – FY19 v FY18 Quarterly Evolution (Business Plan Consensus)' was emailed by Derek Kerr to Stefan Camphausen.
- (jj) 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.

- (kk) Ahead of the ARC and Board meetings on 10 April 2019, the draft Paper entitled 'Analyst and Investor Presentation 1Q Results 2019' was made available to ARC members and CIMIC Board members.
- (ll) 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'.
- (mm) On 30 April 2019, GMT Research published a newsletter entitled 'CIMIC Group (CIM AU) – Engineering profits'.
- (nn) On 4 May 2019, Fairfax Media published an article entitled 'Construction giant CIMIC targeted over \$800m profit boost'.
- (oo) On 6 May 2019, Fairfax Media published an article entitled 'Investor sees CIMIC as overvalued, not overblown'.
- (pp) On 6 May 2019, the spreadsheet entitled '2018 Rating Cash Flow - v2' was emailed by Stefan Camphausen to Derek Kerr, Justin Grogan, Cameron Smith, Scott McAlpine and Miryam Meza.
- (qq) On 28 May 2019, the internal presentation entitled 'Factoring and Supply Chain Financing' was emailed by Stefan Camphausen to Ángel Muriel Bernal.
- (rr) 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.
- (ss) On 17 July 2019, CIMIC published a report entitled 'Half Year Report 2019'.
- (tt) On 17 July 2019, Thomson Reuters published a document entitled 'Edited Transcript – CIM.AX – Half Year 2019 CIMIC Group Ltd Earnings Call'.
- (uu) On or around 17 July 2019, the document entitled 'Half Year Report 2019' was published and lodged by CIMIC with the ASX.
- (vv) On or around 17 July 2019, the document entitled 'Analyst and Investor Presentation HY19 Results' was published and lodged by CIMIC with the ASX.

- (ww) On 17 July 2019, a CIMIC ASX / Media Release was published and lodged with the ASX which stated 'SOLID CASH GENERATION – OPERATING CASH FLOW \$1.8BN LTM WITH EBITDA CONVERSION 87%'.
- (xx) On 6 August 2019, the spreadsheet entitled 'Financial Highlights – FY19 v FY18 Quarterly Evolution (Business Plan Consensus)' was emailed by Carla Scodeller to Stefan Camphausen and Derek Kerr, which was subsequently forwarded by Derek Kerr to Michael Wright.

E.1 ALLEGED 1Q18 CASH FLOW INFORMATION AND CONTRAVENTIONS

85 As to paragraph 85, it admits the allegations.

True Position – April 2018

86 As to paragraph 86:

- (a) It refers to and repeats paragraphs 83 to 84A and 84C 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:
 - (A) As at 31 December 2017, approximately \$574 million.
 - (B) As at 31 March 2018, approximately \$767 million.
 - (iv) The difference between the amounts in subparagraphs (iii)A and (iii)B above is \$193 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) Its EBITDA cash conversion was 32.1%.
- (vii) 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 each of the phrases 'cash conversion weakness' and 'cash flow weakness' are embarrassing and subparagraph 86(e) is liable to be struck out.
- (d) It otherwise denies the allegations.

1Q18 Cash Flow Information

87 As to paragraph 87:

- (a) It refers to and repeats paragraphs 84D and 86 above.
- (b) It otherwise denies the allegations.

88 As to paragraph 88:

- (a) It denies paragraphs 88(a) and (b) and refers to and repeats paragraphs 39 to 39B, 40A, 42, 42A, 43A, 43B, 48 to 49, 51, 52A, 52B, 54 to 57, 59 to 60 and 87 above.
- (b) As to paragraph 88(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 11 July 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:

- (A) 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 84D(a), (b), (u), (v) and (gg) above.

- (B) Further or alternatively, the information alleged at paragraph 87(e) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 87(e) 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.

- (C) The information was confidential prior to 6 May 2019, alternatively 11 July 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 (A) above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

- (D) A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 11 July 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs (A) to (C) above.

- (c) It otherwise denies the allegations.
- 89 It denies the allegations in paragraph 89 and refers to and repeats paragraphs 86 to 88 above.
- 90 It denies the allegations in paragraph 90 and refers to and repeats paragraphs 61, 63, 64, 66, 70, 71, 74 to 76, 78, 81, 82 and 88 above and paragraph 122 below.

91 It denies the allegations in paragraph 91 and refers to and repeats paragraphs 86 to 90 above.

E.2 ALLEGED 1H18 CASH FLOW INFORMATION AND CONTRAVENTIONS

True Position – July 2018

92 As to paragraph 92:

- (a) It refers to and repeats paragraphs 83 to 84A and 84C 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:
 - (A) As at 31 March 2018, approximately \$767 million.
 - (B) As at 30 June 2018, approximately \$1,022 million.
 - (iv) The difference between the amounts in subparagraphs (iii)(A) and (iii)(B) above is \$255 million.
 - (v) Following the re-statement referred to in paragraph 86(b)(v) above, the Factoring Balances referred to in subparagraphs (iii)A and (iii)B above were revised, however the difference between the two amounts was not affected and remained as \$255 million.
 - (vi) Its EBITDA cash conversion was 142.1%.
 - (vii) 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:
 - (A) As at 31 December 2017, approximately \$574 million.
 - (B) As at 30 June 2018, approximately \$1,022 million.
- (iv) The difference between the amounts in subparagraphs (iii)A and (iii)B above is \$448 million.
- (v) Its EBITDA cash conversion was 91.1%.
- (vi) 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 refers to and repeats paragraph 86(c) above.
- (e) It otherwise denies the allegations.

1H18 Cash Flow Information

93 As to paragraph 93:

- (a) It refers to and repeats paragraphs 84D and 92 above.
- (b) It otherwise denies the allegations.

94 As to paragraph 94:

- (a) It denies paragraphs 94(a) and (b) and refers to and repeats paragraphs 39 to 40A, 42, 42A, 43A, 43B, 48 to 49, 51 to 57, 59 to 64, 66, 67 and 93 above.
- (b) As to paragraph 94(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 11 July 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:

- (A) 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 84D(c) to (h), (u), (v) and (gg) above.

- (B) Further or alternatively, the information alleged at paragraph 93(a)(iv) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 93(a)(iv) 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.

- (C) The information was confidential prior to 6 May 2019, alternatively 11 July 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 (A) above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

- (D) A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 11 July 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs (A) to (C) above.

- (c) It otherwise denies the allegations.

- 95 It denies the allegations in paragraph 95 and refers to and repeats paragraphs 92 to 94 above.
- 96 It denies the allegations in paragraph 96 and refers to and repeats paragraphs 63, 64, 66, 67, 68 to 71, 72 to 76, 78, 79, 80 to 82 and 94 above and paragraph 122 below.
- 97 It denies the allegations in paragraph 97 and refers to and repeats paragraphs 92 to 96 above.

E.3 ALLEGED 3Q18 CASH FLOW INFORMATION AND CONTRAVENTIONS

True Position – October 2018

- 98 As to paragraph 98:
- (a) It refers to and repeats paragraphs 83 to 84A and 84C above.
 - (b) It says that in the period 1 July 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:
 - (A) As at 30 June 2018, approximately \$1,022 million.
 - (B) As at 30 September 2018, approximately \$1,491 million.
 - (iv) The difference between the amounts in subparagraphs (iii)A and (iii)B above is \$469 million.
 - (v) Following the re-statement referred to in 86(b)(v) above, the Factoring Balances referred to in subparagraphs (iii)A and (iii)B above were revised with the effect that the difference between the two amounts was \$455 million (not \$469 million). Its EBITDA cash conversion was 77.7%.
 - (vi) 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 refers to and repeats paragraph 86(c) above.

- (d) It otherwise denies the allegations.

3Q18 Cash Flow Information

99 As to paragraph 99:

- (a) It refers to and repeats paragraphs 84D and 98 above.
- (b) It otherwise denies the allegations.

100 As to paragraph 100:

- (a) It denies paragraphs 100(a) and (b) and refers to and repeats paragraphs 39 to 40A, 42, 42A, 43A, 43B, 48 to 49, 51 to 57, 59 to 64, 66 to 71 and 99 above.
- (b) As to paragraph 100(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 11 July 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:

- (A) 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 84D(i), (m) to (r), (u), (v) and (gg) above.

- (B) Further or alternatively, the information alleged at paragraph 99(e) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 99(e) 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.

- (C) The information was confidential prior to 6 May 2019, alternatively 11 July 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 (A) above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

- (D) A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 11 July 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs (A) to (C) above.

101 It denies the allegations in paragraph 101 and refers to and repeats paragraphs 98 to 100 above.

102 It denies the allegations in paragraph 102 and refers to and repeats paragraphs 70, 71, 72 to 74, 76, 78, 79, 80 to 82 and 100 above and paragraph 122 below.

103 It denies the allegations in paragraph 103 and refers to and repeats paragraphs 98 to 103 above.

E.4 ALLEGED FY18 CASH FLOW INFORMATION AND CONTRAVENTIONS

True Position – February 2019

104 As to paragraph 104:

- (a) It refers to and repeats paragraphs 83 to 84A and 84C 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:
 - (A) As at 30 September 2018, approximately \$1,463 million.
 - (B) As at 31 December 2018, approximately \$1,953 million.
 - (iv) The difference between the amounts in (iii)A and (iii)B 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:
 - (A) As at 31 December 2017, approximately \$558 million.
 - (B) As at 31 December 2018, approximately \$1,953 million.
 - (iv) The difference between the amounts in subparagraphs (iii)A and (iii)B above is \$1,395 million.
 - (v) Its EBITDA cash conversion was 109.2%.
 - (vi) 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 refers to and repeats paragraph 86(c) above.
- (e) It otherwise denies the allegations.

FY18 Cash Flow Information

105 As to paragraph 105:

- (a) It refers to and repeats paragraphs 84D and 104 above.
- (b) It otherwise denies the allegations.

106 As to paragraph 106:

- (a) It denies paragraphs 106(a) and (b) and refers to and repeats paragraphs 39 to 40A, 42, 42A, 43A, 43B, 48 to 49, 51 to 57, 59 to 64, 66 to 76, 78 to 79A and 105 above.
- (b) As to paragraph 106(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 11 July 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:

- (A) 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 84D(c) to (f), (h), (i), (l) to (o), (r), (t) to (z), (gg) and (pp) above.

- (B) Further or alternatively, the information alleged at paragraphs 105(a)(iv) and 105(b)(v) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraphs 105(a)(iv) and 105(b)(v) 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.

- (C) The information was confidential prior to 6 May 2019, alternatively 11 July 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 (A) above are confidential. The information was known only to employees and directors CIMIC who owed duties of confidentiality.

- (D) A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 11 July 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs (A) to (C) above.

