NOTICE OF FILING

Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	1/05/2026 4:16:57 PM AEST
Date Accepted for Filing:	1/05/2026 4:16:58 PM AEST
File Number:	NSD602/2023
File Title:	GREENSILL BANK AG & ANOR v INSURANCE AUSTRALIA LIMITED & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

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

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

Form 33

Rule 16.32

Amended Defence to the Fifth Amended Statement of Claim

No. NSD602 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Greensill Bank AG

First Applicant

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG

Second Applicant

Insurance Australia Limited (ACN 000 016 722) and others according to the Schedule

Respondents

To the Applicants' Fifth Amended Statement of Claim filed on 11 June 2025 (**SOC**), the First Respondent (**IAL**) says as follows:

SUMMARY

A1 The Applicants allege that Greg Brereton (**Brereton**) and BCC Trade Credit Pty Ltd (**BCC**) acted on behalf of IAL in issuing a "trade credit" insurance policy (referred to as **Policy 5369**) and related endorsements to Greensill Bank AG (**Greensill Bank**). Greensill Bank claims that it is entitled to indemnity from IAL under Policy 5369.

Filed on behalf of (name & role of party)	Insurance Australia Limited – First Respondent
Prepared by (name of person/lawyer)	Malcolm StephensKirsty Prinsloo
Law firm (if applicable)	Allens
Tel +61 2 9230 4000	Fax
Email	Malcolm.Stephens~~Kirsty.Prinsloo~~@allens.com.au
Address for service	Level 28, 126 Phillip Street, Sydney NSW 2000

A2 A total of 28 endorsements, purportedly issued pursuant to Policy 5369, are relied upon by the Applicants in these proceedings. This is the only **Greensill Proceeding**[1] in which Greensill Bank seeks indemnity under Policy 5369 (eight other proceedings involve claims for indemnity under a policy defined as "the 2019 Policy", and one proceeding involves claims for indemnity under Policy TS-03088). The endorsements purportedly issued under Policy 5369 pleaded in these proceedings were written by BCC and Brereton between 25 June 2019 and 10 January 2020. The start date is significant because it was only five days before BCC's and Brereton's appointment as authorised representatives of IAL ceased and that, thereafter, BCC and Brereton were authorised representatives of Tokio Marine & Nichido Fire Insurance Co Ltd (**TMNF**) (a fact known to Greensill Bank). The Applicants allege that the claims made in these proceedings fall within the scope of Policy 5369 and endorsements pleaded.

A3 Notably, in light of the acquisition of BCC by Tokio Marine Management (Australasia) Pty Ltd (**TMMA**), which completed on 9 April 2019, there was a transitional period between 9 April and 30 June 2019 during which the authority given by IAL to BCC and Brereton was more limited than the period immediately preceding that. TMMA and Bond & Credit Company Pty Ltd (**Bond**) issued public statements about the acquisition in mid-April 2019. BCC provided a copy of these statements to the insurance broker of the **Greensill Group** (being, Greensill Bank, Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Pty Ltd (**GCUK**)), Marsh Pty Limited and/or Marsh Limited (collectively, **Marsh**), on 15 April 2019. Accordingly, the public, and specifically the Greensill Group, were on notice of the impending change in the licensee on whose behalf BCC and Brereton could act in issuing trade credit insurance.

A4 Across the various Greensill Proceedings, IAL denies liability on numerous bases. It was not a party to the policies and endorsements, and cannot be sued on them. Even if the policies and endorsements are binding, the Applicants' pleaded cases do not plead the facts necessary for there to be coverage, and in any event, even on the Applicants' pleaded case, their claims fail to meet multiple necessary conditions. On these, and other bases, liability is denied.

A4A The core bases upon which IAL denies liability in this proceeding are set out below.

---

[1] NSD1039 of 2021 (White Oak Proceeding), NSD1216 of 2021 (EHG Proceeding), NSD106 of 2022 (Catfoss Renewables Proceeding), NSD110 of 2022 (NMC Health Proceeding), NSD169 of 2023 (Credit Suisse Global Proceedings), NSD173 of 2023 (Atlantic 57 Proceeding), NSD174 of 2023 (Bluestone Proceeding), NSD175 of 2023 (LCL Proceeding); NSD177 of 2023 (Simec Proceeding) and NSD602 of 2023 (Liberty Delta Proceeding).

No authority

A5 First, BCC and Brereton did not have any authority from IAL to write the risks the subject of claims in these proceedings. BCC's and Brereton's authority was, at all relevant times, limited by specific written authorities and underwriting manuals. The only policies they could enter into on behalf of IAL were true trade credit policies using prescribed wording of three kinds – "Trade Credit Insurance Whole of Turnover", "Trade Credit Insurance Multi Buyer" and "Trade Credit Insurance Single Risks" (being, the "**Approved Wording**" as referred to in paragraphs 8(j) and 8(k) of this Defence). The endorsements that BCC and Brereton could issue on behalf of IAL were also prescribed and in set terms (being, the Approved Endorsements, as defined in paragraph 8(i) of this Defence). BCC and Brereton could not issue trade credit policies and endorsements that were not in accordance with the prescribed terms without approval from IAL and its reinsurers (in particular, lead trade credit reinsurer Scor Reinsurance Asia-Pacific Pte Ltd (**Scor Re**)). This was known to the entities in the Greensill Group purportedly insured under the policies entered into by BCC and Brereton (as explained in paragraph A10 of this Defence).

A6 Policy 5369 (pursuant to which claims are made in this proceeding) was outside the scope of BCC and Brereton's written authority in numerous respects, including as follows, such that the policy is not binding on IAL:

(a) Policy 5369 was not Approved Wording. IAL and Scor Re had not approved its terms, as was required under the relevant authorities.

(b) The risks were not trade credit risks.

(c) BCC and Brereton could only write policies for insureds domiciled in Australia, but Greensill Bank was not so domiciled.

(d) BCC and Brereton could not issue policies that exceeded a policy term of 12 months but Policy 5369 had a policy term of 24 months.

(e) The premium for Policy 5369 was specified as $1, less than the minimum authorised premium of $10,000. $1 was in any event entirely uncommercial and disproportionate to the risks sought to be purportedly insured (initially approximately EUR 2.2 billion, then allegedly increased by an endorsement to approximately EUR 2.4 billion).

(f) BCC and Brereton could not write policies on behalf of IAL with limits in excess of AUD50 million, but the limit under Policy 5369 far exceeded that.

(g) BCC and Brereton could not insure credit terms in excess of 180 days but Policy 5369 did not set out any limit for credit terms.

(h) Policy 5369 did not have a minimum excess, when the minimum required was 0.75%.

(i) Policy 5369 was in breach of BCC's and Brereton's contractual obligation to act efficiently, honestly and fairly.

A7 Moreover, the purported insureds failed to pay any premium or other consideration for Policy 5369, such that it is not valid or binding.

A8 The endorsements pleaded and purportedly issued by BCC/Brereton on behalf of IAL pursuant to Policy 5369 were outside the scope of their authorities and are therefore invalid, of no effect and not binding or enforceable against IAL because, inter alia:

(a) They were not Approved Endorsements.

(b) As BCC and Brereton lacked authority to enter into Policy 5369, they also lacked authority to enter into the endorsements.

(c) The endorsements (including Endorsements 2 and 3, each of the Delta HoldCo Customer Endorsements and the Further Delta HoldCo Customer Endorsements) purported to operate in favour of an insured not domiciled in Australia, which their authorities did not permit, and/or purported to vastly increase the exposure of IAL beyond the limits as stipulated in the applicable Underwriting Manual (as referred to in paragraphs 5(d)(i)(C), 5(d)(i)(D) and 5(d)(i)(E) of this Defence).

(d) Many of the endorsements (including each of the Further Delta HoldCo Customer Endorsements) were entered into after 30 June 2019 after BCC's and Brereton's appointment as authorised representatives of IAL ceased. Moreover, this information was publicly available: the register maintained by ASIC under section 922A of the *Corporations Act 2001 (Cth)* (***Corporations Act***) was updated to record that BCC's and Brereton's status as authorised representatives of IAG Agencies Pty Ltd (**IAGA**) had ceased with effect on 30 June 2019, and that BCC was the authorised representative of Tokio Marine & Nichido Fire Insurance Co Ltd (**TMNF**) from 1 July 2019 onwards. On and from 1 July 2019, TMNF was responsible for the conduct of BCC and Brereton for the purposes of section 917B of the *Corporations Act*.

A8A The Greensill Group knew or ought to have known that BCC/Brereton lacked authority to enter into Policy 5369 on behalf of IAL. In particular, in late 2017, the Greensill Group (through its insurance broker Marsh) and Alexander 'Lex' Greensill (**Lex Greensill**) sought to negotiate (through BCC) the terms of a policy prepared by the Greensill Group or Marsh with IAL and reinsurer Scor Re. Those terms deviated from the Approved

Wording. IAL and Scor Re informed BCC that they disagreed in numerous respects and BCC communicated this to the Greensill Group. In the result, agreement was not reached, and BCC informed IAL that it would proceed only using Approved Wording. Through this, the Greensill Group knew that policy wordings which deviated from Approved Wording required approval from IAL and Scor Re, and that no such approval had been given. At no point did the Greensill Group seek approval for Policy 5369, or any of its purported endorsements, from IAL or Scor Re as required, and at no point did IAL or Scor Re give approval for Policy 5369 and or any endorsements.

A9 Even if BCC/Brereton had authority to write the endorsements (which IAL denies), those endorsements were inconsistent with numerous terms of Policy 5369, and were not of a kind contemplated by it, i.e., they were not permitted by the terms of Policy 5369, and are therefore invalid, of no effect and not binding or enforceable against IAL.

A9A For the reasons summarised at paragraph A5, A6 and A11 of this Defence, BCC/Brereton additionally lacked authority to enter into the series of master and parallel policies that Greensill Bank alleges (and IAL denies) were substantively similar in structure and wording as Policy 5369 (the **Alleged Master/Parallel Policies**). Further, at all material times:

(a) the wording and structure of the Alleged Master/Parallel Policies were not communicated to IAL and IAL did not communicate to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording (as defined at paragraphs 83B and 83C of the SOC) and the wording and structure of the Alleged Master/Parallel Policies;

(b) BCC indicated to IAL that it would not be proceeding with the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording and that it would instead use Approved Wording;

(c) BCC and Brereton could not issue trade credit policies and endorsements that were not in accordance with the prescribed terms without approval from IAL and its reinsurers (in particular, Scor Re). This was known to the entities in the Greensill Group purportedly insured under the Alleged Master/Parallel Policies entered into by BCC and Brereton;

(d) as detailed at paragraph A11(b) of this Defence, the bordereaux provided by BCC to IAL failed to disclose material information and contained substantial inaccuracies in relation to the Alleged Master/Parallel Policies, including that the bordereaux did not disclose the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording or the alleged master/parallel structure of

each of the Alleged Master/Parallel Policies and/or any connection between each master policy and its alleged corresponding parallel policy; and

(e) it further follows that IAL did not engage in the misleading or deceptive conduct alleged by the Applicants at Part F1A of the SOC.

IAL is not responsible for the conduct of BCC/Brereton under the Corporations Act

A10 *Second*, Division 6 of Part 7.6 of the *Corporations Act* does not apply to make IAL responsible for the conduct of BCC/Brereton, including their conduct in entering into Policy 5369 and endorsements. This is so because, inter alia:

(a) Greensill Bank was not a "client" with respect to Policy 5369 for the purpose of sections 917A(1)(b) or 917A(1)(c) of the *Corporations Act*.

(b) [Not used].

(c) It follows that, if Greensill Bank was a "client" with respect to Policy 5369 and endorsements for the purpose of section 917A(1)(b) of the *Corporations Act* (which IAL denies), then the purported entry into Policy 5369 and endorsements was not conduct on which Greensill Bank could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act* because the Greensill Group (including its agent, Marsh) knew or ought to have known that BCC and Brereton did not have authority to write the risks the subject of these proceedings.

(d) Moreover, the Applicants have not pleaded the facts, matters and circumstances said to constitute actual good faith reliance for the purpose of section 917A(1)(c) of the *Corporations Act* and IAL denies that Greensill Bank in fact relied in good faith on the purported entry into Policy 5369 and endorsements.

A11 IAL was not informed that BCC and Brereton were issuing policies and endorsements using non-approved wording and non-approved endorsements. In fact:

(a) BCC informed IAL on 2 November 2017 that "We are only going to use our approved wording in accordance with our approved Underwriting Guidelines." [IAL.500.011.0555].

(b) The bordereaux provided by BCC to IAL at all relevant times failed to disclose material information and contained substantial inaccuracies, including by failing to disclose the existence of Policy 5369 and endorsements and multiple other policies purportedly written by BCC/Brereton on behalf of IAL in favour of

Greensill entities, and by failing to disclose that BCC/Brereton had purported to write policies with entities domiciled outside Australia as insureds. In particular, Greensill Bank, which was domiciled in Germany, was not disclosed as an insured. The bordereaux did not disclose that non-approved wording and endorsements were being written. On the contrary, the denominations of the policies identified in the bordereaux were consistent with Approved Wording being used.

A11A The Greensill Group (including its agent, Marsh) knew or ought to have known that BCC and Brereton did not have authority to write the risks the subject of these proceedings.

No coverage under Policy 5369

A12 *Third,* even if the Applicants can establish that IAL is bound by (or otherwise responsible for) Policy 5369 and the endorsements to it, they face a number of insurmountable obstacles in showing that Policy 5369 covered the claims they now make.

A13 To the extent that this Defence sets out coverage defences that are based on the wording of Policy 5369 and its endorsements, it should be understood that these defences arise only in the alternative to IAL's primary position that Policy 5369 and its endorsements are not valid and binding. Policy 5369, at a high level, purports to insure "Loss" in respect of "Assets" caused by a failure to pay "Eligible Debts". There are numerous necessary conditions which must exist before each of those three key Concepts – "Loss", "Asset" and "Eligible Debt" – can be said to exist.

A14 For example, before there can be an "Eligible Debt" there must be a debt which meets the six criteria in Schedule 7 of Policy 5369 at the time the relevant "Asset" derived from one or more Eligible Debts is acquired by the Insured. One of those criteria is that the debt meets the criteria in a "Debt Endorsement". The Applicants rely on an alleged debt endorsement described as Endorsement 1 (defined in paragraph 170 of the SOC as the "Debt Endorsement" and referred to in this Defence as **Debt Endorsement 1**). Debt Endorsement 1 brings with it a host of additional conditions which a debt must meet in order to qualify as an "Eligible Debt". IAL denies that Debt Endorsement 1 binds it, but the Applicants' case depends on Debt Endorsement 1.

A15 There are numerous intersections between IAL's defence of lack of authority and the case advanced by the Applicants on coverage. The Applicants' case on coverage depends on establishing that the "Customer Endorsements" and "Debt Endorsement" they rely on were valid, binding on and enforceable against IAL. For example, there is no "Eligible Debt" unless it is owed by a "Customer" which, in turn, is a person endorsed to the policy under a "Customer Endorsement". If there is no valid or effective "Customer Endorsement", there is no "Customer" and no "Eligible Debt".

A16 IAL anticipates that, if Policy 5369 is (contrary to IAL's position) valid and/or binding on it, in order to resolve the case on coverage, it will be necessary: first, to identify whether Debt Endorsement 1 was valid, binding and enforceable; secondly, to construe the policy and endorsement to identify the conditions necessary for coverage; and, thirdly, to identify and understand the underlying transactions to establish whether the conditions are met. The alleged underlying transactions in this proceeding involve the following parties and transactions:

(a) a supply or possible supply of goods or services from a supplier (A) to a purchaser (B, here the Delta HoldCos (as defined in paragraph 105 of the SOC)), giving rise to a possible payable from B to A. The possible payables here were, in the first instance, a possible acquisition of a corporate group and, in the second instance, general trade payables of B;

(b) the provision of finance from C (here, GCUK) to B (i.e. the Delta HoldCos, as purported acquisition finance or supply chain finance, to allow each of the Delta Holdcos to meet its possible or purported payable to A). The finance is provided under agreements described as the **Delta IPAs** (defined in paragraph 109 of the SOC);

(c) the assumption of payment obligations by B to C (referred to as the **Delta IPUs** in this Defence, and defined in the SOC at paragraph 151) in consideration for the supply of finance by C. The payment obligations arise under the Delta IPAs. (In this case, each of the Delta HoldCos is alleged to be a "Customer", and the payment obligations of the Delta HoldCos to GCUK are alleged to be "Eligible Debts");

(d) the giving of guarantees by each of the Delta HoldCos and a further party, Liberty House (as defined in paragraph 106 of the SOC) (D), of the payment obligations of B to C. (In this case, the further party, Liberty House, is also alleged to be a "Customer", and each of the guarantor's payment obligations to C are also said to be "Eligible Debts"); and

(e) an assignment by C (the financier, GCUK) to E (Greensill Bank, the alleged "Insured") of the payment obligations of B and D to C under the Delta IPAs and the guarantees.

A17 A unique, and unexplained, feature of this case is that, although the finance from GCUK to the Delta HoldCos under the Delta IPAs was expressed to be for financing possible payables of the Delta HoldCos, the finance agreements stipulated that the quantum of the finance was fixed by reference to "expected" future accounts receivable of

subsidiaries of the Delta HoldCos, namely, the Delta OpCos (as defined in paragraph 113 of the SOC).

A18 A further unexplained feature of this case is that, through a set of transactions, separate to those described in A16 and not fully explained in the SOC, the Delta OpCos assigned (or purportedly assigned) their possible future accounts receivable to an entity, Specialty Steel UK Limited (**SSUK**) which, in turn, assigned (or purportedly assigned) its interest (if any) in the possible future accounts receivable to GCUK which, in turn, assigned (or purportedly assigned) the interests to Greensill Bank. The circumstances in which those alleged assignments occurred are not revealed in the SOC, nor is the commercial justification. In any event, IAL says that purported assignment of receivables which may never come into existence was invalid as a matter of law.

A19 IAL contends that the SOC falls well short of pleading material facts capable of establishing the multiple steps in the transactional chain which could ground indemnity under Policy 5369, even assuming that it, and relevant endorsements, are valid and binding on IAL.

A20 Further, the Applicants' pleaded case (as in other Greensill Proceedings) largely does not address, or address adequately, the conditions necessary for there to be coverage. IAL has done its best in the Defence to expose the propositions which are either implicit in the Applicants' case or, if not implicit, are missing and must be established. IAL anticipates that the resolution of the case on coverage will call for a measure of "box-ticking", a task in which IAL says the Applicants will fail at multiple levels on the case as pleaded.

A21 The complexity of the endorsements, and the related multiplicity of conditions necessary for there to be coverage, are not matters for which IAL is responsible: IAL did not draft Policy 5369 or the endorsements; they bear no resemblance to the Approved Wording or the Approved Endorsements; and Policy 5369 and endorsements were in fact drafted by the purported Insureds themselves without approval by or even recourse to IAL.

A22 Once the propositions implicit in or necessary to the Applicants' case are exposed (as they are in other Greensill Proceedings), it is apparent that there are significant gaps throughout the Applicants' case. These are identified throughout this Defence (and correspondingly in IAL's defences to related claims). By way of example only:

(a) Under the relevant part of Debt Endorsement 1 (Part B), it was necessary that the underlying "Debts" arise under an agreement under which either GCUK provides funding against accounts receivable or, alternatively, acquires accounts receivable. Under the Delta IPAs, funding was against possible

payables of the Delta HoldCos, not accounts receivable. Further, GCUK did not acquire accounts receivable pursuant to the Delta IPAs.

(b) Further, any accounts receivable here were, at most, only possible future accounts receivable. Part B of Debt Endorsement 1 does not apply where all that exists is a possible future accounts receivable.

(c) A debt is not an "Eligible Debt" unless it is owed by an "Eligible Customer". For multiple reasons, the Delta HoldCos and Liberty House were not "Eligible Customers". One reason they were not "Eligible Customers" is because, on the proper construction of Policy 5369, a person is not an "Eligible Customer" unless a "Proposal" (essentially, a document providing and verifying financial information about the person) has been submitted to the Insurer in respect of that person. The commercial common sense of that condition is obvious: before an Insurer accepts the risk of a person not paying debts, one would expect the Insurer to be provided with information about the credit risk to which it would be exposed through that person. Here, no "Proposals" were ever provided.

(d) Under Part B of Debt Endorsement 1, a debt is not an "Eligible Debt" unless it is equal to or less than the amount of the underlying account receivable. Here, on the terms of the Delta IPUs, the debts were necessarily greater than the amount of any underlying account receivable.

A23 Examples could be multiplied. Many of the problems in the Applicants' cases arise because the "Asset" in respect of which they seek indemnity is many steps removed from an underlying, real-world transaction (between A and B) and, in fact, the transactions were financially engineered in such a way that there often need never be any real-world transaction at all. Policy 5369 and related debt endorsements ultimately require there to be some real-world root to the "Assets" and "Eligible Debts" the subject of the claims.

A24 Further, and relatedly, once the documents particularised by the Applicants are reviewed, it becomes apparent that there are multiple holes in the transactional chain. Documents said to generate the Delta IPUs (the payment obligations from B to C) do not comply with the Delta IPAs. Documents under which the Delta IPUs are said to have been assigned from C (GCUK) to E (Greensill Bank) do not comply with the relevant assignment agreement. There is no evidence of underlying payables (from B to A) or of expected future accounts receivable of the Delta OpCos.

Misrepresentations and Non-Disclosures

A25 Further, for the reasons as pleaded by IAL and set out in Annexure A to IAL's Defence, there were misrepresentations and non-disclosures made by the purported Insureds relating to (inter alia) the true nature of the arrangements between GCUK and the

purported Customers and the character of the risk being insured which call for Policy 5369 and endorsements to be avoided. IAL says that if, contrary to its primary position, it is bound by Policy 5369 and endorsements, it is entitled to, and does, avoid Policy 5369 (including any endorsements) and there is no right of indemnity.

Greensill Bank and others have caused the damage or loss (if any) the subject of the claim, not IAL

A26 Finally, so far as the Applicants assert an indirect claim against IAL via a deemed responsibility under Division 6 of Part 7.6 of the *Corporations Act* for contraventions of the *Corporations Act*, the *Australian Consumer Law (**ACL**)* and the *Australian Securities and Investments Commission Act 2001* (Cth) (***ASIC Act***), or in the alternative, a direct claim against IAL under Division 2 of Part 7.10 of the Corporations Act, the ACL or the ASIC Act in respect of allegedly misleading or deceptive conduct, IAL also advances a concurrent wrongdoer/apportionment defence. The basis of this defence is the proposition that IAL's deemed responsibility is not, and cannot be, greater than that of BCC or Brereton, being the persons for whose conduct IAL is said to be responsible – so, if a concurrent wrongdoer defence is available to BCC or Brereton, it is also available to IAL. A concurrent wrongdoer is a person whose acts or omissions (whether wrongful at law or not) caused the loss the subject of the claim. Here, there were multiple concurrent wrongdoers, including the numerous participants in the transactional chain relied upon as the factual foundation for the Applicants' pleaded case, and there is contributory negligence of Greensill Bank. IAL's responsibility, if any, is reduced to the extent appropriate in all the circumstances.

Applicants' case fails against IAL at every stage

A27 IAL says that the Applicants' case fails at multiple stages. IAL was not a party to Policy 5369 or the endorsements, and it is not attributed with responsibility for the conduct of BCC and Brereton in relation to them. As pleaded by IAL, the conduct of the Greensill Group would in any event allow Policy 5369 and endorsements to be avoided. And, even if Policy 5369 and endorsements (or some of them) are valid and binding, there is no coverage. The claim is denied, in whole and at each stage.

Reservation and other preliminary matters

A28 Given the nature of the matters in which issue is joined between the parties, discovery and compulsory disclosure will be sought by IAL. In addition, IAL continues to investigate the circumstances in which Policy 5369 came to be issued by the Third Respondent, Brereton, and/or the Second Respondent, BCC. Additional issues may come to light as a result of discovery, disclosure and further investigation, in which case an amended Defence will be filed at an appropriate future time.

A29 Save where expressly stated to the contrary, this pleading adopts the sub-headings and definitions used in the SOC where appropriate and for convenience only. No admissions are implicit in or to be inferred from the use of these sub-headings in the Defence.

A29A Save where expressly stated to the contrary, IAL pleads only to the paragraphs pleaded in the SOC, not to the particulars of the paragraphs pleaded in the SOC.

Issues likely to arise

A30 The issues likely to arise are as follows:

(a) the existence and scope of the authority (if any) of BCC and Brereton to act on behalf of IAL in the various respects alleged by the First Applicant, Greensill Bank, including in relation to the issue of Policy 5369 and the endorsements pleaded in the SOC;

(b) whether Division 6 of Part 7.6 of the Corporations Act applies;

(c) the validity of Policy 5369 and the endorsements purportedly issued under or in relation to it;

(d) the scope of the coverage under Policy 5369 (if valid and effective, which is denied), if any;

(e) the duty of Greensill Bank to mitigate under Policy 5369 (if valid and effective, which is denied);

(f) whether Policy 5369 (if valid and effective, which is denied) can be avoided; and

(g) whether there were misrepresentations or non-disclosures which entitle IAL to avoid Policy 5369 or otherwise resist an obligation to indemnify.

A PARTIES

1 IAL admits paragraph 1 of the SOC.

2 IAL admits paragraph 2 of the SOC.

3 IAL admits paragraph 3 of the SOC.

4 IAL admits paragraph 4 of the SOC.

5 As to paragraph 5 of the SOC, IAL:

(a) admits paragraph 5.a of the SOC;

(b) as to paragraph 5.b of the SOC:

(i) states that IAGA was a shareholder of BCC between on or about 29 August 2017 and 9 April 2019;

(ii) states that since 9 April 2019 TMMA has been a shareholder in BCC;

(iii) admits that since 7 June 2018 BCC has been a subsidiary of Bond within the meaning of section 46 of the *Corporations Act*; and

(iv) otherwise denies paragraph 5.b of the SOC;

(c) admits paragraph 5.c of the SOC and says further that, between 28 July 2016 and 1 August 2017, BCC's authority to act on behalf of CGU was limited in accordance with the terms of the CGU AAR Agreement (referred to in paragraph 8 of the SOC) and Underwriting Manual Version 1.0 (referred to in the particulars to paragraph 6.c of the SOC);

(d) admits paragraph 5.d of the SOC and says further that:

(i) BCC's authority to act on behalf of IAL and IAGA between 1 August 2017 and 30 June 2019 was limited in accordance with the terms of the:

(A) CGU AAR Agreement between 1 August 2017 and 9 April 2019;

(B) **IAL AAR Agreement** (referred to in paragraph 33 of the SOC) between 9 April 2019 and 30 June 2019;

(C) Underwriting Manual Version 1.0 between 1 August 2017 and 11 July 2018;

(D) **Underwriting Manual Version 2.0** (referred to in the particulars to paragraph 6.e of the SOC) between 12 July 2018 and 8 April 2019;

(E) **Underwriting Manual Version 3.0** (referred to in the particulars to paragraph 6.e of the SOC) between 9 April 2019 and 30 June 2019;

(ii) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that:

(A) BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019; and

(B) BCC was the authorised representative of only TMNF from 1 July 2019 onwards; and

Particulars

The register maintained under section 922A of the *Corporations Act* is a publicly-available record.

(iii) in respect of the second particularised document at paragraph 5(d) of the SOC:

(A) the Applicants have identified this as a document with document reference number PLE.3000.0001.0676;

(B) on its face, that document is not an agreement to which "IAG Agencies Pty Ltd" is a party;

(e) as to paragraph 5.e of the SOC:

(i) repeats paragraphs 8, 32(j), 33 and 55 of this Defence;

(ii) says that there is no identification of the paragraph or paragraphs of the definition of “representative” in section 910A of the *Corporations Act* in which BCC is said to fall; and

(iii) otherwise denies paragraph 5.e of the SOC; and

(f) admits paragraph 5.f of the SOC.

6 As to paragraph 6 of the SOC, IAL:

(a) does not know and cannot admit paragraph 6.a of the SOC;

(b) admits that Brereton held the title “Head of Trade Credit” but otherwise denies paragraph 6.b of the SOC;

(c) admits paragraph 6.c of the SOC and says further that between 8 July 2016 and 1 August 2017 Brereton’s authority to act on behalf of CGU was limited in accordance with the terms of:

(i) the **CGU/Brereton Authorisation Agreement** (defined as the “Brereton CGU Authorisation" in paragraph 46 of the SOC, and referenced as the “Brereton-CGU Authorisation Agreement" in the particulars to paragraph 6.c of the SOC);

(ii) Underwriting Manual Version 1.0; and

(iii) the CGU AAR Agreement between 28 July 2016 and 1 August 2017;

(d) admits paragraph 6.d of the SOC and repeats paragraph 6(c) of this Defence;

(e) admits paragraph 6.e of the SOC and says further that between 1 August 2017 and 30 June 2019, Brereton's authority to act on behalf of IAL and IAGA was limited in accordance with the terms of:

(i) the **IAGA/IAL Brereton Authorisation** (defined as the "Brereton IAGA Authorisation" in paragraph 55 of the SOC, and referenced as the "Brereton-IAGA Authorisation Agreement" in the particulars to paragraph 6.e of the SOC);

(ii) the CGU AAR Agreement between 1 August 2017 and 9 April 2019;

(iii) the IAL AAR Agreement referred to in paragraph 33 of the SOC between 9 April 2019 and 30 June 2019;

(iv) the Underwriting Manual Version 1.0 between 1 August 2017 and 11 July 2018;

(v) the Underwriting Manual Version 2.0 between 12 July 2018 and 8 April 2019; and

(vi) the Underwriting Manual Version 3.0 between 9 April 2019 and 30 June 2019; and

(f) admits paragraph 6.f of the SOC and repeats paragraph 6(e) of this Defence.

(g) as to paragraph 6.g of the SOC:

(i) repeats paragraphs 32(j), 33(k), 46, 53, and 55 of this Defence;

(ii) says that there is no identification of the paragraph or paragraphs of the definition of "representative" in section 910A of the *Corporations Act* in which Brereton is said to fall; and

(iii) otherwise denies paragraph 6.g of the SOC; and

(h) as to paragraph 6.h of the SOC admits that, pursuant to section 917A(2)(a) of the *Corporations Act*, Brereton was a representative of TMNF and otherwise does not know and cannot admit paragraph 6.h of the SOC.

6A IAL admits paragraph 6A of the SOC.

6B As to paragraph 6B of the SOC, IAL:

(a) admits paragraph 6B(a) of the SOC;

(b) admits paragraph 6B(b) of the SOC;

(c) admits paragraph 6B(c) of the SOC;

(d) admits paragraph 6B(d) of the SOC and says further that:

(i) since 10 March 2004, Marsh Pty Ltd has been and is (as at the date of the Defence) the holder of an Australian Financial Services Licence (licence no. 000238983) (**Marsh AFSL**) issued under s 913B of the Corporations Act, and

(ii) refers to the terms of the Marsh AFSL (including as updated from time to time) for their full force and effect;

(e) says that:

(i) under the Marsh AFSL, Marsh Pty Ltd is permitted to (among other things) carry on a financial services business to provide financial product advice for general insurance products and life products; and

(ii) otherwise, does not know and therefore cannot admit paragraph 6B(e) of the SOC;

(f) says that:

(i) it repeats paragraphs 5(c), 5(d), 8, 66A, 83, and 84 of this Defence; and

(ii) otherwise, does not know and therefore cannot admit paragraph 6B(f) of the SOC;

(g) denies paragraph 6B(g) of the SOC;

(h) says, in respect of paragraph 6B(h), that:

(i) it repeats paragraph 322(v)(i)(A)b of this Defence; and

(ii) it does not know and therefore cannot admit the paragraph.

6C As to paragraph 6C of the SOC, IAL:

(a) admits paragraph 6C(a) of the SOC;

(b) says, in respect of paragraph 6C(b) of the SOC, that:

(i) since 6 April 2016, Marsh Limited has been a subsidiary of Marsh & McLennan Companies, Inc., a company publicly listed on the New York Stock Exchange; and

(ii) it otherwise, does not know and therefore cannot admit the paragraph;

(c) does not know and therefore cannot admit paragraph 6C(c) of the SOC;

(d) says, in respect of paragraph 6C(d) of the SOC, that:

(i) it repeats paragraphs 5(c), 5(d), 8, 66A, 83, and 84 of this Defence; and

(ii) it otherwise, does not know and therefore cannot admit the paragraph;

(e) does not know and therefore cannot admit paragraph 6C(e) of the SOC;

(f) does not know and therefore cannot admit paragraph 6C(f) of the SOC; and

(g) does not know and therefore cannot admit paragraph 6C(g) of the SOC.

B AGENCY ARRANGEMENTS BETWEEN BCC AND IAL

B1 Agency arrangements between CGU and BCC

7 IAL admits paragraph 7 of the SOC on the assumption that "IAGL" is a reference to Insurance Australia Group Limited.

8 IAL admits paragraph 8 of the SOC and says further that:

(a) the CGU AAR Agreement described BCC as "Agent";

(b) the CGU AAR Agreement included (inter alia) the following defined terms (clause 23.1):

(i) **Applicable Laws**, meaning: (a) all laws (including acts, regulations and instruments); (b) all policies, guidelines, standards and requirements issued or imposed by a Regulator; (c) any conditions imposed on CGU's Australian Financial Services Licence (AFSL) which are notified by CGU to BCC; and (d) all industry codes of practice including the general insurance code of practice, to the extent that they relate to the conduct of the relevant party;

(ii) **Approved Products**, meaning contracts of insurance issued or to be issued by CGU of the classes and types: (a) identified in the Commission Schedule to the CGU AAR Agreement; and (b) otherwise agreed between the parties in writing;

(iii) **Authorisation Agreement**, meaning the agreement between BCC and an Authorised Individual appointing the Authorised Individual as CGU's authorised representative;

(iv) **Authorisation Notice**, meaning, relevantly, an instrument in the form of the "Authorisation Notice Schedule which appoints [BCC] as CGU's authorised representative";

(v) **Authorised Individual**, meaning an employee, officer or representative of BCC who has been appointed as an authorised representative of CGU by BCC or CGU in accordance with a duly executed Authorisation Agreement and whose appointment has not been terminated;

(vi) **Authorised Services**, meaning the services which BCC is authorised by CGU to perform as specified in the "Authorisation Notice" and, if applicable, any claims handling services delegated to BCC in accordance with clause 9;

(vii) **Client**, meaning any person to whom BCC has provided any of the "Authorised Services" on behalf of CGU or any person whom BCC has dealt with in connection with the possible provision of any of the "Authorised Services" to the person by BCC on behalf of CGU;

(viii) **Commencement Date**, meaning, relevantly, 1 July 2016;

(ix) **Guidelines**, meaning the written authorisations, procedures, guidelines (including any claims handling guidelines issued pursuant to clause 9), directions and requirements notified or provided by CGU to BCC from time to time in relation to the provision of the "Authorised Services" by BCC or BCC's obligations under the CGU AAR Agreement and including the compliance manual;

(x) **Insurer**, meaning the insurer of an "Insurance Policy";

(xi) **Insurance Policy**, meaning a policy of general insurance, including an interim insurance policy arranged by BCC and issued by CGU or a related body corporate of CGU to a "Client" from time to time under the terms of the CGU AAR Agreement;

(xii) **Term**, meaning, relevantly, the period from the "Commencement Date" until terminated under clause 17;

(xiii) **Underwriting Manual**, meaning, the underwriting manual agreed between the Parties, as varied from time to time in accordance with the CGU AAR Agreement, which may include procedures in relation to: (a) the pricing of the "Approved Products", subject to underwriting variants in relation to individual "Approved Products"; (b) the provision of

services by BCC in relation to the "Approved Products" including service level requirements; (c) BCC's performance of its other obligations under the CGU AAR Agreement; and (d) BCC's compliance with applicable laws;

(c) the CGU AAR Agreement also included the following express terms:

(i) the Commission Schedule identified a single "Approved Product", namely, "Trade Credit Products";

(ii) CGU authorised BCC, from the Commencement Date:

(A) as an authorised representative of CGU in accordance with the CGU AAR Agreement, by giving BCC an "Authorisation Notice";

(B) to provide the "Authorised Services"; and

(C) to deal in, arrange and issue "Approved Products" in accordance with the "Underwriting Manual" (clause 2.1);

(iii) BCC must carry out the "Authorised Services" only through an "Authorised Individual" as set out in clause 5.4 (clause 2.2);

(iv) BCC was not authorised to do anything on behalf of CGU that was not expressly authorised under the CGU AAR Agreement (clause 2.3);

(v) BCC must not, except to the extent expressly permitted by the CGU AAR Agreement or authorised in writing by CGU, enter into any contract or arrangement, do any acts, make any representations or incur any obligation (including accepting any risk) on behalf of CGU or the Insurer (clause 2.3(a));

(vi) BCC must not, except to the extent expressly permitted by the CGU AAR Agreement or authorised in writing by CGU, vary or waive:

(A) any term or requirement of any Insurance Policy;

(B) any duty of a Client or any third party imposed by an Applicable Law relating to any Insurance Policy or proposed Insurance Policy, including the statutory duty of disclosure; or

(C) any legal requirement relating to any Insurance Application, any Claim or the administration, variation or cancellation of any Insurance Policy (clause 2.3(b));

(vii) the relationship between CGU and BCC created by the agreement was one of principal and agent for the purposes expressly permitted by the agreement only, and otherwise principal and independent contractor, and not one of employer and employee, joint venture or partnership (clause 2.6);

(viii) BCC must comply with all reasonable written Guidelines given to BCC by CGU at any time in relation to (inter alia):

(A) the provision of the "Authorised Services" (clause 4.1(a)); and

(B) compliance with the Applicable Laws by BCC or CGU (clause 4.1(b));

(ix) the Guidelines (being Underwriting Manual Version 1.0, and Underwriting Manual Version 2.0 referred to in paragraphs 8(h) and 8(l) of this Defence respectively) were taken to be incorporated into and form part of the CGU AAR Agreement (clause 4.2);

(x) BCC was to perform the "Authorised Services" and its obligations under the CGU AAR Agreement in accordance with the Applicable Laws, in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly (clause 4.3);

(xi) BCC may from time to time appoint one or more individuals as "Authorised Individuals" to provide the "Authorised Services" on the conditions set out in clause 5.4 (clause 5.4);

(xii) BCC would perform its obligations under the CGU AAR Agreement in accordance with the Underwriting Manual (clause 7.1); and

(xiii) BCC would collect a premium for the risks underwritten within authority (clause 8.1);

(d) the CGU AAR Agreement included a schedule constituting the "Authorisation Notice Schedule", being the **BCC Authorisation Notice** (defined as the "Authorisation Notice" in paragraph 9 of the SOC), which:

(i) stated and had the effect that CGU authorised BCC to provide and perform the "Authorised Financial Services" in relation to the "Approved Products" only on behalf of CGU, and for that purpose appointed BCC as its authorised representative for the purposes of Chapter 7 of the *Corporations Act* from the "Effective Date", being 28 July 2016;

(ii) defined the "Authorised Financial Services" to mean that BCC was authorised, in accordance with the CGU AAR Agreement, to:

(A) provide general advice (but not personal advice);

(B) deal in, arrange, acquire, issue, vary and dispose of "Approved Products", with that term bearing its meaning set out in the CGU AAR Agreement;

(C) collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for "Approved Products"; and

(D) issue, negotiate and agree the terms of Insurance Policies for "Approved Products" as agent of CGU;

(iii) defined the "Approved Products" to have the meaning given to that term in the CGU AAR Agreement, such that the only "Approved Products" were "Trade Credit Products", and "Trade Credit Products" could only be written using Approved Wording 1.3 (referred to in paragraph 8(j) of this Defence) or Approved Wording 1.4 (referred to in paragraph 8(k) of this Defence);

(e) the BCC Authorisation Notice was a written notice for the purposes of section 916A of the *Corporations Act*, and, in accordance with section 916A(1) of the *Corporations Act*, did not and could not give authority to BCC to provide any service on behalf of CGU that was not specified in the notice;

(f) on 8 July 2016, CGU and Brereton entered into the CGU/Brereton Authorisation Agreement, to which was attached a notice (the **CGU/Brereton Authorisation Notice**);

(g) the CGU/Brereton Authorisation Agreement (which included the CGU/Brereton Authorisation Notice on page 3 of 3) included the following express terms:

(i) CGU authorised Brereton to provide and perform the "Authorised Financial Services" in relation to the "Approved Products" only on behalf of CGU, and for that purpose appointed Brereton as its authorised representative for the purposes of Chapter 7 of the *Corporations Act* from the "Effective Date", being 8 July 2016 (pages 1 and 3);

(ii) Brereton was only authorised to perform the "Authorised Services" on behalf of CGU (page 1);

(iii) "Approved Products" was defined to have the same meaning given to that term in the CGU AAR Agreement (page 3), such that the only "Approved Products" were "Trade Credit Products" and "Trade Credit Products" could only be written using Approved Wording 1.3 (referred to in paragraph 8(j) of this Defence) or Approved Wording 1.4 (referred to in paragraph 8(k) of this Defence);

(iv) "Authorised Financial Services" was defined to mean that Brereton was authorised in accordance with the CGU AAR Agreement to:

(A) provide general advice (but not personal advice);

(B) deal in, arrange, acquire, issue, vary and dispose of "Approved Products";

(C) collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for "Approved Products"; and

(D) issue, negotiate and agree the terms of Insurance Policies for "Approved Products" as agent of CGU (page 3);

(v) Brereton must comply with and provide the "Authorised Services" in accordance with the CGU AAR Agreement and subsequently the IAL AAR Agreement as if Brereton were BCC (page 1); and

(vi) Brereton must not cause BCC to breach any terms and conditions of the CGU AAR Agreement (page 1);

(h) in or around June 2016, Underwriting Manual Version 1.0, being a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines … (Version 1.0)" was issued, which was the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement, and which (inter alia) set out the following:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid as a result of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a “Buyer”, who receives goods/services from and trade credit (from a “Seller”) and who makes payments for goods and services (to a “Seller”);

(B) a “Seller”, who supplies goods/services and trade credit (to a “Buyer”) and who receives payments for goods and services (from a “Buyer”);

(C) a “Credit Insurer”, who provides insurance to the “Seller”, receives premiums from the “Seller” and who has a right of subrogation in respect of the “Buyer”;

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 13);

(v) BCC is authorised to bind insurance policies only in the nature of the product listed in “2 –Trade Credit Insurance Products”, and not for other product lines or risk categories (page 8);

(vi) BCC must always act within the authority and terms of the applicable agency agreement in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 1.0 (page 8);

(vii) the “Maximum Limits” that may be underwritten and accepted by BCC are:

(A) Whole of Turnover Limit: AUD50 million, subject to the special acceptance stipulation in paragraph 8(h)(viii) of this Defence;

(B) Major Debtors / Multi Buyer Limit: AUD40 million, subject to the special acceptance stipulation in paragraph 8(h)(viii) of this Defence;

(C) Single Risks Limit: AUD35 million (page 9);

(viii) BCC’s authority is up to AUD35 million, with policies and buyers with limits up to AUD50 million for Whole of Turnover policies and up to AUD40 million for Major Debtors/Multi Buyer policies considered by Special Acceptance by CGU and its reinsurers (page 9);

(ix) BCC was authorised only to issue policies to Australian customers in Australia (page 9);

(x) the maximum credit limit / credit term BCC must set for each policy written within authority is 180 days (page 9);

(xi) the maximum indemnity limit BCC must set for each policy written within authority is 90% of Debt, being accounts receivable of the insured (page 9);

(xii) the standard policy term would be twelve months, and policy periods beyond fifteen months must be referred to CGU for approval, but in any case, would be no longer than twenty four months (page 11);

(xiii) there was authority only to use authorised endorsement clauses (pages 12, 14 and 16);

(xiv) BCC was authorised to provide three types of trade credit insurance products for Australian clients that were transacting domestically or overseas, being Comprehensive / Whole of Turnover, Major Debtors / Multi Buyer and Single Risks cover, and to do so using the same core base wording (as recorded in Appendix 2 of the Underwriting Manual Version 1.0) with the application of select mandatory endorsements (page 16);

(xv) the minimum premium BCC must set for each policy written within authority is $10,000 (page 26);

(xvi) a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured must bear for each loss or series of losses, must be set for each policy written within authority (page 28);

(xvii) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 29); and

(xviii) various “exclusions” from the risks BCC was authorised to write, including any “financial guarantees that cover a purely monetary debt”, “Insolvent risks” and “Intercompany sales” (page 31);

(i) on or around 24 July 2016, CGU approved a set of “Policy Endorsement Clauses” (**Approved Endorsements**) for use by BCC in accordance with the

terms of the Underwriting Manual Version 1.0 and subsequent versions as referred to below, and says further that:

(i) at all material times thereafter, CGU and IAL did not approve any additional endorsement clauses for use by BCC; and

(ii) at all material times thereafter, BCC did not have authority to issue endorsements that were not Approved Endorsements;

Particulars

The Approved Endorsements are in writing. A copy is available for inspection at the offices of IAL's solicitors.

(j) in or around October 2016, CGU issued the following approved wording (**Approved Wording 1.3**), being the “core base wording” for the purposes of Underwriting Manual Version 1.0 and the "Trade Credit Products” listed in the Commission Schedule to the CGU AAR Agreement;

(i) “Trade Credit Insurance Whole of Turnover” dated October 2016 (Version WOT 1.3);

Particulars

Trade Credit Insurance Whole of Turnover dated October 2016 (Version WOT 1.3) (IAL.500.011.1310).

(ii) “Trade Credit Insurance Multi Buyer” dated October 2016 (Version MB 1.3);

Particulars

Trade Credit Insurance Multi Buyer dated October 2016 (Version MB 1.3) (IAL.500.011.1309).

(iii) “Trade Credit Insurance Single Risk” dated October 2016 (Version SR 1.3);

Particulars

Trade Credit Insurance Single Risk dated October 2016 (Version SR 1.3) (IAL.500.011.130).

(k) in or around 1 August 2017, IAL issued the following approved wording (**Approved Wording 1.4**), which came into effect on 1 August 2017, being the “core base wording” for the purposes of Underwriting Manual Version 1.0 and the "Trade Credit Products” listed in the Commission Schedule to the CGU AAR Agreement:

(i) "Trade Credit Insurance Whole of Turnover" dated August 2017 (Version WOT 1.4);

Particulars

Trade Credit Insurance Whole of Turnover dated August 2017 (Version WOT 1.4) (IAL.500.011.0475).

(ii) "Trade Credit Insurance Multi Buyer" dated August 2017 (Version MB 1.4); and

Particulars

Trade Credit Insurance Multi Buyer dated August 2017 (Version MB 1.4) (IAL.500.011.0474).

(iii) "Trade Credit Insurance Single Risk" dated August 2017 (Version SR 1.4);

Particulars

Trade Credit Insurance Single Risk dated August 2017 (Version SR 1.4) (IAL.500.011.0473).

(l) in or around July 2018, Underwriting Manual Version 2.0, being a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines … (Version 2.0)", was issued, which was, from the time it came into effect on 12 July 2018 until 8 April 2019, the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement and which (inter alia) set out the following express terms:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid as a result of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a "Buyer", who receives goods/services from and trade credit (from a "Seller") and who makes payments for goods and services (to a "Seller");

(B) a “Seller”, who supplies goods/services and trade credit (to a “Buyer”) and who receives payments for goods and services (from a “Buyer”);

(C) a “Credit Insurer”, who provides insurance to the “Seller”, receives premiums from the “Seller” and who has a right of subrogation in respect of the “Buyer”;

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 13);

(v) BCC is authorised to bind insurance policies only in the nature of the product listed in “2 – Trade Credit Insurance Products”, and not for other product lines or risk categories (page 8);

(vi) BCC must at all times act within the authority and terms of the applicable agency agreement (being, relevantly, the CGU AAR Agreement) in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 2.0 (page 8);

(vii) BCC is authorised to write three Trade Credit Insurance Products only, being Approved Wording 1.4, described as follows:

> “BCC Trade Credit will underwrite and is authorised by IAL to write three Trade Credit Insurance Products. These are:
>
> Whole of Turnover approved wording Version WOT 1.4 August 2017
>
> Multi Buyers approved wording Version MB 1.4 August 2017
>
> Single Risks approved wording Version SR 1.4 August 2017”
>
> (page 9);

(viii) the “Maximum Limits” that may be underwritten and accepted by BCC are:

(A) Whole of Turnover Limit: AUD50 million;

(B) Major Debtors / Multi Buyer Limit: AUD50 million; and

(C) Single Risks Limit: AUD50 million (page 9);

(ix) BCC's binding authority is up to AUD50 million, with policies and buyers with limits up to AUD75 million considered by Special Acceptance (page 9);

(x) BCC's authority in paragraphs 8(l)(viii), 8(l)(ix) and 8(l)(xvii) of this Defence was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons (page 9, page 56) (the **Buyer Group limit v 2.0**);

(xi) BCC was authorised only to issue policies for Australian customers domiciled in Australia (page 9);

(xii) the maximum credit limit / credit term BCC must set for each policy written within authority is 180 days (page 9);

(xiii) the maximum indemnity limit BCC must set for each policy written within authority is 95% of Debt, being accounts receivable of the insured (page 9);

(xiv) the standard policy term would be twelve months, and policy periods beyond fifteen months must be referred to IAL for approval, but in any case, would be no longer than twenty four months (page 11);

(xv) the minimum premium BCC must set for each policy written within authority is $10,000 (page 26);

(xvi) a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured must bear for each loss or series of losses, must be set for each policy written within authority (page 28);

(xvii) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 29); and

(xviii) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany transactions unless said transactions are on a commercial 'arm's length' basis" (page 31).

9 IAL admits paragraph 9 of the SOC.

10 IAL admits paragraph 10 of the SOC and repeats paragraph 8 of this Defence.

11 IAL admits paragraph 11 of the SOC and repeats paragraph 8(d) of this Defence.

12 IAL admits paragraph 12 of the SOC.

13 IAL admits paragraph 13 of the SOC and says further that:

(a) it refers to and repeats paragraph 8 of this Defence;

(b) between October 2016 and July 2017, the only "Approved Products" in relation to which BCC was authorised to provide "Authorised Financial Services" were contracts of insurance constituting trade credit insurance policies issued or to be issued by CGU written using Approved Wording 1.3; and

(c) there were no contracts of insurance which were "otherwise agreed between CGU and BCC in writing" as being "Approved Products" for the purpose of the CGU AAR Agreement.

14 IAL admits paragraph 14 of the SOC and says further that:

(a) between October 2016 and July 2017, the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement were trade credit insurance policies written using Approved Wording 1.3; and

(b) from August 2017 to 9 April 2019, the only "Approved Products" that BCC was authorised to issue as agent for IAL under the CGU AAR Agreement were trade credit insurance policies written using Approved Wording 1.4.

15 IAL admits paragraph 15 of the SOC and says further that the scope of BCC's authority to act as CGU's agent from 28 July 2016 was limited as pleaded in paragraphs 5(c), 8(a)-8(i) and 13-14 of this Defence.

16 As to paragraph 16 of the SOC, IAL:

(a) says that, it was a term of the CGU AAR Agreement that CGU will pay to BCC commission for providing the "Authorised Services" (as defined in paragraph 8(b)(vi) of this Defence) under the CGU AAR Agreement for the "Trade Credit Products" issued by BCC as agent for CGU (clause 3.1(a) and the Commission Schedule);

(b) says that, the "Trade Credit Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, could only be written using Approved Wording 1.3; and

(c) otherwise denies paragraph 16 of the SOC.

17 As to paragraph 17 of the SOC, IAL:

(a) says that, it was a term of the CGU AAR Agreement that BCC would collect and remit to CGU (net of commission) premiums received by BCC on account of contracts of "Approved Products" issued by BCC as agent for CGU, net of BCC's commission (clauses 3.1, 3.3, 8.1);

(b) says that, the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, were trade credit insurance policies written using Approved Wording 1.3; and

(c) otherwise denies paragraph 17 of the SOC.

18 As to paragraph 18 of the SOC, IAL:

(a) admits that it was a term of the CGU AAR Agreement that BCC will maintain a bordereaux of all "Approved Products" issued by BCC on behalf of CGU (clause 4.5(a));

(b) says that, the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, were trade credit insurance policies written using Approved Wording 1.3; and

(c) otherwise denies paragraph 18 of the SOC.

19 As to paragraph 19 of the SOC, IAL:

(a) admits that it was a term of the CGU AAR Agreement that BCC would provide a copy of the bordereaux referred to in paragraph 18(a) of this Defence to CGU within 7 business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to "Approved Products" issued by BCC as agent for CGU (clause 4.5(b));

(b) says that, the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, were trade credit insurance policies written using Approved Wording 1.3;

(c) says that, it was a term of the CGU AAR Agreement that each monthly bordereaux must include details of all transactions undertaken and monies outstanding, received, refunded or paid during that particular month in relation to Insurance including in respect of each Insurance Policy issued or arranged by BCC on behalf of CGU; and

Particulars

Reporting Schedule to CGU AAR Agreement.

(d) otherwise denies paragraph 19 of the SOC.

20 IAL admits paragraph 20 of the SOC.

21 As to paragraph 21 of the SOC, IAL:

(a) repeats paragraph 8(h) to 8(l) of this Defence;

(b) says that, the maximum policy limit BCC could underwrite for each type of policy referred to in Underwriting Manual Version 1.0 is set out in paragraphs 8(h)(vii), 8(h)(viii) and 8(h)(xvii) of this Defence;

(c) otherwise denies paragraph 21.a of the SOC; and

(d) otherwise admits paragraph 21.b of the SOC.

B2 Transfer of CGU's business to IAL

22 IAL admits that the scheme at Annexure A to the orders made on 20 July 2017 by the Federal Court of Australia (the **Scheme Orders**) had the effect substantially alleged in paragraph 22 of the SOC and relies on the terms of the Scheme Orders for their full force and effect.

Particulars

Orders made by Gleeson J on 20 July 2017 in NSD1739/2016, and Annexure A to those orders.

23 IAL admits paragraph 23 of the SOC.

B3 Agency arrangements between BCC and IAL

24 As to paragraph 24 of the SOC, IAL:

(a) admits that the Scheme Orders had the effect substantially alleged in paragraph 24 of the SOC and relies on the terms of the Scheme Orders for their full force and effect; and

(b) says further that:

(i) BCC's authority to act as IAL's agent under and pursuant to the terms of the CGU AAR Agreement was confirmed by letter issued by IAL dated 1 August 2017; and

Particulars

Letter issued by IAL dated 1 August 2017 (IAL.500.005.0103).

(ii) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that BCC's status as authorised representative of CGU had ceased as at 1 August 2017.

25 IAL admits paragraph 25 of the SOC and repeats paragraph 24(b) of this Defence.

26 As to paragraph 26 of the SOC, IAL:

(a) says that, by reason of the Scheme Orders, on and from 1 August 2017, BCC was authorised by IAL to act as IAL's agent to undertake the activities pleaded in paragraphs 26(a), 26(b) and 26(c) of the SOC, subject to the limits of authority referred to in paragraph 5(d)(i) of this Defence; and

(b) otherwise denies paragraph 26 of the SOC.

27 IAL denies paragraph 27 of the SOC.

28 As to paragraph 28 of the SOC, IAL:

(a) admits that it provided BCC with a letter dated 1 August 2017 stating that BCC was acting on behalf of IAL in relation to the issue of "Trade Credit Insurance";

(b) says that, the letter was provided to BCC for the purpose of providing confirmation of BCC's authority following the transfer of CGU's insurance business to IAL as pleaded in paragraph 22 of this Defence; and

(c) otherwise denies paragraph 28 of the SOC.

29 As to paragraph 29 of the SOC, IAL:

(a) says that, the To Whom it May Concern Letter (as defined in paragraph 28 of the SOC) stated that BCC was arranging "Trade Credit Insurance" under an authority provided by IAL;

(b) relies on the terms of the letter for their full force and effect; and

(c) otherwise denies paragraph 29 of the SOC.

30 IAL repeats paragraphs 28 and 29 of this Defence and otherwise denies paragraph 30 of the SOC.

31 IAL admits paragraph 31 of the SOC and repeats paragraph 8(l) of this Defence.

32 As to paragraph 32 of the SOC, IAL:

(a) says that, on and from 9 April 2019, Underwriting Manual Version 3.0, being a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines …

(Version 3.0)", came into effect and limited BCC's acceptance authority for IAL business effective from that date;

(b) denies that Underwriting Manual Version 3.0 came into effect from 18 March 2019;

(c) admits that Underwriting Manual Version 3.0 included the terms referred to in paragraphs 32(a), 32(b), 32(c), and 32(d) of the SOC;

(d) says that, Underwriting Manual Version 3.0 included a term that BCC will continue to manage claims on behalf of IAL under management of TMMA via the Policy & Claims Administration Outsourcing Deed dated 9 April 2019 (**PACAO**) (page 9);

(e) says that, from the time it came into effect, Underwriting Manual Version 3.0 was the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the IAL AAR Agreement;

(f) says that, Underwriting Manual Version 3.0 also included, inter alia, the following express terms:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid because of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a "Buyer", who receives goods/services from and trade credit (from a "Seller") and who makes payments for goods and services (to a "Seller");

(B) a "Seller", who supplies goods/services and trade credit (to a "Buyer") and who receives payments for goods and services (from a "Buyer");

(C) a "Credit Insurer", who provides insurance to the "Seller", receives premiums from the "Seller" and who has a right of subrogation in respect of the "Buyer";

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 14);

(v) BCC is authorised to bind insurance policies only in the nature of the product listed in ”2 – Trade Credit Insurance Products”, and not for other product lines or risk categories (page 8);

(vi) BCC must always act within the authority and terms of the applicable agency agreement (being, relevantly, the IAL AAR Agreement) in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 3.0 (page 8);

(vii) BCC is not permitted to quote or bind new business on behalf of IAL after the Effective Date, being 30 June 2019 (page 8);

(viii) any new insurance policies issued prior to 30 June 2019 must not exceed a policy term of 12 months (page 8);

(ix) any new business issued prior to 30 June 2019 must adhere to the Underwriting Manual Version 3.0 (page 8);

(x) BCC is not permitted to bind renewal business on behalf of IAL with renewal inception after the Effective Date, being 30 June 2019 (page 8);

(xi) any renewal business due prior to the inception date stated must not exceed 12 months (page 8);

(xii) BCC was authorised to bind mid-term policy alterations where IAL is the insurer provided such changes are permitted within Underwriting Manual Version 3.0 after prudent underwriting judgment is applied, with no extensions of due date permitted (pages 8, 9);

(xiii) the ”Maximum Limits” that may be underwritten and accepted by BCC are:

(A) Whole of Turnover Limit: AUD50 million;

(B) Major Debtors Limit: AUD50 million;

(C) Single Risks Limit: AUD50 million;

(page 10);

(xiv) Maximum Limits of AUD75 million per Buyer or Buyer Group, with Limits above AUD50 million and below AUD75 million referred to the lead Reinsurer, and with IAL having final acceptance authority on those risks (page 9);

(xv) BCC's authority in paragraphs 32(f)(xiii), 32(f)(xiv) and 32(f)(xxiv) of this Defence was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons (page 9, page 57) (the **Buyer Group limit v 3.0**);

(xvi) BCC was authorised to write three Trade Credit Insurance Products only, being Approved Wording 1.4, described as follows:

> "BCC Trade Credit will underwrite and is authorised by IAL to write three Trade Credit Insurance Products. These are:
>
> Whole of Turnover approved wording Version WOT 1.4 August 2017
>
> Multi Buyers approved wording Version MB 1.4 August 2017
>
> Single Risks approved wording Version SR 1.4 August 2017"
>
> (page 10);

(xvii) BCC was authorised only to issue policies for Australian customers domiciled in Australia (page 10);

(xviii) the maximum credit limit / credit term BCC must set for each policy written within authority was 180 days (page 10);

(xix) the maximum indemnity limit BCC must set for each policy written within authority was 95% of Debt, being accounts receivable of the insured (page 10);

(xx) the Maximum Policy Period for all policies was 24 months (page 10);

(xxi) there was authority only to use authorised endorsement clauses (page 13);

(xxii) the minimum premium BCC must set for each policy written within authority is $10,000 (page 27);

(xxiii) a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured

must bear for each loss or series of losses, must be set for each policy written within authority (page 29);

(xxiv) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 30);

(xxv) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany transactions unless said transactions are on a commercial 'arm's length' basis" (page 32);

(xxvi) BCC will continue to manage claims on behalf of IAL under management of TMMA via the PACAO (as referred to in paragraph 66 of the SOC) (page 9);

(g) on its proper construction, the phrase "mid-term policy alterations" in Underwriting Manual Version 3.0 has the same meaning as "Mid-Term Policy Alterations" referred to in the IAL AAR Agreement which also came into effect on 9 April 2019, as to which IAL repeats paragraph 33(i) of this Defence;

(h) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019;

(i) at all material times, IAL did not authorise BCC or Brereton to represent:

(i) that BCC had its authority to enter into Policy 5369 or policies akin to Policy 5369; and

(ii) that BCC was IAL's corporate authorised representative in relation to Policy 5369 or policies akin to Policy 5369;

(j) at all material times, including at all times prior to 23 July 2020, IAL did not know that BCC and Brereton had purported to enter into Policy 5369.

33 IAL admits paragraph 33 of the SOC and says further that:

(a) on 9 April 2019, IAL terminated the CGU AAR Agreement (and therefore also the BCC Authorisation Notice) by notice to BCC;

Particulars

Letter from IAL to the Directors of BCC sent by email on 9 April 2019 (IAL.500.011.0572).

IAL further relies on clause 6.2(a)(i) of the Share Sale Deed dated 3 April 2019 to which IAGA was a party (IAL.500.011.0014).

(b) further, or alternatively, BCC and IAL conducted themselves in a manner consistent with:

(i) the termination of the CGU AAR Agreement as from 9 April 2019, which implicitly brought the CGU AAR Agreement to an end if not expressly terminated; and

(ii) their relationship being governed by the IAL AAR Agreement on and from 9 April 2019;

Particulars

(a) BCC and IAL entered into the IAL AAR Agreement which commenced on 9 April 2019;

(b) the IAL AAR Agreement contained clause 20.9(a); and

(c) BCC and IAL treated the IAL AAR Agreement as governing their relationship as from 9 April 2019.

(c) further, or alternatively, by no later than 9 September 2019, IAL and BCC agreed to terminate the CGU AAR Agreement (and therefore also the BCC Authorisation Notice), with effect on and from "Completion", as defined in the Share Sale Deed, being relevantly 9 April 2019;

Particulars

Letter from IAL to the Directors of BCC signed by a duly authorised signatory of BCC (IAL.500.005.0124).

(d) by necessary implication, legacy references to "CGU" in the IAL AAR Agreement were intended by the parties to be read and understood as references to IAL;

(e) the IAL AAR Agreement described BCC as "Agent";

(f) the IAL AAR Agreement included (inter alia) the following defined terms (clause 21.1):

(i) **Approved Products,** meaning contracts of insurance issued or to be issued by IAL of the classes and types: (a) identified in the Commission Schedule to the agreement; and (b) otherwise agreed between the parties in writing;

(ii) **Authorisation Agreement,** meaning the agreement between BCC and an Authorised Individual appointing the Authorised Individual as IAL's authorised representative;

(iii) **Authorisation Notice,** meaning, relevantly, an instrument in the form of the "Authorisation Notice Schedule which appoints [BCC] as IAL's authorised representative";

(iv) **Authorised Individual,** meaning an employee, officer or representative of BCC who has been appointed as an authorised representative of IAL by BCC or IAL in accordance with a duly executed Authorisation Agreement and whose appointment has not been terminated;

(v) **Authorised Services,** meaning the services which BCC is authorised by IAL to perform as specified in the "Authorisation Notice" and, if applicable, any claims handling services delegated to BCC in accordance with clause 9;

(vi) **Client,** meaning any person to whom BCC has provided any of the "Authorised Services" on behalf of IAL or any person whom BCC has dealt with in connection with the possible provision of any of the "Authorised Services" to the person by BCC on behalf of IAL;

(vii) **Commencement Date,** meaning the date that completion occurs under the Share Sale Deed between IAGA and others (as vendors) and TMMA (referred to in paragraph 32(e) of the SOC as "Tokio Marine") (as purchaser) in relation to BCC, or such other date as may be agreed in writing by IAL and BCC, being, relevantly 9 April 2019;

(viii) **Guidelines,** meaning the written authorisations, procedures, guidelines, directions and requirements notified or provided by IAL to BCC from time to time in relation to the provision of the "Authorised Services" by BCC or BCC's obligations under the IAL AAR Agreement and including the compliance manual;

(ix) **Insurer,** meaning the insurer of an "Insurance Policy";

(x) **Insurance Policy,** meaning a policy of general insurance, including an interim insurance policy arranged by BCC and issued by IAL or a related body corporate of IAL to a "Client" from time to time under the terms of the IAL AAR Agreement;

(xi) **Term,** meaning the term of the IAL AAR Agreement which, in accordance with clause 1 of the IAL AAR Agreement, came to an end on 30 June 2019; and

(xii) **Underwriting Manual,** meaning the underwriting manual agreed between the Parties, as varied from time to time in accordance with the IAL AAR Agreement, which may include procedures in relation to: (a) the pricing of the Approved Products, subject to underwriting variants in relation to individual Approved Products; (b) the provision of services by BCC in relation to the Approved Products including service level requirements; (c) BCC's performance of its other obligations under the IAL AAR Agreement; and (d) BCC's compliance with applicable laws;

(g) the Commission Schedule of the IAL AAR Agreement identified a single Approved Product, namely, "Trade credit insurance products";

(h) the IAL AAR Agreement included, inter alia, the following express terms:

(i) IAL authorised BCC, from the Commencement Date and for the Term of the agreement:

(A) as an authorised representative of IAL in accordance with the IAL AAR Agreement, by giving BCC an "Authorisation Notice";

(B) to provide the "Authorised Services"; and

(C) to deal in, arrange and issue "Approved Products" in accordance with the applicable "Underwriting Manual" and specifically as follows:

"**New Business:** [BCC] is not permitted to bind new Insurance Policies on behalf of IAL after 30 June 2019.

New Insurance Policies issued prior to that date must not exceed a policy term of 12 months.

Renewal Business: [BCC] is not permitted to bind renewal Insurance Policies on behalf of IAL with renewal inception dates after 30 June 2019. This also includes:

(a) any Insurance Policies issued as a conditional 2-year contract. Second year renewal must not be written with IAL as the insurer; and

(b) any extensions of policy due date.

Renewal Insurance Policies due prior to the inception date stated must not exceed 12 months.

[BCC] may, unless IAL notifies [BCC] otherwise, provide cover under a cover note upon the expiry of an Insurance Policy for policies where a renewal offer has been made. The interim cover will be on the same terms and conditions as the renewal offer for a maximum period of 30 days starting on the expiry date of the Insurance Policy, but in any event must not extend beyond 30 June 2019.

Mid-Term Policy Alterations: [BCC] is authorised to bind mid-term Insurance Policy alterations where IAL is the insurer provided that such changes are permitted within the Underwriting Manual Version 3 after prudent underwriting judgment is applied.

No extensions of due date are permitted." (clause 2.1)

(ii) BCC was obliged to carry out the "Authorised Services" only through an "Authorised Individual" (clause 2.2);

(iii) BCC was not authorised to do anything on behalf of IAL that was not expressly authorised under the IAL AAR Agreement (clause 2.3);

(iv) BCC was prohibited, except to the extent expressly permitted by the IAL AAR Agreement or authorised in writing by IAL, from entering into any contract or arrangement, doing any acts, making any representations or incurring any obligations (including accepting any risk) on behalf of IAL or the Insurer (clause 2.3 (a));

(v) BCC was prohibited, except to the extent expressly permitted by the IAL AAR Agreement or authorised in writing by IAL from varying or waiving:

(A) any term or requirement of any Insurance Policy;

(B) any duty of a Client or any third party imposed by an Applicable Law relating to any Insurance Policy or proposed Insurance Policy, including the statutory duty of disclosure; or

(C) any legal requirement relating to any Insurance Application, any Claim or the administration, variation or cancellation of any Insurance Policy (clause 2.3(b));

(vi) the relationship between IAL and BCC created by the agreement was one of principal and agent for the purposes expressly permitted by the agreement only, and otherwise principal and independent contractor, and not one of employer and employee, joint venture or partnership (clause 2.5);

(vii) BCC must comply with all reasonable written Guidelines given to BCC by IAL at any time in relation to the provision of the Authorised Services (clause 4.1(a));

(viii) the Guidelines (being Underwriting Manual Version 3.0) were taken to be incorporated into and form part of the IAL AAR Agreement (clause 4.2);

(ix) BCC was to perform the "Authorised Services" and its obligations under this Agreement in accordance with the Applicable Laws, in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly (clause 4.3);

(x) IAL could in its complete discretion appoint or refuse to appoint a person as an authorised representative (clause 5.2), and that BCC was prohibited from authorising any person to provide any Authorised Services on its behalf or on behalf of IAL (clause 5.1);

(xi) BCC would perform its obligations under the IAL AAR Agreement in accordance with the Underwriting Manual (clause 7.1);

(xii) BCC would collect a premium for risks written within authority (clause 8.1);

(i) on a proper construction of the IAL AAR Agreement, the Mid-Term Policy Alterations that BCC was authorised to bind under the IAL AAR Agreement comprised changes to existing policies written by BCC on behalf of IAL which:

(i) reduced or did not alter, alternatively did not materially alter, the scope of IAL's risk under existing policies issued by BCC on behalf of IAL; and

(ii) were of a kind contemplated by the existing terms of the existing policies issued by BCC on behalf of IAL;

(j) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019;

(k) at all material times, IAL did not authorise BCC or Brereton to represent:

(i) that BCC had its authority to enter into Policy 5369 or policies akin to Policy 5369;

(ii) that BCC was IAL's corporate authorised representative in relation to Policy 5369 or policies akin to Policy 5369.

34 IAL admits paragraph 34 of the SOC.

35 As to paragraph 35 of the SOC, IAL:

(a) says that, the CGU AAR Agreement and BCC Authorisation Notice remained in effect from 1 August 2017 (by reason of the Scheme Orders) to 9 April 2019;

(b) repeats paragraph 33 of this Defence;

(c) admits that between 9 April 2019 and 30 June 2019, pursuant to the IAL AAR Agreement:

(i) IAL appointed BCC as IAL's agent to perform "Authorised Financial Services" in relation to the "Approved Products" on behalf of IAL, including the services set out at paragraphs 26(a), 26(b) and 26(c) of the SOC, subject to the limitations imposed by the IAL AAR Agreement and Underwriting Manual Version 3.0 (as to which IAL refers to and repeats paragraphs 32 and 33 of this Defence);

(ii) the only "Approved Products" that BCC was authorised to issue as agent for IAL under the IAL AAR Agreement were trade credit insurance policies written using Approved Wording 1.4; and

(iii) IAL appointed BCC as an authorised representative of IAL for the purposes of Chapter 7 of the *Corporations Act* on the terms set out in the IAL AAR Agreement; and

(d) otherwise denies paragraph 35 of the SOC.

36 As to paragraph 36 of the SOC, IAL:

(a) says that, between 1 August 2017 and 30 June 2019:

(i) BCC was the agent of IAL and BCC's authority was limited by the authorities set out in the CGU AAR Agreement, IAL AAR Agreement, Underwriting Manual Version 1.0, Underwriting Manual Version 2.0 and Underwriting Manual Version 3.0, as referred to in paragraphs 5(d)(i), 8, 32 and 33 of this Defence;

(ii) BCC was an authorised representative of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act*;

(iii) the IAL AAR Agreement was written notice given by IAL to BCC for the purpose of section 916A of the *Corporations Act*;

(iv) in accordance with section 916A(1) of the *Corporations Act*, IAL did not and could not give authority to BCC to provide any service on behalf of IAL that was not specified in the notice;

(b) says that, if IAL had known that BCC and/or Brereton had acted outside the scope of their authority as pleaded in paragraphs 66A(d) and 66A(e) of this Defence, it would have terminated their authority to act on its behalf at the relevant times; and

(c) otherwise denies paragraph 36 of the SOC.

B4 Agency arrangements between BCC, IAL and Tokio Marine

37 IAL admits paragraph 37 of the SOC and says further that:

(a) for the purposes of the PACAO, "Services" was defined to mean (clause 1.1):

(i) customer service (including service availability, customer contract and complaints management);

(ii) Claims processing (including Claims processing, error management, document retention, Claim lodgement and Claim authorisation and Claims payment);

(iii) Policy administration (including modifications of Policies, extensions of Bonds and premium collection and remittance); and

(iv) preparing management reports;

(b) the PACAO also included the following defined terms (clause 1.1):

(i) **Agency Agreements** means: (a) the Bond Agency Agreement between BCC Surety and IAL dated 5 June 2013; (b) the Agency and Authorised Representative Agreement between BCC and CGU dated 28 July 2016 (namely, the CGU AAR Agreement); (c) the Agency & Authorised Representative Extension Agreement between IAL and BCC (namely, the IAL AAR Agreement); and (d) the Bond Agency Extension Agreement;

(ii) **Claim** means a claim under a Policy, and each of the following is, without limitation, deemed to be a separate Claim: (a) a claim that is lodged but subsequently withdrawn after the end of the month in which it is lodged; (b) a claim that is lodged by a person even though details are incomplete; (c) a claim under statutory cover arising from section 58 of the *Insurance Contracts Act 1984* (Cth) (***ICA***) relating to a Policy; (d) a claim that is purportedly lodged under a Policy even though it is subsequently found that no Policy exists or there was no entitlement to lodge a claim;

(iii) **Contentious Claim** means "any Claim where a customer raises concerns that have the potential to impact IAL's reputation, such as: high value claims; high profile claimants; claims about a significant business matter; threats to go to the media; any complaint has been made by a third party in relation to the Claims Management Services" (Sch 4, clause 3.1);

(iv) **Policy** means: (a) a commercial surety bond arranged or extended by BCC Surety and issued by IAL; or (b) a trade credit insurance product arranged by BCC and issued by IAL, pursuant to an Agency Agreement;

(c) the PACAO described each of TMMA and Bond as the "Administrator";

(d) it was a term of the PACAO that, during the term of the PACAO, the Administrator must provide the Services, and do so in accordance with clauses 5.1(a)(i)-(v) (clause 5.1(a));

(e) the PACAO did not confer a general authority on Bond or BCC as Bond's delegate to act as IAL's agent to administer trade credit insurance policies issued by IAL on or before 30 June 2019; and

(f) it was a term of the PACAO that Bond, or BCC as Bond's delegate, was not permitted to write new business or renewals on IAL paper (Sch 5, clause 2).

38 As to paragraph 38 of the SOC, IAL:

(a) repeats paragraph 37(c) of this Defence;

(b) says that, by the PACAO, IAL appointed "the Administrator", being TMMA and Bond, to process mid-term alterations within the rules set out in Underwriting Manual Version 3.0 for "Trade Credit policies" written on IAL paper on or before 30 June 2019 (clauses 2, 5.1, and Schedule 5 of the PACAO);

(c) says that, on its proper construction, the phrase "mid-term alterations" in the PACAO has the same meaning as "Mid-Term Policy Alterations" referred to in the IAL AAR Agreement, which also came into effect on 9 April 2019, as to which IAL repeats paragraph 33(i) of this Defence;

(d) says that, the PACAO included the following express terms in Schedule 5 in relation to the Administrator's authority to process mid-term alterations referred to in paragraph 38(b)~~38(c)~~ of this Defence:

(i) the Administrator is not permitted to extend policy due dates or enforce year 2 auto renewals on to IAL paper;

(ii) the Administrator is not permitted to write new business or renewals on IAL paper;

(iii) the Administrator is to handle all claims for the life of the run off policies (written on IAL paper) as prescribed in Schedule 3 of the PACAO;

(iv) the finance/administration activities that the Administrator was permitted to undertake for mid-term alterations were limited to:

(A) issuing premium invoices;

(B) follow up and collection of outstanding Debtor invoices;

(C) allocation of cash receipts in the financial systems;

(D) reconciling Trust bank accounts daily;

(E) prepare and disseminate monthly Written Bordereaux;

(F) prepare and disseminate monthly Payment Bordereaux and make appropriate distributions;

(G) investigate and respond to ad hoc queries from the IAL finance team;

(H) reconcile reporting systems to bank and Bordereaux reports;

(e) says that, on 3 September 2020, IAL issued a notice under clause 21.1(a) of the PACAO which restricted the Administrator's authority under the PACAO;

Particulars

The notice revoked the authority of the Administrator in relation to Claims arising under Trade Credit Policies to:

(a) accept indemnity on behalf of IAL in connection with Claims;

(b) authorise any payments in connection with Claims;

(c) defend, negotiate or settle any Claims on behalf of IAL;

(d) implement strategies for defending Claims;

(e) engage appropriate Third-Party Service Providers to establish entitlement and quantification of the Claim; and

(f) make or pursue on behalf of IAL recovery action against third parties who have contributed to the Claim.

(f) says that, while there was power under the PACAO for Bond to delegate to BCC, IAL is unaware of the terms of any delegation made by Bond to BCC in this regard; and

(g) otherwise denies paragraph 38 of the SOC.

39 As to paragraph 39 of the SOC, IAL:

(a) repeats paragraphs 37(c) and 38(b) of this Defence;

(b) says that, on 3 September 2020, IAL issued a notice under clause 21.1(a) of the PACAO which restricted the Administrator's authority under the PACAO;

Particulars

IAL repeats the particulars at paragraph 38(e) of this Defence.

(c) says that, the Term of the PACAO was 5 years unless terminated earlier (clause 3(b) of the PACAO); and

(d) otherwise denies paragraph 39 of the SOC.

B5 BCC administered trade credit insurance policies as agent for IAL

40 As to paragraph 40 of the SOC, IAL:

(a) says that, the allegation does not identify the "iterations of the Bordereaux" pleaded, and refers (in particulars) only to 'Written Bordereaux', 'Payment Bordereaux' and 'Claims Bordereaux' prepared from 'time to time' without identifying which bordereaux are relied upon;

(b) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(c) refers to and repeats paragraph 41(b) of this Defence; and

(d) otherwise denies paragraph 40 of the SOC.

41 As to paragraph 41 of the SOC, IAL:

(a) repeats paragraph 40(a) of this Defence;

(b) says that, the bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) did not disclose the existence of Policy 5369 or any endorsements purportedly issued pursuant to Policy 5369, including that Policy 5369 or any endorsements had been purportedly issued by BCC;

(ii) only disclosed (relevantly) that "Approved Products", being trade credit insurance policies, had been issued by BCC to GCPL;

Particulars

The bordereaux that BCC provided to IAL identified the policies issued by BCC as being "Trade Credit" Products with policy numbers that in each case contained the prefix "TB", "TW" or "TS" representing multi-buyer policies, whole of turnover policies, and single risks policies written using Approved Wording respectively.

(iii) did not disclose that such policies had not been written using Approved Wording 1.3 and Approved Wording 1.4;

(iv) disclosed only one Greensill entity to be an insured under policies written by BCC purportedly on behalf of IAL, being GCPL;

(v) did not disclose Greensill Bank to be an insured;

(vi) did not disclose GCUK to be an insured;

(vii) did not disclose non-Australian domiciled insureds;

(viii) did not disclose that insurance policies which did not constitute trade credit insurance policies, or which used non-approved wording, including Policy 5369, had been issued by BCC to any Greensill entity;

(ix) did not disclose that any policies purportedly issued by BCC on behalf of IAL had an insured percentage of 100%;

(x) did not disclose that BCC had issued endorsements that had not been approved by CGU or IAL and/or were not in the form of the Approved Endorsements;

(xi) failed to disclose 10 policies (including Policy 5369) purportedly issued by BCC on behalf of IAL with GCPL and either Greensill Bank or GCUK as named insureds; and

Particulars

The 10 policies that BCC failed to disclose are:

(a) TW-03137 with an inception date of 15 December 2017;

(b) TW-03547 with an inception date of 25 May 2018;

(c) TB-04271 with an inception date of 8 October 2018;

(d) TB-04278 with an inception date of 8 October 2018;

(e) TB-04585 with an inception date of 28 December 2018;

(f) TB-03690 with an inception date of 22 February 2019, or any earlier incepted policy of which TB-03690 was a purported renewal;

(g) TS-03088 with an inception date of 1 March 2019;

(h) the Parallel Policy to Master Policy TB-04917 with an inception date of 1 March 2019, the policy number of which is not currently known to IAL;

(i) TB-05369 (being Policy 5369) with an inception date of 26 June 2019;

(j) TW-05412 with an inception date of 30 June 2019;

(xii) contained other inaccuracies or omissions.

Particulars

The inaccuracies or omissions included:

(a) inaccurate or omitted recording of written premium on Greensill risks;

(b) inaccurate or omitted recording of payment frequency of premium on Greensill risks;

(c) inaccurate or omitted recording of inception and expiry dates of policies concerning Greensill risks.

Further particulars will be provided after discovery, compulsory production and evidence.

(c) the Applicants have not particularised any "Bordereaux" evidencing or establishing the matters particularised at paragraph 2 of the particulars under paragraph 41 of the SOC; and

(d) otherwise denies paragraph 41 of the SOC.

42 As to paragraph 42 of the SOC, IAL:

(a) admits that from 1 August 2017, BCC collected premiums for policies which BCC represented in iterations of the bordereaux as conforming with Approved Products;

Particulars

See particulars under paragraphs 41(b)(ii) and 41(b)(xi) of this Defence.

(b) repeats paragraph 41(b) of this Defence and says that the premiums that BCC collected for all policies that it purportedly issued on behalf of IAL to GCPL, GCUK and Greensill Bank were omitted or not accurately recorded, and did not reflect policies purportedly issued at specific points in time, in the iterations of the bordereaux it submitted to IAL;

Particulars

See particulars under paragraph 41(b)(xii) of this Defence.

(c) refers to and repeats paragraphs 5(c), 5(d) and 8 of this Defence;

(d) in relation to the CGU AAR Agreement and the IAL AAR Agreement:

(i) refers to those agreements for their full force and effect;

(ii) says that cl 8.1 of the agreements referred to "Premiums";

(iii) says that cl 8.1(a) of the CGU AAR Agreement and IAL AAR Agreement referred to the collection of "Premiums" payable to CGU or IAL (as the case may be) in respect of contracts of "Approved Products";

(iv) says that "Premium" was defined in each of the agreements to mean (inter alia) an amount payable "in respect of" an "Insurance Policy" (CGU AAR Agreement cl 23.1; IAL AAR Agreement cl 21.1);

(v) says that "Approved Products" was defined in each of the agreements to mean (inter alia) "contracts of insurance issued or to be issued by CGU or IAL (as the case may be) of a certain class or type (CGU AAR Agreement cl 23.1; IAL AAR Agreement cl 21.1);

(vi) says that "Insurance Policy" was defined in each of the agreements to mean (inter alia) a "policy of general insurance … issued by" CGU or IAL (as the case may be) (CGU AAR Agreement cl 23.1; IAL AAR Agreement cl 21.1);

(vii) says that cl 8.1 of the agreements was not engaged in accordance with its terms unless there were "Premiums" payable in respect of "Approved Products";

(e) in relation to the PACAO:

(i) refers to and repeats paragraph 37 of this Defence;

(ii) says that:

(A) it was an express term of the PACAO that the relationship between IAL and "the Administrator" was that of contractor and not that of principal and agent, except to the extent otherwise expressly provided in the PACAO (clause 29.2);

(B) there were no terms of the PACAO expressly providing for "the Administrator" to act as agent of IAL;

(C) the PACAO did not create a principal-agent relationship between IAL (as principal) and "the Administrator" (as agent);

(iii) otherwise, relies on the terms of the PACAO for their full force and effect; and

(f) otherwise denies paragraph 42 of the SOC.

43 As to paragraph 43 of the SOC, IAL:

(a) repeats paragraph 42 of this Defence;

(b) denies that BCC remitted premiums to IAL in respect of Policy 5369 or any of the endorsements purportedly issued pursuant to Policy 5369;

(c) says that, BCC remitted some premiums to IAL in respect of policies which BCC represented in iterations of the bordereaux as conforming with Approved Products; and

Particulars

See particulars under paragraphs 41(b)(ii) and 41(b)(xi) of this Defence.

(d) otherwise denies paragraph 43 of the SOC.

44 As to paragraph 44 of the SOC, IAL:

(a) repeats paragraph 42(a) of this Defence;

(b) denies that IAL paid commission to BCC in relation to Policy 5369 or any of the endorsements purportedly issued pursuant to Policy 5369;

(c) says that, IAL paid commission to BCC in respect of policies which BCC represented in iterations of the bordereaux as conforming with Approved Products; and

Particulars

See particulars under paragraphs 41(b)(ii) and 41(b)(xi) of this Defence.

(d) otherwise denies paragraph 44 of the SOC.

45 As to paragraph 45 of the SOC, IAL:

(a) repeats paragraphs 8, 10 and 33 of this Defence;

(b) says that, BCC's authority to act on behalf of IAL between 1 August 2017 and 30 June 2019 was limited in accordance with the terms of the:

(i) CGU AAR Agreement between 1 August 2017 and 9 April 2019;

(ii) IAL AAR Agreement between 9 April 2019 and 30 June 2019;

(iii) Underwriting Manual Version 1.0 between 1 August 2017 and 11 July 2018;

(iv) Underwriting Manual Version 2.0 between 12 July 2018 and 8 April 2019;

(v) Underwriting Manual Version 3.0 from 9 April 2019;

(c) says that, from 1 July 2019, BCC was authorised to act as the agent and authorised representative of TMNF and provide financial services on behalf of TMNF;

(d) says that, the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that:

(i) BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019; and

(ii) BCC was the authorised representative of only TMNF from 1 July 2019 onwards; and

(e) otherwise denies paragraph 45 of the SOC.

C AGENCY ARRANGEMENTS BETWEEN GREG BRERETON, CGU AND IAL

C1 Agency arrangements between Greg Brereton and CGU

46 IAL admits paragraph 46 of the SOC.

47 IAL repeats paragraph 8(g) of this Defence and otherwise admits paragraph 47 of the SOC.

48 IAL admits paragraph 48 of the SOC.

49 IAL repeats paragraph 8(g) of this Defence and otherwise admits paragraph 49 of the SOC.

50 IAL admits paragraph 50 of the SOC and says further that:

(a) between October 2016 and July 2017, the only Approved Products in relation to which Brereton was authorised to provide "Authorised Financial Services" were contracts of trade credit insurance issued or to be issued by CGU using Approved Wording 1.3; and

(b) between October 2016 and July 2017, there were no contracts of insurance which were "otherwise agreed between CGU and BCC in writing" as being Approved Products for the purpose of the CGU AAR Agreement or CGU/Brereton Authorisation Agreement.