- (c) It otherwise denies the allegations.
- 107 It denies the allegations in paragraph 107 and refers to and repeats paragraphs 104 to 106 above.
- 108 It denies the allegations in paragraph 108 and refers to and repeats paragraphs 78, 79, 80 to 82 and 106 above and paragraph 122 below.
- 109 It denies the allegations in paragraph 109 and refers to and repeats paragraphs 104 to 108 above.

E.5 ALLEGED 1Q19 CASH FLOW INFORMATION AND CONTRAVENTIONS

- 110 As to paragraph 110:

- (a) It refers to and repeats paragraphs 84A, 84C, 84D, 86, 92, 98, 104 above and 111 below.
- (b) It otherwise denies the allegations.

True Position – April 2019

111 As to paragraph 111:

- (a) It refers to and repeats paragraphs 82 to 84A and 84C 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:
 - (A) As at 31 December 2018, approximately \$1,953 million.
 - (B) As at 31 March 2019, approximately \$2,153 million.
 - (iv) The difference between the amounts in subparagraphs (iii)A and (iii)B above is \$200 million.
 - (v) Its EBITDA cash conversion was 49.3%.
 - (vi) 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%.
- (c) It refers to and repeats paragraph 86(c) above.
- (d) It otherwise denies the allegations.

1Q19 Cash Flow Information

112 As to paragraph 112:

- (a) It refers to and repeats paragraphs 84D and 111 above.
- (b) It otherwise denies the allegations.

113 As to paragraph 113:

- (a) It denies paragraphs 113(a) and (b) and refers to and repeats 39 to 40A, 42, 42A, 43A, 43B, 48 to 49, 51 to 57, 59 to 64, 66, 67A, 66 to 76, 78, 79A, 81, 82 and 112 above.
- (b) As to paragraph 113(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 11 July 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:

- (A) 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 84D(aa) to (dd), (gg) to (kk) and (pp) above.

- (B) Further or alternatively, the information alleged at paragraph 112(e) comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 112(e) 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.

- (C) The information was confidential prior to 6 May 2019, alternatively 11 July 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 (A) above are confidential. The information was known only to employees and directors of CIMIC who owed duties of confidentiality.

- (D) A reasonable person would not expect that information to be disclosed prior to 6 May 2019, alternatively 11 July 2019, alternatively 17 July 2019.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs (A) to (C) above.

- (c) It otherwise denies the allegations.
- 114 It denies the allegations in paragraph 114 and refers to and repeats paragraphs 111 to 113 above.
- 115 It denies the allegations in paragraph 115 and refers to and repeats paragraphs 80 to 82, 113 above and 122 below.
- 116 It denies the allegations in paragraph 116 and refers to and repeats paragraphs 111 to 115 above.

F ALLEGED CASH FLOW CORRECTIVE DISCLOSURES

F.1 ALLEGED MAY PARTIAL CORRECTIVE DISCLOSURE

- 117 As to paragraph 117:
- (a) It refers to and repeats paragraph 84D(mm) above.
- (b) Subject to reference at trial to the full terms and effect of the newsletter entitled 'CIMIC Group (CIM AU) – Engineering profits' published by GMT Research on 30 April 2019, it admits that the newsletter substantively stated the matters in paragraphs 117(a) to (e).
- (c) It otherwise denies the allegations.

118 As to paragraph 118:

- (a) It refers to and repeats paragraph 84D(nn) above.
- (b) Subject to reference at trial to the full terms and effect of the article entitled 'Construction giant CIMIC targeted over \$800m profit boost' published by Fairfax Media on 4 May 2019, it admits that the article substantively stated the matters in paragraphs 118(a) to (d).
- (c) It otherwise denies the allegations.

119 As to paragraph 119:

- (a) It refers to and repeats 84D(oo) above.
- (b) Subject to reference at trial to the full terms and effect of the article entitled 'Investor sees CIMIC as overvalued, not overblown' published by Fairfax Media on 6 May 2019, it admits that the article substantively stated the matters in paragraph 119.
- (c) It otherwise denies the allegations.

120 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 120.

121 As to paragraph 121:

- (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.

F.2 ALLEGED S&P PARTIAL CORRECTIVE DISCLOSURE

122 As to paragraph 122:

- (a) It says that 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 \$1.9 billion as of December 2018 from \$600 million in 2017.

Particulars

CIMIC release to the ASX on 11 July 2019 entitled 'CIMIC Group rating affirmed by Standard & Poor's', at page 3 of the S&P announcement [CIM.100.005.4372].

- (b) Subject to reference at trial to the full terms and effect of the document entitled 'S&P Global Ratings announcement' published and lodged with ASX by CIMIC on 11 July 2019, it admits that the document substantively stated the matters in paragraphs 122(a) to (h).

123 As to paragraph 123:

- (a) It says that on 10 July 2019 its shares opened at \$45.25, closed at \$45.22, had a high of \$45.28, had a low of \$44.92 and had a VWAP of \$45.16.
- (b) It says that on 11 July 2019 its shares opened at \$45.00, closed at \$45.45, had a high of \$45.91, had a low of \$44.94 and had a VWAP of \$45.46.
- (c) It says that on 12 July 2019 its shares opened at \$45.39, closed at \$45.05, had a high of \$45.53, had a low of \$44.93 and had a VWAP of \$45.13.
- (d) It says that on 15 July 2019 its shares opened at \$44.87, closed at \$44.80, had a high of \$45.05, had a low of \$44.66 and had a VWAP of \$44.85.
- (e) It says that on 16 July 2019 its shares opened at \$44.96, closed at \$45.27, had a high of \$45.67, had a low of \$44.80 and had a VWAP of \$45.32.
- (f) It otherwise denies the allegations.

F.3 ALLEGED 17 JULY CASH FLOW PARTIAL CORRECTIVE DISCLOSURE

124 Subject to reference at trial to the full terms and effect of the 2019 Half Year Report, it admits the allegations in paragraph 124.

- 125 Subject to reference at trial to the full terms and effect of the 2019 Half Year Report, it admits the allegations in paragraph 125.
- 126 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 126.
- 127 As to paragraph 127:
- (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.

G ALLEGED CASH GENERATION REPRESENTATION

- 128 It denies the allegations in paragraph 128 and refers to and repeats paragraphs 39, 39A, 42, 42A, 48, 51, 54 to 56, 59, 60, 61, 63, 64, 66, 70, 71, 74 to 76, 78, 80, 81, 82 and 122 above.
- 129 It denies the allegations in paragraph 129 and refers to and repeats paragraph 128 above.
- 130 It denies the allegations in paragraph 130 and refers to and repeats paragraph 128 above.
- 131 As to paragraph 131:
- (a) It refers to and repeats paragraphs 39 to 39B, 40A, 42, 42A, 43A, 43B, 48 to 48B, 51, 52A, 52B, 54 to 56, 59 to 61, 61A, 63, 64, 66, 67A, 70, 71, 71A, 74 to 76, 78, 79A, 81 to 82A, 120 and 122 above.

(b) It otherwise denies the allegations.

132 As to paragraph 132:

(a) It refers to and repeats paragraph 128 above.

(b) If the alleged Cash Generation Representation was made (which is denied) then it denies that the representation was in respect to a future matter.

(c) It otherwise denies the allegations.

133 It denies the allegations in paragraph 133 and refers to and repeats paragraphs 128 to 132 above.

H ANNOUNCEMENTS MADE BY CIMIC AFTER MID-2019

134 As to paragraph 134:

(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 134(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 134(a), (b), (d) and (e).

135 Subject to reference at trial to the full terms and effect of CIMIC's 2019 Half Year Report, it admits the allegations in paragraph 135.

136 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 136.

137 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 137.

138 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 138.

- 139 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 139.

I ALLEGED MIDDLE EAST DISCLOSURE CONTRAVENTIONS

- 139A. It refers to and repeats paragraphs 18 to 34 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 consolidated statement of financial position included CIMIC's Shareholder Loan in the amount of \$559 million, compared to \$1,072.1 million at 22 January 2020.

Particulars

2018 Annual Report, at page 234 [CIM.002.001.0754].

2019 Annual Report, at page 164 [CIM.110.073.4748].

- (c) As at January 2018, the total amount of the banking facilities drawn by BICC and guaranteed by CIMIC was \$739 million.

Particulars

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

- (d) As at 22 January 2020, the total amount of the banking facilities drawn by BICC and guaranteed by CIMIC was \$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].

- 139B. It refers to and repeats paragraph 84B above and says that in respect of its audit of CIMIC's 2017 Financial Report, 2018 Financial Report and 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 [CIM.004.001.3549]:

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 [CIM.004.001.4251]:

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 [CIM.004.005.0574]:

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.

139C. Since August 2016 until 22 January 2020, CIMIC and BICC, have both separately and jointly undertaken ongoing strategic reviews 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 'Update on HLG Shareholders' [CIM.111.040.4741].

139D. 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 [CIM.102.038.3043].

- (c) In September 2019, CIMIC engaged PricewaterhouseCoopers (**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' [CIM.102.004.2611].

139E. 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 AEDT, 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 AEDT, 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 AEDT, CIMIC's Board held a meeting and resolved, among 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 financial year 2019.
- (iv) To confirm the financial year 2019 NPAT guidance of around \$800 million (excluding the expected NPAT impact of around \$1.8 billion due to BICC).
- (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

140 As to paragraph 140:

- (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 140(a) to (c).
- (c) It otherwise denies the allegations.

141 As to paragraph 141:

- (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 Shareholder Loan 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 141(a) to (c).

(c) It otherwise denies the allegations.

142 As to paragraph 142:

(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 Shareholder Loan 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 142(b) and (c).

(c) It otherwise denies the allegations.

143 As to paragraph 143, it admits the allegations.

HLG's performance

144 As to paragraph 144:

(a) It says that on 20 November 2017, Michael Wright emailed Michael Cooper and Stefan Camphausen the HLG Board Report, dated November 2017.

(b) It says that on 6 December 2017, Moustafa Fahour emailed Roman Garrido Sanchez and George Sassine the HLG Board Report, dated November 2017.

(c) 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 144(a) and (b).

(d) It otherwise denies the allegations.

145 As to paragraph 145:

(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) It says that on 29 January 2018, George Sassine emailed Scott McAlpine the HLG Contracting LLC – Draft 2018 Business Plan, dated December 2017.

(c) 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 145(a) to (k).

(d) It otherwise denies the allegations.

146 As to paragraph 146:

(a) It says that on 9 January 2018, Tamara Kidd received, from CIMIC's Group Reporting mailing list, draft HLG consolidated financial statements for the 2017 financial year, dated January 2018.

(b) It says that on 3 February 2018, Carlos Mendes emailed Gary McLean (Deloitte) draft HLG consolidated financial statements for the 2017 financial year, dated January 2018.

(c) Subject to reference at trial to the full terms and effect of the draft HLG consolidated financial statements for the 2017 financial year, it admits that the draft HLG consolidated financial statements for the 2017 financial year stated the matters in paragraphs 145(a) to (g), save that the figures in paragraphs 145(a) to (g) are approximate.