51 As to paragraph 51 of the SOC, IAL:

(a) says that, by reason of the CGU/Brereton Authorisation Agreement, Brereton was authorised by CGU to act as CGU's agent on and from 8 July 2016 until 1 August 2017 to undertake the activities pleaded in paragraphs 51(a), 51(b) and 51(c) of the SOC, subject to the limits of authority in the CGU/Brereton Authorisation Agreement, CGU AAR Agreement and Underwriting Manual Version 1.0; and

(b) otherwise denies paragraph 51 of the SOC.

52 IAL repeats paragraph 8(h) of this Defence and otherwise admits paragraph 52 of the SOC.

C2 Agency arrangements between Greg Brereton, IAL and IAGA

53 IAL admits that the Scheme Orders had the effect substantially alleged in paragraph 53 of the SOC and relies on the terms of the Scheme Orders for their full force and effect.

54 IAL admits paragraph 54 of the SOC on the assumption that "IAGL" is a reference to Insurance Australia Group Limited.

55 IAL admits paragraph 55 of the SOC and says further that:

(a) by necessary implication, upon the coming into effect of the IAGA/IAL Brereton Authorisation on 1 August 2017, the CGU/Brereton Authorisation Agreement came to an end, and IAL says further that the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that Brereton's status as authorised representative of CGU had ceased with effect on 1 August 2017;

(b) the IAGA/IAL Brereton Authorisation was an authorisation notice for the purposes of the CGU AAR Agreement and subsequently the IAL AAR Agreement;

(c) the IAGA/IAL Brereton Authorisation included, inter alia, the following express terms:

(i) Brereton was authorised personally to provide the financial and other services specified in the form of the "Authorisation Notice" attached to the letter as "Authorised Representative" (page 1);

(ii) Brereton was obliged to comply with the terms of the IAGA/IAL Brereton Authorisation (page 1);

(iii) Brereton was only authorised to perform the Authorised Services (page 1);

(iv) "Approved Products" was defined to have the same meaning given to that term in the CGU AAR Agreement and subsequently the IAL AAR Agreement, such that the only "Approved Products" were "Trade Credit Insurance Products" (page 3);

(v) "Authorised Financial Services" was defined to mean that Brereton was authorised in accordance with the CGU AAR Agreement and subsequently the IAL AAR Agreement to:

(A) provide general advice (but not personal advice);

(B) deal in, arrange, acquire, issue, vary and dispose of Approved Products;

(C) collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for Approved Products; and

(D) issue, negotiate and agree the terms of Insurance Policies for Approved Products (page 3);

(vi) Brereton must comply with and provide the Authorised Services in accordance with the CGU AAR Agreement and subsequently the IAL AAR Agreement as if Brereton were the Intermediary (page 1);

(vii) Brereton must not cause BCC to breach any terms and conditions of the CGU AAR Agreement and subsequently the IAL AAR Agreement (page 1);

(viii) Brereton must comply with the CGU AAR Agreement and subsequently the IAL AAR Agreement and all policies, procedures and compliance guidelines as provided by IAGA and IAL and any reasonable directions of IAGA and IAL (page 1); and

(ix) Brereton must act efficiently, honestly and fairly (page 2);

(d) the IAGA/IAL Brereton Authorisation was also an authority given by IAL to Brereton to act on behalf of IAL in accordance with the terms of the IAGA/IAL Brereton Authorisation;

(e) IAGA and IAL terminated the IAGA/IAL Brereton Authorisation with effect from 30 June 2019 and the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that BCC's and Brereton's status as authorised representatives of IAGA had ceased with effect from 30 June 2019; and

Particulars

Letter from Brad Robson to Greg Brereton dated 1 July 2019 and entitled "Termination of Individual Authorisation Agreement and Authorisation Notice" (IAL.500.009.0270).

The register maintained under section 922A of the *Corporations Act* is a publicly-available record.

(f) Brereton did not have any authority to act on behalf of IAL and IAGA pursuant to the IAGA/IAL Brereton Authorisation on and from 30 June 2019.

56 IAL admits paragraph 56 of the SOC.

57 IAL admits paragraph 57 of the SOC.

58 IAL repeats paragraph 55 of this Defence, and otherwise admits paragraph 58 of the SOC.

59 IAL repeats paragraph 55 of this Defence, and otherwise admits paragraph 59 of the SOC.

60 IAL admits paragraph 60 of the SOC and says further that:

(a) it repeats paragraph 55 of this Defence;

(b) after 1 August 2017, the only Approved Products in relation to which Brereton was authorised to provide "Authorised Financial Services" under the IAGA/IAL Brereton Authorisation were contracts of trade credit insurance issued or to be issued by IAL using Approved Wording 1.4; and

(c) after 1 August 2017, there were no contracts of insurance which were "otherwise agreed between IAL and BCC in writing" as being Approved Products for the purpose of the CGU AAR Agreement, the IAL AAR Agreement or the IAGA/IAL Brereton Authorisation.

61 As to paragraph 61 of the SOC, IAL:

(a) admits that on 1 July 2018, BCC issued a document to Brereton styled "Delegated Authority for Head of Trade Credit effective: 1st July 2018", which was signed by Brereton on or around 3 July 2018 (**BCC Delegation**);

(b) says that, the BCC Delegation included the following express terms:

(i) Brereton's delegated authority from BCC was limited to that set out in the document (clause 1.1);

(ii) Brereton's delegated authority was subject always to Brereton acting at all times in accordance with: (a) the approved business plans relevant to Brereton's business unit; (b) procedures, policies, strategies, standards and guidelines; and (c) Brereton's fiduciary duties towards BCC (clause 1.2);

(iii) Brereton's "Underwriting Authority" was set out in Schedule A and included the following constraints:

(A) any underwriting decision was to be made properly having regard to the financial, legal or reputational consequences for the relevant products or class of products;

(B) in respect of "Trade Credit":

a. maximum Premium: $10 million;

b. maximum buyer / group limit: $50 million; and

c. all underwriting to be exercised in accordance with underwriting guidelines and reinsurance arrangements;

(C) there was no authority to issue retrospective liability extensions in respect of known or reported claims and in respect of incurred but not reported claims;

(iv) Brereton's "Underwriting Authority" was, for currency other than Australian dollars, subject to limits to be converted at actual rates of exchange applicable at the date of attachment of the risk, or at agreed

risks if included in Group or specific insurance or reinsurance arrangements (clause 3.1);

(v) Brereton's "Underwriting Authority" was subject to Brereton: (a) employing the highest ethical standards expected in the markets in which Brereton was operating and Brereton not doing anything which he would not be confident would be endorsed by respected colleagues in the market; (b) adhering to any Policies and Procedures, underwriting guidelines and legal and regulatory requirements; (c) ensuring that risks were placed in accordance with approved underwriting guidelines and business plans; and (d) ensuring that material and documentation forwarded to external parties (e.g. intermediaries and insureds) was in the approved form (clause 3.2); and

(c) otherwise denies paragraph 61 of the SOC.

62 IAL repeats paragraph 31 of this Defence and otherwise admits paragraph 62 of the SOC.

63 IAL admits paragraph 63 of the SOC.

64 As to paragraph 64 of the SOC, IAL:

(a) repeats paragraph 55 of this Defence;

(b) says that, by reason of the IAGA/IAL Brereton Authorisation, Brereton was authorised to act as IAL and IAGA's agent between 1 August 2017 and 30 June 2019 to undertake the activities pleaded in paragraphs 64(a), 64(b) and 64(c) of the SOC, subject to the limits of authority in the IAGA/IAL Brereton Authorisation, CGU AAR Agreement, IAL AAR Agreement, Underwriting Manual Version 1.0, Underwriting Manual Version 2.0 and Underwriting Manual Version 3.0;

(c) says that, if IAL had known that BCC and/or Brereton had acted outside the scope of their authority as pleaded in paragraphs 66A(d) to 66A(e)of this Defence, it would have terminated their authority to act on its behalf at the relevant times; and

(d) otherwise denies paragraph 64 of the SOC.

DA REGULATORY REQUIREMENTS

DA1 Membership of the German Deposit Protection Fund

64A IAL does not know and therefore cannot admit paragraph 64A of the SOC.

64B IAL does not know and therefore cannot admit paragraph 64B of the SOC.

64C IAL does not know and therefore cannot admit paragraph 64C of the SOC.

64D IAL does not know and therefore cannot admit paragraph 64D of the SOC.

64E IAL does not know and therefore cannot admit paragraph 64E of the SOC.

64F IAL does not know and therefore cannot admit paragraph 64F of the SOC.

64G In response to paragraph 64G of the SOC, IAL says that:

(a) it is aware of a document in German described as a letter from the 'Prüfungsverband deutscher Banken e.V' (**PdB**) addressed to Dr Mathias Hanten of DLA Piper UK LLP dated 18 December 2013 ("*18 Dezember 2013*");

Particulars

Letter from PdB to Dr Mathias Hanten dated 18 December 2013 (in German).

(b) the Applicants provided IAL with an English language translation of the letter on 9 May 2025;

Particulars

Letter from PdB to Dr Mathias Hanten dated 18 December 2013 (English translation).

(c) based on this English translation of the letter:

(i) the subject of the letter is described as "Owner control proceedings NordFinanz Bank Aktiengesellschaft, Bremen / Greensill Capital (UK) Ltd. et al." (page 1);

(ii) the purpose of the letter is described as being to "inform [Dr Hanten] of the result of the ongoing ownership control proceedings regarding Greensill Capital (UK) Ltd. and its direct and indirect shareholders (together the "Investors") as well as the examination of the intended business model" (page 1);

(iii) the letter refers to a "new business model" comprising "the purchase of receivables from the supply of goods and the provision of services" (page 1) and the "purchase of receivables from the supply chain

finance business (SCF business)" (page 1) and a "business plan of 10.12.2013" (page 2);

(iv) the letter refers to the PdB having "carried out an assessment of the intended business model to assess the risk of the Deposit Protection Fund", which is "[b]ased on the information received from Greensill Capital and NordFinanz Bank (NF Bank) (page 1)";

(v) the letter refers to this "risk assessment" having been based on "key statements on the intended legal and economic structure of NF Bank's SCF business" (page 1), including inter alia that:

(A) "Greensill Capital (UK) Ltd. has contractual agreements with various clients for the purchase of receivables from the supply of goods and services. The company offers NF Bank the receivables for purchase. The purchase of any receivables is solely within the decision-making area of NordFinanz Bank. For those associated with the purchase of the receivable, NF Bank receives a market-based interest rate from Greensill Capital in the form of a discount on the amount of the receivable" (pages 1 to 2);

(B) "Only receivables with a maximum maturity of 180 and a volume-weighted average maturity of no more than 90 days are purchased, for which there is sufficient insurance cover against loan defaults without NF Bank's deductible by AIG Europe Limited or at least equivalent protection" (page 2);

(C) "The cost of the insurance premium is paid and borne economically by Greensill Capital (UK) Ltd" (page 2);

(D) "The maximum purchase volume per debtor is limited by the applicable large exposure provisions, but in no case more than EUR 7.5 million" (page 2);

(E) "The operation of SCF's business requires proper business organisation of NF Bank, in particular appropriate credit analysis and decision-making and adequate staffing. The creation of the proper business organisation is the task of the Board of Directors of NF Bank" (page 2);

(F) GCUK "as the majority shareholder, will work towards the timely realisation of the necessary banking organisation as far as possible and legally permissible" (page 2);

(vi) under the "above-mentioned framework conditions for the SCF business" referred to at sub-paragraph 64G(c)(iv) (amongst others), the letter states that the PdB "accept the change in NF Bank's business model and the business plan of 10.12.2013 submitted for this purpose" (page 2); and

Particulars

Letter from PdB to Dr Mathias Hanten dated 18 December 2013 (English translation).

(d) otherwise, IAL does not know and therefore cannot admit paragraph 64G of the SOC.

64H In response to paragraph 64H of the SOC, IAL:

(a) says it is aware of a document in German described as a letter from the PdB addressed to Frau Baalmann and Herr Lloyd and dated 14 March 2014, but is not aware of a document dated 14 December 2014;

Particulars

Letter from PdB to Baalmann and Lloyd dated 14 March 2014 (in German).

(b) the Applicants provided IAL with an English language translation of the letter on 9 May 2025;

(c) says that the 14 March 2014 letter:

(i) set out “conditions” imposed by the PdB on the “business activities” of "NordFinanz Bank Aktiengesellschaft";

(ii) referred to a “business model” involving “the purchase of receivables from the delivery of goods and the provision of services … which are acquired by Greensill Capital” (page 1);

(iii) referred to a “main basis” for the “decision” in the “owner control proceeding” as being “the business plan submitted … on 5 December 2013 and the information provided by Greensill Capital and the management of NF Bank on the structure of the SCF business” (page 2);

(iv) stated that “[a]ny change to the risk-determining features of the organisation of the SCF business at NF Bank and any material change to the business plan require prior review and approval” by the PdB (page 3);

(d) otherwise, does not know and therefore cannot admit 64H of the SOC.

64I In response to paragraph 64I of the SOC, IAL says that:

(a) it is aware of a document in German described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 1 December 2015 ("*1 Dezember 2015*");

Particulars

Letter from PdB to Board of Greensill Bank dated 1 December 2015 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from PdB to Board of Greensill Bank dated 1 December 2015 (English translation), but with a date stamp marking of “02.09.15”.

(c) based on this English translation of the letter:

(i) the letter refers to an "audit carried out in the period from 16.03 to 26.06.2015 in accordance with § 4 para. 1 sentence 1 no. 1 and § 5 of the Articles of Association of the Auditing Association of German Banks as of 28.02.2015 (deposit guarantee audit)" (page 1);

(ii) the letter states that, based on the results on this audit, PdB "issue[s] the following conditions to Greensill Bank AG in accordance with accordance with § 11 para. 1 no. 3 of [the PdB's] articles of association" (page 1);

(iii) the "conditions" referred to at paragraph 64I(c)(ii) included (amongst other "conditions"):

(A) in respect of paragraphs 64I(a) and 64I(b) of the SOC, that the "SCF receivables to be purchased by Greensill Bank AG are fully insured against credit. The bank does not bear a deductible" (page 1);

(B) in respect of paragraph 64I(c) of the SOC, that "[t]he total capital ratio of Greensill Bank AG pursuant to Art. 92 CRR is at least 14%" (page 1);

(iv) the letter states that “in the case of purchases of SCF receivables up to mid-2014, the creditworthiness of the debtors was not sufficiently analysed and used as a basis for decision-making for the granting of loans” (page 2);

(v) the letter stated that PdB “expect[ed] the bank to carry out appropriate creditworthiness analyses of SCF receivables and to make credit decisions based on them” (page 2);

(d) otherwise, IAL does not know and therefore cannot admit paragraph 64I of the SOC.

64J In response to paragraph 64J of the SOC, IAL says that:

(a) it is aware of a document in German bearing the letterhead of "Greensill Bank" addressed to the PdB dated 1 December 2015 and signed by Jutta Daalmann and Markus Nünnerich;

Particulars

Letter from Greensill Bank to the PdB dated 1 December 2015 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from Greensill Bank to the PdB dated 1 December 2015 (English translation).

(c) the English translation of the letter refers to a letter from the PdB dated 1 December 2015 and states "we hereby confirm that the conditions will be complied with"; and

(d) otherwise, IAL does not know and therefore cannot admit paragraph 64J of the SOC.

64K In response to paragraph 64K of the SOC, IAL says that:

(a) It is aware of a document in German described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 3 March 2020;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 3 March 2020 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 3 March 2020 (English translation).

(c) based on this English translation of the letter:

(i) the letter states that, "[i]n accordance with § 11 paragraph 1 sentence 1 no. 6 of [the PdB's] articles of association, we grant you the following condition" (page 1);

(ii) the "condition" referred to at paragraph 64K(c)(i) included (amongst other "conditions"):

(A) in respect of paragraphs 64K(a) and 64K(b) of the SOC, that the "Supply Chain Finance (SCF) and Accounts Receivables Purchase (ARP) receivables to be purchased by Greensill Bank must be fully insured by credit. The bank does not bear a deductible" (page 1);

(B) in respect of paragraph 64K(c) of the SOC, that the "total capital ratio of Greensill Bank AG in accordance with Art. 92 CRR is at least 14%" (page 1);

(C) that the "total amount of covered (EdB) and insured (ESF) deposits is limited to 3.5 billion" and that the "volume vis-à-vis the "Gupta Group" – including direct financing" will be managed below a level of EUR 2,100 million by 31 March 2020 and will then be further reduced as follows" (page 1):

a. "until 30 April 2020", "[r]epatriation to a maximum of EUR 1,600 million" (page 1);

b. "until 31 July 2020", "[r]epatriation to a maximum of EUR 1,100 million" (page 1);

c. "until 31 October 2020", "[r]epatriation to a maximum of EUR 600 million" (page 1);

(D) that, "[b]y the end of March 2020, the Bank will implement a system to limit concentration risks, in particular "seller risks" from its SCF and ARP business as well as concentration risks from the collateralisation of the business (credit insurance),

and inform the auditing association about the structure" (page 2);

(iii) under the heading "Justification", the English translation of the letter:

(A) refers to a "deposit insurance audit" by the PdB and states that:

a. "[the PdB] have the impression that you [Greensill Bank] have not acted in a sufficiently risk-conscious manner with regard to the takeover of the ARP claims of the Sanjeev Gupta Group to the bank by Greensill Capital (UK) Limited, London" (page 3);

b. "[a]s of 30.09.2019, there was a nominal verity risk of EUR 2.3 billion due to the purchase of the portfolio of ARP receivables from the Sanjeev Gupta Group, London" (page 3);

c. "[d]espite the corresponding insurance policies, which focus on a few credit insurers, this represents a significant concentration of verity risks" (page 3);

(B) says further that:

a. "you [Greensill Bank] have not been able to provide us [the PdB] with any external proof (confirmation from the insurance company) to date that, as agreed between us, all SCF and ARP receivables of the bank were fully insured as of 31.10.2019" (page 3);

b. in the premises at paragraph 64K(c)(iii)(B)a above, the PdB states that, "from [its] point of view, it is not only the compliance with [its] corresponding requirements that is in question, but also the correctness of the regulatory capital ratios communicated by [Greensill Bank]" (page 3);

(C) states that the "Sanjeev Gupta Group's nominal verity risk of EUR 2.3 billion represents an unjustifiable concentration of risk compared to the risk cover pool of EUR 404.9 million, despite credit insurance" (page 3);

(D) references a letter from the PdB dated 27 November 2019 and states that:

a. "[t]here was agreement between us that the unacceptably high verity risk Sanjeev Gupta Group must be reduced" (page 3);

b. "[t]hey had provided us with a plan for gradual reduction, which [the PdB] included in the condition issued with [its] letter of 27 November 2019" (page 3); and

(d) otherwise, IAL does not know and therefore cannot admit paragraph 64K of the SOC.

64L In response to paragraph 64L of the SOC, IAL says that:

(a) it is aware of a document in German bearing the letterhead of "Greensill Bank" addressed to the PdB dated 5 March 2020 and signed by Jutta Daalmann and Markus Nünnerich;

Particulars

Letter from Greensill Bank to the PdB dated 5 March 2020 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from Greensill Bank to the PdB dated 5 March 2020 (English translation).

(c) the English translation of the letter refers to a letter from the PdB dated 3 March 2020 and states "we hereby confirm the conditions listed in your letter […] in accordance with § 11 paragraph 1 no. 6 of [the PdB's] articles of association"; and

(d) otherwise, IAL does not know and therefore cannot admit 64L of the SOC.

64M In response to paragraph 64M of the SOC, IAL says that:

(a) it is aware of a document in German described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 1 April 2020;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 1 April 2020 (in German)

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 1 April 2020 (English translation)

(c) based on this English translation of the letter:

(i) the letter states that, "[i]n accordance with § 11 paragraph 1 sentence 1 no. 6 of [the PdB's] articles of association, we grant you the following condition" (page 1);

(ii) the "condition" referred to at paragraph 64M(c)(i) included (amongst other "conditions"):

(A) in respect of paragraphs 64M(a) and 64M(b) of the SOC, that "[t]he Supply Chain Finance (SCF) and Accounts Receivables Purchase (ARP) receivables purchased by Greensill Bank are fully insured against credit. The bank is not allowed to bear a deductible" (page 2);

(B) in respect of paragraph 64M(c) of the SOC, that "[t]he - adjusted - total capital ratio pursuant to Art. 92 CRR of Greensill Bank AG is at least 14%. When calculating this adjusted total capital ratio, the Bank must refrain from taking into account RWA-reducing effects due to the conclusion of credit insurance for the purposes of this condition, for a limited period until the end of June 2021, in deviation from the requirements of banking supervision" (page 1);

(iii) that the "volume vis-à-vis the "Gupta Group" (predominantly consisting of the seller obligation) does not exceed the current level of EUR 2.6 billion," and that "[t]he Bank must continue to make all reasonable efforts to reduce this volume significantly and steadily. The final volume of EUR 600 million must be reached by 31 December 2020" (page 1);

(iv) that "[t]he bank must implement a system in the short term to limit concentration risks, in particular "seller risks" from its SCF and ARP business as well as concentration risks from the collateralisation of the business (credit insurance), and inform the auditing association about the structure" (page 2);

(d) under the heading "Justification", the English translation of the letter refers to the "reasoning in the [PdB's] last letter of 3 March 2020", "[i]n particular with regard to the need to reduce the Bank's existing concentration risks vis-à-vis the Gupta Group" (page 3); and

(e) otherwise, IAL does not know and therefore cannot admit 64M of the SOC.

64N In response to paragraph 64N of the SOC, IAL says that:

(a) it is aware of a document in German bearing the letterhead of "Greensill Bank" addressed to the PdB dated 3 April 2020 and signed by Jutta Daalmann, Markus Nünnerich and Danyon Lloyd;

Particulars

Letter from Greensill Bank to the PdB dated 3 April 2020 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from Greensill Bank to the PdB dated 3 April 2020 (English translation).

(c) the English translation of the letter refers to a letter from the PdB dated 1 April 2020 and states "we hereby confirm the conditions in accordance with § 11 paragraph 6 sentence 1 of [the PdB's] articles of association"; and

(d) otherwise, IAL does not know and therefore cannot admit 64N of the SOC.

64O In response to paragraph 64O of the SOC, IAL says that:

(a) it is aware of the following documents in German:

(i) the document described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 4 November 2020;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 4 November 2020 (in German).

(ii) the document bearing the letterhead of "Greensill Bank" addressed to the PdB dated 5 November 2020 and signed by Markus Nünnerich, Ingo Schwartz and Ann-Christin Rathjen;

Particulars

Letter from Greensill Bank to the PdB dated 5 November 2020 (in German).

(iii) the document described as a letter from the PdB addressed to the Board ("*Vorstand*") of Greensill Bank dated 2 February 2021 ("*2. Februar 2021*");

Particulars

Letter from the PdB to the Board of Greensill Bank dated 2 February 2021 (in German).

(iv) the document bearing the letterhead of "Greensill Bank" addressed to the PdB dated 11 February 2021 and signed by Markus Nünnerich, Ingo Schwartz and Ann-Christin Rathjen;

Particulars

Letter from Greensill Bank to the PdB dated 11 February 2021 (in German).

(b) the Applicants provided IAL with English translations of the letters on 9 May 2025;

Particulars

Letter from the PdB to the Board of Greensill Bank dated 4 November 2020 (English translation).

Letter from Greensill Bank to the PdB dated 5 November 2020 (English translation).

Letter from the PdB to the Board of Greensill Bank dated 2 February 2021 (English translation).

Letter from Greensill Bank to the PdB dated 11 February 2021 (English translation).

(c) based on the English translation of the letter referred to at paragraph 64O(a)(i):

(i) the letter states that "[i]n accordance with § 11 paragraph 1 sentence 1 no. 6 of [the PdB's] Articles of Association, we are adapting the requirement of 1 April 2020 issued to you as follows" (page 1);

(ii) the adapted "requirement of 1 April 2020" referred to at paragraph 64O(c)(i) included (amongst other adjustments) that the "volume vis-à-vis the "Gupta Group" (predominantly consisting of the seller obligation and state-guaranteed loans) is capped at the current level (EUR 2.1 billion risk exposure after netting with the corresponding cash collaterals held in the bank)" and that "the Bank must continue to make all reasonable efforts to reduce this volume further as early as possible" (page 1);

(iii) besides the adapted requirements referred to at paragraph 64O(c)(ii), the letter states that "[a]ll other points of [the PdB's] letter of conditions of 1 April 2020 remain unchanged" (page 2);

(iv) under the heading "Justification", the letter references the "statements made in [the PdB's] letters of 3 March and 1 April 2020" (page 2);

(d) the English translation of the letter referred to at paragraph 64O(a)(ii) refers to a letter from the PdB dated 4 November 2020 and states "we hereby confirm the conditions according to § 11 paragraph 6 sentence 1 of your articles of association";

(e) based on the English translation of the letter referred to at paragraph 64O(a)(iii):

(i) the letter states that the PdB "hereby amend [its] condition, which was last issued to you in a letter dated 01.04.2020 and modified in a letter dated 04.11.2020, as follows" (page 1);

(ii) the amended "condition" referred to at paragraph 64O(e)(i) included (amongst other conditions):

(A) that the "total amount of covered (EdB) and insured (ESF) deposits is limited to EUR 3.3 billion with immediate effect" (page 1);

(B) that the "deposits currently received by the Bank and assigned to it from the GFG portfolio to secure its commitments may not be repaid to the respective creditors without [the PdB's] prior consent" (page 1);

(iii) besides the amended "condition" referred to at paragraph 64O(e)(i), the letter states that "[a]ll other points of [the PdB's] letter of requirements of 01.04.2020, modified by letter of 04.11.2020, remain unchanged" (page 2);

(iv) under the heading "Justification", the letter:

(A) states that "[t]he basis of [the PdB's] circulation at that time was, among other things, [its] understanding that all of the bank's receivables, in particular those relating to the bank's GFG portfolio, are fully insured against credit" (page 2);

(B) that "[i]n doing so, they concealed from [the PdB] that the receivables purchased by the bank from the GFG portfolio are also […] "future receivables" in their entirety" (page 2);

(C) refers to a video conference on 1 February 2021 between the PdB and "participants of the Greensill Group", during which the PdB "learned" of the matters referred to at paragraph 64O(e)(iv)(B);

(D) refers to a letter from the PdB dated 18 January 2021 "on the violations of Greensill Bank AG's statutory obligations under its statutory obligations arising from its membership in the Auditing Association of German Banks e.V." (page 2);

(E) refers to the PdB's receipt of "a copy of the notification pursuant to Section 29 (3) sentence 1 of the German Banking Act (KWG) from your special auditor KPMG", which it says is "accompanied by a letter from "TBCC" to the bank dated 04.08.2020, after the bank questions the existence of the main credit insurance policies it had issued in favour of the bank" (page 2)

(F) in respect of the "letter from "TBCC"" referred to at 64O(e)(iv)(E), states that "we would like to point out that you are also not aware of this fact, which is essential for the assessment of the Bank's risk situation" (page 2);

(G) states that, "[o]verall, the bank's risk situation is therefore significantly higher than previously recognizable to {the PdB}, and a tightening of our condition regime towards you is therefore necessary" (page 2);

(v) based on the English translation of the letter referred to at paragraph 64O(a)(iv), the letter:

(A) refers to the PdB's letters dated 2 February 2021 and 8 February 2021 "regarding the partial revision of the conditions as well as our telephone conversations in this regard" (page 1);

(B) states "[w]e […] hereby confirm to you in accordance with § 11 (6) sentence 1 of the Articles of Association of the Auditing Association German Banks that we will limit the total amount of covered and secured deposits to EUR 3.2 billion in the future in accordance with your last updated condition in your letter dated 08.02.2021" (page 1);

(C) refers to a discussion by telephone between the PdB and Greensill Bank, and states "we are restricting our confirmation to the extent that, from today's perspective, we do not expect to fall below the mandated total amount of covered and secured deposits of EUR 3.2 billion before the beginning of March" (page 1);

(D) states that "we confirm that we will take into account the new condition issued in the letter dated 2 February 2021 that the deposits currently received and assigned to secure the exposure from the GFG portfolio […] may not be repaid to the respective creditors specified in the letter dated 2 February 2021 […] without [the PdB's] prior consent (page 1); and

(f) based on the English translation of the letter referred to at 64O(e)(iv)(D), the letter:

(i) states that, "Since mid-2019, Greensill Bank AG has repeatedly breached its duties as a member of the Auditing Association of German Banks (Prüfungsverband deutscher Banken e.V)";

(ii) states that, in relation to an audit of Greensill Bank:

(A) "The Bank's management, contrary to its business strategy which had been submitted to [PdB] as the subject matter of [PdB's] deposit insurance audit, assumed a significant, unacceptable concentration risk after [PdB] increased the limit on protected customer deposits" (page 3);

(B) "The bank's management did not inform [PdB] in advance about the occurrence of this circumstance, which is significant for [Greensill Bank's] risk situation" (page 3);

(C) "The Bank's management provided [PdB] with incomplete or incorrect information during [PdB's] audit" (page 3);

(iii) states that, by its conduct particularised in paragraph 64O(f)(ii)(A) to 64O(f)(ii)(C), Greensill Bank violated §10 paragraph 1 number 8 and §10 paragraph 1 number 4 of PdB's Articles of Association (page 3);

(iv) states, "In summary, we note that Greensill Bank AG has repeatedly since mid-2019 [breached] material obligations towards [PdB] pursuant to §12, Paragraph 5 of [PdB's] Articles of Association. The breaches of

duty are to be considered [by] their nature…in such a way that deliberate violations can be assumed" (page 5).

Particulars

Letter dated 18 January 2021 from the Auditing Association of German Banks to the Board of Directors of Greensill Bank (English translation) produced during discovery [GCU.0013.0010.4342].

(g) otherwise, IAL does not know and therefore cannot admit 64O of the SOC.

64P IAL does not know and therefore cannot admit 64P of the SOC.

64Q As to paragraph 64Q of the SOC, IAL:

(a) says:

(i) the purchase of a Delta IPU is not, or is not established to be, a purchase of a receivable;

(ii) an assumption of the Applicants' pleaded case is that the purchase of a Delta IPU from GCUK is a "credit relationship" within the meaning of "The Company Manual – Credit Business (07.06)", but that assumption is not supported by any pleaded material facts;

(iii) an assumption of the Applicants' pleaded case is that the purchase of a Delta IPU is covered by "The Company Manual – Credit Control (08.06)", but that assumption is not supported by any pleaded material facts;

(b) otherwise, does not know and therefore cannot admit 64Q of the SOC.

DA2 Capital Requirements Regulation (EU) No. 575/2013

DA.2.1 ***Capital Regulation Requirements***

64R IAL does not know and therefore cannot admit paragraph 64R of the SOC.

64S IAL does not know and therefore cannot admit paragraph 64S of the SOC.

64T IAL does not know and therefore cannot admit paragraph 64T of the SOC.

DA.2.2 ***Credit Risk Mitigation***

64U IAL does not know and therefore cannot admit paragraph 64U of the SOC.

64V IAL does not know and therefore cannot admit paragraph 64V of the SOC.

64W In response to paragraph 64W of the SOC, IAL says that:

(a) it is aware of a document in German bearing the letterhead of "Bafin" addressed to Greensill Bank and dated 13 June 2019;

Particulars

Letter from BaFin to Greensill Bank dated 13 June 2019 (in German).

(b) the Applicants provided IAL with an English translation of the letter on 9 May 2025;

Particulars

Letter from BaFin to Greensill Bank dated 13 June 2019 (English translation).

(c) based on this English translation of the letter:

(i) the letter refers to a letter of 15 January 2018 in which BaFin informed Greensill Bank that “the previously submitted insurance contracts and conditions did not meet the requirements for the eligibility of the credit insurance as a guarantee in accordance Art. 213, 215 CRR” (page 1);

(ii) the letter refers to letters from Greensill Bank to BaFin dated 17 January 2019 and 30 April 2019 (page 1);

(iii) the letter does not refer to “CRM” or “Credit Risk Mitigation Technique/s”’; and

(d) otherwise, does not know and therefore cannot admit 64W of the SOC.

64X IAL does not know and therefore cannot admit paragraph 64X of the SOC.

64Y IAL does not know and therefore cannot admit paragraph 64Y of the SOC.

64Z As to paragraph 64Z of the SOC, IAL:

(a) says that by reason of the matters in paragraph 66A of this Defence, Policy 5369 is not valid and binding;

(b) says further that even if Policy 5369 is valid and binding (which is denied), IAL relies on the terms of Policy 5369 for their full effect;

(c) says further:

(i) clause 4.5 of Policy 5369 empowered cancellation by the Insurer in certain circumstances, but did not limit the circumstances in which cancellation, termination or avoidance by the Insurer was otherwise available;

(ii) clause 7.4 of Policy 5369 did not state that the Insured gave no warranty or had no responsibility regarding information provided in "Information Packs";

(iii) clause 7.3 of Policy 5369 had the effect that the Insured gave the warranties set out in the "Proposal"; and

(d) otherwise, denies the allegations in paragraph 64Z of the SOC.

D POLICY 5369

D1 Entry into Policy 5369

65 [Not used].

66 As to paragraph 66 of the SOC, IAL:

(a) says that Policy 5369, entitled "Comprehensive Trade Credit Insurance Policy, Policy Number TB-05369" with unique market reference B0509FINCW1900040, was signed by Brereton on 25 June 2019; and

(b) otherwise denies paragraph 66 of the SOC.

66A IAL denies paragraph 66A of the SOC and says further that:

(a) on 25 June 2019, Brereton signed Policy 5369;

(b) the terms of Policy 5369 were authored by or for the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of Policy 5369;

(c) in June 2019 and at all material times between 9 April 2019 and 30 June 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the IAL AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Insurance Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Guidelines which, in June 2019, comprised Underwriting Manual Version 3.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies that did not exceed a policy term of 12 months;

(vi) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vii) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 95% of Debt, being accounts receivable of the insured;

(viii) relevantly extended only to arranging and issuing policies with limits of AUD50 million or less;

(ix) relevantly extended only to arranging and issuing policies with limits which were subject to the Buyer Group limit v 3.0 referred to in paragraph 32(f)(xv) of this Defence;

(x) relevantly extended only to arranging and issuing policies with a maximum limit which did not exceed 95% of the AUD Binder Limit for policies issued in a foreign currency, as referred to in paragraph 32(f)(xxiv) of this Defence;

(xi) relevantly extended only to arranging and issuing policies with a maximum credit limit / credit term of 180 days; and

(xii) relevantly extended only to arranging and issuing policies with a recommended excess of 1% of the policy limit, but in any event a minimum excess of 0.75% of the policy limit;

(d) the authority given by IAL to BCC did not include an authority to enter into Policy 5369 because:

(i) Policy 5369 was not a "Trade Credit Insurance Product" within the meaning of the IAL AAR Agreement and the applicable Underwriting Manual Version 3.0 because:

(A) the wording of Policy 5369 was not "approved wording" for the purposes of the applicable Underwriting Manual Version 3.0, in that Policy 5369 was not written on Approved Wording 1.4;

(B) the wording of Policy 5369 had not otherwise been approved by IAL or its reinsurers; and

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 3.0, and therefore the IAL AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies that exceeded a policy term of 12 months and Policy 5369 had a policy term of 24 months;

(C) issue policies with a premium of less than $10,000 and the premium for Policy 5369 was $1 (Schedule 5 of Policy 5369), less than the minimum premium;

(D) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in Policy 5369 of 100% exceeded that limitation;

(E) issue policies with limits in excess of AUD50 million and the policy limit of approximately EUR 2.2 billion in Policy 5369 (Schedule 6) exceeded that limitation;

(F) issue policies with limits which exceeded Buyer Group limit v 3.0 and the policy limit of approximately EUR 2.2 billion in Policy 5369 (Schedule 6) exceeded that limitation;

(G) issue policies with a maximum limit which exceeded 95% of the AUD Binder Limit (of AUD50 million) for policies issued in a foreign currency but Policy 5369 exceeded that limitation;

(H) insure credit terms in excess of 180 days and Policy 5369 did not set out any limit for credit terms; and

(I) issue policies which did not have a minimum excess of 0.75% of the policy limit and Policy 5369 did not have any minimum excess;

(iii) entering into Policy 5369 was in breach of BCC's obligation under the IAL AAR Agreement to perform the "Authorised Services" in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

Policy 5369 was not a "Trade Insurance Credit Product". Policy 5369 was not written on Approved Wording. Greensill Bank, the insured, was not domiciled in Australia. The policy term exceeded 12 months. The premium payable was $1. The indemnity limit of Policy 5369 exceeded 95% of Debt. The Policy Limit of Policy 5369 was not AUD50 million or less. There was no limit on credit terms specified. There was no minimum excess.

Policy 5369 benefitted Greensill Bank; gave no benefit, commercial or otherwise, to IAL; had no commercial or other legitimate justification; and was signed by Brereton four days before the IAL AAR Agreement was scheduled to come to an end on 30 June 2019 in accordance with its terms, but Policy 5369 sought to impose on IAL risks of up to approximately EUR 2.2 billion;

Further particulars may be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the IAL AAR Agreement;

(e) the authority given by IAL to Brereton did not include an authority to enter into Policy 5369 because:

(i) pursuant to the IAGA/IAL Brereton Authorisation, Brereton was obliged to comply with the IAL AAR Agreement and applicable Underwriting Manual Version 3.0, but failed to do so when he signed Policy 5369 in the circumstances referred to in paragraph 66A(d) of this Defence;

(ii) Policy 5369 was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation because:

(A) the wording of Policy 5369 was not "approved wording" for the purposes of the applicable Underwriting Manual Version 3.0, in that Policy 5369 was not written on Approved Wording 1.4;

(B) the wording of Policy 5369 had not otherwise been approved by IAL and its reinsurers; and

(C) the risks insured purportedly were not trade credit risks;

(iii) it was beyond BCC authority's pursuant to the applicable Underwriting Manual Version 3.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies that exceeded a policy term of 12 months and Policy 5369 had a policy term of 24 months;

(C) issue policies with a premium of less than $10,000 and the premium for Policy 5369 was $1 (Schedule 5 of Policy 5369), less than the minimum premium;

(D) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in Policy 5369 of 100% exceeded that limitation;

(E) issue policies with limits in excess of AUD50 million and the policy limit of approximately EUR 2.2 billion in Policy 5369 (Schedule 6) exceeded that limitation;

(F) issue policies with limits which exceeded Buyer Group limit v 3.0 and the policy limit of approximately EUR 2.2 billion in Policy 5369 (Schedule 6) exceeded that limitation;

(G) issue policies with a maximum limit which exceeded 95% of the AUD Binder Limit (of AUD50 million) for policies issued in a foreign currency but Policy 5369 exceeded that limitation;

(H) insure credit terms in excess of 180 days and Policy 5369 did not set out any limit for credit terms; and

(I) issue policies which did not have a minimum excess of 0.75% of the policy limit and Policy 5369 did not have any minimum excess;

(iv) entering into Policy 5369 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 66A(d)(iii) of this Defence.

Further particulars may be provided after discovery, compulsory production and evidence.

(f) at all material times from at least September 2017 onwards, Lex Greensill was (i) the co-founder and CEO of the group of companies that included Greensill Bank, GCPL and GCUK (being the Greensill Group); (ii) a director of GCPL (of which GCUK and Greensill Bank were wholly owned subsidiaries); (iii) a director of GCUK; (iv) the ultimate controlling party of GCUK; and (v) the beneficial owner of Greensill Bank.

Particulars

IAL relies on GCUK's financial statements for 12 months to 31 December 2019, signed by Lex Greensill on or about 22 May 2020, and Greensill Bank's filings from the German Transparency Register for the period 5 April 2017 to 15 March 2021.

Further particulars may be provided after discovery, compulsory production and evidence.

(g) between 5 September 2017 and 13 December 2017, there was a series of communications involving (inter alia) the Greensill Group, Lex Greensill, Marsh, BCC, IAL and Scor Re, in the context of negotiating a proposed insurance policy in 2017, in the course of which GCUK, Marsh (as agent for Greensill Group), and Lex Greensill were informed that:

(i) before BCC and Brereton could agree to an insurance policy which departed from approved wording, it was necessary for the departure to be approved by IAL and Scor Re (as a reinsurer of IAL);

(ii) the insurance policy wording proposed by GCUK was not approved by IAL and Scor Re, and in fact IAL and Scor Re disagreed in numerous respects with the wording proposed by or on behalf of the Greensill Group;

Particulars

Emails with the following document IDs, copies of which are available from the offices of IAL's solicitors:

IAL.500.011.0521,	IAL.500.011.0486,	IAL.500.011.0504,
IAL.500.011.0514,	IAL.500.011.0483,	IAL.500.011.0505,
IAL.500.011.0506,	IAL.500.011.0536,	IAL.500.011.0488,
IAL.500.011.0523,	IAL.500.011.0519,	IAL.500.011.0498,
IAL.500.011.0489,	IAL.500.011.0490,	IAL.500.011.0016,
IAL.500.011.0556,	IAL.500.011.0501,	IAL.500.011.0553,
IAL.500.011.0540,	IAL.500.011.0502,	IAL.500.011.0517,
IAL.500.011.0526,	IAL.500.011.0513,	IAL.500.011.0497,
IAL.500.011.0500,	IAL.500.011.0551,	IAL.500.011.0552,
IAL.500.011.0557,	IAL.500.011.0555,	IAL.500.011.0567,
IAL.500.011.0562,	IAL.500.011.0263,	IAL.500.011.0274,
IAL.500.011.0431,	IAL.500.011.0527,	IAL.500.011.0275,
IAL.500.011.0277,	IAL.500.011.0266,	IAL.500.011.0021,
IAL.500.011.0491,	IAL.500.011.0495.	

(h) since September 2017, IAL and Scor Re have not communicated to Greensill Group, Lex Greensill or Marsh that the matters referred to in paragraphs 66A(g)(i) and 66A(g)(ii) of this Defence have changed;

(i) in the premises, as at 15 December 2017 and at all material times including in June 2019, Greensill Bank and GCPL knew, or ought reasonably to have known that:

(i) before BCC and Brereton could agree to Policy 5369, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of Policy 5369;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into Policy 5369;

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of Policy 5369;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 66A(f), 66A(g) and 66A(h) of this Defence. Insofar as the emails referred to in the particulars under paragraph 66A(g) were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further particulars may be provided after compulsory production.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into Policy 5369:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of Policy 5369;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for Policy 5369; and

(iii) by reason of the matters in paragraph 66A(j)(i) and 66A(j)(ii) of this Defence, Policy 5369 is not valid and binding;

(k) it otherwise denies paragraph 66Aof the SOC.

67 IAL repeats paragraph 66A of this Defence, and otherwise denies paragraph 67 of the SOC.

68 IAL repeats paragraph 66A of this Defence, and otherwise denies paragraph 68 of the SOC.

69 As to paragraph 69 of the SOC, IAL:

(a) repeats paragraph 66A(d)(i) of this Defence; and

(b) otherwise denies paragraph 69 of the SOC.

70 As to paragraph 70 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that, the policy period for Policy 5369 (if valid and effective, which is denied) when purportedly entered into was 26 June 2019 to 26 June 2021; and

(c) otherwise denies paragraph 70 of the SOC.

71 As to paragraph 71 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that, Policy 5369 states that the governing law of Policy 5369 is the law of New South Wales; and

(c) otherwise denies paragraph 71 of the SOC.

72 As to paragraph 72 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that, if Policy 5369 is valid and effective (which is denied), it would be a contract of insurance to which the *ICA* applies; and

(c) otherwise denies paragraph 72 of the SOC.

D2 Key terms of Policy 5369

73 As to paragraph 73 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that, Policy 5369 (if valid and effective, which is denied) states the definitions set out in paragraphs 73(a), 73(b), 73(c), 73(d), 73(e), 73(f), 73(g), 73(h), 73(i), 73(j), 73(k), 73(n), 73(o), 73(p), 73(q), 73(r), 73(s) and 73(t) of the SOC;

(c) as to paragraph 73(l) of the SOC, says that:

(i) the term "**Eligible Debt**" was defined to have the meaning set out in Schedule 7 of Policy 5369;

(ii) the effect of Schedule 7 was that to be an "Eligible Debt", a "Debt" had to satisfy the following conditions at the time of acquisition of the relevant "Asset" by the "Insured":

(A) the obligor must be a "Customer", being a "Customer" endorsed to the Policy 5369 under a "Customer Endorsement", who is a debtor in respect of a "Debt" (Policy 5369, Sch 7; definition of "Customer", Sch 1);

(B) the obligor must be not an "Affiliate" of any of the parties to the "Transaction Documents" (other than any "Origination Documentation") (Policy 5369, Sch 7);

(C) the obligor must be a "corporate entity" (Policy 5369, Sch 7);

(D) the obligor must be not "Insolvent" (Policy 5369, Sch 7), which includes circumstances in which any corporate action, legal proceedings or other procedure or step is taken for (inter alia) winding up, administration or reorganisation;

(E) the obligor must have a "Customer Limit" (Policy 5369, Sch 7);

(F) the "Customer Limit" must be established in accordance with the terms of Policy 5369 (Policy 5369, Sch 7);

(G) the debt must have a "Due Date", being a date stated in the "Platform" (being an electronic platform used by GCUK from time to time into which details of "Suppliers" and/or "Customers", "Debts", "Due Dates" and other related information is recorded) as the date by which payment of the "Debt" by the "Customer" is required to be made (Policy 5369, Sch 7; definition of "Due Date" and definition of "Platform", Sch 1);

(H) the "Due Date" must not exceed the "Maximum Tenor", being a period set out in a relevant "Debt Endorsement" or "Customer Endorsement" (Policy 5369, Sch 7; definition of "Maximum Tenor", Sch 1);

(I) the debt must not be outstanding after its "Due Date" (Policy 5369, Sch 7);

(J) there must (on the proper construction of Policy 5369 and, in particular, Schedule 7) be in place a "Debt Endorsement" or "Customer Endorsement" which stipulates, in respect of the debt, a "Maximum Tenor";

(K) the debt must be denominated and payable only in an "Approved Currency" (Policy 5369, Sch 7); and

(L) the debt must satisfy any further criteria set out in the relevant Debt Endorsement relating to the Debt (Policy 5369, Sch 7);

(iii) for there to be an "Eligible Debt" it is necessary that there be an "Asset" owned by the "Insured" and, at the time of acquisition of that "Asset", the "Debt" meets the criteria identified in paragraph 73(c)(ii) of this Defence; and

(iv) the form of Debt Endorsement appended to Policy 5369 further required that the "Eligible Debt" arises under a Customer Agreement that is in full force and effect and to the best of the "Insured's" knowledge, after reasonable due diligence, constitutes the legal, valid and binding obligation of the "Customer" enforceable against such "Customer" in accordance with its terms, subject to no offset, counterclaim, defence or adverse claim; and

(d) as to paragraph 73(m) of the SOC, says that:

(i) the definition of "Expected Allocation" set out at paragraph 73(m) of the SOC accurately reflects the text of Policy 5369; and

(ii) there was only an "Expected Allocation" if there was in existence an "Direct Asset".

74 As to paragraph 74 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) refers to clause 1.1 of Policy 5369 for its full force and effect (if any);

(c) says that, on the proper construction of Policy 5369 (if valid and effective, which is denied), the "Insured" may only make a claim in respect of a "Loss" suffered by the "Insured" in respect of an "Asset" (where the Asset is a "Direct Asset"):

(i) owned by the "Insured" at the time "Loss" was suffered (Policy 5369, clause 3.1; definition of "Claim", Sch 1; Sch 7);

(ii) owned by the "Insured" at the time of the "Insured Cause" (Policy 5369, clause 3.1; Sch 7);

(iii) owned by the "Insured" during the "Policy Period" or, alternatively, by the "Insured" or a "Loss Payee" during the "Policy Period" (Policy 5369, clause 4.1);

(iv) owned by the "Insured" immediately prior to the making of a "Claim" (Policy 5369, clause 3.1; definition of "Claim", Sch 1; definition of "Loss", Sch 1);

(v) where by reason of an "Insured Cause", the "Insured" has failed to receive its "Expected Allocation" on the relevant "Due Date" (clause 3.1);

(d) says that, the terms, conditions and limitations of Policy 5369 (if valid and effective, which is denied) included the following:

(i) that the "Insured" acknowledges and agrees that it has a duty to IAL of fair presentation in respect of Policy 5369 and the risks insured thereunder (clause 7.1);

(ii) that IAL was not liable to indemnify the Insured in respect of any "Loss" in respect of which the "Insured" has failed to comply with its obligations under Policy 5369 where such failure has a "Material Policy Impact" (clause 9.7);

(iii) that if the "Insured" makes any statement, report or Claim, knowing it to be false or fraudulent, or the Insured knowingly conceals any material fact, Policy 5369 may be declared void by IAL and all Claims payments hereunder after such false or fraudulent statements, reports or Claims shall be forfeited (clause 15.4); and

(e) otherwise denies paragraph 74 of the SOC.

75 As to paragraph 75 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 85 and 88 of this Defence;

(b) refers to clause 4.1 of Policy 5369 for its full force and effect (if any); and

(c) otherwise denies paragraph 75 of the SOC.

76 As to paragraph 76 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 85 and 88 of this Defence;

(b) refers to clauses 4.1, 4.4 and 4.5 of Policy 5369 for their full force and effect (if any); and

(c) otherwise denies paragraph 76 of the SOC.

77 As to paragraph 77 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 85 and 88 of this Defence;

(b) if Policy 5369 is valid and effective (which is denied), refers to clause 10 of Policy 5369 for its full force and effect (if any); and

(c) otherwise denies paragraph 77 of the SOC.

78 As to paragraph 78 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 85 and 88 of this Defence;

(b) if Policy 5369 is valid and effective (which is denied), refers to clause 14 of Policy 5369 for its full force and effect (if any); and

(c) otherwise denies paragraph 78 of the SOC.

79 As to paragraph 79 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 85 and 88 of this Defence;

(b) refers to clause 5.5 of Policy 5369 for its full force and effect (if any); and

(c) otherwise denies paragraph 79 of the SOC.

80 As to paragraph 80 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 85 and 88 of this Defence;

(b) if Policy 5369 is valid and effective (which is denied), refers to Schedule 6 of Policy 5369 for its full force and effect (if any); and

(c) otherwise denies paragraph 80 of the SOC.

81 As to paragraph 81 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 85 and 88 of this Defence;

(b) if Policy 5369 is valid and effective (which is denied), refers to Schedule 6 of Policy 5369 for its full force and effect (if any); and

(c) otherwise denies paragraph 81 of the SOC.

82 As to paragraph 82 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 85 and 88 of this Defence;

(b) if Policy 5369 is valid and effective (which is denied), refers to Schedule 6 of Policy 5369 for its full force and effect (if any); and

(c) otherwise denies paragraph 82 of the SOC.

D3 BCC had authority to enter into Policy 5369

D.3.1 *Actual authority*

83 IAL repeats paragraphs 5(d), 8, 66A and 74 of this Defence and otherwise denies paragraph 83 of the SOC.

D.3.2 *Ostensible authority*

The Proposed Greensill Policy Structure and Proposed Greensill Policy Wording

83A IAL admits paragraph 83A of the SOC and says further that it relies on the terms of the Greensill Policy Proposal (as defined and particularised in paragraph 83A of the SOC) for their full force and effect.

83B As to paragraph 83B of the SOC, IAL:

(a) as to sub-paragraph (a),

(i) says that the "special acceptance request" stated that the request "is to cover credit for USD $100M on Liberty Group's Australian assets (the former Arrium) and a credit paper is attached";

(ii) refers to the text of the "special acceptance request"; and

(iii) otherwise, denies the paragraphs;

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249]

(b) says that:

(i) the document titled 'Master Risk Participation (MRPA) Facility — Structure Wording Variation' dated 12 September 2017 (**MRPA Wording Variation**), which was attached to the email dated 15 September 2017 referred to in paragraph 83A of the SOC:

(A) referred to 'Greensill', 'Greensill Capital' and 'Greensill Bank AG' but did not refer in terms to Greensill Capital (UK) Limited or GCUK;

(B) stated that 'Greensill Capital' was 'Bundaberg, Queensland based (ultimate holding company) but is largely a UK domiciled finance house';

(C) stated that BCC sought to present detail on Greensill Capital, and 'their proven trade credit policy status, to reflect that the policy structure is encompassed within our reinsurance arrangements' and to highlight the variations between the proposed Greensill Capital Trade Credit Policy Structure and BCC's MRPA structure;

(D) stated that BCC sought access to the full wording of IAG's trade credit reinsurance wording to ensure that the Greensill wording was compliant as a trade credit policy on a stand alone basis and that the policy wording complied with all conditions of IAG's reinsurance agreement; and

(E) in relation to the choice of jurisdiction, noted that the example policy states United Kingdom but that 'Greensill' had agreed that any policy written would be Australian based and answerable under Australian law;

(ii) refers to the MRPA Wording Variation for its full terms and effect; and

(iii) otherwise denies paragraph 83B(b);

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249]

Master Risk Participation (MPRA) Facility – Structure Wording Variation prepared by Greg Brereton and dated 12 September 2017 [IAL.500.008.0250]

(c) as to paragraph 83B(c) of the SOC, IAL:

(i) refers to and repeats paragraphs 83B(b)(i)(A) and 83B(b)(ii) of this Defence;

(ii) says further that the MRPA Wording Variation stated that BCC's proposed outcome was that IAG and its reinsurers agree with BCC that the proposed structure is acceptable for BCC's use in order to facilitate trade credit transactions with 'Greensill Capital' in the future, whether for Liberty based transactions or other Australian domiciled transactions; and

(iii) otherwise denies paragraph 83B(c);

(d) as to paragraph 83B(d) of the SOC, IAL;

(i) refers to and repeats paragraphs 83B(b)(i)(A) and 83B(b)(ii) of this Defence; and

(ii) otherwise denies paragraph 83B(d);

(e) says further that the alleged Proposed Greensill Policy Structure involved GCUK acquiring invoice liabilities from suppliers, and did not involve GCUK purportedly acquiring possible future liabilities.

83C IAL admits paragraph 83C of the SOC and says further that:

(a) the documents particularised at paragraph 83C of the SOC were embedded in a document attached to the email pleaded at 83A of the SOC; and

Particulars

Email from Scott Newland of BCC to Twain Abbott, Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others) dated 15 September 2017 [IAL.500.008.0249]

Master Risk Participation (MPRA) Facility – Structure Wording Variation prepared by Greg Brereton and dated 12 September 2017 [IAL.500.008.0250]

(b) that this document attached to the email pleaded at 83A of the SOC also embedded two other documents which are not particularised at 83C.

Particulars

'Aus – master [] Customer End 2017'

'Trade Credit QS – 2017 Final Wording'

83D IAL admits paragraph 83D of the SOC.

83E As to paragraph 83E of the SOC, IAL:

(a) denies paragraph 83E of the SOC;

(b) repeats paragraph 66A(g) above;

(c) says further that in around late October 2017 and November 2017, BCC indicated to IAL that it would not be proceeding with proposals from Greensill and would instead use the Approved Wording 1.4; and

Particulars

Email from Scott Newland of BCC to Benjamin Gan of Scor Re, and copied to Greg Brereton, Twain Abbott of IAL, Ian Dearmun of Willis Towers Watson and Aldridge Tan, dated 31 October 2017, stating that BCC "will not be proceeding with the SCF transaction … and will apply our approved policy wording" [BCC.0001.0007.1422]

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Brad Robson of IAL, Toby Guy of BCC and Greg Brereton, dated 1 November 2017, stating "To avoid any confusion or any misunderstanding we are not going to use anything from the SCF. We are only going to use our approved wording in accordance with our approved Underwriting Guidelines." [BCC.0001.0004.0646]

Email from Scott Newland of BCC to Twain Abbott of IAL, dated 2 November 2017, stating "Either way, we are using our approved wordings and not the Greensill MRPA." [BCC.0001.0004.0659]

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Toby Guy of BCC and Brad Robson and Phuong Ly of IAL, dated 6 November 2017, stating that BCC had decided that Scor Re did not have a reasonable grasp of the proposed MRPA wording and that "Accordingly, we reverted to our approved wording …" [BCC.0001.0004.0673]

(d) says further that, IAL did not approve the request for an increased limit because LibertyOne group did not have a sound trading history in support of increasing the limit.

Particulars

Email from Twain Abbott of IAL to Benjamin Gan of Scor Re and Brad Robson of IAL dated 10 November 2017 [IAL.500.007.1259].

83F IAL denies paragraph 83F of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A, 83B, 83C and 83E(c) of this defence;

(b) at no stage after 6 November 2017 did BCC communicate to IAL that it would be proceeding with the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording;

(c) at no stage did IAL agree to, or hold out that it adopted, the Proposed Greensill Policy Structure or the Proposed Greensill Policy Wording; and

(d) the documents particularised at paragraph 83D of the SOC do not establish the matters pleaded at paragraph 83F.

The 2017 LOS Policies

83G IAL denies paragraph 83G of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2017 LOS Master Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0002.5354, which IAL understands is alleged to be the "2017 LOS Master Policy";

(ii) if the document is said to be the "2017 LOS Master Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on 15 December 2017" (page 2);

(B) was signed by Greg Brereton on or about 15 December 2017 (page 47);

(C) does not have a "Contract Number"; and

(D) contains a signature box on each page reading “Contract Leader”, none of which are signed;

(c) in respect of the 2017 LOS Parallel Policy:

(i) the Applicants rely on a document with document reference GBA.0004.0029.7294, which IAL understands is alleged to be the "2017 LOS Parallel Policy";

(ii) if the document is said to be the "2017 LOS Parallel Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on 15 December 2017" (page 2);

(B) was not signed by Greg Brereton (and further nor by either of GCPL or Greensill Bank);

(C) does not have a "Contract Number"; and

(D) contains a signature box on each page reading “Contract Leader”, none of which are signed;

(d) the terms of the 2017 LOS Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2017 LOS Policies;

(e) in December 2017, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around December 2017, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2017 LOS Policies because:

(i) the 2017 LOS Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of the 2017 LOS Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2017 LOS Policies were not written on Approved Wording 1.4;

(B) the wording of the 2017 LOS Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 LOS Parallel Policy was $1 (Schedule 5 of the 2017 LOS Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the 2017 LOS Parallel Policy did not specify any indemnity limit as a proportion of Debt;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 LOS Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 LOS Parallel Policy did not have any minimum excess;

(iii) entering into the 2017 LOS Policies was in breach of BCC's obligations under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The 2017 LOS Policies were not a "Trade Credit Product". The 2017 LOS Policies were not written on Approved Wording 1.4.

In respect of the 2017 LOS Master Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the 2017 LOS Parallel Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The 2017 LOS Parallel Policy did not specify any indemnity limit as a proportion of Debt. The policy limit of the 2017 LOS Parallel Policy was not AUD35 million or less. The 2017 LOS Parallel Policy did not have any minimum excess.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2017 LOS Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to purportedly enter into the 2017 LOS Policies in the circumstances referred to in paragraph 83G(b) to 83G(f) of this Defence;

(ii) the 2017 LOS Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2017 LOS Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2017 LOS Policies were not written on Approved Wording 1.4;

(B) the wording of the 2017 LOS Policies had not otherwise been approved by IAL and its reinsurers; and

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 LOS Parallel Policy was $1 (Schedule 5 of the 2017 LOS Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the 2017 LOS Parallel Policy did not specify any indemnity limit as a proportion of Debt;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 LOS Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 LOS Parallel Policy did not have any minimum excess;

(iv) entering into the 2017 LOS Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 83G(f)(iii) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) in respect of Lex Greensill, it refers to and repeats paragraphs 66A(g) of this Defence;

(i) Greensill Bank:

(i) was previously known as NordFinanz Bank and was founded in 1927;

(ii) NordFinanz Bank was acquired by the Greensill Group in 2014, with Lex Greensill changing its name to Greensill Bank AG to include prominently his own name;

(iii) had GCUK as its majority shareholder (85% or greater) at all material times from no later than 30 October 2014 until approximately 31 December 2018;

(iv) was wholly owned by GCUK at all material times no later than 31 December 2017 until approximately 31 December 2018;

(v) was wholly owned by GCPL on and from approximately 31 December 2018;

(vi) was at all material times part of the Greensill Group set up by Lex Greensill;

(vii) was at all material times a bank regulated by BaFin;

(viii) entered "Insolvenzverfahren" on 16 March 2021 which in Germany is a form of court appointed external administration on insolvency and is equivalent to having administrators appointed under Australian law;

(j) GCUK:

(i) was another company within the Greensill Group;

(ii) was incorporated in England and Wales on 2 July 2012 under the name Greensill Capital Management Company (UK) Limited before changing to its current name on 18 July 2012;

(iii) was upon incorporation and at all material times thereafter, 100% owned by GCPL;

(iv) had, as one of its directors, Lex Greensill, who was appointed from 2 July 2012;

(v) is recorded at UK Companies House as having one active person with significant control: Lex Greensill, who is said to have "significant influence or control over the trustees of a trust";

(vi) was in the business of originating supply chain finance programmes and other financing programmes for companies, and obtaining sources of funding for those programmes (one of those sources being Greensill Bank); and

(vii) entered administration in England and Wales on 8 March 2021.

(k) GCPL:

(i) was at all material times ultimately controlled by Lex Greensill;

(ii) was at all material times in the period 5 April 2017 to 15 March 2021 beneficially owned by Lex Greensill;

(iii) had as shareholders of its ordinary shares:

(A) the Greensill Corporation Pty Ltd (360,000 shares); and

(B) Peter Greensill Family Co Pty Ltd (168,046 shares),

who were at all material times the trustees of the AD Greensill Family Trust (which was named after Lex Greensill, and had as a beneficiary, Lex Greensill) and the Peter Greensill Family Trust respectively. Therefore, at all material times, Lex Greensill had significant influence or control over one or both of the family trusts, and through that had significant influence or control over GCPL (and GCUK);

(iv) had, as one of its directors, Lex Greensill, who was appointed from 4 November 2011;

(l) at all material times Lex Greensill (through his control of GCPL) exercised controlling influence over the management of Greensill Bank:

(i) at all material times from approximately 30 October 2014, GCPL was the ultimate owner of Greensill Bank (initially, through GCPL's shareholding of GCUK and then, from approximately 31 December 2018, directly);

(ii) from no later than 31 December 2018, GCPL was the sole shareholder of Greensill Bank;

(iii) according to Greensill Bank's own financial statements, GCPL and Greensill Bank (as well as GCUK) formed part of a Konzern as a matter of German law (which refers to related or combined enterprises where one or more dependent enterprises are grouped under a controlling enterprise, with control being directly or indirectly exercised by way of greater than 50% of the shares or votes, or any other form of control such as uniform management);

(m) further GCUK and Greensill Bank's senior management overlapped with each other:

(i) Lex Greensill:

(A) was the CEO of GCUK and a director from the date of incorporation;

(B) exercised and was capable of exercising effective control over both GCUK and Greensill Bank at least because each of those entities was, at all material times, directly or indirectly owned by GCPL, and Lex Greensill beneficially owned and/or controlled GCPL;

(ii) Maurice Thompson:

(A) was both chairman of Greensill Bank's Supervisory Board (from June 2014 to March 2021) and director/chairman of GCUK (from September 2014 to January 2018);

(B) was described by GCUK as part of GCUK's senior management team (according to a GCUK presentation from 2016);

Particulars

Email dated 15 April 2016 from Ewan Berkemeier to Greg Brereton (IAL.500.011.0589) with attached presentation (IAL.500.011.0591).

(iii) Jason Austin:

(A) was a co-founder of Greensill Group;

(B) was both a member of Greensill Bank's Supervisory Board (from March 2014 to June 2019) and a director of GCUK (from July 2012 to June 2019);

(n) Greensill Bank's core function was or included to provide funds for GCUK's financing programmes;

(o) between 5 September 2017 and 13 December 2017, there was a series of communications involving (inter alia) the Greensill Group, Lex Greensill, Marsh (being Greensill Group's insurance broker), and BCC, and between BCC, IAL and Scor Re, in the context of negotiating a proposed insurance policy in 2017, in the course of which GCUK, Marsh (as agent for Greensill Group), and Lex Greensill were informed that:

(i) before BCC and Brereton could agree to an insurance policy which departed from approved wording, it was necessary for the departure to be approved by IAL and Scor Re (as a reinsurer of IAL);

(ii) the insurance policy wording proposed by GCUK was not approved by IAL and Scor Re, and in fact IAL and Scor Re disagreed in numerous respects with the wording proposed by or on behalf of the Greensill Group;

Particulars

Emails with the following document IDs, copies of which are available from the offices of IAL's solicitors:

IAL.500.011.0521,	IAL.500.011.0486,	IAL.500.011.0504,
IAL.500.011.0514,	IAL.500.011.0483,	IAL.500.011.0505,
IAL.500.011.0506,	IAL.500.011.0536,	IAL.500.011.0488,
IAL.500.011.0523,	IAL.500.011.0519,	IAL.500.011.0498,
IAL.500.011.0489,	IAL.500.011.0490,	IAL.500.011.0016,
IAL.500.011.0556,	IAL.500.011.0501,	IAL.500.011.0553,
IAL.500.011.0540,	IAL.500.011.0502,	IAL.500.011.0517,
IAL.500.011.0526,	IAL.500.011.0513,	IAL.500.011.0497,
IAL.500.011.0500,	IAL.500.011.0551,	IAL.500.011.0552,
IAL.500.011.0557,	IAL.500.011.0555,	IAL.500.011.0567,
IAL.500.011.0562,	IAL.500.011.0263,	IAL.500.011.0274,
IAL.500.011.0431,	IAL.500.011.0527,	IAL.500.011.0275,
IAL.500.011.0277,	IAL.500.011.0266,	IAL.500.011.0021,
IAL.500.011.0491,	IAL.500.011.0495.	

(p) in respect of the series of communications exchanged in the context of negotiating the proposed insurance policy in 2017 particularised at paragraph 83G(o) above:

(i) IAL's and Scor Re's participation in the negotiations commenced with the "special acceptance request" sent by BCC to IAL on or about 15 September 2017 (as alleged at paragraph 83A of the SOC);

Particulars

In respect of the particulars to paragraph 83G(o) above, IAL refers to the email from Scott Newland of BCC to Twain Abbott of IAL (and copied to Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL, among others) dated 15 September 2017 [IAL.500.011.0536].

(ii) IAL refers to and repeats paragraphs 83E and 83F of this Defence and says further that IAL's and Scor Re's participation in the negotiations concluded in around November 2017;

Particulars

In respect of the list of emails particularised at paragraph 83G(o) above, neither IAL nor Scor Re personnel were parties to the emails dated after the email from Scott Newland of BCC to Brad Robson and Twain Abbott of IAL on or about 2 November 2017 [IAL.500.011.0562].

IAL repeats the particulars at paragraphs 83E(c) and 83E(d) of this Defence.

(q) since September 2017, IAL and Scor Re has not communicated to the Greensill Group, Lex Greensill or Marsh Group that the matters referred to in paragraph 83G(o) of this Defence had changed;

(r) in the premises, as at 15 December 2017 and at all material times, GCUK, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2017 LOS Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2017 LOS Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2017 LOS Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from

IAL and Scor Re for the wording and structure of the 2017 LOS Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 83G(l) to 83G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Emails between Lex Greensill, Greg Brereton, John Whelan and others, with the subject 'Liberty OneSteel AR' dated 7 December 2017 [BCC.0001.0003.0360].

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(s) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2017 LOS Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2017 LOS Parallel Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2017 LOS Parallel Policy; and

(iii) by reason of the matters in paragraphs 83G(s)(i) and 83G(s)(ii) of this Defence, the 2017 LOS Policies are not valid and binding; and

(t) if, which is denied, BCC and/or Brereton entered into the 2017 LOS Policies:

(i) Greensill Bank and GCPL were not a "client" with respect to the 2017 LOS Policies for the purpose of section 917A(1)(b) of the *Corporations Act*;

(ii) if Greensill Bank or GCPL was a "client" with respect to the 2017 LOS Policies for the purpose of section 917A(1)(b) of the *Corporations Act* (which IAL denies), then by reason of the matters in paragraphs 66A(g) and 83G(q) of this Defence, the purported entry by BCC and Brereton into the 2017 LOS Policies was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the Corporations Act;

(iii) Greensill Bank and GCPL did not in fact rely in good faith on the conduct of BCC or Brereton in the purported entry into 2017 LOS Policies; and

(iv) further, IAL reserves the right to rely on section 917D of the Corporations Act that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied);

Particulars

Particulars under paragraph 83G(r) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(u) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2017 LOS Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

83H IAL denies paragraph 83H of the SOC and repeats paragraphs 66A and 83G above.

83I IAL denies paragraph 83I of the SOC and says further that:

(a) it repeats paragraph 83G above;

(b) the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording were based on a Master Risk Participation Agreement facility for a supply chain finance transaction;

(c) the 2017 LOS Policies did not reflect a Master Risk Participation Agreement facility for a supply chain finance transaction; and

(d) the 2017 LOS Policies were written in respect of an accounts receivables transaction.

Particulars

Email from Scott Newland of BCC to Twain Abbott of IAL, and copied to Phuong Ly, Brad Robson, Emily Cook and Andrew McKinnon of IAL (amongst others), dated 15 September 2017 with subject 'Master Risk Participation Agreement (MRPA) and Special Acceptance: Liberty Group/Greensill Capital' [IAL.500.008.0249].

Email from Greg Brereton to Ewan Berkemeier of Marsh, dated 19 December 2017 with subject 'RE: Liberty OneSteel AR' [BCC.0001.0003.0360].

83J IAL denies paragraph 83J of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2017 LOS Master Policy, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2); and

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer"; and

(c) in respect of the 2017 LOS Policies, the SOC pleads no material facts capable of establishing that the amount of AUD 1,819,890.88 was the amount, or an amount, due under the 2017 LOS Master Policy and in respect of the 2017 LOS Parallel Policy at any time.

83K IAL denies paragraph 83K of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 83J of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2017 LOS Master Policy at any time; and

(ii) there were "Assets" insured under the 2017 LOS Parallel Policy (as alleged in paragraph 83K) at any relevant time.

83L As to paragraph 83L of the SOC, IAL:

(a) repeats paragraphs 83J and 83K above, particularly paragraph 83K(b); and

(b) does not know and therefore cannot admit 83L of the SOC.

83M As to paragraph 83M of the SOC, IAL:

(a) repeats paragraphs 40 to 42 and 83G of this Defence;

(b) says further that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) did not disclose any policies with the policy number "TW-03137" referred to in paragraph 83G of the SOC;

(ii) from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 83G of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 41(b)(xi) of this Defence.

(c) otherwise denies paragraph 83M of the SOC.

83N IAL denies paragraph 83N of the SOC and says further that:

(a) in respect of sub-paragraph (a), there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraph (b), IAL repeats paragraph 83M of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 83G to 83M of this Defence.

83O IAL denies paragraph 83O and repeats paragraphs 83G to 83N of this Defence.

2018 Excess Policies

83P IAL denies paragraph 83P of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2018 Master Excess Policy:

(i) the Applicants rely on a document with document reference MAR.0002.0001.0246, which IAL understands is alleged to be the "2018 Master Excess Policy";

(ii) if the document is said to be the "2018 Master Excess Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 9th day of February 2018" (page 2);

(B) was signed by Greg Brereton on or about 20 April 2018 (page 48);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800020;

(E) contains a signature box on each page reading “Contract Leader”, none of which are signed, although some pages have been signed but outside of the box;

(c) in respect of the 2018 Parallel Excess Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0002.0292, which IAL understands is alleged to be the "2018 Parallel Excess Policy";

(ii) if the document is said to be the "2018 Parallel Excess Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 9th day of February 2018" (page 2);

(B) was signed by Greg Brereton on or about 20 April 2018 (page 44);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800019;

(E) contains a signature box on each page reading “Contract Leader”, none of which are signed, although some pages have been signed but outside of the box;

(d) the terms of the 2018 Excess Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2018 Excess Policies;

(e) in April 2018, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around April 2018, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2018 Excess Policies because:

(i) the 2018 Excess Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of 2018 Excess Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2018 Excess Policies were not written on Approved Wording 1.4;

(B) the wording of the 2018 Excess Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 Parallel Excess Policy was $1 (Schedule 5 of the 2018 Parallel Excess Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2018 Parallel Excess Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2018 Parallel Excess Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 Parallel Excess Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2018 Parallel Excess Policy exceeded that limitation;

(iii) entering into the 2018 Excess Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2018 Excess Policies were not a "Trade Credit Product". The 2018 Excess Policies were not written on Approved Wording 1.4.

In respect of the 2018 Master Excess Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the 2018 Parallel Excess Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2018 Parallel Excess Policy exceeded 90% of Debt. The policy limit of the 2018 Parallel Excess Policy was not AUD35 million or less. The 2018 Parallel Excess Policy did not have any minimum excess.

Further, the obligation referred to in paragraph 83P(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2018 Excess Policies were to take effect approximately 73 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2018 Excess Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into the 2018 Excess Policies in the circumstances referred to in paragraph 83P(f) of this Defence;

(ii) the 2018 Excess Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2018 Excess Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the 2018 Excess Policies were not written on Approved Wording 1.4;

(B) the wording of the 2018 Excess Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 Parallel Excess Policy was $1 (Schedule 5 of the 2018 Parallel Excess Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2018 Parallel Excess Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2018 Parallel Excess Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 Parallel Excess Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2018 Parallel Excess Policy exceeded that limit;

(iv) entering into the 2018 Excess Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 83P(f)(iii) of this Defence. Further, the obligation referred to in paragraph 83P(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2018 Excess Policies were to take effect approximately 73 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraph 83G(h) to 83G(q) of this Defence;

(i) in the premises, in April 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2018 Excess Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2018 Excess Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2018 Excess Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2018 Excess Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 83G(l) to 83G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2018 Excess Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2018 Parallel Excess Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2018 Parallel Excess Policy; and

(iii) by reason of the matters in paragraphs 83P(j)(i) and 83P(j)(ii) of this Defence, the 2018 Excess Policies are not valid and binding;

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2018 Excess Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with

Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

83Q IAL denies paragraph 83Q of the SOC and repeats paragraphs 66A and 83P of this Defence.

83R IAL denies paragraph 83R of the SOC and says further that:

(a) it repeats paragraphs 83B, 83C, 83F and 83P of this Defence;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 83B(d); and

(c) otherwise, denies the paragraph.

83S IAL denies paragraph 83S of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2018 Master Excess Policy, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer";

(c) in respect of the 2018 Excess Policies, the SOC pleads no material facts capable of establishing that the amount of USD 93,090.36 was the amount, or

an amount, due under the 2018 Master Excess Policy and in respect of the 2018 Parallel Excess Policy at any time.

83T IAL denies paragraph 83T of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 83S of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2018 Master Excess Policy at any time; and

(ii) there were "Assets" insured under the 2018 Parallel Excess Policy (as alleged in paragraph 83T) at any relevant time.

83U As to paragraph 83U, IAL:

(a) repeats paragraphs 83S and 83T above, particularly paragraph 83T(b); and

(b) does not know and therefore cannot admit paragraph 83U of the SOC.

83V As to paragraph 83V of the SOC, IAL:

(a) repeats paragraphs 40 to 42 and 83P of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TS-03087" and which recorded only "Greensill Capital Pty Limited" as the "Insured";

(ii) did not disclose any policies with the policy number "TS-03088" referred to in paragraph 83P of the SOC; and

Particulars

IAL repeats the particulars to paragraph 41(b)(xi) of this Defence.

(e) otherwise denies paragraph 83V of the SOC.

83W As to paragraph 83W of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 83P of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 83V of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 83P to 83V of this Defence; and

(B) otherwise denies that paragraph of the SOC.

83X IAL denies paragraph 83X and repeats paragraphs 83P to 83W above.

Sub-Direct Policies

83Y IAL denies paragraph 83Y of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the Sub-Direct Master Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0009.1186, which IAL understands is alleged to be the "Sub-Direct Master Policy";

(ii) if the document is said to be the "Sub-Direct Master Policy", then it appears on the face of the document that the document:

(iii) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 18th day of May 2018" (page 2);

(iv) was signed by Greg Brereton, GCPL and GCUK on or about 18 May 2018 (page 45);

(v) has a "Contract Number", being FINCW1800032;

(vi) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the Sub-Direct Parallel Policy:

(i) the Applicants rely on a document with document reference GBA.0004.0006.0582, which IAL understands is alleged to be the "Sub-Direct Parallel Policy";

(ii) if the document is said to be the "Sub-Direct Parallel Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 18th day of May 2018" (page 2);

(B) was signed by:

a. Greg Brereton and GCPL and GCUK on or about 18 May 2018 (page 42); and

b. Greensill Bank on or about 22 May 2018 (page 42);

(C) has a "Contract Number", being FINCW1800033;

(D) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the Sub-Direct Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the Sub-Direct Policies;

(e) in May 2018, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing “Approved Products”, being relevantly “Trade Credit Products”, using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around May 2018, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) prior to 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the Sub-Direct Policies because:

(i) the Sub-Direct Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of Sub-Direct Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the Sub-Direct Policies were not written on Approved Wording 1.4;

(B) the wording of the Sub-Direct Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the Sub-Direct Parallel Policy was $1 (Schedule 5 of the Sub-Direct Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the Sub-Direct Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the Sub-Direct Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the Sub-Direct Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the Sub-Direct Parallel Policy exceeded that limitation;

(iii) entering into the Sub-Direct Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The Sub-Direct Policies were not a "Trade Credit Product". The Sub-Direct Policies were not written on Approved Wording 1.4.

In respect of the Sub-Direct Master Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the Sub-Direct Parallel Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the Sub-Direct Parallel Policy exceeded 90% of Debt. The policy limit of the Sub-Direct Parallel Policy was not AUD35 million or less. The Sub-Direct Parallel Policy did not have any minimum excess.

Further, the obligation referred to in paragraph 83Y(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the Sub-Direct Policies were to take effect approximately 4 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the Sub-Direct Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into the Sub-Direct Policies in the circumstances referred to in paragraph 83Y(f) of this Defence;

(ii) the Sub-Direct Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the Sub-Direct Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the Sub-Direct Policies were not written on Approved Wording 1.4;

(B) the wording of the Sub-Direct Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the Sub-Direct Parallel Policy was $1 (Schedule 5 of the Sub-Direct Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the Sub-Direct Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the Sub-Direct Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the Sub-Direct Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the Sub-Direct Parallel Policy exceeded that limit;

(iv) entering into the Sub-Direct Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 83Y(f)(iii) of this Defence. Further, the obligation referred to in paragraph 83Y(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the Sub-Direct Policies were to take effect approximately 4 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 83G(h) to 83G(q) above;

(i) in the premises, in May 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the Sub-Direct Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the Sub-Direct Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the Sub-Direct Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the Sub-Direct Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 83G(l) to 83G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the Sub-Direct Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the Sub-Direct Parallel Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the Sub-Direct Parallel Policy; and

(iii) by reason of the matters in paragraphs 83Y(j)(i) and 83Y(j)(ii) of this Defence, the Sub-Direct Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the Sub-Direct Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

83Z IAL denies paragraph 83Z of the SOC and repeats paragraphs 66A and 83Y above.

83AA IAL denies paragraph 83AA of the SOC and says further that:

(a) it repeats paragraphs 83B, 83C, 83F and 83Y above;

(b) it assumes that the reference to “Proposed Greensill Policy Structure” is a reference to the six pleaded terms set out at SOC paragraph 83B(d); and

(c) otherwise, denies the paragraph.

83AB IAL denies paragraph 83AB of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the Sub-Direct Master Policy, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer"; and

(c) in respect of the Sub-Direct Policies, the SOC pleads no material facts capable of establishing that the amount of USD 78,000 was the amount, or an amount, due under the Sub-Direct Master Policy and in respect of the Sub-Direct Parallel Policy at any time.

83AC IAL denies paragraph 83AC of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 83AB of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the Sub-Direct Master Policy at any time; and

(ii) there were "Assets" insured under the Sub-Direct Parallel Policy (as alleged in paragraph 83AC) at any relevant time.

83AD As to paragraph 83AD, IAL:

(a) repeats paragraphs 83AB and 83AC above, particularly paragraph 83AC(b); and

(b) does not know and therefore cannot admit paragraph 83AD of the SOC.

83AE As to paragraph 83AE of the SOC, IAL:

(a) repeats paragraphs 40 to 42 and 83Y of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TW-03546" (as referred to in paragraph 83Y of the SOC) and which recorded only "Greensill Capital Pty Limited" as 'Insured";

(ii) did not disclose any policies with the policy number "TW-03547" referred to in paragraph 83Y of the SOC; and

Particulars

IAL repeats the particulars to paragraph 41(b)(xi) of this Defence.

(e) otherwise denies paragraph 83AE of the SOC.

83AF As to paragraph 83AF of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 83Y of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 83AE of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 83Y to 83AE of this Defence; and

(B) otherwise denies that paragraph of the SOC.

83AG IAL denies paragraph 83AG and repeats paragraphs 83Y to 83AF above.

2017 Standalone Policies

83AH IAL denies paragraph 83AH of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2017 Master Policy 3691:

(i) the Applicants rely on a document with document reference AGB.0002.0002.0872, which IAL understands is alleged to be the "2017 Master Policy 3691";

(ii) if the document is said to be the "2017 Master Policy 3691", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 27th day of December 2017" (page 2);

(B) was signed by Greg Brereton on or about 15 June 2018 (page 51);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800044;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the 2017 Parallel Policy 3690:

(i) the Applicants rely on a document with document reference GBA.0004.0009.4397, which IAL understands is alleged to be the "2017 Parallel Policy 3690";

(ii) if the document is said to be the "2017 Parallel Policy 3690", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 27h day of December 2017" (page 2);

(B) was signed by Greg Brereton on or about 15 June 2018 (page 44);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800045;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the 2017 Standalone Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2017 Master Policy 3691 and 2017 Parallel Policy 3690;

(e) in June 2018, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in or around June 2018, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2017 Standalone Policies because:

(i) the 2017 Standalone Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of 2017 Master Policy 3691 and 2017 Parallel Policy 3690 was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were not written on Approved Wording 1.4;

(B) the wording of the 2017 Standalone Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 Parallel Policy 3690 was $1 (Schedule 5 of the 2017 Parallel Policy 3690), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2017 Parallel Policy 3690 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 Parallel Policy 3690 is not yet known as it is "specified in the Customer Endorsement" (page 1 of 5 of the 2017 Parallel Policy 3690) and that for "any particular Customer will be set out in the relevant Customer Endorsement, or is otherwise the same as the Discretionary Credit Limit written for that Customer" (page 49 of 51 of the 2017 Master Policy 3691), each of which have not been identified;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 Parallel Policy 3690 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any customer endorsements were issued pursuant to the 2017 Standalone Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iii) entering into the 2017 Standalone Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were not a "Trade Credit Product". The 2018 Excess Policies were not written on Approved Wording 1.4.

In respect of the 2017 Master Policy 3691, GCUK, the insured, was not domiciled in Australia.

In respect of the 2017 Parallel Policy 3690, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2017 Parallel Policy 3690 exceeded 90% of Debt. The policy limit of the 2017 Parallel Policy 3690 is not identified. The 2017 Parallel Policy 3690 did not have any minimum excess.

Further, the obligation referred to in paragraph 83AH(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were to take effect approximately 175 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2017 Standalone Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into the 2017 Standalone Policies in the circumstances referred to in paragraph 83AH(f) of this Defence;

(ii) the 2017 Standalone Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2017 Standalone Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the 2017 Standalone Policies were not written on Approved Wording 1.4;

(B) the wording of the 2017 Standalone Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2017 Parallel Policy 3690 was $1 (Schedule

5 of the 2017 Parallel Policy 3690), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in the 2017 Parallel Policy 3690 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD35 million and the policy limit of the 2017 Parallel Policy 3690 is not yet known as it is "specified in the Customer Endorsement" (page 1 of 5 of the 2017 Parallel Policy 3690) and that for "any particular Customer will be set out in the relevant Customer Endorsement, or is otherwise the same as the Discretionary Credit Limit written for that Customer" (page 49 of 51 of the 2017 Master Policy 3691), each of which have not been identified;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2017 Parallel Policy 3690 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any customer endorsements were issued pursuant to the 2017 Standalone Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iv) entering into the 2017 Standalone Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 83AH(f)(iii) of this Defence. Further, the obligation referred to in paragraph 83AH(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were to take effect approximately 175 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 83G(h) to 83G(q) of this Defence;

(i) in the premises, in June 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2017 Standalone Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2017 Standalone Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2017 Standalone Policies ; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2017 Standalone Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 83G(l) to 83G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2017 Standalone Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2017 Parallel Policy 3690;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2017 Parallel Policy 3690; and

(iii) by reason of the matters in paragraphs 83AH(j)(i) and 83AH(j)(ii) of this Defence, the 2017 Standalone Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2017 Standalone Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with

Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

83AI IAL denies paragraph 83AI of the SOC and repeats paragraphs 66A and 83AH above.

83AJ IAL denies paragraph 83AJ of the SOC and says further that:

(a) it repeats paragraphs 83B, 83C, 83F and 83AH above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 83B(d); and

(c) otherwise, denies the paragraph.

83AK IAL denies paragraph 83AK of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2017 Master Policy 3691, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer";

(c) in respect of the 2017 Standalone Policies, the SOC pleads no material facts capable of establishing that the amount of AUD 149,819.52 and USD 215,200 was the amount, or an amount, due under the 2017 Master Policy 3691 and in respect of the 2017 Parallel Policy 3690 at any time.

83AL IAL denies paragraph 83AL of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 83AK of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2017 Master Policy 3691 at any time; and

(ii) there were "Assets" insured under the 2017 Parallel Policy 3690 (as alleged in paragraph 83AL) at any relevant time.

83AM As to paragraph 83AM, IAL:

(a) repeats paragraphs 83AK and 83AL above, particularly paragraph 83AL(b); and

(b) does not know and therefore cannot admit paragraph 83AM of the SOC.

83AN As to paragraph 83AN of the SOC, IAL:

(a) repeats paragraphs 40 to 42 and 83AH of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TB-03691" (as referred to in paragraph 83AH of the SOC) and which recorded only "Greensill Capital Pty Limited" as "Insured"; and

(ii) did not disclose any policies with the policy number "TB-03690" referred to in paragraph 83AH of the SOC;

Particulars

IAL repeats the particulars to paragraph 41(b)(xi) of this Defence.

(e) otherwise denies paragraph 83AN of the SOC.

83AO As to paragraph 83AO of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 83AH of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 83AN of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 83AH to 83AN of this Defence; and

(B) otherwise denies that paragraph of the SOC.

83AP IAL denies paragraph 83AP and repeats paragraphs 83AH to 83AO above.