(d) It otherwise denies the allegations.

147 As to paragraph 147:

(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 147(a) to (g).

Legacy Project Receivables

147A. It refers to and repeats paragraphs 18, 43 and 46 above 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

Half Year Report for the six months ended 31 December 2010, at page 15 [CIM.013.001.0737].

2011 Annual Report, at page 32 [CIM.013.001.1045].

Half Year Report for the six months ended 30 June 2012, at page 15 [CIM.012.001.0089].

2012 Annual Report, at page 33 [CIM.012.001.0089].

Half Year Report for the six months ended 30 June 2013, at page 18 [CIM.012.001.0389].

2013 Annual Report, at page 137 [CIM.013.001.1133].

Half Year Report for the six months ended 30 June 2014, at page 18 [CIM.013.001.1603].

2014 Annual Report, at page 80 [CIM.013.001.1447].

Half Year Report for the six months ended 30 June 2015, at page 22 [CIM.013.001.1840].

2015 Annual Report, at page 82 [CIM.013.001.1683].

Half Year Report for the six months ended 30 June 2016, at page 22 [CIM.002.001.0008].

2016 Annual Report, at page 127 [CIM.002.001.0061].

Half Year Report for the six months ended 30 June 2017, at page 22 [CIM.002.001.0286].

- (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'.

148 As to paragraph 148:

- (a) It refers to and repeats paragraph 147A 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

149 As to paragraph 149:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 149 and 150, 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 says that in or around February 2018, BICC drew down AED 55 million under the HSBC Syndicated Facility.
- (d) It otherwise denies the allegations.

150 As to paragraph 150:

- (a) It refers to and repeats paragraph 149 above.
- (b) Subject to reference at trial to the full terms and effect of the HLG Exposure Update dated 19 February 2018, it says that document stated that HLG had fully drawn the HSBC Syndicated Facility following the draw down at paragraph 149(c) above.
- (c) It otherwise denies the allegations.

CIMIC's exposure to HLG

151 As to paragraph 151:

- (a) It refers to and repeats paragraphs 58 and 139A above.
- (b) It says that on 6 February 2018, Colin Young emailed Stefan Camphausen and George Sassine the draft HLG – Exposure Update, dated 5 February 2018, the full terms and effect of which it will refer to at trial.
- (c) It says that on 1 February 2018, Stefan Camphausen emailed Michael Wright and Adolfo Valderas, the full terms and effect of which it will refer to at trial.
- (d) It says that on 11 October 2019, George Sassine emailed Emilio Grande and Colin Young the BICC – Exposure Estimate, the full terms and effect of which it will refer to at trial.
- (e) It says that the draft CIMIC 2017 Annual Report dated 30 January 2018 formed part of the ARC papers for the meeting on 7 February 2018.
- (f) Subject to reference at trial to the full terms and effect of the 2017 Annual Report, it admits that the 2017 Annual Report substantively stated the matters in paragraphs 151(a), (c) and (d).
- (g) It otherwise denies the allegations.

Valuation of HLG

151A. In the course of preparing its financial statements in each of financial year 2017 and financial year 2018, CIMIC calculated the 'value-in-use' of its investment in BICC by preparing a model (the *VIU model*) which was used to assess the recoverability of:

- (a) the carrying value of its investment in BICC; and

- (b) its shareholder loans to BICC.

151B. Each VIU model was:

- (a) prepared by CIMIC with reference to the following documents prepared by and/or provided by HLG:
 - (i) the unaudited consolidated financial information, which included a balance sheet and a 'profit and loss appropriation' (the **HLG Consolidated Financial Pack**);
 - (ii) a draft of HLG's business plan (the **HLG Business Plan**) which was a forward-looking presentation and ultimately approved by HLG's board;
 - (iii) loan repayment schedules, which set out a repayment schedule for HLG's overdraft facilities and other bank debts (the **Loan Repayment Schedules**);
- (b) reviewed and audited by Deloitte as part of its audit of CIMIC's financial statements; and
- (c) used for the purpose of valuing the Call Option and:
 - (i) for financial year 2017, the model was provided to KPMG for the purpose of KPMG performing that valuation; and
 - (ii) for financial year 2018, a summary of the model was provided to Grant Thornton for the purpose of Grant Thornton performing that valuation.

151C. In relation to the VIU model prepared for the financial year ending 31 December 2017 (the **FY17 VIU model**), CIMIC says as follows:

- (a) on 6 October 2017, HLG provided CIMIC with the unaudited HLG Consolidated Financial Pack as at 30 September 2017;

Particulars

Email from Ramkumar Paranjothi to CIMIC Group Reporting and Derek Kerr dated 6 October 2017, attaching the HLG Consolidated Financial Pack for September 2017 [CIM.122.007.6923, CIM.122.007.6924].

- (b) on 17 October 2017, HLG provided CIMIC with the quarterly Loan Repayment Schedule for September 2017;

Particulars

Email from Debadutta Acharya to Vijay Divate, David Wood, Trevor Northcott, Ram Kumar Paranjothi and Colin Young dated 17 October 2017, attaching the Loan Repayment Schedule for September 2017 [CIM.102.032.7928; CIM.102.032.7931].

- (c) on 15 December 2017, CIMIC provided a draft copy of the FY17 VIU model and the unaudited HLG Consolidated Financial Pack as at 30 September 2017 to Deloitte for the purpose of Deloitte's audit of CIMIC's financial statements for financial year 2017;

Particulars

Email from Derek Kerr to Lee Highton, Crina Sava and John Leotta dated 15 December 2017, attaching draft FY17 VIU model and HLG Consolidated Financial Pack for September 2017 [CIM.102.032.7780; CIM.102.032.7914; CIM.102.032.7821].

- (d) on 9 January 2018, HLG provided CIMIC with the unaudited HLG Consolidated Financial Pack as at 31 December 2017;

Particulars

Email from Ramkumar Paranjothi to CIMIC Group Reporting and Derek Kerr dated 9 January 2018, attaching the draft HLG Consolidated Financial Pack for December 2017 [CIM.122.002.6708, CIM.122.002.6709].

- (e) on 31 January 2018, CIMIC provided a further updated draft of the FY17 VIU model to Deloitte for the purpose of its audit of CIMIC's financial statements for financial year 2017;

Particulars

Email from Colin Young to John Leotta dated 31 January 2018, attaching updated draft FY17 VIU model [CIM.102.032.7558; CIM.102.032.7561].

- (f) between 2 and 4 February 2018, CIMIC provided Deloitte and KPMG with a final draft of the FY17 VIU model and the HLG Contracting Valuation Report, the latter of which identified the carrying value of CIMIC's equity in BICC as US\$192.6 million (\$246.9 million);

Particulars

Email from Colin Young to John Leotta dated 2 February 2018, attaching the finalised FY17 VIU model [CIM.102.038.8527; CIM.102.038.8534, CIM.102.038.8528].

Email from Carlos Mendes to Ian Jedlin and Aaron Sun dated 4 February 2018, attaching the finalised FY17 VIU Model [CIM.119.006.2345; CIM.119.006.2352; CIM.119.006.2345].

- (g) the papers prepared for the ARC meeting on 6 February 2018 included a draft HLG Contracting Valuation Report dated 2 February 2018 which identified the carrying value of CIMIC's equity in BICC as US\$191.6m (\$245.7 million);

Particulars

Papers for the ARC meeting on 6 February 2018 [CIM.004.001.3549].

- (h) on 7 February 2018, CIMIC published its 2017 Annual Report which stated that the carrying value of its investment in HLG was US\$191.6m (\$245.6 million) as at 31 December 2017;

Particulars

2017 Annual Report, at page 201 [CIM.002.001.0335].

- (i) in relation to the HLG Business Plan, it refers to and repeats paragraph 145 above and further says on 17 February 2018, HLG's board approved the HLG Business Plan for 2018; and

Particulars

[Minutes of the meeting of the Board of Directors for HLG dated 17 April 2018 [CIM.100.154.5563].

- (j) on 17 April 2018, HLG's board approved the 2017 audited annual financial statements for HLG.

Particulars

Minutes of the meeting of the Board of Directors for HLG dated 17 April 2018 [CIM.100.154.5563].

152 As to paragraph 152:

- (a) It refers to and repeats paragraphs 151A to 151C above.
 (b) It otherwise denies the allegations.

153 As to paragraph 153:

- (a) Subject to reference at trial to the full terms and effect of the FY17 HLG Valuation and the February 2018 HLG Contracting Valuation Report, it admits the

allegations in paragraphs 153(a), (b), (c)(ii), (c)(iii), (c)(v), (c)(vi), and (c)(vii), save that the words 'net profit margin' in (c)(iii) be replaced with 'margin (being revenue (excluding joint venture) divided by profit before tax)'.

- (b) As to paragraph 153(c)(i):
 - (i) It says that the FY17 HLG Valuation included an assumption that HLG's revenue would grow from AED 5,843 million in financial year 2018 to AED 10,688 million in financial year 2022.
 - (ii) It otherwise denies the allegations.
- (c) As to paragraph 153(c)(iv):
 - (i) It says that the FY17 HLG Valuation included an assumption that, between financial year 2018 and financial year 2022, HLG would achieve, on average, a reduction in Debtor Days, an improvement in Net Capital Working Days, and positive Net Working Capital Days.
 - (ii) It otherwise denies the allegations.
- (d) As to paragraph 153(d):
 - (i) It says that the equity value of HLG as at 31 December 2017 was USD 452.2 million of which CIMIC's 45% share was valued at USD 203.5 million.
 - (ii) It otherwise denies the allegations.

Accounting treatment in respect of HLG

Carrying value of investment in HLG

- 154 As to paragraph 154:
- (a) It refers to and repeats paragraph 151C above and paragraphs 155 and 170(b) below.
 - (b) It says that the CIMIC Presentation entitled 'IFRS 9 Financial Instruments – HLG Receivable Preliminary Impact Assessment' dated January 2018 stated that CIMIC management used the HLG FY17 Valuation in assessing the carrying value of its investment in HLG.

- (c) It says that CIMIC's 2017 Annual Report stated that the carrying value of its investment in HLG was \$245.6 million as at 31 December 2017.
- (d) It otherwise denies the allegations.

Shareholder Loans

155 As to paragraph 155:

- (a) Subject to reference at trial to the full terms and effect of the documents particularised at paragraph 155, it admits that in January 2018, KPMG assessed HLG's indicative credit rating on a standalone basis as at the end of financial year 2017 using the Moody's rating methodology for the global construction industry, as Caa3.
- (b) It otherwise denies the allegations.

156 As to paragraph 156, it admits the allegations.

157 As to paragraph 157:

- (a) It says CIMIC assessed the expected credit losses (***ECL***) by applying an overall credit rating for HLG to the amounts owed by HLG had to its creditors.
- (b) It says that it had regard to the priority between different classes of creditors in determining the expected credit losses for each class.
- (c) It says that it recorded a credit loss adjustment against the Shareholder Loans of \$487 million.
- (d) It otherwise denies the allegations.