2018 LOS Policies

83AQ IAL denies paragraph 83AQ of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2018 LOS Master Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0003.5867, which IAL understands is alleged to be the "2018 LOS Master Policy";

(ii) if the document is said to be the "2018 LOS Master Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 15 December 2018" (page 2);

(B) was signed by Greg Brereton on or about 13 December 2018 (page 47);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800109;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the 2018 LOS Parallel Policy:

(i) the Applicants rely on a document with document reference AGB.0002.0002.1549, which IAL understands is alleged to be the "2018 LOS Parallel Policy";

(ii) if the document is said to be the "2018 LOS Parallel Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 15 December 2018" (page 2);

(B) was signed by Greg Brereton on or about 13 December 2018 (page 40);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800108;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the 2018 LOS Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2018 LOS Policies;

(e) in December 2018, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing “Approved Products”, being relevantly “Trade Credit Products”, using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in or around December 2018, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) prior to 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2018 LOS Policies because:

(i) the 2018 LOS Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of 2018 LOS Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2018 LOS Policies were not written on Approved Wording 1.4;

(B) the wording of the 2018 LOS Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 LOS Parallel Policy was $1 (Schedule 5 of the 2018 LOS Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2018 LOS Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2018 LOS Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 LOS Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any endorsements were issued pursuant to the 2018 LOS Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iii) entering into the 2018 LOS Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2018 LOS Policies were not a "Trade Credit Product". The 2018 LOS Policies were not written on Approved Wording 1.4.

In respect of the 2018 LOS Master Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the 2018 LOS Parallel Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2018 LOS Parallel Policy exceeded 95% of Debt. The policy limit of the 2018 LOS Parallel Policy was not AUD50 million or less. The 2018 LOS Parallel Policy did not have any minimum excess.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2018 LOS Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into the 2018 LOS Policies in the circumstances referred to in paragraph 83AQ(f) of this Defence;

(ii) the 2018 LOS Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2018 LOS Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2018 LOS Policies were not written on Approved Wording 1.4;

(B) the wording of the 2018 LOS Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 LOS Parallel Policy was $1 (Schedule 5 of the 2018 LOS Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2018 LOS Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2018 LOS Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 LOS Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged (to the extent any endorsements were issued pursuant to the 2018 LOS Policies in a foreign currency that exceeded that limit, which is not currently known to IAL);

(iv) entering into the 2018 LOS Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 83AQ(f)(iii) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 83G(h) to 83G(q) of this Defence;

(i) in the premises, in December 2018 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2018 LOS Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2018 LOS Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2018 LOS Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2018 LOS Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 83G(l) to 83G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2018 LOS Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2018 LOS Parallel Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2018 LOS Parallel Policy; and

(iii) by reason of the matters in paragraphs 83AQ(j)(i) and 83AQ(j)(ii) of this Defence, the 2018 LOS Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2018 LOS Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

83AR IAL denies paragraph 83AR of the SOC and repeats paragraphs 66A and 83AQ above.

83AS IAL denies paragraph 83AS of the SOC and says further that:

(a) it repeats paragraphs 83B, 83C, 83F and 83AQ above;

(b) it assumes that the reference to “Proposed Greensill Policy Structure” is a reference to the six pleaded terms set out at SOC paragraph 83B(d); and

(c) otherwise, denies the paragraph.

83AT IAL denies paragraph 83AT of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2018 LOS Master Policy, there were terms to the following effect:

(i) the “Insured” will pay the “Additional Fees” in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer";

(c) in respect of the 2018 LOS Policies, the SOC pleads no material facts capable of establishing that the amount of AUD 3,757,467.79 was the amount, or an amount, due under the 2018 LOS Master Policy and in respect of the 2018 LOS Parallel Policy at any time.

83AU IAL denies paragraph 83AU of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 83AT of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2018 LOS Master Policy at any time; and

(ii) there were "Assets" insured under the 2018 LOS Parallel Policy (as alleged in paragraph 83AU) at any relevant time.

83AV As to paragraph 83AV, IAL:

(a) repeats paragraphs 83AT and 83AU above, particularly paragraph 83AU(b); and

(b) does not know and therefore cannot admit paragraph 83AV of the SOC.

83AW As to paragraph 83AW of the SOC, IAL:

(a) repeats paragraphs 40 to 42 and 83AQ of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) did not disclose any policies with the policy number "TS-03137" referred to in paragraph 83AQ of the SOC;

(ii) from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 83AQ of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 41(b)(xi) of this Defence.

(e) otherwise denies paragraph 83AW of the SOC.

83AX IAL denies paragraph 83AX of the SOC and says further that:

(a) in respect of sub-paragraph (a), there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraph (b), IAL repeats paragraph 83AW of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 83AQ to 83AW of this Defence.

83AY IAL denies paragraph 83AY and repeats paragraphs 83AQ to 83AX above.

Nokia Policies

83AZ IAL denies paragraph 83AZ of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the Nokia Master Policy,

(i) the Applicants rely on a document with document reference AGB.0002.0009.1866, which IAL understands is alleged to be the "Nokia Master Policy";

(ii) if the document is said to be the "Nokia Master Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 28th day of December 2018" (page 2);

(B) was signed by Greg Brereton on or about 9 January 2019 (page 49);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1800119;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of the Nokia Parallel Policy:

(i) the Applicants rely on a document with document reference GBA.0004.0020.6119, which IAL understands is alleged to be the "Nokia Parallel Policy";

(ii) if the document is said to be the "Nokia Parallel Policy", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 28th day of December 2018" (page 2);

(B) was signed by Greg Brereton on or about 9 January 2019 (page 49);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1800120;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the Nokia Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the Nokia Policies;

(e) in January 2019, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around January 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) prior to 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the Nokia Policies because:

(i) the Nokia Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of Nokia Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the Nokia Policies were not written on Approved Wording 1.4;

(B) the wording of the Nokia Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the Nokia Parallel Policy was $1 (Schedule 5 of the Nokia Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the Nokia Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the Nokia Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the Nokia Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the Nokia Parallel Policy exceeded that limitation;

(iii) entering into the Nokia Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The Nokia Policies were not a "Trade Credit Product". The 2018 Excess Policies were not written on Approved Wording 1.4.

In respect of the Nokia Master Policy, GCUK, the insured, was not domiciled in Australia.

In respect of the Nokia Parallel Policy, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the Nokia Parallel Policy exceeded 95% of Debt. The policy limit of the Nokia Parallel Policy was not AUD50 million or less. The Nokia Parallel Policy did not have any minimum excess.

Further, the obligation referred to in paragraph 83AZ(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the Nokia Policies were to take effect approximately 20 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the Nokia Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into the Nokia Policies in the circumstances referred to in paragraph 83AZ(f) of this Defence;

(ii) the Nokia Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the Nokia Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the Nokia Policies were not written on Approved Wording 1.4;

(B) the wording of the Nokia Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the Nokia Parallel Policy was $1 (Schedule 5 of the Nokia Parallel Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the Nokia Parallel Policy of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the Nokia Parallel Policy exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the Nokia Parallel Policy did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the Nokia Parallel Policy exceeded that limit;

(iv) entering into the Nokia Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 83AZ(f)(iii) of this Defence. Further, the obligation referred to in paragraph 83AZ(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the Nokia Policies were to take effect approximately 20 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 83G(h) to 83G(q) of this Defence;

(i) in the premises, as at or about 9 January 2019 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the Nokia Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the Nokia Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the Nokia Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the Nokia Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 83G(l) to 83G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the Nokia Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the Nokia Parallel Policy;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the Nokia Parallel Policy; and

(iii) by reason of the matters in paragraphs 83AZ(j)(i)and 83AZ(j)(ii) of this Defence, the Nokia Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the Nokia Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

83BA IAL denies paragraph 83BA of the SOC and repeats paragraphs 66A and 83AZ above.

83BB IAL denies paragraph 83BB of the SOC and says further that:

(a) it repeats paragraphs 83B, 83C, 83F and 83AZ above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 83B(d); and

(c) otherwise, denies the paragraph.

83BC IAL denies paragraph 83BC of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the Nokia Master Policy, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer";

(c) in respect of the Nokia Policies, the SOC pleads no material facts capable of establishing that the amount of USD 599,112.50 was the amount, or an amount, due under the Nokia Master Policy and in respect of the Nokia Parallel Policy at any time.

83BD IAL denies paragraph 83BD of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 83BC of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged;

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the Nokia Master Policy at any time; and

(ii) there were "Assets" insured under the "Nokia Parallel Policies" (as alleged in paragraph 83BD) at any relevant time.

83BE As to paragraph 83BE, IAL:

(a) repeats paragraphs 83BC and 83BD above, particularly paragraph 83BD(b); and

(b) does not know and therefore cannot admit paragraph 83BE of the SOC.

83BF As to paragraph 83BF of the SOC, IAL:

(a) repeats paragraphs 40 to 42 and 83AZ of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TB-04584" (as referred to in paragraph 83AZ) and which recorded only "Greensill Capital Pty Limited" as 'Insured";

(ii) did not disclose any policies with the policy number "TB-04585" referred to in paragraph 83AZ of the SOC; and

Particulars

IAL repeats the particulars to paragraph 41(b)(xi) of this Defence.

(e) otherwise denies paragraph 83BF of the SOC.

83BG As to paragraph 83BG of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was

appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 83AZ of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 83BF of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(c) in respect of sub-paragraph (c):

(i) repeats paragraphs 83AZ to 83BF of this Defence; and

(ii) otherwise denies that paragraph of the SOC.

83BH IAL denies paragraph 83BH and repeats paragraphs 83AZ to 83BG above.

2019 Excess Policies

83BI IAL denies paragraph 83BI of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of Policy 3087:

(i) the Applicants rely on a document with document reference GBA.0004.0031.1983, which IAL understands is alleged to be the "Policy 3087";

(ii) if the document is said to be the "Policy 3087", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 1st day of March 2019" (page 2);

(B) was signed by Greg Brereton on or about 6 March 2019 (page 48);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1900010;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(c) in respect of Policy 3088:

(i) the Applicants rely on a document with document reference AGB.0002.0002.1923, which IAL understands is alleged to be the "Policy 3088";

(ii) if the document is said to be the "Policy 3088", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 1st day of March 2019" (page 2);

(B) was signed by Greg Brereton on or about 6 March 2019 (page 48);

(C) was not signed by either of GCPL or Greensill Bank;

(D) has a "Contract Number", being B0509FINCW1900008;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed, save for one page on which the page has been signed but outside of the box;

(d) the terms of the 2019 Excess Policies were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2019 Excess Policies;

(e) in March 2019, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing “Approved Products”, being relevantly “Trade Credit Products”, using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in or around March 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) prior to 12 July 2018, AUD35 million or less;

(B) from 12 July 2018, AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2019 Excess Policies because:

(i) the 2019 Excess Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of the 2019 Excess Policies was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2019 Excess Policies were not written on Approved Wording 1.4;

(B) the wording of the 2019 Excess Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for Policy 3088 was $1 (Schedule 5 of Policy 3088), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in Policy 3088 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of Policy 3088 exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and Policy 3088 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and Policy 3088 exceeded that limitation;

(iii) entering into the 2019 Excess Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2019 Excess Policies were not a "Trade Credit Product". the 2019 Excess Policies were not written on Approved Wording 1.4.

In respect of Policy 3087, GCUK, the insured, was not domiciled in Australia.

In respect of Policy 3088, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of Policy 3088 exceeded 95% of Debt. The policy limit of Policy 3088 was not AUD50 million or less. Policy 3088 did not have any minimum excess.

Further, the obligation referred to in paragraph 83BI(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2019 Excess Policies were to take effect approximately 19 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2019 Excess Policies because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused

BCC to enter into the 2019 Excess Policies in the circumstances referred to in paragraph 83BI(f) of this Defence;

(ii) the 2019 Excess Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A)~~(G)~~ the wording of the 2019 Excess Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Excess Policies were not written on Approved Wording 1.4;

(B)~~(H)~~ the wording of the 2019 Excess Policies had not otherwise been approved by IAL and its reinsurers;

(C)~~(I)~~ the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for Policy 3088 was $1 (Schedule 5 of Policy 3088), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in Policy 3088 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the Policy 3088 exceeded that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and Policy 3088 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and Policy 3088 exceeded that limit;

(iv) entering into the 2019 Excess Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 83BI(f)(iii) of this Defence. Further, the obligation referred to in paragraph 83BI(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2018 Excess Policies were to take effect approximately 19 days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 83G(h) to 83G(q) of this Defence;

(i) in the premises, in March 2019 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i)~~(iii)~~ before BCC and Brereton could agree to the 2019 Excess Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii)~~(iv)~~ IAL and Scor Re did not approve of the wording and structure of the 2019 Excess Policies;

(iii)~~(v)~~ IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Excess Policies; and

(iv)~~(vi)~~ despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Excess Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 83G(l) to 83G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2019 Excess Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of Policy 3088;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for Policy 3088; and

(iii) by reason of the matters in paragraphs 83BI(j)(i) and 83BI(j)(ii) of this Defence, the 2019 Excess Policies are not valid and binding; and

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the 2019 Excess Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual.

83BJ IAL denies paragraph 83BJ of the SOC and repeats paragraphs 66A and 83BI above.

83BK IAL denies paragraph 83BK of the SOC and says further that:

(a) it repeats paragraphs 83B, 83C, 83F and 83BI above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 83B(d); and

(c) otherwise, denies the paragraph.

83BL IAL denies paragraph 83BL of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of Policy 3087, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer"; and

(c) in respect of the 2019 Excess Policies, the SOC pleads no material facts capable of establishing that the amount of USD 275,141.78 was the amount, or an amount, due under Policy 3087 and in respect of Policy 3088 at any time.

83BM IAL denies paragraph 83BM of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 83BL of this Defence;

(b) it says that there is no articulation or particularisation of the specific premia and/or when they were paid, such that IAL does not know what specific premia are alleged; and

(c) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under Policy 3087 at any time; and

(ii) there were "Assets" insured under Policy 3088 (alleged in paragraph 83BF) at any relevant time.

83BN As to paragraph 83BN, IAL:

(a) repeats paragraphs 83BL and 83BM above, particularly paragraph 83BM(b); and

(b) does not know and therefore cannot admit paragraph 83BN of the SOC.

83BO As to paragraph 83BO of the SOC, IAL:

(a) repeats paragraphs 40 to 42 and 83BI of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TS-03087" (referred to in paragraph 83BI of the SOC) and which recorded only "Greensill Capital Pty Limited" as 'Insured";

(ii) did not disclose any policies with the policy number "TS-03088" referred to in the particulars at paragraph 83 of the SOC; and

Particulars

IAL repeats the particulars to paragraph 41(b)(xi)) of this Defence.

(e) otherwise denies paragraph 83BO of the SOC.

83BP As to paragraph 83BP of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8 and 83BI of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 83BOof this Defence; and

(B) otherwise denies that paragraph of the SOC;

(c) in respect of sub-paragraph (c):

(i) repeats paragraphs 83BI to 83BO of this Defence; and

(ii) otherwise denies that paragraph of the SOC.

83BQ IAL denies paragraph 83BQ and repeats paragraphs 83BI to 83BP above.

2019 Standalone Policies

83BR IAL denies paragraph 83BR of the SOC and refers to and repeats paragraph 83BS below.

83BS IAL denies paragraph 83BS of the SOC and says further that:

(a) it repeats paragraphs 5(d), 6(e), 8 and 66A of this Defence;

(b) in respect of the 2019 Master Policy 3691:

(i) the Applicants rely on a document with document reference AGB.0004.0001.2304, which IAL understands is alleged to be the "2019 Master Policy 3691";

(ii) if the document is said to be the "2019 Master Policy 3691", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 22nd Day of February 2019" (page 2);

(B) was signed by Greg Brereton but whose signature is undated (page 51);

(C) was not signed by either of GCPL or GCUK;

(D) has a "Contract Number", being B0509FINCW1900011;

(E) contains a signature box on each page reading “Contract Leader”, none of which are signed but on which page a signature is recorded in the footer outside the box except for the final page;

(c) in respect of the 2019 Parallel Policy 3690:

(i) the Applicants rely on a document with document reference AGB.0004.0001.2781, which IAL understands is alleged to be the "2019 Parallel Policy 3690";

(ii) if the document is said to be the "2019 Parallel Policy 3690", then it appears on the face of the document that the document:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 22nd day of February 2019" (page 2);

(B) was signed by Greg Brereton on or about 13 March 2019 (page 44);

(C) was signed on behalf of both:

a. GCPL, but which signature is undated; and

b. Greensill Bank on or about 14 March 2019;

(D) has a "Contract Number", being B0509FINCW1900009;

(E) contains a signature box on each page reading “Contract Leader”, all of which are signed;

(d) the terms of the 2019 Standalone Policies were authored by or for the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2019 Master Policy 3691 and 2019 Parallel Policy 3690;

(e) in March 2019, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4 from August 2017;

(iii) relevantly extended only to arranging and issuing products “in accordance with the ‘Underwriting Manual’” and the Manual which, in or around March 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of:

(A) before 12 July 2018, a maximum of 90% of Debt;

(B) from 12 July 2018, a maximum of 95% of Debt;

(vii) relevantly extended only to arranging and issuing policies with limits of:

(A) before 12 July 2018, AUD35 million or less under Underwriting Manual Version 1.0;

(B) from 12 July 2018, AUD50 million or less under Underwriting Manual Version 2.0; and

(viii) relevantly extended only to arranging and issuing policies with a maximum credit limit / credit term of 180 days;

(ix) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(x) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(f) the authority given by IAL to BCC did not include an authority to enter into the 2019 Standalone Policies and/or to renew or extend the 2019 Parallel Policy 3690, because:

(i) the 2019 Standalone Policies were not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0 because:

(A) the wording of 2019 Master Policy 3691 and 2019 Parallel Policy 3690 was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the 2019 Master Policy 3691 and 2019 Parallel Policy 3690 were not written on Approved Wording 1.4;

(B) the wording of the 2019 Standalone Policies had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2019 Parallel Policy 3690 was $1 (Schedule 5 of the 2019 Parallel Policy 3690), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Parallel Policy 3690 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2019 Parallel Policy 3690 was in excess (or is established to have been in excess) of that limitation;

(E) issue policies with limits or terms in excess of AUD50 million and the 2019 Parallel Policy 3690 did not have (or is not established to have) a limit of AUD50 million or less;

(F) insure credit terms in excess of 180 days and the 2019 Parallel Policy 3690 credit terms exceeded that limitation;

(G) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Parallel Policy 3690 did not have any minimum excess;

(H) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2019 Parallel Policy 3690 exceeded (or it is established that the 2019 Parallel Policy 3690 exceeded) that limitation;

(I) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Parallel Policy 3690 exceeded 12 months;

(iii) entering into the 2019 Standalone Policies was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honesty;

Particulars

The 2019 Master Policy 3691 and 2019 Parallel Policy 3690 were not a "Trade Credit Product". The 2018 Excess Policies were not written on Approved Wording 1.4.

In respect of the 2019 Master Policy 3691, GCUK, the insured, was not domiciled in Australia.

In respect of the 2019 Parallel Policy 3690, Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2019 Parallel Policy 3690 exceeded 95% of Debt. The policy limit of the 2019 Parallel Policy 3690 was not AUD50 million or less. The Policy Period exceeded 12 months. The credit terms were in excess of 180 days. The 2019 Parallel Policy 3690 did not have any minimum excess.

Further, the obligation referred to in paragraph 83BS(f)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2019 Parallel Policy 3690 was to take effect by almost a month prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(g) the authority given by IAL to Brereton did not include an authority to enter into the 2019 Standalone Policies and/or to renew or extend the 2019 Parallel Policy 3690, because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into the 2019 Standalone Policies in the circumstances referred to in paragraph 83BS(f) of this Defence;

(ii) the 2019 Standalone Policies were not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2019 Standalone Policies was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Standalone Policies were not written on Approved Wording 1.4;

(B) the wording of the 2019 Standalone Policies had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and GCUK and Greensill Bank were not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2019 Parallel Policy 3690 was $1 (Schedule 5 of the 2019 Parallel Policy 3690), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Parallel Policy 3690 of 100% of Debt exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the Policy limit of the 2019 Parallel Policy 3690 did not have (or is not established to have) a limit of AUD50 million or less;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Parallel Policy 3690 did not have any minimum excess;

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2019 Parallel Policy 3690 exceeded (or it is established that the 2019 Parallel Policy 3690 exceeded) that limitation;

(G) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Parallel Policy 3690 exceeded 12 months;

(H) insure credit limits in excess of 180 days and the 2019 Parallel Policy 3690 credit limits exceeded that limitation;

(iv) entering into the 2019 Standalone Policies was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 83BS(f)(iii) of this Defence. Further, the obligation referred to in paragraph 83BS(g)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where the 2019 Parallel Policy 3690 was to take effect by almost a month prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) it repeats paragraphs 83G(h) to 83G(q) of this Defence;

(i) in the premises, as at 22 February 2019 and March 2019 and at all material times, GCUK, Greensill Bank and GCPL knew or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2019 Standalone Policies, it was necessary for IAL and Scor Re to agree to their terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2019 Standalone Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Standalone Policies; and

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, GCUK, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Standalone Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 83G(l) to 83G(q) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

(j) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2019 Standalone Policies:

(i) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of the 2019 Parallel Policy 3690;

(ii) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for the 2019 Parallel Policy 3690; and

(iii) by reason of the matters in paragraphs 83BS(j)(i) and 83BS(j)(ii) of this Defence, the 2019 Standalone Policies are not valid and binding; and

(k) if, which is denied, GCPL and Greensill Bank entered into the 2019 Parallel Policy 3690 on 22 February 2019, the 2019 Parallel Policy 3690 expired on 1 March 2020 and was not validly renewed or extended after that date by BCC and Brereton on behalf of IAL;

(l) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) the 2019 Standalone Policies had been issued; and

(ii) the 2019 Standalone Policies had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the Underwriting Manual Version 2.0.

83BT IAL denies paragraph 83BT of the SOC and repeats paragraphs 66A and 83BS above.

83BU IAL denies paragraph 83BU of the SOC and says further that:

(a) it repeats paragraphs 83B, 83C, 83F, 83BR and 83BS above;

(b) it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 83B(d); and

(c) otherwise, denies the paragraph.

83BV IAL denies paragraph 83BV of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8 and 66A of this Defence;

(b) in respect of the 2019 Master Policy 3691, there were terms to the following effect:

(i) the "Insured" will pay the "Additional Fees" in accordance with Schedule 5 (cl 6.2);

(ii) "Premium" shall accrue day by day during the "Policy Period" and be calculated in accordance with the terms set out in Schedule 5 (cl 6.2);

(iii) the "Insured" shall pay the "Insurer" the adjusted "Premium" relating to each calendar quarter by not later than the last "Business Day" of the first month of the subsequent quarter (cl 6.2);

(iv) the payment of such amounts shall be made in full by the "Insured" when due (cl 6.2);

(v) the "Insurer" shall not be obliged to indemnify the "Insured" for a "Loss" in accordance with, and subject to the terms, conditions and limitations of the "Policy" until such amounts have been paid (cl 6.2);

(vi) Schedule 5 prescribed a mechanism for calculating the "Premium" arising each day under the "Policy" with respect to "Assets" owned by the "Insured" and/or the "Insured Participant" that derive from "Debts" owned by a "Customer";

(c) in respect of the 2019 Standalone Policies, the SOC pleads no material facts capable of establishing that any of the amounts of USD 3,143,046.95, GBP 16,700, AUD 10,779.04 and/or AUD 1,395,713.68 was the amount, or an amount, due under the 2019 Master Policy 3691 and in respect of the 2019 Parallel Policy 3690 at any time.

83BW IAL denies paragraph 83BW of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 83BV of this Defence;

(b) the SOC pleads no material facts capable of establishing that:

(i) any of the particularised amounts was the amount, or an amount, due under the 2017 Master Policy 3691 at any time; and

(ii) there were "Assets" insured under the 2017 Parallel Policy 3690 (as alleged in paragraph 83AL) at any relevant time.

83BX As to paragraph 83BX, IAL:

(a) repeats paragraphs 83BV and 83BW above; and

(b) denies the paragraph.

83BY As to paragraph 83BY of the SOC, IAL:

(a) repeats paragraphs 40 to 42, 83BR and 83BS of this Defence;

(b) says that the allegation does not identify the "written and payment bordereaux" pleaded, and refers (without particulars) only to "written and payment bordereaux" prepared by BCC from "time to time" without identifying which bordereaux are relied upon;

(c) under cover of that objection admits that BCC provided iterations of bordereaux to IAL from 1 August 2017;

(d) says that the written and payment bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) from time to time included entries that referred to a policy number "TB-03691" (as referred to in paragraph 83BR of the SOC) and which recorded only "Greensill Capital Pty Limited" as "Insured"; and

(ii) did not disclose any policies with the policy number "TB-03690" referred to in paragraph 83BS of the SOC;

Particulars

IAL repeats the particulars to paragraph 41(b)(xi) of this Defence.

(e) otherwise denies paragraph 83BY of the SOC.

83BZ As to paragraph 83BZ of the SOC, IAL says that:

(a) in respect of sub-paragraph (a), it:

(i) denies this paragraph of the SOC; and

(ii) says further that there is no pleading of material fact capable of establishing that any particular alleged payment from BCC to IAL was appropriated to discharge of any particular debt allegedly owing by BCC to IAL;

(b) in respect of sub-paragraphs (b) and (c), it:

(i) repeats paragraphs 5(d), 6(e), 8, 83BR and 83BS of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 83BY of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 83BR to 83BY of this Defence; and

(B) otherwise denies that paragraph of the SOC.

83CA IAL denies paragraph 83CA and repeats paragraphs 83BR to 83BZ above.

Delta Policies

83CB IAL denies paragraph 83CB of the SOC and says further that:

(a)~~(c)~~ it repeats paragraphs 66A, 83B, 83C and 83F above;

(b)~~(d)~~ it assumes that the reference to "Proposed Greensill Policy Structure" is a reference to the six pleaded terms set out at SOC paragraph 83B(d); and

(c)~~(e)~~ otherwise, denies the paragraph.

83CC IAL denies paragraph 83CC of the SOC.

84 As to paragraph 84, IAL:

(a) repeats paragraphs 5, 8, 41(b), 66A, 83O, 83X, 83AG, 83AP, 83AY, 83BH, 83BQ, 83CA and 83CC of this Defence; and

(b) otherwise denies paragraph 84 of the SOC.

D.3.3 *Statutory responsibility*

85 As to paragraph 85 of the SOC, IAL:

(a) says, as to the whole paragraph, that “entry” into a contract is a legal conclusion and not “conduct” to which sections 917A, 917B and 917C of the *Corporations Act* apply;

(aa) repeats paragraphs 97(b) to 97(e) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019 and denies that BCC and/or Brereton entered into Policy 5369 or any of the endorsements (including Endorsement 3 and the Further Delta HoldCo Customer Endorsements referred to at 168(a) of this Defence) referred to in the SOC on behalf of IAL;

(b) says further, as to the whole paragraph:

(i) Division 6 of Part 7.6 of the *Corporations Act* generally, and sections 917B and 917C in particular, deem a licensee to be responsible for conduct of a representative only if:

(A) the conduct is itself a wrong of the representative actionable by the client; and

(B) the conduct by itself gives the "client" a remedy against the representative;

(ii) denies that Greensill Bank was the "client" for the purpose of section 917A(1)(b) and 917A(1)(c) of the *Corporations Act*;

(iii) mere execution of, or entry into, Policy 5369 was not a wrong of BCC actionable by Greensill Bank and did not by itself give Greensill Bank a remedy against BCC;

(iv) the conduct relied on in the paragraph is therefore not conduct to which sections 917A, 917B and 917C of the *Corporations Act* apply; and

(v) in the circumstances, the whole of the paragraph is denied, and the balance of this paragraph is further and in the alternative;

(c) admits, in relation to paragraph 85(a) of the SOC, that, at the time BCC purported to enter into Policy 5369, it was an authorised representative of IAL, which was a financial services licensee within the meaning of section 917A of the *Corporations Act*;

(d) admits, in relation to paragraph 85(b) of the SOC, that entry into a policy of general insurance is, subject to subparagraphs 85(a), 85(aa) and 85(b) of this Defence, conduct that relates to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(e) denies paragraph 85(c) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1)(b) of the

Corporations Act turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraph 85 of the SOC was conduct on which Greensill Bank could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) of the *Corporations Act* is the "rel[iance]" referred to in section 917A(1)(c) of the *Corporations Act*, with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading as to the manner of Greensill Bank's alleged reliance, or linking the actual reliance alleged in paragraph 85(d) of the SOC (which is wholly unparticularised) with the reasonable expectation as to reliance alleged in paragraph 85(c) of the SOC (again unparticularised);

(v) the conduct of BCC in entering into and/or executing Policy 5369 was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Paragraphs 66A(b) to ~~**Error! Reference source not found.**~~66A(i) of this Defence. Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

Further particulars may be provided after discovery, compulsory production and evidence.

(f) denies paragraph 85(d) of the SOC and says further that:

(i) there is no pleading as to the manner in which Greensill Bank in fact relied on the conduct referred to in paragraph 85 of the SOC or as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 85(d) of the SOC (which is wholly unparticularised) with the reasonable expectation as to reliance alleged in paragraph 85(c) of the SOC (again unparticularised); and

(iii) says that, Greensill Bank did not in fact rely in good faith on the "conduct of BCC" in entering into Policy 5369;

Particulars

(a) Paragraphs 66A(i) to **Error! Reference source not found.**66A(i) of this Defence.

(b) The premium amount listed in Policy 5369 was $1, substantially less than the risks (totalling over EUR 2 billion) purportedly written by BCC on behalf of IAL under this policy.

(c) Greensill Bank did not pay any premium for Policy 5369.

(d) Prior to 25 June 2019:

(i) on or about 10 April 2019, TMMA issued a media release by which it announced that it had acquired BCC;

(ii) on or about 15 April 2019, Bond issued a market announcement by which it announced that TMMA, a wholly owned subsidiary of TMNF, had acquired the "BCC Trade Credit & Surety businesses" and, in respect of trade credit, from 1 July 2019, all new and renewal business will be undertaken by TMNF under its underwriting guidelines; and

(iii) on 15 April 2019, BCC provided to Marsh, on behalf of the Greensill Group, the media release and market announcement referred to in (d)(i) and (ii) of these particulars above: Email dated 15 April 2019 from Toby Guy on behalf of BCC to Ewan Berkemeier of Marsh on behalf of the Greensill Group with attachments (IAL.500.011.0568, IAL.500.011.0569 and IAL.500.011.0570).

(e) In the circumstances described in the preceding subparagraph (d), Greensill Bank ought to have known that the attempt by BCC and Brereton to write approximately EUR 2.2 billion in risk on behalf of IAL by Policy 5369 just four days before 1 July 2019 was unreasonable, uncommercial and outside the scope of the authority given by IAL to BCC and Brereton, and was not conduct on which Greensill Bank could have relied in good faith.

(f) IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

Further particulars may be provided after discovery, compulsory production and evidence.

(g) further reserves the right to rely on section 917D of the *Corporations Act* and contends that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client", which is denied;

Particulars

Particulars under paragraphs **Error! Reference source not found.**66A(g) and 66A(i) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(h) says further that, the SOC is deficient in failing to identify, with precision or at all, the content of the "responsib[ility]" alleged in paragraph 85 of the SOC and, in particular, failing to identify:

(i) whether it is alleged that Greensill Bank has suffered loss and damage, for the purposes of section 917E of the *Corporations Act*, as a result of BCC's conduct referred to in paragraph 85 of the SOC;

(ii) for the purposes of section 917E of the *Corporations Act*, the causal connection between that conduct and any asserted loss and damage, including the counterfactual alleged;

(iii) for the purposes of section 917E of the *Corporations Act*, what "loss and damage" is relied on;

(iv) whether it is alleged that, by reason of section 917F(1) of the *Corporations Act*, Greensill Bank has the same remedies against IAL that it has against BCC and, if so, what those remedies are; and

(v) for the purposes of section 917F(1) of the *Corporations Act*, the connection between the "remedies" asserted and the "conduct" relied on;

(i) says that, in respect of any contention that IAL is responsible for any conduct of BCC (including any contention that Greensill Bank has remedies against IAL by reason of section 917F(1) of the *Corporations Act*) that:

(i) the responsibility deemed by sections 917B and 917C of the *Corporations Act* does not extend to responsibility for conduct and/or causes of action for which BCC has a defence as between BCC and Greensill Bank; and

(ii) IAL's responsibility and/or liability to Greensill Bank is no greater than BCC's responsibility and/or liability to Greensill Bank;

(j) says that, on their proper construction, the responsibility deemed by sections 917B and 917C of the *Corporations Act* to exist is responsibility for contraventions of Part 7 of the *Corporations Act* or, alternatively, contraventions

of the *Corporations Act*, and is not responsibility for general law wrongs, including breaches of contract;

(k) says that, IAL was not party to any relevant communications or relations between BCC and/or Brereton, on the one hand, and Greensill Bank/Marsh on the other and IAL intends to seek discovery bearing on the content of those relations and communications and, ultimately, on the potential application of sections 917A to 917E of the *Corporations Act*; and

(l) otherwise denies paragraph 85 of the SOC.

D4 Greg Brereton had authority to enter into Policy 5369

86 IAL repeats paragraphs 5, 6, 8(a)-8(k), 31-33, 55, 60 and 66A of this Defence and otherwise denies paragraph 86 of the SOC.

87 IAL repeats paragraphs 5, 6, 8(a)-8(k), 31-33, 55, 60 and 66A of this Defence and otherwise denies paragraph 87 of the SOC.

88 As to paragraph 88 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 88, the matters in paragraph 85 of this Defence which apply mutatis mutandis to Mr Brereton and his conduct referred to in paragraph 88; and

(b) denies paragraph 88 of the SOC.

D5 Endorsement 2

89 IAL denies paragraph 89 of the SOC and says further:

(a) the terms of Endorsement 2 were authored by or on behalf of the purported "Insured" and at no stage did IAL agree to, or hold out that it adopted, those words;

(b) that as at 25 June 2019 and at all material times on and after 9 April 2019 until 30 June 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 5(d)(i)(B), 5(d)(i)(E), 6(e)(i), 6(e)(iii), 6(e)(vi), 8(i), 8(k), 32, 33, 55, 60 and **Error! Reference source not found.**66A of this Defence;

(c) the amendments purportedly made by Endorsement 2 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(d) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 2 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Policy 5369 and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into Policy 5369, BCC and Brereton also did not have authority to issue endorsements under Policy 5369;

(iii) BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 2:

(A) materially altered the scope of the risk of the Insurer under Policy 5369 (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of Policy 5369;

Particulars

The definition of Debt (and therefore the scope of indemnity) under Policy 5369 was purportedly expanded.

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(iv) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 8(i) of this Defence, and Endorsement 2 was not an Approved Endorsement;

(v) Endorsement 2 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(e) that by reason of the matters in paragraphs 89(a) to 89(d) of this Defence and each of them individually, Endorsement 2 was invalid, of no effect and not binding on or enforceable as against IAL;

(f) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Endorsement 2:

(i) Endorsement 2 purported to vary Policy 5369;

(ii) clause 15.3(a) of Policy 5369 provided that any variation of Policy 5369 could only be effected in writing signed by or on behalf of each party;

(iii) Endorsement 2 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of Policy 5369;

(iv) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 2;

(v) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 2;

(vi) any power to issue Debt Endorsements under Policy 5369 did not authorise the issuing of a "Debt Endorsement" or, alternatively, a unilateral "Debt Endorsement" which purported to expand and/or vary the meaning of " Debt" whether at all, or in a manner which purported to bring within Policy 5369 debts of the kind purportedly covered by Endorsement 2; and

(vii) any Debt Endorsements issued under Policy 5369 must specify a premium rate in an associated Customer Endorsement, which in turn was required to be expressed as a percentage premium rate (Appendix 1 and Appendix 2 of Policy 5369);

(viii) Endorsement 2 did not specify a premium rate;

(ix) by reason of the matters in:

(A) paragraphs 89(f)(i) to 89(f)(iii) of this Defence;

(B) paragraphs 89(f)(iv) and 89(f)(v) of this Defence;

(C) paragraph 89(f)(vi) of this Defence; and/or

(D) paragraphs 89(f)(vii) and 89(f)(viii) of this Defence,

Endorsement 2 is invalid, of no effect and not binding on or enforceable as against IAL;

(g) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 2 had been issued; and

(ii) Endorsement 2 had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(h) executing Endorsement 2 was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 89(a) to 89(g) of this Defence.

(i) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 2 because entering into Endorsement 2 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 89(a) to 89(g) of this Defence.

(j) Greensill Bank and GCPL knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 2 on behalf of IAL.

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs **Error! Reference source not found.**66A(f) to ~~**Error! Reference source not found.**~~66A(i) of this Defence. Insofar as the emails referred to in the particulars under paragraph **Error! Reference source not found.**66A(g) were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further particulars may be provided after compulsory production.

90 As to paragraph 90 of the SOC, IAL:

(a) says Brereton signed Endorsement 2;

(b) repeats paragraph 89 of this Defence; and

(c) otherwise denies paragraph 90 of the SOC.

91 In answer to paragraph 91 of the SOC, IAL:

(a) repeats paragraph 89 of this Defence;

(b) says that, Endorsement 2 was, in terms, said to be "effective from the Commencement Date", but it did not define "Commencement Date"; and

(c) otherwise denies paragraph 91 of the SOC.

92 In answer to paragraph 92 of the SOC, IAL:

(a) repeats paragraph 89 of this Defence;

(b) relies on the terms of Endorsement 2 (if valid and effective, which is denied) for their full force and effect; and

(c) otherwise denies paragraph 92 of the SOC.

D6 BCC had authority to execute Endorsement 2

93 IAL repeats paragraph 89 of this Defence, and otherwise denies paragraph 93 of the SOC.

94 As to paragraph 94 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 94 of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of BCC with respect to Endorsement 2 and its conduct referred to in paragraph 94 of the SOC; and

(b) denies paragraph 94 of the SOC.

D7 Greg Brereton had authority to execute Endorsement 2

95 IAL repeats paragraph 89 of this Defence, and otherwise denies paragraph 95 of the SOC.

96 As to paragraph 96 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 96 of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of Brereton with respect to Endorsement 2 and his conduct referred to in paragraph 96 of the SOC; and

(b) denies paragraph 96 of the SOC.

D8 Endorsement 3 to Policy 5369

97 IAL denies paragraph 97 of the SOC and says further that:

(a) on 16 September 2019, Brereton signed Endorsement 3 and backdated it to commence on 26 June 2019;

Particulars

The particulars under paragraph 97 of the SOC refer to a further version of endorsement 3 allegedly entered into on or about 10 January 2020 by IAL, Greensill Bank and GCPL, as to which see paragraph 97(p) of this Defence.

(b) on and from 1 July 2019:

(i) BCC did not have any authority to write new policies or risks, or extend the term or scope of existing policies;

(ii) BCC was authorised to act as the agent and authorised representative of TMNF and provide financial services on behalf of TMNF;

(iii) BCC was a representative of TMNF, and not IAL or IAGA, for the purposes of Division 6 of Part 7.6 of the *Corporations Act*;

(iv) TMNF was responsible for the conduct of BCC for the purposes of section 917B of the *Corporations Act*;

(v) Brereton was a representative of TMNF, and not IAL or IAGA, for the purposes of Division 6 of Part 7.6 of the *Corporations Act*; and

(vi) TMNF was responsible for the conduct of Brereton for the purposes of section 917B of the *Corporations Act*;

(c) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that:

(i) BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019;

(ii) BCC was the authorised representative of only TMNF from 1 July 2019 onwards; and

(iii) Brereton's status as authorised representative of IAGA had ceased with effect on 30 June 2019;

(d) on or about 10 April 2019, TMMA issued a media release by which it announced that it had acquired BCC;

(e) on or about 15 April 2019, Bond issued a market announcement by which it announced that TMMA, a wholly owned subsidiary of TMNF, had acquired the "BCC Trade Credit & Surety businesses" and, in respect of trade credit, from

1 July 2019, all new and renewal business will be undertaken by TMNF under its underwriting guidelines;

(f) on 15 April 2019, BCC provided to Marsh, on behalf of the Greensill Group, the media release and market announcement referred to in paragraphs 97(d) and 97(e) of this Defence;

Particulars

Email dated 15 April 2019 from Toby Guy on behalf of BCC to Ewan Berkemeier of Marsh on behalf of the Greensill Group with attachments (IAL.500.011.0568, IAL.500.011.0569 and IAL.500.011.0570).

(g) the terms of Endorsement 3 were authored by or on behalf of the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(h) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 3 because:

(i) Endorsement 3 was signed by Brereton on behalf of BCC on 16 September 2019, after BCC ceased to have authority to act for IAL as referred to in paragraph 97(b) of this Defence;

(ii) the authority given by IAL to BCC and Brereton did not include an authority to enter into Policy 5369 and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL; and

(iii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into Policy 5369, BCC and Brereton also did not have authority to issue endorsements under Policy 5369;

(i) Endorsement 3 was not in any event consistent with the application of prudent underwriting judgment, and was invalid, because:

(i) the amendments purportedly made by Endorsement 3 (if valid and effective, which is denied):

(A) benefited Greensill Bank;

(B) gave no benefit, commercial or otherwise, to IAL;

(C) deprived IAL of the benefit of the claims procedure set out in Policy 5369, for no corresponding gain; and

(D) had no commercial or other legitimate justification;

(ii) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL prior to 30 June 2019, that authority was limited to the Approved Endorsements referred to in paragraph 8(i) of this Defence, and Endorsement 3 (if valid and effective, which is denied) was not an Approved Endorsement; and

(iii) Endorsement 3 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(j) by reason of the matters in paragraph 97(g) to 97(i) of this Defence, and each of them individually, Endorsement 3 was invalid, of no effect and not binding on or enforceable as against IAL;

(k) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Endorsement 3:

(i) the only types of endorsement contemplated or permitted by Policy 5369 were Customer Endorsements and Debt Endorsements, and Endorsement 3 was not an endorsement of those kinds;

(ii) Endorsement 3 purported to vary Policy 5369;

(iii) clause 15.3(a) of Policy 5369 provided that any variation of Policy 5369 could only be effected in writing signed by or on behalf of each party; and

(iv) Endorsement 3 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of Policy 5369;

(v) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 3;

(vi) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 3;

(vii) any power to issue endorsements under Policy 5369 did not authorise the issuing of endorsements purporting to operate retrospectively;

(viii) Endorsement 3 purported to operate retrospectively;

(ix) by reason of the matters in:

(A) paragraph 97(k)(i) of this Defence;

(B) paragraphs 97(k)(ii) to 97(k)(iv) of this Defence;

(C) paragraphs 97(k)(v) and 97(k)(vi) of this Defence; and/or

(D) paragraphs 97(k)(vii) and 97(k)(viii) of this Defence;

Endorsement 3 is invalid, of no effect and not binding on or enforceable as against IAL;

(l) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 3 had been issued;

(ii) Endorsement 3 had been purportedly issued:

(A) in circumstances where the IAL AAR Agreement had come to an end; and

(B) further, or alternatively, in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(m) executing Endorsement 3 was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 97(a) to 97(l) of this Defence.

(n) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 3 because entering into Endorsement 3 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 97(a) to 97(l) of this Defence.

(o) Greensill Bank knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Endorsement 3 on behalf of IAL.

Particulars

IAL repeats the matters in paragraph 89(j) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 97(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.

(p) insofar as the Applicants rely on the further version of endorsement 3 referred to in the particulars to paragraph 97 of the SOC and allegedly entered into on or about 10 January 2020 by IAL, Greensill Bank and GCPL, the matters in paragraph 97 of this Defence apply mutatis mutandis to that further endorsement.

98 As to paragraph 98 of the SOC, IAL:

(a) says that, Brereton signed Endorsement 3;

(b) repeats paragraph 97 of this Defence; and

(c) otherwise denies paragraph 98 of the SOC.

99 As to paragraph 99 of the SOC:

(a) repeats paragraph 97 of this Defence;

(b) says that, Endorsement 3 purported to operate retrospectively from 26 June 2019, being the Commencement Date of Policy 5369 (if valid and effective, which is denied); and

(c) otherwise denies paragraph 99 of the SOC.