158 As to paragraph 158:

- (a) It refers to and repeats paragraph 157 above.
- (b) It says that in considering the ECL of the CIMIC Guarantees, it applied a nominal credit rating (namely Baa2) and that based on Moody's tables this resulted in an expected loss rate of 0.87%.
- (c) It otherwise denies the allegations.

Call Option

159 Subject to reference at trial to the full terms and effect of the KPMG report 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 159.

160 As to paragraph 160:

- (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

2018 Annual Report, at page 179 [CIM.002.001.0754].

- (b) It otherwise denies the allegations.

161 As to paragraph 161:

- (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) on the following dates, CIMIC disclosed that the fair value of the Call Option was determined to be US\$54.0 million:

- (i) as at 31 December 2017 (in the 2017 Annual Report);
- (ii) as at 30 June 2018 (in the 2018 Half Year Report);
- (iii) 31 December 2018 (in the 2018 Annual Report); and
- (iv) 30 June 2019 (in the 2019 Half Year Report).

Particulars

2017 Annual Report, at page 201 [CIM.002.001.0335].

2018 Half Year Report, at page 30 [CIM.002.001.0653].

2018 Annual Report, at page 179 [CIM.002.001.0754].

2019 Half Year Report, at page 30 [CIM.114.010.1965].

- (c) It otherwise denies the allegations.

Alleged errors and unreasonable assumptions in the FY17 HLG Valuation

162 As to paragraph 162:

- (a) It refers to and repeats paragraphs 151A to 151C above.
- (b) It says the FY17 HLG Valuation included as HLG's opening position:
 - (i) assumed cash balances of AED 70,674,680;
 - (ii) assumed outstanding debt from overdraft facilities of AED 55,909,294;
 - (iii) assumed outstanding debt from the HSBC Syndicated Banking facility of AED 1,135,078,300; and
 - (iv) assumed outstanding debt from other bank facilities and term debt of AED 957,816,767.
- (c) It otherwise denies the allegations.

Particulars

Further particulars will be provided following the receipt of expert evidence.

163 As to paragraph 163:

- (a) It refers to and repeats paragraphs 139C and 151A to 151C above.
- (b) It otherwise denies the allegations.

Particulars

Further particulars will be provided following the receipt of expert evidence.

164 It denies the allegations in paragraph 164.

Particulars

Further particulars will be provided following the receipt of expert evidence.

Accounting treatment in respect of HLG

165 As to paragraph 165:

- (a) It refers to and repeats paragraphs 162 to 164 above.

- (b) It otherwise denies the allegations.
- 166 As to paragraph 166:
- (a) It refers to and repeats paragraph 165 above.
 - (b) It otherwise denies the allegations.
- 167 As to paragraph 167:
- (a) It refers to and repeats paragraph 165 above.
 - (b) It otherwise denies the allegations.
- 168 As to paragraph 168:
- (a) It refers to and repeats paragraph 165 above.
 - (b) It otherwise denies the allegations.
- 169 As to paragraph 169:
- (a) It refers to and repeats paragraph 165 above.
 - (b) It otherwise denies the allegations.

True Position – February 2018

- 170 As to paragraph 170:
- (a) It refers to and repeats paragraphs 58 and 165 to 169 above.
 - (b) It says that by 7 February 2018, CIMIC had formed the view and announced to the market that:
 - (i) the fair value of CIMIC's equity investment in HLG was \$245.6 million as at 31 December 2017, and that the commencement of AASB 15 on 1 January 2018 might lead to the equity being reduced to nil.

Particulars

CIMIC 2017 Annual Report, at pages 201, 253 [CIM.002.001.0335].

Further particulars will be provided following the receipt of expert evidence.

- (ii) the value of the Shareholder Loans was \$1,046.3 million as at 31 December 2017, but that the commencement of AASB 9 might lead to an estimated adjustment reducing equity by around \$500 million (after tax) with regards to the non-current loan receivables from HLG.

Particulars

CIMIC 2017 Annual Report, at pages 181, 252 [CIM.002.001.0335].

Further particulars will be provided following the receipt of expert evidence.

- (iii) the fair value of the Call Option was \$69.2 million as at 31 December 2017.

Particulars

CIMIC 2017 Annual Report, at page 201 [CIM.002.001.0335].

Further particulars will be provided following the receipt of expert evidence.

- (iv) it was not required to recognise any amounts in relation to the CIMIC Guarantees as at 31 December 2017.

Particulars

CIMIC 2017 Annual Report, at page 201 [CIM.002.001.0335].

Further particulars will be provided following the receipt of expert evidence.

- (c) It otherwise denies the allegations.

February 2018 Middle East Information

171 As to paragraph 171:

- (a) It refers to and repeats paragraph 139B, 139C, 151A to 151C, 155, 159 to 161 and 170 above.
- (b) It otherwise denies the allegations.

172 As to paragraph 172:

- (a) As to paragraph 172(a), it refers to and repeats paragraph 171 above and says that if the February 2018 Middle East Information was true (which it denies), the character of that information was that it was based on opinions that:
- (i) were not held by CIMIC; and
 - (ii) had not been provided to CIMIC,
- and as such it was not information that a reasonable person would expect to have a material effect on the price or value of CIMIC Securities.
- (b) As to paragraph 172(b), it refers to and repeats paragraphs 41, 46, 47, 50 and 58 above and otherwise denies the allegations.
- (c) As to paragraph 172(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:

- (A) That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 139A to 139E above.

The information in paragraph 171 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated in the course of, or for the purpose of, the Strategic Review which was ongoing and incomplete.

- (B) Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

CIMIC refers to and repeats the matters particularised in paragraph (C) below.

The information in paragraph 171 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated for internal management purposes.

- (C) Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 171 is alleged to have been known, or ought reasonably to have been known, by CIMIC based on (or inferred from) facts, intermediate facts and/or information known (including opinions) which involved supposition and/or was imprecise and/or its veracity was open to doubt.

- (D) 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 information, including the documents, particularised at paragraph 171 is confidential (save for any information which was included in an annual report or interim report disclosed to the market). The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

- (E) A reasonable person would not expect that information to be disclosed.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs (A) to (D) above.

Further particulars may be provided following the receipt of expert evidence.

- (d) It otherwise denies the allegations.

173 As to paragraph 173, it denies the allegations and refers to and repeats paragraphs 170 and 172 above.

174 As to paragraph 174, it denies the allegations and refers to and repeats paragraphs 56, 58, 65, 77, 79, 134, 136 and 173 above.

175 As to paragraph 175, it denies the allegations and refers to and repeats paragraphs 170 to 174 above.

I.2 ALLEGED JULY 2018 MIDDLE EAST DISCLOSURE CONTRAVENTIONS

HLG's Performance

176 As to paragraph 176:

- (a) It refers to and repeats paragraph 145 above.
- (b) It says that on 16 April 2018 Moustafa Fahour emailed Michael Wright, Stefan Camphausen, Roman Garrido Sanchez, George Sassine and Michael Charlton the 2018 HLG Business Plan.
- (c) It otherwise denies the allegations.

177 As to paragraph 177:

- (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 177(a) to (g).
- (e) It otherwise denies the allegations.

178 As to paragraph 178:

- (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 178(a) to (h).
- (d) It otherwise denies the allegations.

179 As to paragraph 179:

- (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 179(a) to (h).
- (d) It otherwise denies the allegations.

180 As to paragraph 180:

- (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 180(a), (c) to (e) and (g) to (i).
- (c) It otherwise denies the allegations.

181 As to paragraph 181:

- (a) It says that on 3 May 2018, Moustafa Fahour emailed Michael Wright, Stefan Camphausen, George Sassine and 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.

182 As to paragraph 182:

(a) It says that on 15 May 2018, Scott McAlpine emailed Stefan Camphausen, Emilio Grande and Colin Young the HLG Contracting LLC Consolidated Financial Statements – 31 December 2017, dated 17 April 2018.

(b) It says that on 29 June 2018, Emilio Grande emailed Ignacio Segura, Roman Garrido Sanchez, George Sassine and Colin Young the HLG Contracting LLC Consolidated Financial Statements – 31 December 2017, dated 17 April 2018.

(c) It says that on 16 April 2018, Moustafa Fahour emailed Michael Wright, Stefan Camphausen, Roman Garrido Sanchez and George Sassine the draft HLG consolidated financial statements for the 2017 financial year.

(d) It otherwise denies the allegations.

183 As to paragraph 183:

(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.

184 As to paragraph 184:

(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.

- (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 184(a) to (h).
- (d) It otherwise denies the allegations.

Legacy Project Receivables

185 As to paragraph 185:

- (a) It refers to and repeats paragraph 147A 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.

186 As to paragraph 186:

- (a) It refers to and repeats paragraph 147A 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.

187 As to paragraph 187:

- (a) It refers to and repeats paragraph 147A above.
- (b) It says that on 5 June 2018, Christopher Granda emailed Ignacio Segura 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 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' and '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.

188 As to paragraph 188:

- (a) It refers to and repeats paragraph 147A 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 on 29 June 2018, Group Reporting emailed Tamara Kidd the BICC Project Data Report as at May 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 May 2018 contained a worksheet entitled 'Uncert. Rev & Overdue – May18';
 - (ii) that worksheet contained a column headed 'Legacy / Current', which contained values 'Completed', 'Ongoing' and '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.
- (e) It otherwise denies the allegations.

Cash Requests – March, April and May 2018

189 As to paragraph 189:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 189 to 192, 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

190 As to paragraph 190, it refers to and repeats paragraph 189 above and otherwise denies the allegations.

191 As to paragraph 191, it refers to and repeats paragraph 189 above and otherwise denies the allegations.

192 As to paragraph 192, it refers to and repeats paragraph 189 above and otherwise denies the allegations.

Amendments to UNB Facility Agreements

193 As to paragraph 193:

- (a) It says that on or about 24 April 2018, BICC and UNB entered into a facility agreement the terms of which were set out in a facility offer letter.
- (b) Subject to reference at trial to the full terms and effect of the facility offer letter dated 24 April 2018, it admits that the facility offer letter amended the UNB Facility Agreements substantively to the effect in paragraphs 193(a) to (d).
- (c) It otherwise denies the allegations.

Additional debt-facilities – Greensill Facility A and Facility B

194 Subject to reference at trial to the full terms and effect of the Greensill Facility A Agreement, it admits the allegations in paragraph 194.

195 As to paragraph 195:

- (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 195(a) to (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.

- 196 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 196.
- 197 As to paragraph 197:
- (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 197(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.
- 198 Subject to reference at trial to the full terms and effect of the Greensill Facility B Agreement, it admits the allegations in paragraph 198.
- 199 As to paragraph 199:
- (a) It says it will rely on Greensill Facility B Agreement at trial as to its full terms.
 - (b) It otherwise denies the allegations.
- 200 Subject to reference at trial to the full terms and effect of the Greensill Facility B Guarantee, it admits the allegations in paragraph 200.
- 201 As to paragraph 201:
- (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

- 202 As to paragraph 202:
- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 202 to 205, 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 net of discount and fees;
 - (ii) on 6 July 2018, BICC drew down AED 77.5 million net of discount; and
 - (iii) on 27 July 2018, BICC drew down AED 66.9 million net of discount.
- (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;
 - (ii) on 25 June 2018, CIMIC transferred AED 46.0 million to BICC; and
 - (iii) on 28 June 2018, BICC transferred AED 187.6 million to CIMIC.
- (d) It otherwise denies the allegations.

203 As to paragraph 203, it refers to and repeats paragraph 202 above and otherwise denies the allegations.

204 As to paragraph 204, it refers to and repeats paragraph 202 above and otherwise denies the allegations.

205 As to paragraph 205, it refers to and repeats paragraph 202 above and otherwise denies the allegations.

CIMIC's exposure to BICC

206 As to paragraph 206:

- (a) It refers to and repeats in paragraphs 139A and 151 above.
- (b) It says that the draft CIMIC consolidated financial report for the six months ended 30 June 2018 formed part of the ARC papers for the meeting on 18 July 2018, the full terms and effect of which it will refer to at trial.

- (c) It says that on 9 July 2019, Colin Young emailed Derek Kerr the spreadsheet 'HLG Bonding_Jun-18 from FP&A_cy edit', the full terms and effect of which it will refer to at trial.
- (d) It says that on 10 September 2018, Stefan Camphausen emailed Michael Wright, Ignacio Segura and Derek Kerr the BICC – Update, dated 10 September 2018, the full terms and effect of which it will refer to at trial.
- (e) It says that on 11 October 2019, George Sassine emailed Emilio Grande and Colin Young the BICC – Exposure Estimate, the full terms and effect of which it will refer to at trial.
- (f) Subject to reference at trial to the full terms and effect of the BICC – Exposure Estimate, it admits that the BICC Exposure Estimate substantively stated the matters in paragraph 206(c).
- (g) It otherwise denies the allegations.

Accounting treatment in respect of BICC

207 As to paragraph 207:

- (a) It refers to and repeats paragraphs 177 to 184 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) 'continued to deteriorate';
 - (iii) 'significant challenges';
 - (iv) 'declined substantially';
 - (v) 'critically degraded';
 - (vi) 'escalating risk'; and
 - (vii) 'reliant'.
- (c) It otherwise denies the allegations.

208 As to paragraph 208:

- (a) It refers to and repeats paragraph 165 above.
- (b) It otherwise denies the allegations.

209 As to paragraph 209:

- (a) It refers to and repeats paragraph 165 above.
- (b) It otherwise denies the allegations.

210 As to paragraph 210:

- (a) It refers to and repeats paragraph 165 above.
- (b) It otherwise denies the allegations.

True Position – July 2018

211 As to paragraph 211:

- (a) It refers to and repeats paragraphs 207 to 210 above.
- (b) It says that by 18 July 2018, CIMIC had formed the view and announced to the market that:
 - (i) the value of the Shareholder Loans was \$593.2 million as at 30 June 2018, with the change to AASB 9 leading to an adjustment reducing equity by \$487.4 million with regards to the non-current loan receivables from BICC.

Particulars

CIMIC 2018 Half Year Report, at pages 12, 26, 49 [CIM.002.001.0653].

Further particulars will be provided following the receipt of expert evidence.

- (ii) the fair value of the Call Option was \$72.0 million as at 30 June 2018.

Particulars

CIMIC 2018 Half Year Report, at page 30 [CIM.002.001.0653].

Further particulars will be provided following the receipt of expert evidence.

- (iii) it was not required to recognise any amounts in relation to the CIMIC Guarantees as at 30 June 2018.

Particulars

CIMIC 2018 Half Year Report, at page 30 [CIM.002.001.0653].

Further particulars will be provided following the receipt of expert evidence.

- (c) It otherwise denies the allegations.

July 2018 Middle East Information

212 As to paragraph 212:

- (a) It refers to and repeats paragraphs 171 and 211 above.
- (b) It otherwise denies the allegations.

213 As to paragraph 213:

- (a) As to paragraph 213(a), it refers to and repeats paragraph 212 above and says that if the July 2018 Middle East Information was true (which it denies), the character of that information was that it was based on opinions that:
 - (i) were not held by CIMIC; and
 - (ii) had not been provided to CIMIC.
- (b) As to paragraph 213(b), it refers to and repeats paragraphs 41, 46, 47, 50, 58 and 65 above and otherwise denies the allegations.
- (c) As to paragraph 213(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:

- (A) That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 139A to 139E above.

The information in paragraph 212 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated in the course of, or for the purpose of, the Strategic Review which was ongoing and incomplete.

- (B) Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

CIMIC refers to and repeats the matters particularised in paragraph 0 below.

The information in paragraph 212 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated for internal management purposes.

- (C) Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 212 is alleged to have been known, or ought reasonably to have been known, by CIMIC based on (or inferred from) facts, intermediate facts and/or information known (including opinions) which involved supposition and/or was imprecise and/or its veracity was open to doubt.

- (D) 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 information, including the documents, particularised at paragraph 212 is confidential (save for any information which was included in an annual report or interim report disclosed to the market). The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

- (E) A reasonable person would not expect that information to be disclosed.

Particulars

CIMIC refers to and repeats the matters particularised in paragraphs (A) to (D) above.

Further particulars may be provided following the receipt of expert evidence.

- (d) It otherwise denies the allegations.
- 214 It denies the allegations in paragraph 214 and refers to and repeats paragraphs 211 to 213 above.
- 215 It denies the allegations in paragraph 215 and refers to and repeats paragraphs 65, 77, 79, 134, 136 and 213 above.
- 216 It denies the allegations in paragraph 216 and refers to and repeats paragraphs 211 to 215 above.

I.3 ALLEGED FEBRUARY 2019 MIDDLE EAST DISCLOSURE CONTRAVENTIONS

Amendments to UNB Facilities Agreements

- 217 As to paragraph 217:
- (a) It says that on or about 15 August 2018, BICC and UNB entered into a facility agreement the terms of which were set out in a facility offer letter.
- (b) Subject to reference at trial to the full terms and effect of the facility offer letter dated 15 August 2018, it admits that the facility offer letter contained terms substantively in the form set out in paragraphs 217(a) to (e).
- (c) It otherwise denies the allegations.

BICC's performance – August to October

- 218 As to paragraph 218:
- (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.

219 As to paragraph 219:

(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.

220 As to paragraph 220:

(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 220(a) to (h).

(d) It otherwise denies the allegations.

221 As to paragraph 221:

(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 221(a) to (h).

(d) It otherwise denies the allegations.

222 As to paragraph 222:

(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 222(a), (b) and (d) to (h).

(c) It otherwise denies the allegations.

Cash Requests – July to October 2018

223 As to paragraph 223:

(a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 223 to 228, 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 net of discount;

(ii) on 6 September 2018, BICC drew down AED 37.9 million net of discount;

(iii) on 25 September 2018, BICC drew down AED 89.8 million net of discount; and

(iv) on 17 October 2018, BICC drew down AED 84.4 million net of discount.

(c) It otherwise denies the allegations.

224 As to paragraph 224, it refers to and repeats paragraph 223 above and otherwise denies the allegations.

- 225 As to paragraph 225, it refers to and repeats paragraph 223 above and otherwise denies the allegations.
- 226 As to paragraph 226, it refers to and repeats paragraph 223 above and otherwise denies the allegations.
- 227 As to paragraph 227, it refers to and repeats paragraph 223 above and otherwise denies the allegations.
- 228 As to paragraph 228, it refers to and repeats paragraph 223 above and otherwise denies the allegations.

Additional Debt Facilities – HSBC Multi-Option Facility

- 229 As to paragraph 229, 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.
- 230 As to paragraph 230:
- (a) It 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.
- 231 Subject to reference at trial to the full terms and effect of the HSBC MOFA Guarantee, it admits the allegation at paragraph 231 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.
- 232 As to paragraph 232:
- (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 232(a) and (b).
 - (b) It otherwise denies the allegations.

Cash Requests – November 2018 to January 2019

233 As to paragraph 233:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 233 to 238, 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.

234 As to paragraph 234, it refers to and repeats paragraph 233 above and otherwise denies the allegations.

235 As to paragraph 235, it refers to and repeats paragraph 233 above and otherwise denies the allegations.

- 236 As to paragraph 236, it refers to and repeats paragraph 233 above and otherwise denies the allegations.
- 237 As to paragraph 237, it refers to and repeats paragraph 233 above and otherwise denies the allegations.
- 238 As to paragraph 238, it refers to and repeats paragraph 233 above and otherwise denies the allegations.

Legacy Project Receivables

- 239 As to paragraph 239:
- (a) It refers to and repeats paragraph 147A 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' and '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.

240 As to paragraph 240:

- (a) It refers to and repeats paragraph 147A 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' and '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 2,920,525,000; 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 521,888,000.
- (e) It otherwise denies the allegations.

241 As to paragraph 241:

- (a) It refers to and repeats paragraph 147A 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' and '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 2,917,413,000; 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 514,647,000.
- (d) It otherwise denies the allegations.

242 As to paragraph 242:

- (a) It refers to and repeats paragraph 147A 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' and '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.

243 As to paragraph 243:

(a) It refers to and repeats paragraph 147A 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' and '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.

244 As to paragraph 244:

- (a) It refers to and repeats paragraph 147A 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' and '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 allegations.

245 As to paragraph 245:

- (a) It refers to and repeats paragraph 147A 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' and '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 – as of late 2018

246 As to paragraph 246:

- (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.

247 As to paragraph 247:

(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.

248 As to paragraph 248:

(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 248(a) to (e), (g) and (h).

(c) It otherwise denies the allegations.

CIMIC's exposure to BICC

249 As to paragraph 249:

(a) It refers to and repeats paragraph 139A above.

(b) It says that on 16 January 2019, Colin Young emailed Stefan Camphausen the draft BICC Exposure Update dated 16 January 2019, the full terms and effect of which it will refer to at trial.

(c) It says that on 11 March 2019, Colin Young emailed Stefan Camphausen, George Sassine, Roman Garrido Sanchez and Christopher Granda the draft BICC Exposure Update dated 11 March 2019, the full terms and effect of which it will refer to at trial.

(d) It says that on 11 October 2019, George Sassine emailed Emilio Grande and Colin Young the BICC – Exposure Estimate, the full terms and effect of which it will refer to at trial.

(e) Subject to reference at trial to the full terms and effect of the draft BICC Exposure Update at subparagraphs (b) to (d) above, it admits that the draft BICC Exposure

Update dated 16 January 2019 substantively stated the matters in paragraphs 249(a) to (c).