100 As to paragraph 100 of the SOC, IAL:

(a) repeats paragraph 97 of this Defence;

(b) relies on the terms of Endorsement 3 (if valid and effective, which is denied) for their full force and effect; and

(c) otherwise denies paragraph 100 of the SOC.

D9 BCC had authority to execute Endorsement 3

101 IAL repeats paragraph 97 of this Defence and otherwise denies paragraph 101 of the SOC.

102 As to paragraph 102 of the SOC, IAL:

(a) repeats paragraph 97 of this Defence;

(b) repeats, in answer to the whole of paragraph 102 of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of BCC with respect to Endorsement 3 and its conduct referred to in paragraph 102 of the SOC; and

(c) otherwise denies paragraph 102 of the SOC.

102A As to paragraph 102A of the SOC, IAL:

(a) repeats paragraphs 85 and 97 of this Defence;

(b) otherwise, does not know and cannot admit paragraph 102A of the SOC.

D10 Greg Brereton had authority to execute Endorsement 3

103 IAL repeats paragraph 97 of this Defence and otherwise denies paragraph 103 of the SOC.

104 As to paragraph 104 of the SOC, IAL:

(a) repeats paragraph 97 of this Defence;

(b) repeats, in answer to the whole of paragraph 104 of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of Brereton with respect to Endorsement 3 and his conduct referred to in paragraph 104 of the SOC; and

(c) denies paragraph 104 of the SOC.

104A As to paragraph 104A of the SOC, IAL:

(a) repeats paragraphs 85 and 97 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 104A of the SOC.

E THE LIBERTY DELTA TRANSACTIONS

E0 Introduction to coverage issues

104a Paragraphs 105-206 of the SOC are directed to issues of "coverage", that is, whether Policy 5369 (and endorsements), if valid and effective (which IAL denies), respond to the Claim.

104B In response to the whole of paragraphs 105-206 of the SOC, IAL says:

(a) the Applicants' case on coverage depends on propositions as to the proper construction of Policy 5369, endorsements (or purported endorsements) thereto and underlying instruments and agreements as between (inter alia) GCUK, the Delta HoldCos and Greensill Bank;

(b) the SOC largely does not articulate with precision, or at all, the constructional propositions which underpin the Applicants' case and, to a large extent, the Applicants' case pleads ultimate conclusions, rather than the material facts warranting such conclusions;

(c) in pleading this Defence, IAL has, where possible, sought to expose the underlying and implicit constructional propositions which underpin the Applicants' case;

(d) further, in pleading this Defence, IAL has, where possible, sought to identify possible constructions of Policy 5369, the endorsements relied on and the underlying instruments, with a view to alleging in each case that, on the hypothesised construction, there is no coverage;

(e) IAL was not a party to Policy 5369, the endorsements or any of the underlying instruments pleaded by the Applicants, does not know the circumstances in which they were entered into (if at all), does not know all of the facts comprising the factual matrix in which they are to be construed and does not know whether the instruments relied on by the Applicants identify, or identify exhaustively, the legal relations of the parties to them;

(f) in the circumstances, where IAL asserts below a construction of Policy 5369, an endorsement or an underlying instrument, it does so on the basis that it does not admit that construction or that the relevant document is what it is alleged to be by the Applicants, but is instead identified for the purposes of advancing an argument to the effect that if the instrument was valid and binding and bore the alleged construction (which is not admitted), then the pleaded consequences follow;

(g) for the avoidance of doubt, where it advances a construction below, that construction is not admitted, but is instead advanced for the purposes of identifying why, on the hypothesised construction, there is no coverage.

104C Except where identified otherwise, the allegations in paragraphs 105 and following of the Defence proceed on the assumption, which is denied, that Policy 5369 (and alleged endorsements thereto) are valid, effective and binding and enforceable against IAL.

104D In response to the whole of paragraphs 105-206 of the SOC, IAL says that the following are necessary conditions of Greensill Bank's entitlement (if any) to indemnity:

(a) there must be an "Asset" or "Assets" (Policy 5369 clause 1.1, clause 3.1; definition of "Loss");

(b) there must be an "Eligible Debt" (Policy 5369 clause 1,1, clause 3.1; definition of "Insured Cause");

(c) there must be a failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date" (Policy 5369 clause 1.1, clause 3.1; definition of "Insured Cause");

(d) there must be a "Loss" or "Losses" suffered by the "Insured", which are caused by or result from the occurrence of the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date" (Policy 5369 clause 1.1); and

(e) the "Loss" or "Losses" must be quantified in accordance with Policy 5369.

E.0.1 "Asset"

104E In respect of the condition that there be an "Asset" or "Assets", IAL says the following:

(a) the Applicants allege, or implicitly allege, that the "Assets" were:

(i) the "Delta IPUs" defined at SOC paragraph 151;

(ii) the amounts said to be "payable by the Delta HoldCos in accordance with the Guaranteed Obligations under the Delta HoldCo Guarantees" referred to in SOC paragraph 189 (the **Delta HoldCo Guarantee Debts**); and/or

(iii) the amounts said to be "payable by Liberty House in accordance with the Guaranteed Obligations under the Liberty House IPA Guarantee" referred to in SOC paragraph 191 (the **Liberty House Guarantee Debts**);

(b) Policy 5369 provides for three, and only three, kinds of "Assets" (Sch 1, definition of "Asset");

(c) if an asset does not meet the description of one or more of the kinds of "Assets" identified in Schedule 1, then it is not an "Asset";

(d) the SOC does not articulate with precision which kind of "Asset" any of the Delta IPUs, the Delta HoldCo Guarantee Debts or the Liberty House Guarantee Debts is alleged to be;

(e) in respect of each of the kinds of rights relied on, or implicitly relied on, by the Applicants as "Assets":

(i) the Applicants do not assert that they are, or gave rise to, "Assets";

(ii) the Applicants do not specify which, if any, kind of "Asset" they are; and

(iii) the Applicants do not identify the basis, if any, on which the obligations are said to give rise to "Assets";

(f) however, having regard to paragraphs 73(a), 152-153, 201 and 203-204 of the SOC, IAL understands the Applicants' case to be that the Delta IPUs, the Delta

HoldCo Guarantee Debts and the Liberty House Guarantee Debts were "Direct Assets";

(g) that an asset is a "Direct Asset" only if it is a direct ownership interest in an "Eligible Debt";

(h) that for the Delta IPUs, the Delta HoldCo Guarantee Debts or the Liberty House Guarantee Debts, or Greensill Bank's rights (if any) in or in respect of them or any of them, to be a "Direct Asset", it is necessary that:

(i) the Delta IPUs and/or the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts were "Eligible Debts" which, in turn, requires that those obligations meet, at material times, each of the conditions in Schedule 7 of Policy 5369; and

(ii) Greensill Bank's interest in or in respect of those obligations, at material times, was or is in the nature of a "direct ownership interest";

(i) an asset is an "Asset" only if it is derived from an "Eligible Debt" (Policy 5369, clause 3.1; Sch 7);

(j) there can be an entitlement to an indemnity in respect of a Loss suffered in relation to an "Asset" only if the "Asset" was:

(i) owned by the "Insured" at the time "Loss" was suffered (Policy 5369, clause 3.1; definition of "Claim", Sch 1; Sch 7);

(ii) owned by the "Insured" at the time of the "Insured Cause" (Policy 5369, clause 3.1; Sch 7);

(iii) owned by the "Insured" during the "Policy Period" or, alternatively, by the "Insured" or a "Loss Payee" during the "Policy Period" (Policy 5369, clause 4.1); and

(iv) owned by the "Insured" immediately prior to the making of a "Claim" (Policy 5369, clause 3.1; definition of "Claim", Sch 1; definition of "Loss", Sch 1);

(k) the "Policy Period" started no earlier than 26 June 2019 and ended no later than 26 June 2021 and, in the premises, there can be an entitlement to an indemnity in respect of an "Asset" only if the "Asset" was owned by an "Insured" (or alternatively by an "Insured" or a "Loss Payee") during the relevant "Policy Period";

(l) the Applicants allege (which is not admitted) that Greensill Bank acquired the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts between 27 June 2019 and 1 March 2021 (SOC, paragraphs 152 to 153);

(m) in the event that the alleged "Assets" were not acquired between 26 June 2019 and 26 June 2021, the "Insured" did not own the "Asset" during the "Policy Period" and there is no coverage under Policy 5369;

(n) that none of the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts was an "Asset" because:

(i) an "Asset" must be derived from an "Eligible Debt"; and

(ii) there were no "Eligible Debts" for the reasons addressed in paragraph 104F;

(o) that none of the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts (or Greensill Bank's interest in them) was a "Direct Asset" in the hands of Greensill Bank because Greensill Bank's interest in or in respect of the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts was in each case:

(i) mediated via assignments, or purported assignments, of interests in underlying rights from GCUK to Greensill Bank; and

(ii) not a direct ownership interest;

(p) it puts the Applicants to proof on each element necessary to establish that Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts (or Greensill Bank's interest in or in respect of them) were each:

(i) "Assets"; and

(ii) owned by the Applicants at all material times, including that all conditions necessary for any assignment or purported assignment to Greensill Bank were satisfied;

(q) it denies that any of the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts was a "Direct Asset"; and

(r) it denies that any of the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts was an "Asset".

E.0.2 "Eligible Debt"

104F In respect of the condition that there be an "Eligible Debt", IAL says the following:

(a) the Applicants allege that the following were "Eligible Debts":

(i) the Delta HoldCo IPUs (SOC, paragraphs 181-190);

(ii) the Delta HoldCo Guarantee Debts (SOC, paragraphs 181-190); and

(iii) the Liberty House Guarantee Debts (SOC, paragraphs 191-196);

(b) so far as the Applicants rely on the Delta HoldCo IPUs as constituting "Eligible Debts", as best IAL understands the Applicants' case, it is that the Delta HoldCo IPUs were:

(i) amounts payable by the Delta HoldCos to GCUK; and

(ii) amounts payable pursuant to the Delta IPAs, the Delta IPA Side Letters (defined in paragraph 116 of the SOC) and/or the IPA Supplementary Letters (defined in paragraph 123 of the SOC);

(c) so far as the Applicants rely on the Delta HoldCo Guarantee Debts as constituting "Eligible Debts", as best IAL understands the Applicants' case, it is that the Delta HoldCo Guaranteed Debts were:

(i) amounts payable by the Delta HoldCos to GCUK; and

(ii) amounts payable pursuant to the Delta HoldCo Guarantees;

(d) so far as the Applicants rely on the Liberty House Guarantee Debts as constituting "Eligible Debts", as best IAL understands the Applicants' case, it is that the Liberty House Guarantee Debts were:

(i) amounts payable by the Liberty House to GCUK; and

(ii) amounts payable pursuant to the Liberty House IPA Guarantee;

(e) the Applicants do not articulate with precision the circumstances which render each of the foregoing kinds of debt to be "Eligible Debts";

(f) in order for a debt to be an "Eligible Debt", the following conditions must be satisfied, and must be satisfied at the time the Asset is (relevantly) acquired by the "Insured", being in this case Greensill Bank:

(i) the obligor must be a "Customer", being a "Customer" endorsed to the Policy 5369 under a "Customer Endorsement", who is a debtor in

respect of a "Debt" (Policy 5369, Sch 7; definition of "Customer", Sch 1);

(ii) the obligor must be an "Eligible Customer" (Policy 5369 clause 3.1);

(iii) the obligor must be not an "Affiliate" of any of the parties to the "Transaction Documents" (other than any "Origination Documentation") (Policy 5369, Sch 7);

(iv) the obligor must be a "corporate entity" (Policy 5369, Sch 7);

(v) the obligor must be not "Insolvent" (Policy 5369, Sch 7), which includes circumstances in which any corporate action, legal proceedings or other procedure or step is taken for (inter alia) winding up, administration or reorganisation;

(vi) the obligor must have a "Customer Limit" (Policy 5369, Sch 7);

(vii) the "Customer Limit" must be established in accordance with the terms of Policy 5369 (Policy 5369, Sch 7);

(viii) the debt must have a "Due Date", being a date stated in the "Platform" (being an electronic platform used by GCUK from time to time into which details of "Suppliers" and/or "Customers", "Debts", "Due Dates" and other related information is recorded) as the date by which payment of the "Debt" by the "Customer" is required to be made (Policy 5369, Sch 7; definition of "Due Date" and definition of "Platform", Sch 1);

(ix) the "Due Date" must not exceed the "Maximum Tenor", being a period set out in a relevant "Debt Endorsement" or "Customer Endorsement" (Policy 5369, Sch 7; definition of "Maximum Tenor", Sch 1);

(x) the debt must not be outstanding after its "Due Date" (Policy 5369, Sch 7);

(xi) there must (on the proper construction of Policy 5369 and, in particular, Schedule 7) be in place a "Debt Endorsement" or "Customer Endorsement" which stipulates, in respect of the debt, a "Maximum Tenor";

(xii) the debt must be denominated and payable only in an "Approved Currency" (Policy 5369, Sch 7); and

(xiii) the debt must satisfy any further criteria set out in the relevant Debt Endorsement relating to the Debt (Policy 5369, Sch 7);

(g) the Applicants rely, and rely only, on Part B of Debt Endorsement 1;

(h) Part B of Debt Endorsement 1 contains a definition of "Debt", which includes three sub-paragraphs, (i), (ii) and (iii);

(i) of the three sub-paragraphs, the Applicants only rely on sub-paragraphs (ii) and (iii) (SOC, paragraph 173);

(j) if Debt Endorsement 1 is valid and effective (which is denied, as to which IAL repeats paragraph 170 of this Defence), the following are necessary conditions for a debt to satisfy the criteria in Part B of that endorsement:

(i) there must be a "Debt";

(ii) the "Debt" must be "originated in an accounts receivable purchase program" or any program where funding is made against accounts receivable;

(iii) the program must be one in which "Debts" are due from a "Customer";

(iv) there must be a "Customer", which is a person who:

(A) is endorsed to Policy 5369 under a "Customer Endorsement";

(B) is a debtor in respect of a "Debt" within the meaning of Part B of Debt Endorsement 1 (including any successor in title or at law to such debtor); and

(C) is a "Seller" in relation to its obligations in relation to certain accounts receivable or is a guarantor of one or more "Seller's" obligations in relation to certain accounts receivable;

(v) there must be a "Receivables Purchase Agreement", being an agreement which (at a minimum):

(A) meets the description of being a receivables purchase agreement or an "other financing agreement";

(B) is entered into between:

a. a "Servicer" and/or an "Affiliate" of the "Servicer" or a third party (a "Buyer"); and

b. a “Supplier” or “Suppliers” and/or an “Affiliate” of a “Supplier” or “Suppliers” (a “Seller”);

(C) is an agreement pursuant to which either:

a. a “Buyer” acquires accounts receivable with recourse from one or more “Sellers”; or

b. a “Buyer” funds against accounts receivable with recourse from one or more “Sellers”;

(vi) there must be a “Supplier”, being a person that has provided goods and/or services to a “Customer” and in relation to which an account receivable is created;

(vii) if (as here) sub-paragraph (ii) of the definition of “Debt” is relied on:

(A) there must be an amount payable to the “Servicer”;

(B) the amount must be payable by a “Customer”; and

(C) the amount must be payable under the “Customer’s” irrevocable obligation as “Seller” under a “Receivables Purchase Agreement” to pay an amount equal to the amount of any accounts receivable funded against pursuant to the “Receivables Purchase Agreement” (or such other amount which may be less than the amount of any accounts receivable funded against pursuant to the “Receivables Purchase Agreement”);

(viii) there must be an accounts receivable, or accounts receivable;

(ix) if (as here) sub-paragraph (iii) of the definition of “Debt” is relied on:

(A) there must be an amount payable to the “Servicer”;

(B) the amount must be payable by a “Customer”; and

(C) the amount must be payable under a guarantee given by the “Customer” to or for the benefit of the “Servicer” guaranteeing the obligations referred to in sub-paragraphs (i) or (ii) of the definition of “Debt”;

(k) that a person is an “Eligible Customer” only if:

(i) the person is a ‘Customer’ endorsed to Policy 5369 under a “Customer Endorsement” (Policy 5369, definition of “Customer”);

(ii) the person is a debtor in respect of a "Debt";

(iii) there is a "Customer Endorsement":

(A) which comes within sub-paragraph (i) of the definition of "Customer Endorsement" in Schedule 1 of Policy 5369, being an endorsement to Policy 5369 that is substantially in the form of Appendix 1 to Policy 5369 or such form as the "Insured" and the "Insurer" may agree from time to time, only, sub-paragraphs (ii) and (iii) of the definition of "Customer Endorsement" being uncertain and/or otherwise, on the proper construction of Policy 5369, being paragraphs which have no operation;

(B) alternatively, which is:

a. an endorsement to Policy 5369 that is substantially in the form of Appendix 1 to Policy 5369 or such form as the "Insured" and the "Insurer" may agree from time to time;

b. data available on the platform the "Insurer" uses to record and/or show insurance limits relevant to Policy 5369; and

c. other data available recording and/or showing insurance limits relevant to Policy 5369,

(Policy 5369, definition of "Customer Endorsement", Sch 1);

(iv) all the warranties set out in Policy 5369 (including compliance with the "Eligibility Criteria") are satisfied at the time of the purchase by the "Insured" of the "Asset" derived from the "Debt" owed by the "Customer" (Policy 5369, definition of "Eligible", Sch 1);

(l) that:

(i) the "warranties" referred to in the definition of "Eligible" included the warranties given by the "Insured" in the "Proposal" (Policy 5369, clause 7.3);

(ii) the "Proposal" is the document in the form contained in Schedule 2 and submitted by the "Insured" to the "Insurer" in order to obtain the insurance (Policy 5369, definition of "Proposal", Sch 1);

(iii) the "Proposal" form in Schedule 2 contains two warranties which are an integral part of the "Proposal" and, on the proper construction of Policy 5369, must be given by the "Insured" to the "Insurer"; and

(iv) on the proper construction of Policy 5369 and/or in order to give business efficacy to Policy 5369, if there was no "Proposal" submitted by the "Insured" to the "Insurer", then (relevantly) there was and could be no "Eligible Customer" in respect of the policy;

(m) that it denies that the Delta HoldCo IPUs, the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts existed because:

(i) the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts could exist only if the Delta HoldCo IPUs existed;

(ii) the Delta IPUs are alleged to have arisen by reason of the matters set out in SOC paragraphs 123-125 and 142-149 (SOC, paragraph 151);

(iii) the matters set out in paragraphs 123-125 and 142-149 of the SOC and the documents there particularised do not evidence or establish that the Delta IPUs came into existence;

(n) that it denies that the Delta HoldCo IPUs, the Delta HoldCo Guarantee Debts or the Liberty House Guarantee Debts or any of them were "Eligible Debts" because:

(i) it is a necessary condition of a debt being an "Eligible Debt" that it be owed by a "Customer"; and

(ii) the Delta HoldCos and Liberty House were not "Customers";

(o) that it denies that the Delta HoldCo IPUs were "Debts" within the meaning of sub-paragraph (ii) of the definition of "Debt" in Part B of Debt Endorsement 1 because:

(i) a debt meets the description in sub-paragraph (ii) only if it is owing under a "Receivables Purchase Agreement";

(ii) the Applicants appear to rely on the Delta IPAs as constituting "Receivables Purchase Agreements" (SOC, paragraph 109);

(iii) the Delta IPAs were not "Receivables Purchase Agreements" because:

(A) they were not agreements pursuant to which a "Buyer" acquires accounts receivable and, in fact, did not provide for the acquisition of accounts receivable at all;

(B) they were not agreements pursuant to which a "Buyer" funds against accounts receivable, but were instead agreements pursuant to which a "Buyer":

a. funded against, and for the purposes of, possible "Payables" of each of the Delta HoldCos; and/or

b. funded against, and for the purposes of, the matters described in clause 3.3(a) and (b) of the Delta IPA Side Letters, being payments for the acquisition of a corporate group (relevantly, payments to any "Affiliated Company" of ArcelorMittal SA for the acquisition of the "Acquired Group" and reasonable transactions costs) or payments to fund purchase of material by the Delta HoldCo or a "Subsidiary";

(C) the fact (which is not admitted) that the "Drawdown Amount" under the Delta IPAs was to be quantified by reference to possible future accounts payable of entitles other than the Delta HoldCos meant that the Delta IPAs were not agreements pursuant to which a "Buyer" funds against accounts receivable because:

a. if funding under the Delta IPAs was against anything, it was, on the terms of the Delta IPAs, against possible "Payables" of the Delta HoldCos; and

b. on the terms of the Delta IPAs, the Delta IPAs were the entire agreement between each Delta HoldCo and GCUK (as to which, IAL refers to clause 7 of the Delta IPAs), and any agreement involving third parties was not part of the Delta IPAs;

(D) if it be the fact (which is denied) that GCUK acquired certain accounts receivable under a separate alleged agreement (as alleged in Section E11 of the SOC), namely the SSUK RPA (defined in paragraph 154 of the SOC), this did not have the effect that the Delta IPAs met the description of being a "Receivables Purchase Agreement", including because if and to the extent it is said that each of the Delta IPAs was a "Receivables Purchase Agreement" because it was an

agreement pursuant to which a "Buyer" acquires accounts receivable with recourse from one or more "Sellers":

a. any agreement pursuant to which accounts receivable were or could be acquired was the SSUK RPA, not the Delta IPAs; and

b. the SSUK RPA did not give recourse from one or more "Sellers";

(p) that it denies that the Delta HoldCo IPUs were "Debts" within the meaning of sub-paragraph (ii) of the definition of "Debt" in Part B of Debt Endorsement 1 (if valid, which is denied, as to which IAL refers to paragraph 170 of this Defence) because:

(i) a debt meets the description in sub-paragraph (ii) of the definition of "Debt" in Part B of Endorsement 1 only if it is:

(A) an amount payable under an irrevocable obligation to pay an amount equal to the amount of any accounts receivable funded against pursuant to the "Receivables Purchase Agreement";

(B) an amount which is such other amount which may be less than the amount of any accounts receivable funded against pursuant to the "Receivables Purchase Agreement";

(ii) the Applicants rely only on the matter identified in paragraph 104F(p)(i) of this Defence (SOC, paragraph 183);

(iii) on the Applicants' pleaded case, the Delta IPUs were (if they existed, which is not admitted) obligations to pay the "Repayment Amount" (as defined in the Delta IPAs and/or the Delta IPA Side Letters, and as calculated in accordance with the definition of "Repayment Amount" in the Delta IPAs) and/or the "Settlement Amount" (as defined in paragraph 118 of the SOC);

(iv) the "Repayment Amount" and the "Settlement Amount" were, by reason of the manner in which those figures were calculated, necessarily different to the amount of any expected future receivables by reference to which the "Drawdown Amount" in the Delta IPAs was calculated and, on the Applicants' pleaded case, "against" which GCUK funded under the Delta IPAs;

(q) that, irrespective of which sub-paragraph of the definition of "Debt" in Part B of Debt Endorsement 1 is relied on, it denies that the Delta HoldCo IPUs met the description of "Debt" in Part B of Debt Endorsement 1 because:

(i) in order for a debt to meet the description in Part B of Debt Endorsement 1, there must be an underlying account receivable;

(ii) in this respect, where there is no more than a possible future account receivable, or an "expected" account receivable, there is not an underlying "account receivable" within the meaning of Part B; and

(iii) on the Applicants' pleaded case (SOC, paragraph 176, particulars 4 and 5), and as best IAL understands the Applicants' case, at all material times, there were not in existence actual accounts receivable, but, rather, no more than possible future accounts receivable;

(r) that, irrespective of which sub-paragraph of the definition of "Debt" in Part B of Debt Endorsement 1 is relied on, it denies that the Delta HoldCo IPUs met the description of "Debt" in Part B of Debt Endorsement 1 because:

(i) in order for a debt to meet the description in Part B of Debt Endorsement 1, the debt must be:

(A) originated in an accounts receivable purchase program; or

(B) originated in a program where funding is made against accounts receivable;

(ii) the Delta HoldCo IPUs were not originated in an accounts receivable purchase program because, if they were originated at all, they were originated in a supply chain finance program, calculated to provide finance to the Delta HoldCos for the purpose of discharging payables of the Delta HoldCos (or possibly receivables of the Delta OpCos), not for the purpose of providing advance payments against accounts receivable of the Delta HoldCos; and

(iii) the Delta HoldCo IPUs were not originated in a program where funding is made against accounts receivable because, if they were originated at all, they were originated under an agreement expressed to fund against accounts payable (of the Delta HoldCos) not to fund against accounts receivable;

(s) that, irrespective of which sub-paragraph of the definition of "Debt" in Part B of Debt Endorsement 1 is relied on, it denies that the Delta HoldCo IPUs met the description of "Debt" in Part B of Debt Endorsement 1 because:

(i) in order for a debt to meet the description in Part B of Debt Endorsement 1, the debt must be due from a "Customer" which is:

(A) a "Seller" in relation to its obligations in relation to certain accounts receivable"; or

(B) a guarantor of one or more "Seller's" obligations in relation to certain accounts receivable;

(ii) the Delta HoldCos were not "Sellers" in relation to their obligations (if any) in relation to certain accounts receivable (if any), but were, so far as the Delta IPAs were concerned, instead possible debtors in relation to accounts payable; and

(iii) the Delta HoldCos were not guarantors of one or more "Seller's" obligation in relation to certain accounts receivable;

(t) it denies that the Delta HoldCo IPUs and/or the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts were capable of being "Eligible Debts" and/or otherwise the subject of coverage under Policy 5369 because:

(i) it is a condition of a debt being an "Eligible Debt" or, further or alternatively, there being coverage in respect of the debt, that it is owed by an "Eligible Customer";

(ii) the "Eligible Customers" relied on by the Applicants are the Delta HoldCos and Liberty House; and

(iii) the Delta HoldCos were not "Eligible Customers" because, at all material times, no "Proposal" at all, or no "Proposal" containing the required warranties, was submitted to the "Insurer" (as to which IAL refers to paragraph 104F(I) of this Defence);

(u) it denies that the Delta HoldCo Guarantee Debts or the Liberty House Guarantee Debts met the description of "Debt" in Part B of Debt Endorse**me**nt 1, and in particular in sub-paragraph (iii) of the definition of "Debt" because:

(i) the Applicants' case is that the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts were amounts owing under guarantees given by a "Customer" guaranteeing the Delta IPUs which,

in turn, were "Debts" within the meaning of sub-paragraph (ii) of the definition of "Debt" (SOC, paragraphs 188, 194); and

(ii) the Delta IPUs were in fact not "Debts" within the meaning of sub-paragraph (ii) of the definition of "Debt" (as to which IAL refers to paragraph 104F(j)(vii) of this Defence);

(v) it denies that the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts were "Eligible Debts" because:

(i) a debt is not an "Eligible Debt" if, at the time the relevant "Asset" is acquired by the "Insured", the "Customer" owing the "Debt" does not have a "Customer Limit" established in accordance with Policy 5369; and

(ii) at all material times, the Delta HoldCos and Liberty House did not have "Customer Limits" established in accordance with Policy 5369, at least because any purported "Customer Limit" in respect of the Delta HoldCos and Liberty House was not a limit at all, but was instead an amount which reset indefinitely upon its breach (as to which, IAL refers to paragraph 165 of this Defence, and the Delta HoldCo Customer Endorsements and Further Delta HoldCo Customer Endorsements referred to at paragraphs 165 and 168 of the SOC);

(w) it denies that the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts were "Eligible Debts" because:

(i) on the proper construction of Schedule 7 of Policy 5369, a debt is not an "Eligible Debt" if, at the time the relevant "Asset" is acquired by the "Insured", there is no "Maximum Tenor" in respect of that debt; and

(ii) at all material times, on the Applicant's pleaded case (SOC, paragraphs 190(e) and 196(e)) there was no "Maximum Tenor" in respect of the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts;

(x) it puts the Applicants to proof on each necessary condition for the Delta IPUs, the Delta HoldCo Guarantee Debts and any other debts on which they rely to be "Debts" and "Eligible Debts"; and

(y) it denies that the Delta IPUs and the Delta Hold Guarantee Debts were "Debts" and "Eligible Debts".

E.0.3 Failure by the "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date"

104G In respect of the condition that there be a failure by a "Customer" to make payment of the "Eligible Debts" on or before the "Backstop Date", IAL says the following:

(a) the Applicants allege, or implicitly allege, that this condition is satisfied because (allegedly):

(i) on or around 2 and 3 March 2021, the Delta HoldCos failed to make payments pursuant to some of the Delta IPUs (SOC, paragraph 197);

(ii) between approximately 2 March 2021 and 27 May 2021, the Delta HoldCos failed to make further payments pursuant to the Delta IPUs (SOC, paragraph 199);

(iii) on and from approximately 2 March 2021, the Delta HoldCos failed to discharge the Delta HoldCo Guarantee Debts (SOC, paragraphs 198-203);

(iv) on and from approximately 25 February 2022, Liberty House failed to discharge the Liberty House Guarantee Debts (SOC, paragraphs 204-206);

(b) it puts the Applicants to proof of the alleged failure to pay, including the existence of an obligation to pay each of the Delta IPUs (and, relatedly, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts) in the asserted quantum, and any asserted failure to pay by the "Backstop Date";

(c) it says that there was no failure to pay by a "Customer" because each of the Delta HoldCos was not a "Customer";

(d) it says that there was no failure to pay "Eligible Debts" because none of the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts was an "Eligible Debt"; and

(e) otherwise denies that the condition identified in the chapeau to paragraph 104G is satisfied.

E.0.4 "Loss" caused by the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date"

104H In respect of the condition that there must be a "Loss" or "Losses" suffered by the Insured, which is or are caused by or result from the occurrence of the "Customer's" failure to

make payment of the "Eligible Debt" on or before the "Backstop Date", IAL says the following:

(a) whether there is a "Loss" is determined by reference to the character of the "Asset" and, relevantly, whether it is a "Direct Asset";

(b) as best IAL understands the Applicants' case, it is that the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts were, or gave rise to, "Direct Assets" (as to which IAL refers to paragraph 104E(f) of this Defence);

(c) the Applicants have not otherwise identified, at all or with any precision, any other kind of "Asset" they rely on;

(d) where the "Asset" is a "Direct Asset", each of the following is a necessary condition of there being a "Loss" suffered by the Insured which is caused by or results from the failure of a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date":

(i) each of the conditions identified in paragraph 104E(j) of this Defence;

(ii) the "Asset" must be owned by the Insured at the time:

(A) of the "Insured Cause"; and

(B) the "Loss" was suffered (Policy 5369, clause 3.1; definition of "Loss", Sch 1);

(iii) the "Asset" must be owned by the "Insured" immediately prior to the making of a "Claim" (Policy 5369, clause 3.1; definition of "Claim", Sch 1; definition of "Loss'', Sch 1);

(iv) the "Asset" must, relevantly, be owned by the "Insured", during the "Policy Period" (Policy 5369, clause 4.1; definition of "Loss", Sch 1);

(v) the Insured must have an "Expected Allocation" in respect of the "Direct Asset" (Policy 5369, definition of "Loss", Sch 1); and

(vi) the amount actually paid by the "Customer" or on its behalf in respect of the "Direct Asset" must be less than the "Expected Allocation" (Policy 5369, definition of "Loss", Sch 1);

(e) the Applicants do not plead material facts establishing (inter alia):

(i) the asserted "Loss";

(ii) that the asserted "Loss" (being, the difference between the "Expected Allocation" and the amount actually paid by the "Customer" or on its behalf in respect of the "Direct Asset") was caused by or resulted from the occurrence of the Insured Causes relied on (if any);

(iii) that in the counterfactual where the relevant Insured Causes did not occur, the "Loss" would not have been suffered;

(iv) that, having regard to the definition of "Expected Allocation" in Policy 5369 and related definitions:

(A) there was a "Face Amount" of the "Eligible Debts" relied on;

(B) there was a "File" relating to each "Eligible Debt" relied on (Policy 5369, definition of "Face Amount", Sch 1);

(C) there was a file and/or records held by GCUK in the form from time to time specified in the "Transaction Documents" relating to each "Debt" (which may include the "Platform") (Policy 5369, definition of "File", Sch 1); and

(D) the "File" showed an amount of a "Debt" in respect of each "Eligible Debt" relied on; and

(v) that, if only part of the "Eligible Debts" comprised the "Direct Asset" relied on, there was an amount due to the "Insured" in relation to such "Eligible Debt";

(f) it puts the Applicants to proof of all material facts necessary for the existence of a "Loss"; and

(g) it denies that there was a "Loss" or "Losses", because of the matters pleaded in paragraphs 104E-104G of this Defence.

E.0.5 "Loss" quantified in accordance with Policy 5369

104I In respect of the condition that the "Loss" or "Losses" must be quantified in accordance with Policy 5369, IAL repeats paragraph 104H of this Defence.

E1 Parties to the transactions

105 IAL admits paragraph 105 of the SOC.

106 IAL admits paragraph 106 of the SOC.

107 IAL admits paragraph 107 of the SOC.

108 IAL admits paragraph 108 of the SOC.

E2 The Delta IPAs

109 As to paragraph 109 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of the Delta HoldCos and GCUK appear to have signed documents styled as "Receivables-Based Instalment Payment Agreements", with a "Date" of 27 June 2019;

(b) says that, under the Delta IPAs:

(i) the "Customer" is, in each case, identified as one of the Delta HoldCos; and

(ii) the "Funder" is identified as GCUK;

(c) says that, the defined expression "Customer" was given no content and did not have the effect that an entity identified as a "Customer" in one of the Delta IPAs was a "Customer" for the purposes of Policy 5369;

(d) admits that the terms of the agreements, as set out in the documents, are identical save for the definitions of "Facility Amount" and "Subsidiary"; and

(e) otherwise does not know and cannot admit paragraph 109 of the SOC.

110 As to paragraph 110 of the SOC, IAL:

(a) repeats paragraph 109(e) of this Defence;

(b) says, as to paragraph 110(b) of the SOC, that none of the Delta IPAs makes any reference to the definition of "Customer" in Policy 5369, or to Policy 5369 at all;

(c) says that, the Delta IPAs also included a defined term, "Payable", which was defined to mean payments which "Customer" may wish to make from time to time in respect of certain of its business transactions; and

(d) otherwise admits that the Delta IPAs included the defined terms set out in paragraph 110 of the SOC.

111 As to paragraph 111 of the SOC, IAL:

(a) repeats paragraph 109(e) of this Defence; and

(b) otherwise admits that the respective Delta IPAs include the defined terms set out in paragraph 111 of the SOC.

112 As to paragraph 112 of the SOC, IAL:

(a) admits paragraph 112(c) of the SOC; and

(b) otherwise does not know and cannot admit paragraph 112 of the SOC.

113 IAL does not plead to paragraph 113 of the SOC as it does not contain an allegation against it.

114 As to paragraph 114 of the SOC, IAL:

(a) admits that the respective Delta IPAs identified Facility Amounts that correspond to the amounts identified in the table at paragraph 114 of the SOC as corresponding to each Delta IPA; and

(b) otherwise does not know and cannot admit paragraph 114 of the SOC.

115 As to paragraph 115 of the SOC, IAL:

(a) admits paragraph 115(a);

(b) as to paragraph 115(b):

(i) says that, remission of the relevant Drawdown Amount was to be into an account notified in writing by an authorised representative of Customer to Funder from time to time provided such account has been validated by Funder;

(ii) says that, clause 1 of the Delta IPAs refers to an “applicable” Payable, not a “relevant” Payable;

(iii) says that, the obligation is described in clause 2 in the terms set out in paragraph 115(b)(ii) of the SOC, but the character of the obligation must be construed in its context and in that connection IAL relies on the whole of the Delta IPAs for their terms and effect; and

(iv) otherwise admits paragraph 115(b);

(c) as to paragraph 115(c):

(i) says that, the definition of “Transferee” is conditioned by the restrictions on the persons to whom rights and/or interests may be transferred; and

(ii) otherwise admits paragraph 115(c);

(d) as to paragraph 115(d):

(i) repeats paragraph 115(c)(i) of this Defence; and

(ii) admits that clause 7 permits a Transferee to benefit from and enforce the relevant Delta IPA regardless of whether the assignment or transfer was in whole or in part; and

(e) says further that, under the Delta IPAs:

(i) the express purpose of any funding from GCUK was to allow the relevant Delta HoldCo to discharge an applicable "Payable", being a payment which the relevant Delta HoldCo may wish to make from time to time in respect of certain of its business transactions;

(ii) if and when GCUK provided funding to the relevant Delta HoldCo, there was no obligation on the Delta HoldCo to disburse that funding to the relevant "Subsidiary" at all or, alternatively, in order to allow the relevant "Subsidiary" to obtain advance payment of an account receivable owed, or to be owed, to it;

(iii) any funding was to be used to discharge "Payables", and could not be used for payment to the Delta OpCos to give them (or any of them) advance payment of accounts receivable;

(iv) the expressed purpose of any funding from GCUK was not to place the "Subsidiary" in funds in advance of the payment of possible future account receivables owed, or possibly to be owed, to the "Subsidiary";

(v) any funding provided by GCUK was not secured by or against possible future account receivables of the relevant "Subsidiaries"; and

(vi) any funding was to be in the amount of the "Drawdown Amount", which was an amount derived from expected future receivables of the "Subsidiaries";

(f) says further that, under the Delta IPAs, GCUK did not obtain a right to be assigned future account receivables of the relevant "Subsidiaries" and, instead, the benefit to GCUK (if any) was the giving of the promise by the "Customer" in clause 2 (being a promise to pay the "Repayment Amount" into "Designated Funder Account" on the applicable "Maturity Date");

(g) says further that, on the proper construction of the Delta IPAs, and having regard to the definitions of "Drawdown Amount" and "Drawdown File":

(i) it was a condition of there being a "Drawdown Amount" that there be "expected future receivables" in the quantum the subject of the "Drawdown Amount";

(ii) a receivable is not an "expected future receivable" unless:

(A) as a matter of fact, at the time the "Drawdown File" was submitted, the receivable would become an actual receivable of the "Subsidiary"; and

(B) as a matter of fact, at the time the "Drawdown File" was submitted, the "Customer" in fact expected the receivable to become an actual receivable of the "Subsidiary";

(h) says further that:

(i) the quantum of any "Repayment Amount" (and thus the quantum of any debt said to arise under the Delta IPAs) was fixed, at the upper end, by the quantum of the "Drawdown Amount" which, in turn, was fixed by the quantum of the "expected future receivables"; and

(ii) in the premises, if and to the extent the Applicants contend that there were debts arising by reason of the alleged obligations of the Delta HoldCos to pay the "Repayment Amount", it is incumbent on the Applicants to establish the quantum of the expected future receivables;

(i) says further that, having regard to the definition of "Repayment Amount", the "Repayment Amount" was necessarily:

(i) not equal to the "Drawdown Amount" and thus:

(A) not equal to the amount (if any) the "Customer" was obliged to pay under clause 2; and

(B) not equal to the amount of any "expected future receivables" from which the "Drawdown Amount" was derived; and

(ii) [Not used];

(A) [Not used];

(B) [Not used];

(j) otherwise does not know and cannot admit paragraph 115 of the SOC.

E3 Delta IPA Side Letters

116 As to paragraph 116 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and each of the Delta HoldCos appear to have signed documents in the form of

letters on GCUK letterhead which bear the date 27 June 2019 (referred to in the SOC as the Delta IPA Side Letters);

(b) admits that the content of each of the four letters is the same, save for the addressee and the entity named on the execution page; and

(c) otherwise does not know and cannot admit paragraph 116 of the SOC.

117 As to paragraph 117 of the SOC, IAL:

(a) repeats paragraph 116(c) of this Defence;

(b) says that, it puts the Applicants to proof in establishing that the Delta IPA Side Letters:

(i) were entered into as binding agreements on 27 June 2019; and

(ii) modified the terms of the Delta IPAs (on the assumption, which IAL does not accept, that the Delta IPAs were binding agreements);

(c) admits that clause 1.1 of the Delta IPA Side Letters contains text to the effect pleaded in paragraph 117(a) of the SOC;

(d) admits that clause 1.2 of the Delta IPA Side Letters contains text to the effect pleaded in paragraph 117(b) of the SOC;

(e) admits that clause 1.3 of the Delta IPA Side Letters contains text to the effect pleaded in paragraph 117(c) of the SOC;

(f) says that:

(i) the effect of the Delta IPA Side Letters was that loans advanced by GCUK under the Delta IPA were automatically rolled over the day following their maturity, subject possibly to any qualification made by clause 1.3 as to full payment of the "Repayment Amount" on the "Maturity Date"; and

(ii) any qualification made by clause 1.3 was modified from 3 February 2021 by the IPA Supplementary Letters addressed in paragraphs 123 to 125 of this Defence;

(g) says that, it was a term of the Delta IPA Side Letters (clause 3.3) that the "Customer" must apply all "Drawdown Amounts" received by it under the relevant Delta IPA towards:

(i) payment to any "Affiliated Company" of ArcelorMittal SA. For the acquisition of the "Acquired Group" and payment of reasonable

transaction costs incurred in relation to the acquisition of the "Acquired Group" (clause 3.3(i)); or

(ii) funding its purchase of material or funding the purchase of material by a "Subsidiary" in which "Customer" owns, either directly or indirectly, all or substantially all of the issued share capital (clause 3.3(ii));

(iii) provided that in either case such purchase is in cash, in the ordinary course of business, on arm's length and for a full market value; or

(iv) as otherwise agreed in writing in advance by the "Funder" (clause 3.3(iii);

(h) says that, under the Delta IPA Side Letters:

(i) the express purpose of any funding from GCUK was to allow and oblige the relevant Delta HoldCo to discharge "Payables" (within the meaning of the Delta IPAs) of the kind described in clause 3.3;

(ii) if and when GCUK provided funding to the relevant Delta HoldCo, there was no obligation on the Delta HoldCo to disburse that funding to the relevant "Subsidiary" in order to allow the relevant "Subsidiary" to obtain advance payment of an account receivable owed, or to be owed, to it;

(iii) the purpose of any funding from GCUK was not to place the "Subsidiary" in funds in advance of the payment of possible future account receivables owed, or possibly to be owed, to the "Subsidiary";

(iv) any funding provided by GCUK was not secured by possible future account receivables of the relevant "Subsidiaries"; and

(v) if, and to the extent the Delta HoldCos applied the funding in accordance with clause 3.3(i), the purpose and effect of the funding was to enable the acquisition of an interest in the "Acquired Group" and was thus in the nature of acquisition finance; and

(i) otherwise does not know and cannot admit paragraph 117 of the SOC.

118 As to paragraph 118 of the SOC, IAL:

(a) repeats paragraph 116(c) of this Defence;

(b) admits that clause 7 of the Delta IPA Side Letters contains text to the effect pleaded in paragraph 118(a) of the SOC;

(c) says that, the effect of clause 7 was that the amount (if any) to be paid by each relevant Delta HoldCo pursuant to the obligation in cl 2 of the Delta IPAs was, subject to the operation of sub-paragraphs (i) and (ii) of clause 7 of the Delta IPA Side Letters, less than the "Repayment Amount";

(d) repeats paragraph 115(j) of this Defence; and

(e) otherwise does not know and cannot admit paragraph 118 of the SOC.

E4 Amendments to Delta IPAs

119 As to paragraph 119 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and Liege appear to have signed a document styled "Amendment to the instalment payment agreement originally dated 27 June 2019 between Greensill Capital (UK) Limited and Liberty Liege Limited (the IPA), as amended and/or restated from time to time", with a "Date" of 28 November 2019 (referred to in the SOC as the Liege IPA);

(b) admits that the document states that the meaning of the defined term "Facility Amount" under the Liege IPA was changed to "EUR 500,000,000"; and

(c) otherwise does not know and cannot admit paragraph 119 of the SOC.

120 As to paragraph 120 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and Galati appear to have signed a document styled "Amendment to the instalment payment agreement originally dated 27 June 2019 between Greensill Capital (UK) Limited and Liberty Galati and Skopje Limited (the IPA), as amended and/or restated from time to time", with a "Date" of 28 November 2019;

(b) admits that the document states that the meaning of the defined term "Facility Amount" under the Galati IPA was changed to "EUR 1,100,000,000"; and

(c) otherwise does not know and cannot admit paragraph 120 of the SOC.

121 As to paragraph 121 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and Ostrava appear to have signed a document styled "Amendment to the instalment payment agreement originally dated 27 June 2019 between Greensill Capital (UK) Limited and Ostrava (the IPA), as amended and/or restated from time to time", with a "Date" of 28 November 2019 (referred to in the SOC as the Ostrava IPA);

(b) admits that the document states that the meaning of the defined term "Facility Amount" under the Ostrava IPA was changed to "EUR 1,100,000,000"; and

(c) otherwise does not know and cannot admit paragraph 121 of the SOC.

122 As to paragraph 122 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and each of the Delta HoldCos appear to have signed documents styled "Amendment to the instalment payment agreement originally dated 27 June 2019 between Greensill Capital (UK) Limited and [each of the Delta HoldCos], as amended and/or restated from time to time", with a "Date" of 27 June 2020;

(b) admits that each of the four documents states that the meaning of "Termination Date" under the relevant Delta IPA is to be amended to read "27 June 2022, which may be extended by mutual written agreement between Customer and Funder";

(c) admits that, read in context, the reference to "Customer" is a reference to the relevant Delta HoldCo and the reference to "Funder" is a reference to GCUK;

(d) denies that the documents purport to restate the terms of the Delta IPAs; and

(e) otherwise does not know and cannot admit paragraph 122 of the SOC.

E5 IPA Supplementary Letters

123 As to paragraph 123, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and each of the Delta HoldCos and SSUK appear to have signed documents styled "Receivables-based instalment payment agreement between Funder and Customer dated 27 June 2019 (as amended from time to time, the "IPA")", with a "Date" of 3 February 2021 (referred to in the SOC as the IPA Supplementary Letters);

(b) admits that each of the documents purports to be executed as a deed by GCUK, SSUK and one of the Delta HoldCos;

(c) admits that each document states: "This letter forms part of the IPA";

(d) says that, SSUK was not a party to any of the Delta IPAs and nothing in the IPA Supplementary Letters purported to make SSUK a party to the Delta IPAs;

(e) says that, the allegation that the documents acknowledged and confirmed "certain matters", those being matters which are not identified in paragraph 123 of the SOC, is vague and, in that context, does not plead to the allegation; and

(f) otherwise does not know and cannot admit paragraph 123 of the SOC.

124 As to paragraph 124 of the SOC, IAL:

(a) repeats paragraph 123(f) of this Defence;

(b) says that, if the IPA Supplementary Letters had legal effect (which is not admitted):

(i) they did not and could not operate retrospectively to change the meaning of the IPA Side Letter with effect from 20 May 2020; and

(ii) further, they did not and could not operate retrospectively to vary the legal rights and obligations of third parties to the IPA Supplementary Letters, including Greensill Bank and IAL;

(c) admits that paragraph 3(a) of the documents contained words to the effect of the term pleaded in paragraph 124(a) of the SOC;

(d) admits that paragraph 3(b) of the documents contained words to the effect of the term pleaded in paragraph 124(b) of the SOC, save that it stipulated the rejection must be in writing;

(e) admits that paragraph 3(c) of the documents contained words to the effect of the term pleaded in paragraph 124(c) of the SOC;

(f) admits that paragraph 3(d) of the documents contained words to the effect of the term pleaded in paragraph 124(d) of the SOC;

(g) admits that paragraph 3(e) of the documents contained words to the effect of the term pleaded in paragraph 124(e) of the SOC;

(h) admits that paragraph 3(f) of the documents contained words to the effect of the term pleaded in paragraph 124(f) of the SOC, save that it was followed by the phrase "(or if not a Business Day, the immediately preceding Business Day)";

(i) admits that paragraph 3(g) of the documents contained words to the effect of the term pleaded in paragraph 124(g) of the SOC; and

(j) otherwise does not know and cannot admit paragraph 124 of the SOC.

125 As to paragraph 125 of the SOC, IAL:

(a) repeats paragraph 123(f) of this Defence;

(b) admits that paragraph 4 of the documents contained words to the effect of the term pleaded in paragraph 125 of the SOC, save that GCUK's obligation to remit the relevant Drawdown Amount set out in the New Drawdown File is expressed as an obligation to remit to the Designated Customer Account;

(c) says that:

(i) the IPA Supplementary Letters are drafted on the assumption that, pursuant to a "New Drawdown File", each Delta HoldCo issued a "Repayment Amount" (to an unspecified person); and

(ii) that assumption does not accurately reflect the operation of clauses 1.1 and 1.3 of the Delta IPA Side Letters, which did not have the effect that, upon the submission (or deemed submission) of a "New Drawdown File", each Delta HoldCo made payment of the "Repayment Amount";

(d) says that if, on their proper construction, the IPA Supplementary Letters had the effect that, upon each "Maturity Date":

(i) each Delta HoldCo was deemed to have paid the "Repayment Amount" (irrespective of whether any payment was in fact made by the Delta HoldCo) and/or clause 1.3 of the Delta IPA Side Letters was otherwise waived or avoided such that GCUK had no power or right to consider, but not accept, the revolving of "Repayment Amounts";

(ii) each Delta HoldCo was deemed to have submitted a "New Drawdown File";

(iii) GCUK was deemed to have accepted the "New Drawdown File";

(iv) GCUK was obliged to remit, or otherwise make available, funds to the relevant Delta HoldCo (whether in the amount of the "Drawdown Amount" as defined in the Delta IPA Side Letters, the Delta IPAs or otherwise);

then

(v) the effect of the IPA Supplementary Letters was to convert the funding facility established by the Delta IPAs into one in which funding from GCUK to the relevant Delta HoldCo was automatically rolled over following the "Maturity Date":

(A) without repayment by the relevant Delta HoldCo; and

(B) irrespective of the existence of "expected accounts receivable" of each "Subsidiary" at the time of the roll-over; and

(e) otherwise does not know and cannot admit paragraph 125 of the SOC.

E6 Guarantees

126 As to paragraph 126 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and each of the Delta HoldCos appear to have signed documents styled "Company Guarantee" (referred to in the SOC as the Delta Holdco Guarantees);

(b) admits that each of the documents bears the date 27 June 2019; and

(c) otherwise does not know and cannot admit paragraph 126 of the SOC.

127 As to paragraph 127 of the SOC, IAL:

(a) repeats paragraph 126(c) of this Defence;

(b) in relation to paragraph 127(a):

(i) denies that the documents purport to impose an obligation in the terms alleged; and

(ii) says that, the purported effect of paragraph 3.2 of the documents is to impose an obligation on each "Guarantor" to indemnify and keep indemnified GCUK and any "Transferee" in full and on demand from and against losses, costs and expenses suffered or incurred by GCUK arising out of, or in connection with any failure of a Delta HoldCo to perform or discharge the Guaranteed Obligations (as defined in paragraph 3.1);

(c) in relation to paragraph 127(b):

(i) denies that the documents purport to impose an obligation in the terms alleged;

(ii) says that, the obligation (if any) on each "Guarantor" to procure the performance of each "Customer" arose only if and when any "Customer" breaches, does not perform its obligations (in any capacity) under, or pay any of the monies, debts and liabilities of any nature from

time to time or owing from or incurred by it pursuant to and/or in connection with the Delta IPAs; and

(iii) says that, the obligation imposed by clause 3.1 (if any) was not an obligation to procure performance in the abstract, but was instead an obligation to procure performance of the obligation which the "Customer" had breached or otherwise failed to perform;

(d) admits that paragraph 3.1 of the documents contains words to the effect of those alleged in paragraph 127(c) of the SOC, but says that that obligation arose only where the condition mentioned in paragraph 127(c)(ii) of the Defence was satisfied; and

(e) otherwise does not know and cannot admit paragraph 127 of the SOC.

128 As to paragraph 128 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and Liberty House appear to have signed a document styled "Company Guarantee";

(b) admits that the document bears the date 27 June 2019;

(c) in relation to paragraph 128(a):

(i) denies that the document purports to impose an obligation in the terms alleged; and

(ii) says that, the purported effect of paragraph 3.2 of the document is to impose an obligation on the "Guarantor" to indemnify and keep indemnified GCUK and any "Transferee" in full and on demand from and against losses, costs and expenses suffered or incurred by GCUK arising out of, or in connection with any failure of a Delta HoldCo to perform or discharge the Guaranteed Obligations (as defined in paragraph 3.1);

(d) in relation to paragraph 128(b):

(i) denies that the document purports to impose an obligation in the terms alleged;

(ii) says that, the obligation (if any) on the "Guarantor" to procure the performance of each "Customer" arises only if and when any "Customer" breaches, does not perform its obligations (in any capacity) under, or pay any of the monies, debts and liabilities of any nature from

time to time due or owing from or incurred by it pursuant to and/or in connection with the Delta IPAs; and

(iii) says that, the obligation imposed by clause 3.1 (if any) was not an obligation to procure performance in the abstract, but was instead an obligation to procure performance of the obligation which the "Customer" had breached or otherwise failed to perform;

(e) admits that paragraph 3.1 of the document contains words to the effect of those alleged in paragraph 128(c) of the SOC but says that that obligation arose only where the condition mentioned in paragraph 128(c)(ii) of the Defence was satisfied; and

(f) otherwise does not know and cannot admit paragraph 128 of the SOC.

E7 Assignment Agreements between GCUK and Greensill Bank

Master Assignment Agreement

129 As to paragraph 129 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of Greensill Bank and GCUK appear to have signed, in counterpart, a document styled "Master Assignment Agreement" (defined in paragraph 129 of the SOC as the **GBAG MAA**), which is expressed to be "dated" 28 May 2018;

(b) says that paragraph 129 of the SOC describes the general effect of clause 2.1 of the GBAG MAA;

(c) says that, any assignment from GCUK to Greensill Bank was effective only if:

(i) GCUK complied with clause 2.1;

(ii) GCUK complied with clause 2.2;

(iii) Greensill Bank complied with clause 2.3;

(iv) the conditions in clause 2.4 were met; and

(v) there was in existence rights capable of being assigned, which did not include possible future rights;

(d) says that, the subject of any assignment was a "Payment Obligation" and "Additional Rights";

(e) says that, a "Payment Obligation" was a payment obligation owed by a "Relevant Obligor" and having the details and being of the type specified in the relevant "Offer File";

(f) says that, "Additional Rights" were certain rights in respect of a "Payment Obligation", as defined in clause 1.2;

(g) says that there was a "Payment Obligation" (and an assignment) only if:

(i) there was a payment obligation of a "Relevant Obligor" and having the details and being of the type specified in the relevant "Offer File" (clause 1.2, definition of "Payment Obligation");

(ii) there was an entity liable for payment of the "Payment Obligation" and that entity was identified as a "Relevant Obligor" in the "Offer File" relating to the "Payment Obligation" (clause 1.2, definition of "Relevant Obligor");

(iii) there was an "Offer File" meeting the description in the definition of "Offer File" in clause 1.2; and

(iv) says that, there was no "Payment Obligation", as defined or for the purposes of the GBAG MAA, unless there was a present payment obligation of a "Relevant Obligor", as distinct from a possible future payment obligation; and

(h) otherwise does not know and cannot admit paragraph 129 of the SOC.

130 As to paragraph 130 of the SOC, IAL:

(a) repeats paragraph 129 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 130 of the SOC.

131 As to paragraph 131 of the SOC, IAL:

(a) repeats paragraph 129 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 131 of the SOC.

First Assignment Agreement

132 As to paragraph 132 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of Greensill Bank and GCUK appear to have signed a document styled "Agreement", which is

expressed to be dated 27 June 2019 (defined in paragraph 132 of the SOC as the **First Assignment Agreement**);

(b) says that, the First Assignment Agreement stated that GCUK has entered into or will enter into certain receivables purchase agreements between GCUK as purchaser and each of the "AR Sellers" (as defined in the First Assignment Agreement), pursuant to which each "AR Seller" will sell, transfer and assign to GCUK certain "Accounts Receivables" (Recital B);

(c) says that, the First Assignment Agreement stated that GCUK and Greensill Bank wish to document their agreement for GCUK to transfer such "Accounts Receivables" and the benefit of any "Transaction Security" to Greensill Bank (Recital C);

(d) says that, under the First Assignment Agreement, no consideration moved from Greensill Bank; and

(e) otherwise does not know and cannot admit paragraph 132 of the SOC.

133 As to paragraph 133 of the SOC, IAL:

(a) repeats paragraph 132 of this Defence;

(b) says, as to paragraph 133(a) of the SOC, that the "AR Sellers" were not the "Subsidiaries" as defined in each Delta IPA, as the "AR Sellers" included ArcelorMittal Skopje CRM, which was not a "Subsidiary";

(c) says that, paragraph 133 of the SOC otherwise sets out the general effect of parts of clause 1.1 of the First Assignment Agreement;

(d) otherwise does not know and cannot admit paragraph 133 of the SOC.

134 As to paragraph 134, IAL:

(a) repeats paragraph 132 of this Defence;

(b) says that, on the proper construction of clause 2 of the First Assignment Agreement and at general law, there was no assignment or purported assignment of a possible future account receivable (or a right to or in respect of a possible future account receivable) unless and until the possible future account receivable (or right) became an actual, existing account receivable or actual, existing right; and

(c) otherwise does not know and cannot admit paragraph 134 of the SOC.

Second Assignment Agreement

135 As to paragraph 135 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of Greensill Bank and GCUK appear to have signed a document styled "Agreement", which purports to be "dated" 11 July 2019 (defined in paragraph 135 of the SOC as the **Second Assignment Agreement**);

(b) says that, the Second Assignment Agreement stated that GCUK has entered into a receivables purchase agreement between SSUK as seller (the "AR Seller") and GCUK as purchaser dated 9 April 2019 (the "Receivables Purchase Agreement") pursuant to which the "AR Seller" will sell, transfer and assign to GCUK certain "Accounts Receivables" (Recital B);

(c) says that, the First Assignment Agreement stated that GCUK and Greensill Bank wish to document their agreement for GCUK to transfer such "Accounts Receivables" to Greensill Bank (Recital C);

(d) says that, under the Second Assignment Agreement, no consideration moved from Greensill Bank; and

(e) otherwise does not know and cannot admit paragraph 135 of the SOC.

136 As to paragraph 136 of the SOC, IAL:

(a) repeats paragraph 135 of this Defence;

(b) says that, the Second Assignment Agreement stated that:

(i) on 27 June 2019, GCUK has entered into certain instalment payment agreements as funder with each of the "IPU Obligors" pursuant to which certain irrevocable payment undertakings will be originated by GCUK;

(ii) such irrevocable payment undertakings will be assigned to Greensill Bank from time to time pursuant to the master assignment agreement, dated 28 May 2018 (referred to in the SOC as the GBAG MAA), and entered into between GCUK and Greensill Bank (Recital A); and

(c) otherwise does not know and cannot admit paragraph 136 of the SOC.

137 As to paragraph 137 of the SOC, IAL:

(a) repeats paragraph 135 of this Defence;

(b) says that, it was a term of the Second Assignment Agreement that Greensill Bank hereby sells, transfers and otherwise conveys absolutely with full title

guarantee to GCUK, and GCUK hereby purchases and agrees to have assigned, transferred or otherwise conveyed to it, all of Greensill Bank's right, title and interest in, to and under each "Assigned Assets" (as defined the "First Assignment Agreement") (clause 2(ii));

(c) says that, on the proper construction of the Second Assignment Agreement and as a matter of general law, clause 2(ii) did not and could not effect or purport to effect an assignment of possible future rights;

(d) says that, it was a term of the Second Assignment Agreement that, notwithstanding the terms of clause 2 of the Second Assignment Agreement, GCUK hereby sells, transfers, assigns and otherwise conveys absolutely with full title guarantee to Greensill Bank, and Greensill Bank hereby purchases and agrees to have assigned, transferred or otherwise conveyed to it, all of GCUK's right, title and interest in, to and under each "Accounts Receivable" and all of GCUK's "Additional Rights" relating thereto, and, in each case, acquired by GCUK on, or at any time after, 27 June 2019, unless otherwise notified by GCUK to Greensill Bank from time to time (clause 3);

(e) says that, on the proper construction of the Second Assignment Agreement and as a matter of general law, clause 3 did not and could not effect or purport to effect an assignment of possible future rights; and

(f) otherwise does not know and cannot admit paragraph 137 of the SOC.

Second Assignment Agreement Supplementary Letters

138 As to paragraph 138 of the SOC, IAL:

(a) says that, at a time or times presently unknown to IAL, a representative of GCUK appears to have signed five letters expressed to be dated 29 July 2019, 19 August 2019, 19 September 2019, 14 November 2019 and 26 November 2019 respectively (as defined in paragraph 138 of the SOC as the **Second Assignment Agreement Supplementary Letters**);

(b) says that, the documents appear to be on GCUK letterhead, addressed to Greensill Bank, and purport to be signed on behalf of GCUK (and not by Greensill Bank);

(c) says that, in the premises of paragraph 138(b) of this Defence:

(i) it is inapt to describe the letters as having been "entered into" by GCUK and Greensill Bank; and

(ii) the letters do not of themselves evidence any agreement between GCUK and Greensill Bank;

(d) admits that each of the letters contains an annex comprising a list of entities under the heading "Account Debtor";

(e) says that, the lists referred to in paragraph 138(d) of this Defence do not establish that the entities there listed are in fact account debtors; and

(f) otherwise does not know and cannot admit paragraph 138 of the SOC.

IPU Confirmation Agreement

139 As to paragraph 139 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of GCUK and Greensill Bank appear to have signed a document styled "Confirmation Agreement", which is expressed to be dated 25 January 2021 (as defined in paragraph 139 of the SOC as the **IPU Confirmation Agreement**);

(b) admits that the document contains a recital which states that the purpose of the agreement was "to acknowledge and confirm certain matters in relation to" the Second Assignment Agreement; and

(c) otherwise does not know and cannot admit paragraph 139 of the SOC.

140 As to paragraph 140 of the SOC, IAL:

(a) repeats paragraph 139 of this Defence;

(b) admits that the document contains a definition of "Additional Rights" to the effect alleged in paragraph 140(a);

(c) admits that the document contains words to the effect alleged in paragraph 140(b);

(d) says that, the Schedule to the IPU Confirmation Agreement states "Excel file Delta IPUs.xlsx to be annexed";

(e) says that, the Applicants do not particularise the documents (if any) relied on;

(f) says that, the untitled document appears to have been created on 29 January 2021 and modified on 5 April 2021, in each case after the time at which the IPU Confirmation Agreement is alleged to have been entered into; and

(g) otherwise does not know and cannot admit paragraph 140 of the SOC.

Consideration Acknowledgment Agreement

141 As to paragraph 141 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of Greensill Bank and GCUK appear to have signed a document styled "Consideration Acknowledgement Agreement", which is expressed to be dated 1 February 2021 (as defined in paragraph 141 of the SOC as the **Consideration Acknowledgement Agreement**);

(b) denies that the document contains a term or terms to the effect alleged; and

(c) otherwise does not know and cannot admit paragraph 141 of the SOC.

E8 Advances made by GCUK to the Delta HoldCos under the Delta IPAs

142 As to paragraph 142 of the SOC, IAL:

(a) admits that there are four documents that bear the date 27 June 2019 and purport to be letters from each of the Delta HoldCos;

(b) admits that each letter states that the "Customer… submits with this letter the attached Drawdown File";

(c) admits that there are four excel spreadsheets, each of which includes a column headed "Sum of Invoice Amount Outstanding", and that the sum of the figures in that column corresponds to a figure in the table in paragraph 142 of the SOC;

(d) says that, the particularised documents (and the spreadsheets referred to in them) were not "Drawdown Files" within the meaning of the Delta IPAs because:

(i) they did not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) they did not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(e) says that, the particularised documents do not establish that:

(i) each of the Delta HoldCos (or any of them) intended to use the "Drawdown Amount" to discharge a "Payable" for the purposes of clause 1 of the Delta IPAs;

(ii) the files were created in respect of a "Payable" (for the purposes of the definition of "Drawdown File");

(iii) the drawdown amount (if any) was derived from the amount of the expected future receivables of a "Subsidiary" owed by "Account Debtors" (for the purposes of the definition of "Drawdown Amount");

(iv) the files were in the agreed format (for the purposes of the definition of "Drawdown File"); and

(v) the files were submitted via direct transfer, details of which had been notified in writing by an authorised representative of GCUK to the relevant Delta HoldCo; and

(f) otherwise does not know and cannot admit paragraph 142 of the SOC.

143 As to paragraph 143 of the SOC, IAL:

(a) admits that there are four documents that bear the date 12 July 2019 and purport to be letters from each of the Delta HoldCos;

(b) admits that each letter states that the "Customer… submits with this letter the attached Drawdown File";

(c) admits that there are four excel spreadsheets, each of which includes a column headed "Invoice Amount Outstanding", and that the sum of the figures in that column corresponds to a figure in the table in paragraph 143 of the SOC;

(d) says that paragraphs 1 to 4 of the particularised documents (and the spreadsheets referred to in them) were not "Drawdown Files" within the meaning of the Delta IPAs because:

(i) they did not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) they did not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(e) says that paragraphs 5 and 6 of the particularised documents are covering emails which:

(i) do not set out the "Drawdown Amounts" to be paid to a "Customer" by a "Funder";

(ii) do not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(f) says that, the particularised documents do not establish that:

(i) each of the Delta HoldCos (or any of them) intended to use the "Drawdown Amount" to discharge a "Payable" for the purposes of clause 1 of the Delta IPAs;

(ii) the files were created in respect of a "Payable" (for the purposes of the definition of "Drawdown File");

(iii) the drawdown amount (if any) was derived from the amount of the expected future receivables of a "Subsidiary" owed by "Account Debtors" (for the purposes of the definition of "Drawdown Amount");

(iv) the files were in the agreed format (for the purposes of the definition of "Drawdown File"); and

(v) the files were submitted via direct transfer, details of which had been notified in writing by an authorised representative of GCUK to the relevant Delta HoldCo; and

(g) otherwise does not know and cannot admit paragraph 143 of the SOC.

144 As to paragraph 144 of the SOC, IAL:

(a) admits that there are four documents that bear the date 18 July 2019 and purport to be letters from each of the Delta HoldCos;

(b) admits that each letter states that the "Customer… submits with this letter the attached Drawdown File";

(c) admits that there are four excel spreadsheets, each of which includes a column headed "Invoice Amount Outstanding", and that the sum of the figures in that column corresponds to a figure in the table in paragraph 144 of the SOC;

(d) says that paragraphs 1 to 4 of the particularised documents (and the spreadsheets referred to in them) were not "Drawdown Files" within the meaning of the Delta IPAs because:

(i) they did not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) they did not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(e) says that paragraphs 5 and 6 of the particularised documents are covering emails which:

(i) do not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) do not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(f) says that, the particularised documents do not establish that:

(i) each of the Delta HoldCos (or any of them) intended to use the "Drawdown Amount" to discharge a "Payable" for the purposes of clause 1 of the Delta IPAs;

(ii) the files were created in respect of a "Payable" (for the purposes of the definition of "Drawdown File");

(iii) the drawdown amount (if any) was derived from the amount of the expected future receivables of a "Subsidiary" owed by "Account Debtors" (for the purposes of the definition of "Drawdown Amount");

(iv) the files were in the agreed format (for the purposes of the definition of "Drawdown File"); and

(v) the files were submitted via direct transfer, details of which had been notified in writing by an authorised representative of GCUK to the relevant Delta HoldCo; and

(g) otherwise does not know and cannot admit paragraph 144 of the SOC.

145 As to paragraph 145 of the SOC, IAL:

(a) admits that there are four documents that bear the date 20 August 2019 and purport to be letters from each of the Delta HoldCos;

(b) admits that each letter states that the "Customer… submits with this letter the attached Drawdown File";

(c) admits that there are four excel spreadsheets, each of which includes a column headed "Invoice Amount Outstanding", and that the sum of the figures in that column corresponds to a figure in the table in paragraph 145 of the SOC;

(d) says that paragraphs 1 to 4 of the particularised documents (and the spreadsheets referred to in them) were not "Drawdown Files" within the meaning of the Delta IPAs because:

(i) they did not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) they did not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(e) says that paragraphs 5 and 6 of the particularised documents are covering emails which:

(i) do not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) do not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(f) says that, the particularised documents do not establish that:

(i) each of the Delta HoldCos (or any of them) intended to use the "Drawdown Amount" to discharge a "Payable" for the purposes of clause 1 of the Delta IPAs;

(ii) the files were created in respect of a "Payable" (for the purposes of the definition of "Drawdown File");

(iii) the drawdown amount (if any) was derived from the amount of the expected future receivables of a "Subsidiary" owed by "Account Debtors" (for the purposes of the definition of "Drawdown Amount");

(iv) the files were in the agreed format (for the purposes of the definition of "Drawdown File"); and

(v) the files were submitted via direct transfer, details of which had been notified in writing by an authorised representative of GCUK to the relevant Delta HoldCo; and

(g) otherwise does not know and cannot admit paragraph 145 of the SOC.

146 As to paragraph 146 of the SOC, IAL:

(a) admits that there are four documents that bear the date 19 September 2019 and purport to be letters from each of the Delta HoldCos;

(b) admits that each letter states that the "Customer… submits with this letter the attached Drawdown File";

(c) admits that there are four excel spreadsheets, each of which includes a column headed "Invoice Amount Outstanding", and that the sum of the figures in that column corresponds to a figure in the table in paragraph 146 of the SOC;

(d) says that paragraphs 1 to 4 of the particularised documents (and the spreadsheets referred to in them) were not "Drawdown Files" within the meaning of the Delta IPAs because:

(i) they did not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) they did not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(e) says that paragraph 5 of the particularised documents is an Excel spreadsheet which:

(i) is not, on its face, dated 19 September 2019;

(ii) has "Document Properties" stating that it was created on 26 June 2019;

(iii) was created by an unidentified person;

(iv) is not established to have been sent or received by any particular person;

(f) says that paragraphs 6 and 7 of the particularised documents are covering emails which:

(i) do not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) do not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(g) says that, the particularised documents do not establish that:

(i) each of the Delta HoldCos (or any of them) intended to use the "Drawdown Amount" to discharge a "Payable" for the purposes of clause 1 of the Delta IPAs;

(ii) the files were created in respect of a "Payable" (for the purposes of the definition of "Drawdown File");

(iii) the drawdown amount (if any) was derived from the amount of the expected future receivables of a "Subsidiary" owed by "Account Debtors" (for the purposes of the definition of "Drawdown Amount");

(iv) the files were in the agreed format (for the purposes of the definition of "Drawdown File"); and

(v) the files were submitted via direct transfer, details of which had been notified in writing by an authorised representative of GCUK to the relevant Delta HoldCo; and

(h) otherwise does not know and cannot admit paragraph 146 of the SOC.

147 As to paragraph 147 of the SOC, IAL:

(a) admits that there are three documents that bear the date 14 November 2019 and purport to be letters from Galati, Liege and Ostrava;

(b) admits that each letter states that the "Customer… submits with this letter the attached Drawdown File";

(c) admits that there are three excel spreadsheets, each of which includes a column headed "Value", and that the sum of the figures in that column corresponds to a figure in the table in paragraph 147 of the SOC;

(d) says that, the particularised documents (and the spreadsheets referred to in them) were not "Drawdown Files" within the meaning of the Delta IPAs because:

(i) they did not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) they did not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(e) says that, the particularised documents do not establish that:

(i) each of Galati, Liege and Ostrava (or any of them) intended to use the "Drawdown Amount" to discharge a "Payable" for the purposes of clause 1 of the Delta IPAs;

(ii) the files were created in respect of a "Payable" (for the purposes of the definition of "Drawdown File");

(iii) the drawdown amount (if any) was derived from the amount of the expected future receivables of a "Subsidiary" owed by "Account Debtors" (for the purposes of the definition of "Drawdown Amount");

(iv) the files were in the agreed format (for the purposes of the definition of "Drawdown File"); and

(v) the files were submitted via direct transfer, details of which had been notified in writing by an authorised representative of GCUK to the relevant Delta HoldCo; and

(f) otherwise does not know and cannot admit paragraph 147 of the SOC.

148 As to paragraph 148 of the SOC, IAL:

(a) admits that there are four documents that bear the dates 27 November 2019 or 28 November 2019 and purport to be letters from each of the Delta HoldCos;

(b) admits that each letter states that the "Customer… submits with this letter the attached Drawdown File";

(c) admits that there are four excel spreadsheets, each of which includes a column headed "Invoice Amount Outstanding", and that the sum of the figures in that column corresponds to a figure in the table in paragraph 148 of the SOC; and

(d) says that, the particularised documents (and the spreadsheets referred to in them) were not "Drawdown Files" within the meaning of the Delta IPAs because:

(i) they did not set out the "Drawdown Amounts" to be paid to "Customer" by "Funder"; and

(ii) they did not set out the "Account Debtors" (if any) from whom receivables are owed or will be owed to the "Subsidiary" which have been used to calculate the "Drawdown Amount";

(e) says that, the particularised documents do not establish that:

(i) each of the Delta HoldCos (or any of them) intended to use the "Drawdown Amount" to discharge a "Payable" for the purposes of clause 1 of the Delta IPAs;

(ii) the files were created in respect of a "Payable" (for the purposes of the definition of "Drawdown File");

(iii) the drawdown amount (if any) was derived from the amount of the expected future receivables of a "Subsidiary" owed by "Account Debtors" (for the purposes of the definition of "Drawdown Amount");

(iv) the files were in the agreed format (for the purposes of the definition of "Drawdown File"); and

(v) the files were submitted via direct transfer, details of which had been notified in writing by an authorised representative of GCUK to the relevant Delta HoldCo; and

(f) otherwise does not know and cannot admit paragraph 148 of the SOC.

149 IAL does not know and cannot admit paragraph 149 of the SOC.

150 As to paragraph 150 of the SOC, IAL:

(a) repeats paragraphs 116-118, 123-125 and 142-149 of this Defence;

(b) says that, on the proper construction of the IPA Side Letters and the IPA Supplementary Letters, GCUK was not deemed to have accepted a "New Drawdown File" if (inter alia) the relevant Delta HoldCo had not paid the "Repayment Date" by the "Maturity Date"; and

(c) otherwise denies paragraph 150 of the SOC.

151 As to paragraph 151 of the SOC, IAL:

(a) repeats paragraphs 123-125 and 142-150 of this Defence; and

(b) otherwise denies paragraph 151 of the SOC.

E9 Assignment of Delta IPUs to Greensill Bank

152 As to paragraph 152 of the SOC, IAL:

(a) says that, contrary to the pleading in SOC paragraph 152, the allegations in paragraphs 129-141 and 149 to 151 of the SOC do not establish that the Delta IPUs set out in Annexure A to the SOC were assigned to Greensill Bank;

(b) says that, in order for the Delta IPUs to be assigned to Greensill Bank, it is necessary for the Applicants to establish (inter alia) that:

(i) the debts constituted by the Delta IPUs existed and were capable of assignment; and

(ii) there was compliance with clauses 2.1, 2.2, 2.3 and 2.4 of the GBAG MAA;

(c) the Applicants do not plead material facts capable of establishing the existence of the pleaded assignment in respect of each Delta IPU identified in Annexure A to the SOC, or any of them;

(d) the documents implicitly said to constitute the "Offer Files" do not meet the description of being "Offer Files", including because:

(i) they do not identify "details" of the alleged underlying "Payment Obligations";

(ii) they do not identify the "Maturity Amount";

(iii) they do not identify the "Relevant Obligor";

(iv) they do not identify the "Settlement Date";

(v) they do not identify the "Purchase Price"; and

(vi) they do not identify the "Invoice Ref";

(e) the communications implicitly said to constitute "Offers" do not meet the description in clause 2.2 of the GBAG MAA including because:

(i) an "Offer File" must be attached to an email from an "authorised user" (GBAG MAA, clause 2.2) and the particularised emails were, at least in part, attached to emails from individuals not mentioned in Schedule 3 to the GBAG MAA and not otherwise established to be "authorised users"; and

(ii) the attachments are not always password protected;

(f) the communications implicitly said to constitute "Acceptances" do not meet the description in clause 2.3 of the GBAG MAA including because:

(i) an acceptance must be via an email from an "authorised user" (GBAG MAA clause 2.3) and the particularised emails were, at least in part, attached to emails from individuals not mentioned in Schedule 3 and not otherwise established to be "authorised users";

(ii) the attachments are not always password protected; and

(iii) the "Offer Files" (if any) attached are not marked as "Accepted";

(g) the time and date of the email communications do not correspond with the "Cut-Off Acceptance Time";

(h) says that, it puts the Applicants to proof of all necessary conditions for the allegation in paragraph 152 of the SOC; and

(i) otherwise denies paragraph 152 of the SOC.

153 As to paragraph 153 of the SOC, IAL:

(a) repeats paragraphs 126-128 and 152 of this Defence; and

(b) otherwise denies paragraph 153 of the SOC.

E10 SSUK Receivables Purchase Agreement

154 As to paragraph 154 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, Lex Greensill and Sanjeev Gupta signed a document styled a "Receivables Purchase Agreement" (the SSUK RPA), with an "Effective Date" of 9 April 2019;

(b) says that, the named parties to the SSUK RPA were GCUK (identified as "Buyer") and SSUK (variously identified as "Company", "Seller Representative" and "Servicer"); and

(c) otherwise does not know and cannot admit paragraph 154 of the SOC.

155 As to paragraph 155 of the SOC, IAL:

(a) says, as to paragraph 155(a) of the SOC:

(i) it does not accurately identify the effect of clause 2.2 of the SSUK RPA; and

(ii) refers to the terms of clause 2.2 and the balance of the SSUK RPA for their full force and effect;

(b) says, as to paragraph 155(b) of the SOC:

(i) it does not accurately identify the effect of clause 2.3 of the SSUK RPA; and

(ii) refers to the terms of clause 2.3 and the balance of the SSUK RPA for their full force and effect; and

(c) says, as to paragraph 155(c) of the SOC:

(i) it does not accurately identify the effect of clause 2.4 of the SSUK RPA; and

(ii) refers to the terms of clause 2.4 and the balance of the SSUK RPA for their full force and effect;

(d) says, as to paragraph 155(d) of the SOC:

(i) it does not accurately identify the effect of clause 2.5 of the SSUK RPA; and

(ii) refers to the terms of clause 2.5 and the balance of the SSUK RPA for their full force and effect;

(e) otherwise does not know and cannot admit paragraph 155 of the SOC.

156 As to paragraph 156 of the SOC, IAL:

(a) says, as to paragraph 156(a) of the SOC, that it sets out the general effect of the definition of "Purchase Price" in the SSUK RPA;

(b) says, as to paragraph 156(b) of the SOC:

(i) it is aware of a document entitled "Receivables purchase agreement between Buyer and SSUK dated 9 April 2019 (as amended from time to time, the 'RPA')" which is dated 10 February 2021 and appears to have been signed, at unknown times, by Jonathan Lane and Sanjeev Gupta (defined in particulars to paragraph 156 of the SOC as the **SSUK RPA Supplementary Letter**);

(ii) the SSUK RPA Supplementary Letter does not vary the SSUK RPA from any time prior to 10 February 2021;

(iii) it does not accurately identify the effect, or purported effect, of paragraphs 2 and 9-11 of the SSUK RPA;

(iv) it will refer to the SSUK RPA for its full force and effect; and

(c) otherwise, does not know and cannot admit paragraph 156 of the SOC.

157 As to paragraph 157 of the SOC, IAL:

(a) says, as to paragraph 157(a) of the SOC:

(i) it does not accurately identify the effect of clause 6.1(n) of the SSUK RPA; and

(ii) refers to the terms of clause 6.1(n) and the balance of the SSUK RPA for their full force and effect;

(b) says, as to paragraph 157(b) of the SOC:

(i) it does not accurately identify the effect of clause 6.1(o) of the SSUK RPA and the definition of "Eligible Receivable"; and

(ii) refers to the terms of clause 6.1(o) and the definition of "Eligible Receivable", and the balance of the SSUK RPA, for their full force and effect; and

(c) otherwise, does not know and cannot admit paragraph 157 of the SOC.

158 As to paragraph 158 of the SOC, IAL:

(a) says that, the allegation is an allegation as to the proper construction of the Delta IPAs, not the SSUK RPA, because it is an allegation as to when amounts are owing under the Delta IPAs;

(b) says that:

(i) the parties to the Delta IPAs included the Delta HoldCos and did not include SSUK;

(ii) it is not alleged that the Delta HoldCos agreed to, acquiesced in or knew of the terms of the SSUK RPA and/or the SSUK RPA Supplementary Letter; and

(iii) no principle of law permits the terms of the SSUK RPA and the SSUK RPA Supplementary Letter to vary the meaning of the Delta IPAs and/or to require terms to be implied into the Delta IPAs;

(c) says that, it is not open to GCUK and SSUK, as between themselves and without the involvement of the Delta HoldCos, to agree when an obligation owed by the Delta HoldCos to GCUK is discharged;

(d) says that, the proper construction of the SSUK RPA is irrelevant to the question of the effect of payments by SSUK to GCUK on the obligations of the Delta HoldCos to GCUK;

(e) says that, the Delta IPAs:

(i) do not refer to the SSUK RPA or the SSUK RPA Supplementary Letter; and

(ii) are commercially efficacious whether or not the SSUK RPA or the SSUK RPA Supplementary Letter exist or are implemented;

(f) says that, the alleged term is not a term of the SSUK RPA or the Delta IPAs, whether by way of construction or implication (as to which, no proper particulars have been provided); and

(g) denies paragraph 158 of the SOC.

SSUK RPA Supplementary Letter

159 As to paragraph 159 of the SOC, IAL:

(a) repeats paragraph 156(b) of this Defence; and

(b) otherwise does not know and cannot admit paragraph 159 of the SOC.

160 As to paragraph 160 of the SOC, IAL:

(a) says that, paragraph 3 of the document stated, inter alia, that "Receivables" sold by a "Seller" to "Buyer" under the "RPA" may be originated by "Seller", or by an affiliate of such "Seller" and sold to "Buyer" by "Seller" following an intra-group transfer of such "Receivables" to "Seller"; and

(b) refers to the terms of the SSUK RPA Supplementary Letter for their full force and effect; and

(c) otherwise does not know and cannot admit paragraph 160 of the SOC.

161 As to paragraph 161 of the SOC, IAL:

(a) says that, the paragraph sets out, at a general level, the effect of parts of the SSUK RPA Supplementary Letter;

(b) refers to the terms of the SSUK RPA Supplementary Letter for their full force and effect; and

(c) otherwise does not know and cannot admit paragraph 161 of the SOC.

162 As to paragraph 162 of the SOC, IAL:

(a) says that, the paragraph does not accurately identify the effect of clause 9 of the SSUK RPA Supplementary Letter;

(b) refers to the terms of clause 9 and the balance of the SSUK RPA Supplementary Letter for their full force and effect; and

(c) otherwise, does not know and cannot admit paragraph 162 of the SOC.

E11 Sale and assignment of receivables under the SSUK RPA

163 As to paragraph 163 of the SOC, IAL:

(a) says that, contrary to the implicit assumption of paragraph 163, under the SSUK RPA, a "Request" was initially delivered by "Buyer" (i.e. GCUK) and not SSUK (see clause 2.3);

(b) says that, in order for there to be an offer and acceptance under the SSUK RPA as implicitly alleged, it is necessary (inter alia) that:

(i) there be compliance with clauses 2.2, 2.3, 2.4, 2.5 and 3 of the SSUK RPA;

(ii) on a "Valuation Report Date" (which, for a "Valuation Report" on a desktop basis, is the 30th day of the calendar month immediately following the calendar month to which the relevant "Valuation Report" relates (SSUK RPA clause 2.2, definition of "Valuation Report Date")), SSUK deliver or procure delivery to GCUK of a list of "Eligible Receivables", a "Payment Profile" of each "Eligible Receivable", a "Valuation Report" and a "Valuation Report Value" of the "Eligible Receivables" (clause 2.2);

(iii) three "Business Days" following delivery of items under clause 2.2, GCUK must deliver to SSUK the documents described in clause 2.3, including a completed but unsigned request listing "Proposed Receivables" that GCUK is willing to purchase and an "Offer File" setting out the "Payment Profile" of the "Eligible Receivables" referred to in the "Request" (clause 2.3);

(iv) within two "Business Days" of the receipt of the draft "Request, SSUK may deliver to GCUK a copy of the "Request" signed by SSUK with the relevant "Offer File" annexed to it (clause 2.4);

(v) subject to satisfaction of the conditions precedent in clause 2.3, within two "Business Days" of receiving a document under clause 2.5, GCUK may accept the "Request" by countersigning the "Request" (clause 2.5) and, on the proper construction of the SSUK RPA, communicating that acceptance to SSUK; and

(vi) there be payment by the "Buyer" under clause 2.7;

(c) says that the documents particularised in paragraph 163 of the SOC:

(i) do not establish that any of the conditions in clauses 2.2, 2.3, 2.4, 2.5, 2.7 and/or 3 of the SSUK RPA were satisfied;

(ii) refer to "Proposed Receivables" in fixed, round sums of money (for example, EUR 750,000);

(iii) do not establish or evidence that there were possible future “Proposed Receivables” of the kind, and in the amounts, referred to in the particularised documents;

(d) there was, at general law, no assignment of any receivable unless and until the receivable was an existing receivable, as distinct from a possible future receivable;

(e) it puts the Applicants to proof of all conditions necessary for the making of any alleged assignments under the SSUK RPA; and

(f) otherwise does not know and cannot admit paragraph 163 of the SOC.

164 As to paragraph 164 of the SOC, IAL:

(a) repeats paragraphs 156 and 163 of this Defence;

(b) says that:

(i) if the SSUK RPA Supplementary Letter varied the rights and obligations of SSUK and GCUK under the SSUK RPA (or otherwise), it did so only prospectively, that is on and from 10 February 2021;

(ii) the alleged conduct under clauses 2.4 and 2.5 of the SSUK RPA is said to have occurred between 12 July 2019 and 28 November 2019 (SOC, paragraph 163);

(iii) under the SSUK RPA, at all material times, including between 12 July 2019 and 28 November 2019 (inclusive):

(A) GCUK was obliged to pay the “Initial Purchase Price”, denominated in “Pounds Sterling” (or such other currency agreed between GCUK and SSUK) to an account, the details of which have been provided in writing by SSUK to GCUK in advance of the relevant “Purchase Date”, in immediately available funds on the applicable “Purchase Date” for distribution by SSUK to the applicable “Sellers” (clause 2.7);

(B) the “Purchase Date” was, in respect of a “Purchased Receivable”, the date on which the “Buyer” purchases, or

purports to purchase, a "Purchased Receivable" pursuant to the SSUK RPA; and

(C) if GCUK did not pay the "Initial Purchase Price" under clause 2.7 on the relevant "Purchase Date", there was no sale or assignment of the relevant "Purchased Receivable";

(iv) the Applicants implicitly allege that the "Purchase Date" or "Purchase Dates" was or were in the period 12 July 2019 to 28 November 2019;

(v) in the period 12 July 2019 to 28 November 2019:

(A) the respective rights and obligations of GCUK and SSUK were (if anything) regulated by the SSUK RPA and not the SSUK RPA Supplementary Letter or the SSUK RPA and the SSUK RPA Supplementary Letter; and

(B) GCUK's obligation under clause 2.7 of the SSUK RPA was to be discharged in accordance with the terms of clause 2.7 and could not, without further agreement as between GCUK and SSUK, be discharged by the disbursement of funds by GCUK to the Delta HoldCos; and

(c) otherwise denies paragraph 164 of the SOC.