- (f) It otherwise denies the allegations.

Valuation of BICC

249A. In relation to the VIU model prepared for the financial year ending 31 December 2018 (the **FY18 VIU model**):

- (a) on 6 April 2018, BICC provided CIMIC with the unaudited BICC Consolidated Financial Pack as at 31 March 2018.

Particulars

Email from Ram Kumar Paranjothi to 'Group Reporting', Hamek Soor and Derek Kerr dated 6 April 2018, attaching the BICC Consolidated Financial Pack for March 2018 [CIM.102.032.5165; CIM.102.032.5166].

- (b) on 5 July 2018, BICC provided CIMIC with the unaudited BICC Consolidated Financial Pack as at 30 June 2018.

Particulars

Email from Ram Kumar Paranjothi to Hamek Soor dated 5 July 2018, attaching the BICC Consolidated Financial Pack for June 2018 [BIC.002.016.3180; BIC.002.016.3183].

- (c) on 25 October 2018, BICC provided CIMIC with the quarterly Loan Repayment Schedule for September 2018.

Particulars

Email from David Wood to Colin Young dated 25 October 2018, attaching the Loan Repayment Schedule for September 2018 [CIM.102.024.2399; CIM.102.024.2400].

- (d) on 28 October 2018, BICC provided CIMIC with the unaudited BICC Consolidated Financial Pack as at 30 September 2018.

Particulars

Email from Qaisir Mahmood to Colin Young, Christopher Granda, Ram Kumar Paranjothi dated 28 October 2018, attaching the BICC Consolidated Financial Pack for September 2018 [CIM.122.019.1961; CIM.122.019.1964].

- (e) on 19 December 2018, CIMIC provided a draft copy of the FY18 VIU Model to Deloitte for the purpose of Deloitte's audit of CIMIC's financial statements for financial year 2018.

Particulars

Email from Derek Kerr to Crina Sava, John Leotta, Carla Scodeller, Carlos Mendes and Colin Young dated 19 December 2018, attaching draft FY18 VIU Model [CIM.102.026.1891; CIM.102.026.1892].

- (f) on 20 December 2018, CIMIC provided a copy of the unaudited BICC Consolidated Financial Packs as at 31 March 2018, 30 June 2018 and 30 September 2018 to Deloitte for the purpose of Deloitte's audit of CIMIC's financial statements for financial year 2018.

Particulars

Email from Colin Young to Tom Hydes, attaching BICC Consolidated Financial Packs for March and June 2018 [CIM.102.022.0623; CIM.102.022.0671; CIM.102.022.0651].

Email from Colin Young to Tom Hydes, attaching BICC Consolidated Financial Pack for September 2018 [CIM.102.023.6156; CIM.102.023.6158].

- (g) on 23 January 2019, CIMIC provided Deloitte with a final draft of the financial year 2018 VIU model (the **Final FY18 VIU Model**).

Particulars

Email from Colin Young to Tom Hydes dated 23 January 2019, attaching the finalised FY18 VIU Model [CIM.102.022.0605; CIM.102.022.0607].

- (h) the papers prepared for the ARC meeting on 5 February 2019 included a draft BICC Valuation Report dated January 2019 which stated that from 1 January 2018 as a result of the implementation of AASB 15, CIMIC adjusted the carrying value of its investment in BICC to nil.

Particulars

Papers for the ARC meeting on 5 February 2019 [CIM.004.001.4251].

- (i) on 5 February 2019, CIMIC published its 2018 Annual Report which stated that the carrying value of its investment in BICC was nil as at 31 December 2018, with a reduction of \$245.6 million from the carrying value at 31 December 2017 due to the commencement of AASB 15.

Particulars

2018 Annual Report, at pages 142, 179 [CIM.002.001.0754].

- (j) on 14 February 2019, BICC's board approved BICC's Business Plan for 2019.

Particulars

Minutes of the Meeting of the Board of Directors for BICC dated 13 March 2019 [CIM.111.044.2313].

- (k) on 3 April 2019, BICC's board approved the 2018 audited annual financial statements for BICC.

Particulars

BIC Contracting LLC Consolidated Financial Statements 31 December 2018, at page 3 [CIM.118.034.4877].

250 As to paragraph 250:

- (a) It refers to and repeats paragraphs 151A, 151B and 249A above.
- (b) It otherwise denies the allegations.

251 As to paragraph 251:

- (a) Subject to reference at trial to the full terms and effect of the Final FY18 VIU Model and the BICC Valuation Report of January 2019, it admits the allegations in paragraphs 251(a), (b), (c)(ii), (c)(iii) and (c)(v) in respect of the Final FY18 VIU Model, save that the words 'net profit margin' in (c)(iii) be replaced with 'margin (being revenue (excluding joint venture) divided by profit before tax)'.
(b) As to paragraph 251(c)(i):
- (i) It says the Final FY18 VIU Model included an assumption that BICC's revenue would grow from AED 4,750 million in financial year 2019 to AED 9,046 million in financial year 2023.
- (ii) It otherwise denies the allegations.
- (c) As to paragraph 251(c)(iv):
- (i) It says that the Final FY18 VIU Model included an assumption that, between financial year 2019 and financial year 2023, BICC would achieve, on average, a reduction in Debtor Days, an improvement in Net

Working Capital Days and, by financial year 2021, positive Net Working Capital Days.

(ii) It otherwise denies the allegations.

(d) As to paragraph 251(c)(vi):

(i) It says that the Final FY18 VIU Model forecast that BICC would repay the Shareholder Loans in full by 30 September 2021.

(ii) It otherwise denies the allegations.

(e) As to paragraph 251(c)(vii):

(i) It says that the Final FY18 VIU Model forecast that there would be a reduction in BICC's external debt outstanding from AED 3,368 million at 31 Dec 2018 to AED 2,418 million at 31 December 2023.

(ii) It otherwise denies the allegations.

(f) As to paragraph 251(d):

(i) It says that the equity value of BICC as at 31 December 2018 was USD 464.1 million of which CIMIC's 45% share was valued at USD 208.8 million.

(ii) It otherwise denies the allegations.

252 As to paragraph 252:

(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.

253 Subject to reference at trial to the full terms and effect of the Grant Thornton report dated January 2019 entitled 'BIC Contractual Limited – Option valuation report', it admits the allegations in paragraph 253.

Alleged errors and unreasonable assumptions in the FY18 BICC Valuation

254 As to paragraph 254:

- (a) It refers to and repeats paragraphs 151A, 151B and 249A above.
- (b) It says the FY18 VIU Model included as BICC's opening position:
 - (i) assumed cash balances of AED 585,822,277 million;
 - (ii) assumed total outstanding debt from overdraft and trust receipt facilities of AED 426,329,489;
 - (iii) assumed outstanding debt from the HSBC Syndicated Banking facility of AED 1,300,078,300;
 - (iv) assumed outstanding debt from other bank facilities & term debt of AED 1,641,182,978.
- (c) It otherwise denies the allegations.

255 As to paragraph 255:

- (a) It refers to and repeats paragraphs 139C, 151A, 151B and 249A above.
- (b) It otherwise denies the allegations.

Particulars

Further particulars will be provided following the receipt of expert evidence.

Accounting treatment in respect of BICC

256 As to paragraph 256:

- (a) It refers to and repeats paragraphs 254 and 255 above.
- (b) It otherwise denies the allegations.

257 As to paragraph 257:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

258 As to paragraph 258:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

259 As to paragraph 259:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

True Position – February 2019

260 As to paragraph 260:

- (a) It refers to and repeats paragraphs 256 to 259 above.
- (b) It says that, by 5 February 2019, CIMIC had formed the view and announced to the market that:
 - (i) the value of the Shareholder Loans was \$640.7 million as at 31 December 2018.

Particulars

CIMIC 2018 Annual Report, at page 161 [CIM.002.001.0754].

Further particulars will be provided following the receipt of expert evidence.

- (ii) the fair value of the Call Option was \$76.1 million as at 31 December 2018.

Particulars

CIMIC 2018 Annual Report, at page 179 [CIM.002.001.0754].

Further particulars will be provided following the receipt of expert evidence.

- (iii) It was not required to recognise any amounts in relation to the CIMIC guarantees as at 31 December 2018.

Particulars

CIMIC 2018 Annual Report, at page 179 [CIM.002.001.0754].

Further particulars will be provided following the receipt of expert evidence.

- (c) It otherwise denies the allegations.

February 2019 Middle East Information

261 As to paragraph 261:

- (a) It refers to and repeats paragraphs 139B, 139C, 151A, 151B, 249A, 252, 253 and 260 above.
- (b) It otherwise denies the allegations.

262 As to paragraph 262:

- (a) As to paragraph 262(a), it refers to and repeats paragraph 261 above and says that if the February 2019 Middle East Information was true (which it denies), the character of that information was that it was based on opinions that:

- (i) were not held by CIMIC; and
- (ii) had not been provided to CIMIC,

and as such it was not information that a reasonable person would expect to have a material effect on the price or value of CIMIC Securities.

- (b) As to paragraph 262(b), it refers to and repeats paragraphs 41, 46, 47, 50, 58, 65, 77 and 79 above and otherwise denies the allegations.

- (c) As to paragraph 262(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:

- (A) That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 139A to 139E above.

The information in paragraph 261 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated in the course of, or for the purpose of, the Strategic Review which was ongoing and incomplete.

- (B) Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

CIMIC refers to and repeats the matters particularised in paragraph (C) below.

The information in paragraph 261 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated for internal management purposes.

- (C) Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 261 is alleged to have been known, or ought reasonably to have been known, by CIMIC based on (or inferred from) facts, intermediate facts and/or information known (including opinions) which involved supposition and/or was imprecise and/or its veracity was open to doubt.

- (D) 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 information, including the documents, particularised at paragraph 261 is confidential (save for any information which was included in an annual report or interim report disclosed to the market). The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

- (E) 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 (A) to (D) above.

Further particulars may be provided following the receipt of expert evidence.

- (d) It otherwise denies the allegations.
- 263 It denies the allegations in paragraph 263 and refers to and repeats paragraphs 260 to 262 above.
- 264 It denies the allegations in paragraph 264 and refers to and repeats paragraphs 77, 79, 134, 136 and 263 above.
- 265 It denies the allegations in paragraph 265 and refers to and repeats paragraphs 260 to 264 above.

I.4 ALLEGED JULY 2019 MIDDLE EAST DISCLOSURE CONTRAVENTIONS

Amended Debt Facility

- 266 As to paragraph 266:
- (a) It says that on or about 9 December 2018, BICC and UNB entered into a facility agreement the terms of which were set out in a facility offer letter.
- (b) Subject to reference at trial to the full terms and effect of the facility offer letter from UNB to BICC dated 9 December 2018, it admits that the facility offer letter contained terms substantively in the form set out in paragraphs 266(a) to (f).
- (c) It otherwise denies the allegations.
- 267 As to paragraph 267, 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.

268 As to paragraph 268:

(a) Subject to reference at trial to the full terms and effect of the Second UNB Guarantee, it admits that the Second UNB Guarantee contained terms substantially in the form set out in paragraphs 268(a), (b) and (d).

(b) It otherwise denies the allegations.

Cash Requests – February to March 2019

269 As to paragraph 269:

(a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 269 to 272, 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 108.4 million; and
- (iii) on or about 21 March 2019, BICC drew down AED 16.5 million.

(e) It otherwise denies the allegations.

270 As to paragraph 270, it refers to and repeats paragraph 269 above and otherwise denies the allegations.

271 As to paragraph 271, it refers to and repeats paragraph 269 above and otherwise denies the allegations.

272 As to paragraph 272, it refers to and repeats paragraph 269 above and otherwise denies the allegations.

Greensill Facilities and HSBC Multi-Option Facility

273 As to paragraph 273, it refers to and repeats paragraph 269 above and otherwise denies the allegations.

BICC's Performance

274 As to paragraph 274:

- (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 274(a) to (f).
- (c) It otherwise denies the allegations.

275 As to paragraph 275:

- (a) It says that on 25 February 2019, Moustafa Fahour emailed Michael Wright, Stefan Camphausen, 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, substantively stated the matters in paragraph 275(a), (b), (c)(i) and (c)(iii).

(c) It otherwise denies the allegations.

276 As to paragraph 276:

(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.

277 As to paragraph 277:

(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 277(a) to (h).

(c) It otherwise denies the allegations.

278 As to paragraph 278:

(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.

279 As to paragraph 279:

(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 279(a) to (h).

(c) It otherwise denies the allegations.

Restructured Shareholders Loan

280 As to paragraph 280, subject to reference at trial to the full terms and effect of the Fourth Restructured Shareholder Loan Agreement, it admits the allegations.

Legacy Project Receivables

281 As to paragraph 281:

- (a) It refers to and repeats paragraph 147A 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' and '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.

282 As to paragraph 282:

- (a) It refers to and repeats paragraph 147A 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' and '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.

283 As to paragraph 283:

- (a) It refers to and repeats paragraph 147A 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' and '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 – April to July 2019

284 As to paragraph 284:

(a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 284 to 291, 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; and

(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 211.9 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.

285 As to paragraph 285, it refers to and repeats paragraph 284 above and otherwise denies the allegations.

286 As to paragraph 286, it refers to and repeats paragraph 284 above and otherwise denies the allegations.

287 As to paragraph 287, it refers to and repeats paragraph 284 above and otherwise denies the allegations.

288 As to paragraph 288, it refers to and repeats paragraph 284 above and otherwise denies the allegations.

289 As to paragraph 289, it refers to and repeats paragraph 284 above and otherwise denies the allegations.

290 As to paragraph 290, it refers to and repeats paragraph 284 above and otherwise denies the allegations.

291 As to paragraph 291, it refers to and repeats paragraph 284 above and otherwise denies the allegations.

Additional Debt Facility – SCB

292 Subject to reference at trial to the full terms and effect of the SCB Facility Agreement, it admits the allegations in paragraph 292.

293 As to paragraph 293:

(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 293(a), (b) and (e).

(b) It otherwise denies the allegations.

294 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 294.

295 As to paragraph 295:

(a) Subject to reference at trial to the full terms and effect of the BICC Exposure Estimate dated 11 October 2019, it says that:

(i) on or about 28 June 2019, BICC drew down AED 361.62 million from the SCB Facility; and

(ii) on or about 28 June 2019, BICC transferred AED 361.62 million to CIMIC.

(b) It otherwise denies the allegations.

BICC's performance – May and June 2019

296 As to paragraph 296:

- (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 [Drat] [sic], dated June 2019, the full terms and effect of which it will refer to at trial.
- (b) 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 says that on 26 June 2019, Sarah Cooper-Woolley emailed Stefan Camphausen and Derek Kerr the 2019 Business Plan Scenarios [Draft] [sic], dated 26 June 2019, the full terms and effect of which it will refer to at trial.
- (d) It says that on 26 June 2019, Sarah Cooper-Woolley emailed Stefan Camphausen and Derek Kerr the 2019 Business Plan [Drat] [sic], dated 26 June 2019, the full terms and effect of which it will refer to at trial.
- (e) Subject to reference at trial to the full terms and effect of the 2019 Business Plan Scenarios [Drat] [sic], dated 26 June 2019, it admits that the 2019 Business Plan Scenarios [Drat] [sic], dated 26 June 2019, stated the matter in paragraph 296(a).
- (f) It otherwise denies the allegations.

297 As to paragraph 297:

- (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 297(a) to (h).
- (c) It otherwise denies the allegations.

298 As to paragraph 298:

- (a) It says that on 15 July 2019, Colin Young emailed George Sassine the draft presentation entitled '2019 Strategic Options', dated 10 July 2019, the full terms and effect of which it will refer to at trial.

- (b) It says that on 16 July 2019, Colin Young emailed Emilio Grande the draft presentation entitled '2019 Strategic Options', dated 10 July 2019.
- (c) Subject to reference at trial to the full terms and effect of the draft presentation entitled '2019 Strategic Options', it admits that the draft presentation entitled '2019 Strategic Options' stated the matters in paragraphs 298(a), (b)(i) and (b)(iii).
- (d) It otherwise denies the allegations.

299 As to paragraph 299:

- (a) It refers to and repeats paragraphs 298(a) and 298(b).
- (b) Subject to reference at trial to the full terms and effect of the draft presentation entitled '2019 Strategic Options', it admits that the draft presentation entitled '2019 Strategic Options' substantively stated the matters in paragraph 299.
- (c) It otherwise denies the allegations.

CIMIC's exposure to BICC

300 As to paragraph 300:

- (a) It refers to and repeats paragraphs 139A and 151 above.
- (b) It says that on 9 July 2019, Colin Young emailed George Sassine and Stefan Camphausen the draft BICC Exposure Update, dated 9 July 2019.
- (c) It says that on 11 October 2019, George Sassine emailed Emilio Grande and Colin Young the BICC – Exposure Estimate, the full terms and effect of which it will refer to at trial.
- (d) It says that the draft CIMIC consolidated financial report for the six months ended 30 June 2019 formed part of the ARC papers for the meeting on 17 July 2019, the full terms and effect of which it will refer to at trial.
- (e) Subject to reference at trial to the full terms and effect of the BICC Exposure Update, dated 9 July 2019, it admits that the draft BICC Exposure Update, dated 9 July 2019, substantively stated the matters in paragraph 300(a).

- (f) Subject to reference at trial to the full terms and effect of the 2019 Half Year Report, it admits that the 2019 Half Year Report stated the matters in paragraph 300(d).
- (g) It otherwise denies the allegations.

Accounting treatment in respect of BICC

301 As to paragraph 301:

- (a) It refers to and repeats paragraphs 274 to 279 and 296 to 297 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) 'continued to deteriorate';
 - (iii) 'severe liquidity issues';
 - (iv) 'reliant';
 - (v) 'critically degraded';
 - (vi) 'escalating risk'; and
 - (vii) 'substantially reduced revenue'.
- (c) It otherwise denies the allegations.

302 As to paragraph 302:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

303 As to paragraph 303:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

304 As to paragraph 304:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

305 As to paragraph 305:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

True Position – July 2019

306 As to paragraph 306:

- (a) It refers to and repeats paragraphs 301 to 305 above.
- (b) It says that by 17 July 2019, CIMIC had formed the view and announced to the market that:
 - (i) the value of the shareholder loans was \$673.9 million as at 30 June 2019.

Particulars

2019 Half Year Report, at pages 26 and 50 [CIM.114.010.1965].

Further particulars will be provided following the receipt of expert evidence.

- (ii) the value of the prepayment made to BICC in 1H19 was \$117.1 million as at 30 June 2019, which represented a secured deposit on the potential purchase of certain assets from BICC.

Particulars

2019 Half Year Report, at page 26 [CIM.114.010.1965].

Further particulars will be provided following the receipt of expert evidence.

- (iii) the fair value of the Call Option was \$78.3 million as at 30 June 2019.

Particulars

2019 Half Year Report, at page 30 [CIM.114.010.1965].

Further particulars will be provided following the receipt of expert evidence.

- (iv) it was not required to recognise any amounts in relation to the CIMIC Guarantees as at 31 December 2017.

Particulars

2019 Half Year Report, at page 30 [CIM.114.010.1965].

Further particulars will be provided following the receipt of expert evidence.

- (c) It otherwise denies the allegations.

July 2019 Middle East Information

307 As to paragraph 307:

- (a) It refers to and repeats paragraphs 261 and 306 above.
- (b) It otherwise denies the allegations.

308 As to paragraph 308:

- (a) As to paragraph 308(a), it refers to and repeats paragraph 307 above and says that if the July 2019 Middle East Information was true (which it denies), the character of that information was that it was based on opinions that:

- (i) were not held by CIMIC; and
- (ii) had not been provided to CIMIC,

and as such it was not information that a reasonable person would expect to have a material effect on the price or value of CIMIC Securities.

- (b) As to paragraph 308(b), it refers to and repeats paragraphs 41, 46, 47, 50, 58, 65, 77, 79, 134, 136 and 307 above and otherwise denies the allegations.

- (c) As to paragraph 308(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:

- (A) That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 139A to 139E above.

The information in paragraph 307 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated in the course of, or for the purpose of, the Strategic Review which was ongoing and incomplete.

- (B) Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

CIMIC refers to and repeats the matters particularised in paragraph (C) below.

The information in paragraph 307 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated for internal management purposes.

- (C) Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 307 is alleged to have been known, or ought reasonably to have been known, by CIMIC based on (or inferred from) facts, intermediate facts and/or information known (including opinions) which involved supposition and/or was imprecise and/or its veracity was open to doubt.

- (D) 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 information, including the documents, particularised at paragraph 307 is confidential (save for any information which was included in an annual report or interim report disclosed to the market). The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

- (E) 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 (A) to (D) above.

Further particulars may be provided following the receipt of expert evidence.

- (d) It otherwise denies the allegations.
- 309 It denies the allegations in paragraph 309 and refers to and repeats paragraphs 306 to 308 above.
- 310 It denies the allegations in paragraph 310 and refers to and repeats paragraphs 134, 136 and 309 above.
- 311 It denies the allegations in paragraph 311 and refers to and repeats paragraphs 306 to 310 above.

I.5 ALLEGED OCTOBER 2019 MIDDLE EAST DISCLOSURE CONTRAVENTIONS

BICC Performance

- 312 As to paragraph 312:
- (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.
- 313 As to paragraph 313:
- (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 313(a) to (h).
- (c) It otherwise denies the allegations.

Cash Requests

314 As to paragraph 314:

- (a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 314 to 317, 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.

315 As to paragraph 315, it refers to and repeats paragraph 314 above and otherwise denies the allegations.

316 As to paragraph 316, it refers to and repeats paragraph 314 above and otherwise denies the allegations.

317 As to paragraph 317, it refers to and repeats paragraph 314 above and otherwise denies the allegations.

Provisions for Cash Advances

318 As to paragraph 318:

- (a) It refers to and repeats the matters in paragraphs 314 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.

319 As to paragraph 319:

- (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 allegations.

Proposals for restructuring of Debt Facilities

320 As to paragraph 320:

- (a) It refers to and repeats the matters in paragraph 139D(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 allegations.

321 As to paragraph 321:

- (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 allegations.

322 As to paragraph 322:

- (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 321.

- (b) It otherwise denies the allegations.

Legacy Project Receivables

323 As to paragraph 323:

- (a) It refers to and repeats paragraph 147A 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' and '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.

324 As to paragraph 324:

- (a) It refers to and repeats paragraph 147A 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' and '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.

325 As to paragraph 325:

- (a) It refers to and repeats paragraph 147A 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:
 - (i) the BICC Project Data Report as at June 2019 contained a worksheet entitled 'Pdata';
 - (ii) that worksheet contained a column headed 'Legacy / Current', which contained values 'Completed', 'Ongoing' and '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 2,896,216,000; 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 615,617,000.

(d) It otherwise denies the allegations.

326 As to paragraph 326:

(a) It refers to and repeats paragraph 147A 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' and '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.

327 As to paragraph 327:

(a) It refers to and repeats paragraph 147A 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' and '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, David Wood emailed Christopher Granda the BICC 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 on 16 September 2019, Christopher Granda emailed Colin Young the BICC 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.
- (f) It says that:
- (i) the BICC Project Data Report as at August 2019 referred to at subparagraphs (d) and (e) above contained a worksheet entitled 'Uncert. Rev & Overdue – Aug1 19';
 - (ii) that worksheet contained a column headed 'Legacy / Current', which contained values 'Completed' and '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.

(g) It otherwise denies the allegations.

Cash Requests – October 2019

328 As to paragraph 328:

(a) Subject to reference at trial to the full terms and effect of the documents referred to or particularised at paragraphs 328 and 329, 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.

(iii) It says that by 23 October 2019, CIMIC transferred AED 47.6 million to BICC.

(b) It otherwise denies the allegations.

329 As to paragraph 329, it refers to and repeats paragraph 328 above and otherwise denies the allegations.

CIMIC's exposure to BICC

330 As to paragraph 330:

(a) It refers to and repeats paragraphs 139A and 151 above.

(b) It says that on 13 October 2019, Colin Young emailed Emilio Grande the draft BICC – Exposure Update, dated 23 September 2019.

(c) It says that on 11 October 2019, George Sassine emailed Emilio Grande and Colin Young the BICC Exposure Estimate.

(d) Subject to reference at trial to the full terms and effect of the draft BICC – Exposure Update, dated 23 September 2019, it admits that the draft BICC – Exposure Update, dated 23 September 2019 substantively stated the matters in paragraphs 330(a) and (e).

- (e) It otherwise denies the allegations.

Accounting treatment in respect of BICC

331 As to paragraph 331:

- (a) It refers to and repeats paragraphs 312 and 313 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) 'continued to deteriorate';
 - (iii) 'severe liquidity issues';
 - (iv) 'reliant';
 - (v) 'critically degraded'; and
 - (vi) 'escalating risk'.
- (c) It otherwise denies the allegations.

332 As to paragraph 332:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

333 As to paragraph 333:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

334 As to paragraph 334:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

335 As to paragraph 335:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

336 As to paragraph 336:

- (a) It refers to and repeats paragraph 256 above.
- (b) It otherwise denies the allegations.

True Position – October 2019

337 As to paragraph 337:

- (a) It refers to and repeats paragraphs 331 to 336 above.
- (b) It otherwise denies the allegations.

October 2019 Middle East Information

338 As to paragraph 338:

- (a) It refers to and repeats paragraphs 261 and 337 above.
- (b) It otherwise denies the allegations.

339 As to paragraph 339:

- (a) As to paragraph 339(a), it refers to and repeats paragraph 338 above and says that if the October 2019 Middle East Information was true (which it denies), the character of that information was that it was based on opinions that:
 - (i) were not held by CIMIC; and
 - (ii) had not been provided to CIMIC,and as such it was not information that a reasonable person would expect to have a material effect on the price or value of CIMIC Securities.
- (b) As to paragraph 339(b), it refers to and repeats paragraphs 41, 46, 47, 50, 58, 65, 77, 79, 134, 136 and 338 above and otherwise denies the allegations.
- (c) As to paragraph 339(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:

- (A) That information concerned an incomplete proposal or negotiation.

Particulars

CIMIC refers to and repeats paragraphs 139A to 139E above.

The information in paragraph 338 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated in the course of, or for the purpose of, the Strategic Review which was ongoing and incomplete.

- (B) Further, or alternatively, that information was generated for the internal management purposes of CIMIC.

Particulars

CIMIC refers to and repeats the matters particularised in paragraph (C) below.

The information in paragraph 338 is alleged to have been known, or ought reasonably to have been known, based on (or inferred from) facts, intermediate facts and/or information known by CIMIC (including opinions) which was generated for internal management purposes.

- (C) Further, or alternatively, that information comprised matters of supposition or was insufficiently definite to warrant disclosure.

Particulars

The information alleged in paragraph 338 is alleged to have been known, or ought reasonably to have been known, by CIMIC based on (or inferred from) facts, intermediate facts and/or information known (including opinions) which involved supposition and/or was imprecise and/or its veracity was open to doubt.

- (D) 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 information, including the documents, particularised at paragraph 338 is confidential (save for any information which was included in an annual report or interim report disclosed to the market). The information was known only to employees and/or directors of BICC and CIMIC who owed duties of confidentiality.

- (E) 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 (A) to (D) above.

Further particulars may be provided following the receipt of expert evidence.

- (d) It otherwise denies the allegations.
- 340 It denies the allegations in paragraph 340 and refers to and repeats paragraphs 337 to 339 above.
- 341 It denies the allegations in paragraph 341 and refers to and repeats paragraph 340 above.
- 342 It denies the allegations in paragraph 342 and refers to and repeats paragraphs 337 to 341 above.

J MIDDLE EAST CORRECTIVE DISCLOSURE

- 343 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 343.
- 344 As to paragraph 344:
- (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.

K ALLEGED FURTHER MISLEADING STATEMENTS

K.1 ALLEGED TRUE AND FAIR VIEW MISLEADING STATEMENTS

345 As to paragraph 345:

- (a) 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 and the 2019 Half Year Report, it says that CIMIC represented in those documents that it held the opinion its financial reports provided a true and fair view of CIMIC's financial position and performance as at the reporting date to which the relevant financial report related.
- (b) It otherwise denies the allegations.

346 As to paragraph 346:

- (a) It refers to and repeats paragraphs 45, 46, 47, 50, 58, 65, 77, 79, 134, 136 and 345 above.
- (b) It otherwise denies the allegations.

347 It denies the allegations in paragraph 347 and refers to and repeats paragraphs 139B to 139D, 151A to 151C, 155, 159 to 161, 249A, 252 and 253 above, and 352(d) below.

348 As to paragraph 348:

- (a) It refers to and repeats paragraph 347 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 352(a) to 352(h) below.

(c) It otherwise denies the allegations.

349 It denies the allegations in paragraph 349 and refers to the matters pleaded in paragraphs 345 to 348 above.

K.2 ALLEGED GUIDANCE MISLEADING STATEMENTS

350 As to paragraph 350:

(a) It refers to and repeats paragraphs 74, 80, 81, 136, 137, 138 and 139 above.

(b) It otherwise denies the allegations.

351 As to paragraph 351:

(a) It refers to the documents identified in paragraphs 74, 80, 81, 136, 137, 138 and 139 and also the 2019 Half Year Report.

(b) It otherwise denies the allegations.

352 As to paragraph 352:

(a) It refers to and repeats paragraphs 139B to 139D, 151A, 151B, 249A, 252 and 253 and 350 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 84B 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, at page 257 [CIM.002.001.0335]; 2018 Annual Report, at page 231 [CIM.002.001.0754]; 2019 Annual Report, at page 234 [CIM.110.073.4748].

- (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 350 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.

353 It denies the allegations in paragraph 353 and refers to and repeats paragraphs 350 to 352 above.

L ALLEGED MARKET EFFECTS

354 It does not know and therefore cannot admit the allegations in paragraph 354.

355 As to paragraph 355:

(a) It admits the allegations in paragraph 355(a).

(b) It does not know, and cannot admit, the allegations in paragraph 355(b).

(c) It otherwise denies the allegations.

356 It does not know and therefore cannot admit the allegations in paragraph 356.

357 As to paragraph 357:

(a) It refers to and repeats paragraph 121 above.

(b) It otherwise denies the allegations.

358 As to paragraph 358:

(a) It refers to and repeats paragraph 123 above.

(b) It otherwise denies the allegations.

359 As to paragraph 359:

(a) It refers to and repeats paragraph 127 above.

(b) It otherwise denies the allegations.

360 It denies the allegations in paragraph 360 and it refers to and repeats paragraphs 91, 97, 103, 109 and 116 above.

361 As to paragraph 361:

(a) It refers to and repeats paragraph 344 above.

(b) It otherwise denies the allegations.

362 It denies the allegations in paragraph 362 and refers to and repeats paragraphs 175, 216, 265, 311 and 342 above.

363 It denies the allegations in paragraph 363 and refers to and repeats paragraphs 133, 349 and 353 above.

364 It denies the allegations in paragraph 364 and refers to and repeats paragraphs 360, 362 and 363 above.

M ALLEGED RELIANCE

365 It does not know and therefore cannot admit the allegations in paragraph 365.

N ALLEGED CHANGE OF POSITION

366 It denies the allegations in paragraph 366 and repeats and refers to the matters pleaded in paragraphs 360, 362 and 363 above.

367 It denies the allegations in paragraph 367 and repeats and refers to the matters pleaded in paragraphs 360, 362 and 363 above.

O ALLEGED LOSS AND DAMAGE

368 It denies the allegations in paragraph 368 and refers to and repeats paragraphs 5A to 5K, 366 and 367 above.

369 It denies the allegations in paragraph 369 and refers to and repeats paragraphs 5A to 5K and 354 to 367 above.

P ALLEGED COMMON QUESTIONS OF FACT OR LAW

370 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 370.

Date: ~~27 September 2023~~ 26 April 2024



Signed by ~~James Campbell~~ Paul Nicols

Lawyer for the Respondent

This pleading was prepared by B Ryde and A Campbell of counsel, and settled by J Stoljar of senior counsel.

Certificate of lawyer

I, ~~James Campbell~~ 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: ~~27 September 2023~~ 26 April 2024



Signed by ~~James Campbell~~ Paul Nicols

Lawyer for the Respondent