E12 The Delta HoldCo Customer Endorsements

Delta HoldCo Customer Endorsements

165 IAL denies paragraph 165 of the SOC and says further that:

(a) on 25 June 2019, Brereton signed the Delta HoldCo Customer Endorsements referred to in paragraph 165 of the SOC;

(b) the terms of each of the Delta HoldCo Customer Endorsements were authored by or on behalf of the purported "Insured" and at no stage did IAL agree to, or hold out that it adopted, those words;

(c) as at 25 June 2019 and at all material times on and after 9 April 2019 until 30 June 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 5(d)(i)(B), 5(d)(i)(E), 6(e)(i), 6(e)(iii), 6(e)(vi), 8(i), 8(k), 32, 33, 55, 60 and 66A~~**Error! Reference source not found.**~~ of this Defence;

(d) the amendments purportedly made by each of the Delta HoldCo Customer Endorsements (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(e) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the Delta HoldCo Customer Endorsements because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Policy 5369 and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into Policy 5369, BCC and Brereton also did not have authority to issue endorsements under Policy 5369;

(iii) BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and each of the Delta HoldCo Customer Endorsements:

(A) materially altered the scope of the risk of the Insurer under Policy 5369 (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of Policy 5369;

Particulars

New customers, with limits totalling EUR 2.2 billion were purportedly added to the policy, thus increasing the scope of risks, for negligible premium (€1 in each endorsement).

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

Particulars

For example, the matters in paragraph 165(d) of this Defence.

(iv) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 8(i) of this Defence,

and each of the Delta HoldCo Customer Endorsements was not an Approved Endorsement;

(v) each of the Delta HoldCo Customer Endorsements purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(vi) each of the Delta HoldCo Customer Endorsements did not have a maximum tenor, and by implication meant credit terms could exceed 180 days, being the maximum credit term specified in the applicable Underwriting Manual Version 3.0;

(vii) the indemnity limit in each of the Delta HoldCo Customer Endorsements was 100%, which was above the maximum indemnity limit of 95% of Debt specified in the applicable Underwriting Manual Version 3.0;

(viii) the customer limit in each of the Delta HoldCo Customer Endorsements, alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under Policy 5369;

(A) exceeded the AUD50 million policy limit specified in Underwriting Manual Version 3.0;

(B) exceeded the Buyer Group limit v 3.0;

(C) exceeded 95% of the AUD Binder Limit (of AUD50 million) for policies issued in a foreign currency as specified in Underwriting Manual Version 3.0;

(f) by reason of the matters in paragraphs 165(b) to (e) of this Defence and each of them individually, each of the Delta HoldCo Customer Endorsements was invalid, of no effect and not binding on or enforceable as against IAL;

(g) if, which is denied, the Delta HoldCo Customer Endorsements were otherwise within the authority of BCC and/or Brereton authority to execute:

(i) each of the Delta HoldCo Customer Endorsements purported to vary Policy 5369;

(ii) clause 15.3(a) of Policy 5369 provided that any variation of Policy 5369 could only be effected in writing signed by or on behalf of each party;

(iii) each of the Delta HoldCo Customer Endorsements was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of Policy 5369;

(iv) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of each of the Delta HoldCo Customer Endorsements;

(v) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for each of the Delta HoldCo Customer Endorsements;

(vi) any Customer Endorsements issued under Policy 5369 must specify a premium rate expressed as a percentage premium rate (Appendix 1 of Policy 5369) and each of the Delta HoldCo Customer Endorsements did not specify a premium rate expressed as a percentage premium rate, rather, the premium was a fixed amount expressed as "EURO 1.00 (one)";

(vii) each of the Delta HoldCos named alongside "Customer Name" was not a "debtor in respect of a Debt" for the purposes of the definition of "Customer" in Policy 5369;

(viii) by reason of the matters in:

(A) paragraphs 165(g)(i) to (iii) of this Defence;

(B) paragraphs 165(g)(iv) and (v) of this Defence;

(C) paragraphs 165(g)(vi) of this Defence; and/or

(D) paragraph 165(g)(vii) of this Defence;

each of the Delta HoldCo Customer Endorsements is invalid, of no effect and not binding on or enforceable as against IAL;

(h) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) any of the Delta HoldCo Customer Endorsements had been issued;

(ii) any of the Delta HoldCo Customer Endorsements had been purportedly issued in breach of the IAL AAR Agreement and applicable Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(i) executing each of the Delta HoldCo Customer Endorsements was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 165(a) to (h) of this Defence.

(j) the authority given by IAL to Brereton did not include an authority to enter into each of the Delta HoldCo Customer Endorsements because entering into these endorsements was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 165(a) to (h) of this Defence.

(k) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into each of the Delta HoldCo Customer Endorsements on behalf of IAL.

Particulars

The particulars under paragraph 89(j) of this Defence.

165A As to paragraph 165A of the SOC, IAL:

(a) repeats paragraph 165 of this Defence; and

repeats, in answer to the whole of paragraph 165A of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Delta HoldCo Customer Endorsements and their conduct referred to in paragraph 165A of the SOC; and

denies paragraph 165A of the SOC.

166 As to paragraph 166 of the SOC, IAL:

(a) repeats paragraph 165 of this Defence;

(b) says that:

(i) it was not a term of the Delta HoldCo Customer Endorsements that Liberty House was jointly and severally liable for certain obligations with the Delta HoldCos;

(ii) whether Liberty House was jointly and severally liable for certain obligations with the Delta HoldCos turned on the legal arrangements

between Liberty House and the obligees, not the content of instruments to which those obligees were not parties; and

(iii) at most, the words "jointly and severally liable for the repurchase/indemnity/payment obligation with the following relevant seller" in the Delta HoldCo Customer Endorsements are descriptive of an understanding on the part of the individual who prepared and/or signed the document as to the character of the Liberty House's obligations *qua* unidentified obligees, and do not create such joint and several legal liability; and

(c) otherwise denies paragraph 166 of the SOC.

167 As to paragraph 167 of the SOC, IAL:

(a) repeats paragraph 165; and

(b) otherwise denies paragraph 167 of the SOC.

168 IAL denies paragraph 168 of the SOC and says further that:

(a) Brereton signed each of the Further Delta HoldCo Customer Endorsements after 30 June 2019, as follows:

(i) on 17 July 2019, Brereton signed Customer Endorsement 1(i) and backdated it to 11 July 2019;

(ii) on 20 November 2019, Brereton signed Customer Endorsement 1(ii) and backdated it to 14 November 2019;

(iii) on 19 December 2019, Brereton signed Customer Endorsement 1(iii) and backdated it to 13 December 2019;

(iv) on 31 July 2019, Brereton signed Customer Endorsement 2(i) and backdated it to 11 July 2019;

(v) on 20 November 2019, Brereton signed Customer Endorsement 2(ii) and backdated it to 14 November 2019;

(vi) on 19 December 2019, Brereton signed Customer Endorsement 2(iii) and backdated it to 13 December 2019;

(vii) on 17 July 2019, Brereton signed Customer Endorsement 3(i) and backdated it to 11 July 2019;

(viii) on 20 November 2019, Brereton signed Customer Endorsement 3(ii) and backdated it to 14 November 2019;

(ix) on 19 December 2019, Brereton signed Customer Endorsement 3(iii) and backdated it to 13 December 2019;

(x) on 17 July 2019, Brereton signed Customer Endorsement 4(i) and backdated it to 11 July 2019;

(xi) on 20 November 2019, Brereton signed Customer Endorsement 4(ii) and backdated it to 14 November 2019;

(xii) on 19 December 2019, Brereton signed Customer Endorsement 4(iii) and backdated it to 13 December 2019;

(b) it repeats paragraphs 97(b) to 97(f) of this Defence;

(c) the terms of each of the Further Delta HoldCo Customer Endorsements were authored by or on behalf of the purported "Insured" and at no stage did IAL agree to, or hold out that it adopted, those words;

(d) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into any of the Further Delta HoldCo Customer Endorsements because:

(i) each of the Further Delta HoldCo Customer Endorsements was signed by Brereton on behalf of BCC after 30 June 2019, after BCC ceased to have authority to act for IAL as referred to in paragraph 97(b) of this Defence;

(ii) the authority given by IAL to BCC and Brereton did not include an authority to enter into Policy 5369 and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL; and

(iii) for each of the reasons referred to in paragraph 66A of this Defence as to why BCC and Brereton did not have authority to enter into Policy 5369, BCC and Brereton also did not have authority to issue endorsements under Policy 5369;

(iv) leaving aside the date on which they were executed, BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and each of the Further Delta HoldCo Customer Endorsements was in any event beyond authority because they:

(A) materially altered the scope of the risk of the insurer under Policy 5369 (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of Policy 5369;

(B) were not mid-term alterations within the scope of the authority from IAL of each of BCC and Brereton; and

(C) if they were otherwise capable of constituting mid-term alterations, such alterations were not consistent with prudent underwriting judgment and were therefore beyond authority;

Particulars

For example, the matters in paragraph 168(d)(v) of this Defence.

(v) the amendments purportedly made by each of the Further Delta HoldCo Customer Endorsements (if valid and effective, which is denied):

(A) benefited Greensill Bank;

(B) gave no benefit, commercial or otherwise, to IAL; and

(C) had no commercial or other legitimate justification;

(vi) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL prior to 1 July 2019, that authority was limited to the Approved Endorsements referred to in paragraph 8(i) of this Defence, and each of the Further Delta HoldCo Customer Endorsements (if valid and effective, which is denied) was not an Approved Endorsement;

(vii) each of the Further Delta HoldCo Customer Endorsements purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia, contrary to the authority of BCC and Brereton;

(viii) each of the Further Delta HoldCo Customer Endorsements did not have a maximum tenor (this being admitted by the Applicants in paragraph 190(e) of the SOC), and by implication meant credit terms could exceed 180 days, being the maximum credit term specified in the applicable Underwriting Manual Version 3.0;

(ix) the indemnity limit in each of the Further Delta HoldCo Customer Endorsements was 100%, which was above the maximum indemnity

limit of 95% of Debt specified in the applicable Underwriting Manual Version 3.0;

(x) the customer limit in each of the Further Delta HoldCo Customer Endorsements, alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under Policy 5369;

(A) exceeded the AUD50 million policy limit specified in Underwriting Manual Version 3.0;

(B) exceeded the Buyer Group limit v 3.0;

(C) exceeded 95% of the AUD Binder Limit (of AUD50 million) for policies issued in a foreign currency as specified in Underwriting Manual Version 3.0;

(e) by reason of the matters in paragraph 168(a), 168(c) and 168(d) of this Defence, and each of them individually, each of the Further Delta HoldCo Customer Endorsements was invalid, of no effect and not binding on or enforceable as against IAL;

(f) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute each of the Further Delta HoldCo Customer Endorsements:

(i) each of the Further Delta HoldCo Customer Endorsements purported to vary Policy 5369;

(ii) clause 15.3(a) of Policy 5369 provided that any variation of Policy 5369 could only be effected in writing signed by or on behalf of each party;

(iii) each of the Further Delta HoldCo Customer Endorsements was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of Policy 5369;

(iv) the purported insureds, Greensill Bank and GCPL, failed to pay any premium in respect of each of the Further Delta HoldCo Customer Endorsements;

(v) the purported insureds, Greensill Bank and GCPL, failed to provide any consideration for each of the Further Delta HoldCo Customer Endorsements;

(vi) any Customer Endorsements issued under Policy 5369 must specify a premium rate expressed as a percentage premium rate (Appendix 1 of Policy 5369);

(vii) each of the Further Delta HoldCo Customer Endorsements did not specify a premium rate expressed as a percentage premium rate, rather was a fixed amount expressed as "EURO 1.00 (one)";

(viii) each of the Further Delta HoldCo named alongside "Customer Name" was not a "debtor in respect of a Debt" for the purposes of the definition of "Customer" in Policy 5369;

(ix) any power to issue endorsements under Policy 5369 did not authorise the issuing of endorsements purporting to operate retrospectively;

(x) each of the Further Delta HoldCo Customer Endorsements purported to operate retrospectively;

(xi) by reason of the matters in:

(A) paragraphs 168(f)(i) to (iii) of this Defence;

(B) paragraphs 168(f)(iv) and (v) of this Defence;

(C) paragraphs 168(f)(vi) and (vii) of this Defence;

(D) paragraph 168(f)(viii) of this Defence; and

(E) paragraphs 168(f)(ix) and (x) of this Defence,

each of the Further Delta HoldCo Customer Endorsements is invalid, of no effect and not binding on or enforceable as against IAL;

(g) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) the Further Delta HoldCo Customer Endorsements had been issued; and

(ii) the Further Delta HoldCo Customer Endorsements had been purportedly issued in breach of the IAL AAR Agreement and applicable Underwriting Manual Version 3.0 and were inconsistent with the Approved Endorsements;

(h) executing each of the Further Delta HoldCo Customer Endorsements was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 168(a) to (g) of this Defence.

(i) the authority given by IAL to Brereton did not include an authority to enter into each of the Further Delta HoldCo Customer Endorsements because entering into these endorsements was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 168(a) to (g) of this Defence.

(j) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into each of the Further Delta HoldCo Customer Endorsements on behalf of IAL;

Particulars

The particulars under paragraph 89(j) of this Defence.

(k) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute any of the Further Delta HoldCo Customer Endorsements, they operated only prospectively, from the date Brereton signed each of the Further Delta HoldCo Customer Endorsements, and applied only in relation to Assets acquired after each date on which the endorsement was signed (if any).

168A As to paragraph 168A of the SOC, IAL:

(a) repeats paragraph 168 of this Defence; and

(b) repeats, in answer to the whole of paragraph 168A of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Further Delta HoldCo Customer Endorsements and their conduct referred to in paragraph 168A of the SOC; and

(c) denies paragraph 168A of the SOC.

168B As to paragraph 168B of the SOC, IAL:

(a) repeats paragraphs 85 and 168 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 168B of the SOC.

169 As to paragraph 169 of the SOC, IAL:

(a) repeats paragraph 168 of this Defence; and

(b) denies paragraph 169 of the SOC.

E13 The Delta IPUs were each a "Debt" within the meaning of Policy 5369

Debt Endorsement

170 IAL denies paragraph 170 of the SOC and says further that:

(a) on 25 June 2019, Brereton signed the Debt Endorsement referred to in paragraph 170 of the SOC (also referred to as Debt Endorsement 1 in this Defence); and

(b) it repeats the matters in paragraph 89 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Debt Endorsement.

171 IAL repeats paragraph 170 of this Defence and otherwise denies paragraph 171 of the SOC.

171A As to paragraph 171A of the SOC, IAL:

(a) repeats paragraph 170 of this Defence; and

(b) repeats, in answer to the whole of paragraph 171A of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Debt Endorsement and their conduct referred to in paragraph 171A of the SOC; and

(c) denies paragraph 171A of the SOC.

172 IAL repeats paragraph 170 of this Defence and otherwise denies paragraph 172 of the SOC.

173 As to paragraph 173 of the SOC, IAL:

(a) repeats paragraph 104F of this Defence; and

(b) otherwise denies paragraph 173 of the SOC.

174 As to paragraph 174 of the SOC, IAL:

(a) repeats paragraph 104F of this Defence; and

(b) otherwise denies paragraph 174 of the SOC.

175 As to paragraph 175 of the SOC, IAL:

(a) repeats paragraph 104F of this Defence;

(b) says that, on the proper construction of Part B of the Debt Endorsement, an agreement was a "Receivables Purchase Agreement" if it met the description

set out in the definition of "Receivables Purchase Agreement" in Part B of Debt Endorsement 1;

(c) says that, on the proper construction of Part B of the Debt Endorsement, in order for a debt to be a "Debt", it must be owing under an agreement which was a "Receivables Purchase Agreement":

(i) at the time the agreement was entered into;

(ii) at the time the debt became payable; and

(iii) at the time the relevant "Asset" was acquired by the "Insured";

(d) says that, it is not the case that, on the proper construction of Part B of the Debt Endorsement, an agreement is a "Receivables Purchase Agreement" merely because two third parties to the Debt Endorsement (such as GCUK and a Delta HoldCo) intended the agreement to be a "Receivables Purchase Agreement"; and

(e) otherwise denies paragraph 175 of the SOC.

176 As to paragraph 176 of the SOC, IAL:

(a) repeats paragraphs 104F and 170-175 of this Defence; and

(b) otherwise, denies paragraph 176 of the SOC.

Limit Endorsement

176A As to paragraph 176A of the SOC, IAL:

(a) repeats paragraph 177 of this Defence; and

(b) denies paragraph 176A of the SOC.

177 IAL denies paragraph 177 of the SOC and says further that:

(a) the Limit Endorsement referred to in paragraph 177 of the SOC:

(i) has an "endorsement effective date" of 14 November 2019; and

(ii) was not dated by Brereton when he signed it, therefore IAL does not know whether Brereton backdated this endorsement;

(b) it repeats the matters in paragraph 97 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Limit Endorsement, save for paragraphs 97(i)(i)(C) and 97(p);

(c) prior to 1 July 2019 and thereafter, BCC and Brereton did not have any authority to write policies with limits:

(i) in excess of AUD50 million;

(ii) in excess of the Buyer Group limit v 3.0;

(iii) which were in excess of 95% of the AUD Binder Limit (of AUD 50 million) where the policy is issued in a foreign currency,

but the Limit Endorsement purported to increase the maximum limit of liability under Policy 5369 to Euro 2,422,222,222, which was well in excess of each of those limits;

(d) by reason of each of the matters in paragraph 177(c) of this Defence, the Limit Endorsement is invalid, of no effect and not binding on or enforceable as against IAL;

(e) if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute the Limit Endorsement:

(i) the only types of endorsement contemplated or permitted by Policy 5369 were Customer Endorsements and Debt Endorsements, and the Limit Endorsement was not an endorsement of those kinds;

(ii) the power to issue endorsements under Policy 5369 did not authorise the issuing of endorsements to increase the policy limit; and

(iii) by reason of the matters in paragraphs 177(c)(i) of this Defence, the Limit Endorsement is invalid, of no effect and not binding on or enforceable against IAL.

177A As to paragraph 177A of the SOC, IAL:

(a) repeats paragraphs 176A and 177 of this Defence; and

(b) repeats, in answer to the whole of paragraph 177A of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Limit Endorsement and their conduct referred to in paragraph 177A of the SOC; and

(c) denies paragraph 177A of the SOC.

177B As to paragraph 177B of the SOC, IAL:

(a) repeats paragraphs 85, 176A and 177 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 177B of the SOC.

178 As to paragraph 178 of the SOC, IAL:

(a) repeats paragraph 177 of this Defence;

(b) refers to the text of the Limit Endorsement (if valid, which is denied) for its full force and effect; and

(c) otherwise denies paragraph 178 of the SOC.

Account Debtors endorsed as Customers under Policy 5369

179 IAL denies paragraph 179 of the SOC and says further that:

(a) it repeats paragraphs **Error! Reference source not found.**66A and 104F of this Defence;

(b) the document referred to in paragraph 1 of the particulars under paragraph 179 of the SOC purports to operate retrospectively by the handwritten notation "17/7/2019 Limits as agreed in policy inception 28/6/2019" (**Collective Endorsement 17/7/19**);

(c) paragraph (iii) in the definition of "Customer Endorsement" in Policy 5369 (if valid and effective, which is denied) states "(iii) other data available recording and/or showing insurance limits relevant to this Policy";

(d) the documents referred to the particulars under paragraph 179 of the SOC, which are defined as "**Collective Endorsements**" in the SOC:

(i) are in the form of tables;

(ii) do not refer to any insurance policy;

(iii) do not refer to IAL; and

(iv) do not specify that the tables were purportedly issued on behalf of IAL;

(e) it denies that the Collective Endorsements constitute "Customer Endorsements";

(f) if any of the Collective Endorsements constitute Customer Endorsements (which is denied), then it:

(i) repeats the matters in paragraph 168(a) to 168(k) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Collective Endorsements:

(A) save for paragraphs 168(d)(ix), 168(f)(viii) to (x) and 168(f)(xi)(D) and (E);

(B) save that paragraph 168(f)(vii) is replaced with: "each of the Collective Endorsements did not specify a premium rate at all";

(ii) says that, each of the Collective Endorsements did not specify a maximum indemnity limit as required by Underwriting Manual Version 3.0 and therefore each was invalid, of no effect and not binding on or enforceable against IAL; and

(iii) says further that Collective Endorsement 17/7/19 is invalid, of no effect and not binding on or enforceable as against IAL because any power to issue endorsements under Policy 5369 did not authorise the issuing of endorsements purporting to operate retrospectively, but Collective Endorsement 17/7/19 purported to operate retrospectively;

179A As to paragraph 179A of the SOC, IAL:

(a) repeats paragraph 179 of this Defence; and

(b) repeats, in answer to the whole of paragraph 179A of the SOC, the matters in paragraph 85 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Collective Endorsements and their conduct referred to in paragraph 179A of the SOC; and

(c) denies paragraph 179A of the SOC.

179B As to paragraph 179B of the SOC, IAL:

(a) repeats paragraphs 85 and 179 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 179B of the SOC.

180 As to paragraph 180 of the SOC, IAL:

(a) refers to paragraph 73 of this Defence;

(b) says that, it is not alleged that the letters were sent by or on behalf of IAL;

(c) says that, the particularised letters, read together, relevantly stated that BCC confirmed the availability of the limits referred to in Policy 5369;

(d) says that, the limits referred to in Policy 5369 did not include the "Customer Limits" for the "Customers" under Policy 5369;

(e) says that, the particularised letters did not confirm the "Customer Limit" for the "Customers" under Policy 5369 as at 31 October 2019 or as at any time; and

(f) otherwise denies paragraph 180 of the SOC.

180A As to paragraph 180A of the SOC, IAL:

(a) repeats paragraph 180 of this Defence; and

(b) repeats, in answer to the whole of paragraph 180A of the SOC, the matters in paragraph 85 of this Defence; and

(c) denies paragraph 180A of the SOC.

180B As to paragraph 180B of the SOC, IAL:

(a) repeats paragraphs 85 and 180 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 180B of the SOC.

The Delta IPUs and the Guaranteed Obligations were Debts under Policy 5369

181 As to paragraph 181 of the SOC, IAL:

(a) repeats paragraphs 123-125 and 142-151of this Defence; and

(b) otherwise denies paragraph 181 of the SOC.

182 As to paragraph 182 of the SOC, IAL:

(a) repeats paragraphs 104F and 165-175 of this Defence; and

(b) otherwise denies paragraph 182 of the SOC.

183 As to paragraph 183 of the SOC, IAL:

(a) repeats paragraphs 104F and 170-175 of this Defence; and

(b) otherwise denies paragraph 183 of the SOC.

184 As to paragraph 184 of the SOC, IAL:

(a) repeats paragraphs 104F and 181-183 of this Defence; and

(b) otherwise denies paragraph 184 of the SOC.

185 As to paragraph 185 of the SOC, IAL:

(a) repeats paragraphs 104F, 123-128 and 142-151 of this Defence; and

(b) otherwise, denies paragraph 185 of the SOC.

186 As to paragraph 186 of the SOC, IAL:

(a) repeats paragraphs 104F and 165-169 of this Defence; and

(b) otherwise denies paragraph 186 of the SOC.

187 As to paragraph 187 of the SOC, IAL:

(a) repeats paragraphs 104F, 123-128 and 142-151 of this Defence; and

(b) otherwise denies paragraph 187 of the SOC.

188 As to paragraph 188 of the SOC, IAL:

(a) repeats paragraph 104F of this Defence; and

(b) otherwise denies paragraph 188 of the SOC.

189 As to paragraph 189 of the SOC, IAL:

(a) repeats paragraphs 104F and 185-188 of this Defence; and

(b) otherwise denies paragraph 189 of the SOC.

190 As to paragraph 190 of the SOC, IAL:

(a) repeats paragraphs 104F and 184-189 of this Defence;

(b) says that, it puts the Applicants to proof of each fact alleged in paragraph 190; and

(c) otherwise denies paragraph 190 of the SOC.

191 As to paragraph 191 of the SOC, IAL:

(a) repeats paragraphs 104E and 128 of this Defence; and

(b) otherwise denies paragraph 191 of the SOC.

192 As to paragraph 192 of the SOC, IAL:

(a) repeats paragraphs 104E and 168-169 of this Defence; and

(b) otherwise denies paragraph 192 of the SOC.

193 As to paragraph 193 of the SOC, IAL:

(a) repeats paragraphs 104E and 128 of this Defence; and

(b) otherwise denies paragraph 193 of the SOC.

194 As to paragraph 194 of the SOC, IAL:

(a) repeats paragraphs 104E and 128 of this Defence; and

(b) otherwise denies paragraph 194 of the SOC.

195 As to paragraph 195 of the SOC, IAL:

(a) repeats paragraphs 104F and 191-194 of this Defence; and

(b) otherwise denies paragraph 195 of the SOC.

196 As to paragraph 196 of the SOC, IAL:

(a) repeats paragraphs 104F and 191-195 of this Defence; and

(b) says that, it puts the Applicants to proof of each fact alleged in paragraph 196; and

(c) otherwise denies paragraph 196 of the SOC.

E14 Payment Default by the Delta HoldCos and Liberty House

197 As to paragraph 197 of the SOC, IAL:

(a) refers to the terms of the particularised letters for their full force and effect;

(b) says that, the particularised letters do not establish either the existence of the alleged debts or any failure to pay them; and

(c) otherwise, does not know and cannot admit paragraph 197 of the SOC.

198 As to paragraph 198 of the SOC, IAL:

(a) refers to the terms of the particularised letters for their full force and effect; and

(b) otherwise does not know and cannot admit paragraph 198 of the SOC.

199 As to paragraph 199 of the SOC, IAL:

(a) says that, the consequence pleaded in paragraph 199 does not follow from the matters pleaded in paragraphs 197-198 (which plead the sending of letters, as distinct from material facts capable of establishing the truth of the matters represented in those letters or the matters alleged in paragraph 199);

(b) says that, it puts the Applicants to proof of all matters necessary for the alleged existence and maturing of all obligations set out in Annexure A of the SOC; and

(c) otherwise does not know and cannot admit paragraph 199 of the SOC.

200 As to paragraph 200 of the SOC, IAL:

(a) says that, the giving of the notification alleged in paragraph 200 (if it occurred) does not establish either the existence of debts or the failure to pay them; and

(b) otherwise does not know and cannot admit paragraph 200 of the SOC.

201 As to paragraph 201 of the SOC, IAL:

(a) refers to the text of the letter particularised at AGB.0004.0001.4433 for its full force and effect (if any); and

(b) otherwise denies paragraph 201 of the SOC.

202 As to paragraph 202 of the SOC, IAL:

(a) refers to the terms of the particularised letters for their full force and effect; and

(b) otherwise does not know and cannot admit paragraph 202 of the SOC.

203 As to paragraph 203 of the SOC, IAL:

(a) refers to the terms of the particularised letters for their full force and effect; and

(b) otherwise does not know and cannot admit paragraph 203 of the SOC.

204 As to paragraph 204 of the SOC, IAL:

(a) refers to the terms of the particularised letter for its full force and effect; and

(b) otherwise does not know and cannot admit paragraph 204 of the SOC.

205 IAL does not know and cannot admit paragraph 205 of the SOC.

206 As to paragraph 206 of the SOC, IAL:

(a) repeats paragraphs 104E-104H and 197-205 of this Defence;

(b) says that, the matters pleaded at 197-205 of the SOC do not and are not capable of establishing the matters alleged in paragraph 206; and

(c) otherwise denies paragraph 206 of the SOC.

E15 Notification and claim by Greensill Bank under Policy 5369

207 As to paragraph 207 of the SOC, IAL:

(a) says that, at times presently unknown to IAL, an administrator of GCUK appears to have sent letters to BCC, copied to Marsh and bearing the dates listed in paragraph 207 of the SOC;

(b) admits that each letter contains the statement, "Please be informed that we have become aware of a Potential Loss in respect of each Customer detailed in the appendix to this notice";

(c) says that, a "Potential Loss" within the meaning of Policy 5369 is "an Asset in relation to which the Insured has actual knowledge of facts by reason of a disclosure of information to them under the Transaction Documents or from publicly available information which has come to their attention, leading them actually to believe that either (a) the Customer will become Insolvent prior to the Due Date of the next maturing Eligible Debt owing from such Customer or within 30 days thereafter or (b) the Customer will fail to pay on such Due Date or within ten (10) London Business Days thereafter";

(d) repeats paragraphs 104E and 104F of this Defence;

(e) puts the Applicants to proof of all necessary conditions for the existence of a "Potential Loss" at the time of each alleged notification; and

(f) otherwise denies paragraph 207 of the SOC.

208 As to paragraph 208 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, a representative of Greensill Bank appears to have prepared a letter styled, "Potential loss for policies TB-03690, TB-05369 with BCC Trade Credit PTY LTD, Corporate Authorised Representative of Insurance Australia Ltd", addressed to representatives of Marsh and marked with a date of "03.03.2021";

(b) admits that the document contains the following statements:

(i) "We have concerns about the capacity of all customers belonging to the… Gupta group to pay on due date the next maturing Eligible Debt"; and

(ii) "we will stop the further acquisition of Assets relating to Eligible Debts and Eligible Customers previously insured under such Policy";

(c) repeats paragraphs 104E and 104F of this Defence;

(d) puts the Applicants to proof of all necessary conditions for the existence of a "Potential Loss" at the time of each alleged notification; and

(e) otherwise denies paragraph 208 of the SOC.

209 As to paragraph 209 of the SOC, IAL:

(a) says that, at a time presently unknown to IAL, representatives of Greensill Bank appear to have prepared letters styled "Disclosure of Potential Loss", addressed to BCC, and variously dated 18 March 2021, 29 March 2021, 1 April 2021, 9 April 2021, 16 April 2021, 23 April 2021;

(b) says that, at a time presently unknown to IAL, representatives of CMS Hasche Sigle appear to have prepared letters styled "Disclosure of Potential Loss BCC TB-05369", addressed to BCC and expressed to be prepared on behalf of Greensill Bank's insolvency administrator, and variously dated 30 April 2021, 7 May 2021, 14 May 2021, 21 May 2021, 28 May 2021, 4 June 2021 and 10 June 2021;

(c) repeats paragraphs 104E and 104F of this Defence;

(d) puts the Applicants to proof of all necessary conditions for the existence of a "Potential Loss" at the time of each alleged notification; and

(e) otherwise denies paragraph 209 of the SOC.

210 As to paragraph 210 of the SOC, IAL:

(a) admits that on or about 28 February 2022, CMS Hasche Sigle as representative of Greensill Bank's insolvency administrator sent representatives of IAL a document styled 'Comprehensive Trade Credit Insurance Policy Claim Form', under cover of correspondence that was also addressed to BCC; and

(b) otherwise denies paragraph 210 of the SOC.

211 As to paragraph 211 of the SOC, IAL:

(a) repeats paragraphs 104E, 104F and 104H of this Defence; and

(b) otherwise denies paragraph 211 of the SOC.

212 As to paragraph 212 of the SOC, IAL:

(a) repeats paragraph 104H of this Defence;

(b) says that, it puts the Applicants to proof of all necessary conditions for the arising of a "Loss" at all, and in the amount alleged;

(c) if and to the extent that IAL has any liability at all to indemnify Greensill Bank (which is denied), its liability will be reduced by the amount of any losses recovered by Greensill Bank, including any amounts recovered pursuant to any restructuring and settlement agreement entered into pursuant to the term sheet

dated 25 April 2023 and signed by Sanjeev Gupta and the Delta HoldCos (as to which, IAL refers to paragraph 319(c) below); and

(d) otherwise denies paragraph 212 of the SOC.

F CLAIMS

F1 Breach of Policy 5369 by Insurer

213 As to paragraph 213 of the SOC, IAL:

(a) admits that it has not indemnified Greensill Bank under Policy 5369;

(b) says that, Greensill Bank is not entitled to indemnity under Policy 5369; and

(c) otherwise denies paragraph 213 of the SOC.

214 As to paragraph 214 of the SOC, IAL:

(a) admits it has not paid the amount pleaded in paragraph 214 of the SOC;

(b) says that, if Greensill Bank is entitled to an indemnity under Policy 5369 (which is denied) it was not (and is not) unreasonable for IAL to withhold payment in circumstances where Greensill Bank has failed (and continues to fail) to provide material to IAL to support its claim;

Particulars

By letters dated 15 March 2022 and 13 May 2022**,** written without prejudice to IAL's authority defence, the solicitors for IAL, Clyde & Co, wrote to the solicitors for Greensill Bank, CMS Hasche Sigle and Quinn Emanuel respectively, requesting information in support of the claim for indemnity. Greensill Bank has not provided any of the information requested (IAL.500.002.4746; IAL.500.002.5608).

(c) says that, Greensill Bank is not entitled to an award of interest under section 57 of the *ICA*; and

(d) otherwise denies paragraph 214 of the SOC.

F1A Misleading or deceptive conduct by IAL

The 2017 LOS Authority Representations

214A In answer to paragraph 214A of the SOC, IAL:

(a) repeats paragraphs 40, 83O and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 83G to 83N and 84) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2017 LOS Master Policy and 2017 LOS Parallel Policy were not communicated to IAL; and

(e) otherwise denies the paragraph.

214B IAL denies paragraph 214B of the SOC.

214C IAL denies paragraph 214C of the SOC.

2018 Excess Policy Representations

214D In answer to paragraph 214D of the SOC, IAL:

(a) repeats paragraphs 40, 83O, 83X and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 83G to 83N, 83P to 83W and 84) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2018 Master Excess Policy and 2018 Parallel Excess Policy were not communicated to IAL; and

(e) otherwise denies the paragraph.

214E IAL denies paragraph 214E of the SOC.

214F IAL denies paragraph 214F of the SOC.

Sub-Direct Policy Authority Representations

214G In answer to paragraph 214G of the SOC, IAL:

(a) repeats paragraphs 40, 83O, 83X, 83AG and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 83G to 83N, 83P to 83W, 83Y to 83AF and 84) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the Sub-Direct Master Policy and Sub-Direct Parallel Policy were not communicated to IAL; and

(e) otherwise denies the paragraph.

214H IAL denies paragraph 214H of the SOC.

214I IAL denies paragraph 214I of the SOC

2017 Standalone Policy Representations

214J In answer to paragraph 214J of the SOC, IAL:

(a) repeats paragraphs 40, 83O, 83X, 83AG, 83AP and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 83G to 83N, 83P to 83W, 83Y to 83AF, 83AH to 83AO and 84) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 were not communicated to IAL; and

(e) denies the paragraph.

214K IAL denies paragraph 214K of the SOC.

214L IAL denies paragraph 214L of the SOC.

2018 LOS Policy Representations

214M In answer to paragraph 214M of the SOC, IAL:

(a) repeats paragraphs 40, 83O, 83X, 83AG, 83AP, 83AY and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 83G to 83N, 83P to 83W, 83Y to 83AF, 83AH to 83AO, 83AQ to 83AX and 84) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2018 LOS Policies were not communicated to IAL; and

(e) otherwise denies the paragraph.

214N IAL denies paragraph 214N of the SOC.

214O IAL denies paragraph 214O of the SOC.

Nokia Policy Representations

214P In answer to paragraph 214P of the SOC, IAL:

(a) repeats paragraphs 40, 83O, 83X, 83AG, 83AP, 83AY, 83AZ, 83BH and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 83G to 83N, 83P to 83W, 83Y to 83AF, 83AH to 83AO, 83AQ to 83AX, 83AZ to 83BG and 84) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the Nokia Master Policy and Nokia Parallel Policy were not communicated to IAL; and

(e) otherwise denies the paragraph.

214Q IAL denies paragraph 214Q of the SOC.

214R IAL denies paragraph 214R of the SOC.

2019 Excess Policy Requirements

214S In answer to paragraph 214S of the SOC, IAL:

(a) repeats paragraphs 40, 83O, 83X, 83AG, 83AP, 83AY, 83AZ, 83BH, 83BQ and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40 and 84, 83G to 83N, 83P to 83W, 83Y to 83AF, 83AH to 83AO, 83AQ to 83AX, 83AZ to 83BG, and 83BI to 83BP) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of Master Policy 3087 and Parallel Policy 3088 were not communicated to IAL; and

(e) otherwise denies the paragraph.

214T IAL denies paragraph 214T of the SOC.

214U IAL denies paragraph 214U of the SOC.

The 2019 Standalone Policy Representations

214V In answer to paragraph 214V of the SOC, IAL:

(a) repeats paragraphs 40, 83O, 83X, 83AG, 83AP, 83AY, 83AZ, 83BH, 83BQ, 83CA and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 83G to 83N, 83P to 83W, 83Y to 83AF, 83AH to 83AO, 83AQ to 83AX, 83AZ to 83BG, 83BI to 83BP, 83BR to 83BZ and 84) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the 2019 Master Policy 3691 and the 2019 Parallel Policy 3690 were not communicated to IAL; and

(e) otherwise denies the paragraph.

214W IAL denies paragraph 214W of the SOC.

214X IAL denies paragraph 214X of the SOC.

The Delta Policy Representations

214Y In answer to paragraph 214Y of the SOC, IAL:

(a) repeats paragraphs 40, 81, 83, 83O, 83X, 83AG, 83AP, 83AY, 83AZ, 83BH, 83BQ, 83CA, 83CC and 84 of this Defence;

(b) says that the paragraph does not identify the person or persons to whom the representations were allegedly made;

(c) says that the identified paragraphs from the SOC (viz, 40, 81, 83, 83G to 83N, 83P to 83W, 83Y to 83AF, 83AH to 83AO, 83AQ to 83AX, 83AZ to 83BG, 83BI to 83BP, 83BR to 83BZ and 83CB) variously contain allegations as to:

(i) conduct of Brereton (not IAL);

(ii) conduct of BCC (not IAL);

(iii) conduct of Greensill Bank, GCPL and/or GCUK (not IAL);

(iv) the status of BCC (not IAL);

(v) conduct of IAL which is not said to have been known to any identified person, including the Applicant; and

(d) says that at all material times:

(i) IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(ii) the wording and structure of the Policy 5369 and Policy 5370 were not communicated to IAL; and

(e) otherwise denies the paragraph.

214Z IAL denies paragraph 214Z of the SOC.

214AA IAL denies paragraph 214AA of the SOC.

NMC Claim Payment Representations

214AB IAL denies paragraph 214AB of the SOC.

214AC IAL denies paragraph 214AC of the SOC.

214AD IAL denies paragraph 214AD of the SOC.

214AE IAL denies paragraph 214AE of the SOC.

214AF IAL denies paragraph 214AF of the SOC.

Misleading or Deceptive Conduct

214AG IAL denies paragraph 214AG of the SOC and in respect of:

(a) the "2017 LOS Policy Authority Representations", refers to and repeats paragraphs 214A to 214C of this Defence;

(b) the "2018 Excess Policy Authority Representations", refers to and repeats paragraphs 214D to 214F of this Defence;

(c) the "Sub-Direct Policy Authority Representations", refers to and repeats paragraphs 214G to 214I of this Defence;

(d) the "2017 Standalone Policy Authority Representations" refers to and repeats paragraphs 214J to 214L of this Defence;

(e) the "2018 LOS Policy Authority Representations", refers to and repeats paragraphs 214M to 214O of this Defence;

(f) the "Nokia Policy Authority Representations", refers to and repeats paragraphs 214P to 214R of this Defence;

(g) the "2019 Excess Policy Authority Representations", refers to and repeats paragraphs 214S to 214U of this Defence;

(h) the "2019 Standalone Policy Authority Representations", refers to and repeats paragraphs 2142V to 214X of this Defence;

(i) the "Delta Policy Authority Representations", refers to and repeats paragraphs 214Y to 214AA of this Defence;

(j) the "NMC Claim Payment Representations", refers to and repeats paragraphs 214AB to 214AF of this Defence; and

(k) the omissions pleaded by the Applicants at paragraphs 214C, 214F, 214I, 214L, 214O, 214R, 214U, 214X, 214AA and 214AF of the SOC, refers to and repeats paragraphs 214C, 214F, 214I, 214L, 214O, 214R, 214U, 214X, 214AA and 214AF of this Defence.

214AH As to paragraph 214AH of the SOC, IAL:

(a) repeats paragraphs 5(d), 8, 66A, 83 and 84 of this Defence;

(b) as to sub-paragraph (a), repeats paragraphs 83G to 83O of this Defence;

(c) as to sub-paragraph (b), repeats paragraphs 83P to 83X of this Defence;

(d) as to sub-paragraph (c), repeats paragraphs 83Y to 83AG of this Defence;

(e) as to sub-paragraph (d):

(i) says that this sub-paragraph refers to a "2018 Parallel Policy 3690", which is not defined in the SOC;

(ii) to the extent the sub-paragraph is intended to be a reference to the "2017 Parallel Policy 3690" defined at paragraph 83AH of the SOC, repeats paragraphs 83AH to 83AP of this Defence;

(f) as to sub-paragraph (e), repeats paragraphs 83AQ to 83AY of this Defence;

(g) as to sub-paragraph (f), repeats paragraphs 83AZ to 83BH of this Defence;

(h) as to sub-paragraph (g), repeats paragraphs 83BI to 83BQ of this Defence;

(i) as to sub-paragraph (h), repeats paragraphs 83BR to 83CA of this Defence; and

(j) insofar as the Applicants seek to rely on IAL establishing that each of the policies referred to in paragraph 214AH of the SOC was entered into by BCC without IAL's authority and/or IAL did not believe on reasonable grounds that they were entered into with IAL's authority in order to support the Applicants' claims against IAL at Part F1A of the SOC, denies the paragraph.

214AI IAL denies paragraph 214AI of the SOC and repeats and refers to paragraphs 5(d), 8, 66A of this Defence.

214AJ IAL denies paragraph 214AJ of the SOC and repeats and refers to paragraphs 5(d), 8, 66A, 83O, 83X, 83AG, 83AP, 83AY, 83BH, 83BQ and 83CA of this Defence and says further that no material facts establishing the alleged reasonable expectation are pleaded.

214AK IAL denies paragraph 214AK of the SOC, repeats and refers to paragraphs 5(d), 8, 66A, 83G, 83P, 83Y, 83AH, 83AQ, 83AZ, 83BI, 83BR and 83BS of this Defence.

Causation and Loss

214AL As to paragraph 214AL of the SOC, IAL:

(a) says that there is:

(i) no allegation of the time at which GCUK was allegedly aware of these matters;

(ii) no identification of the individual or individuals at GCUK who were allegedly aware of the identified matters;

(iii) no identification of the facts, matters and circumstances relied on to allege GCUK's awareness; and

(b) denies the paragraph.

214AM As to paragraph 214AM of the SOC, IAL:

(a) says that:

(i) it understands the Applicants' case to be that the alleged inducement is established solely by the matter alleged in paragraph 214AL;

(ii) there is no identification of the individual or individuals who were allegedly induced by the Misleading Authority Representations and/or Misleading Authority Omissions to propose to BCC the instruments pleaded at paragraph 215 of the SOC; and

(b) denies the paragraph.

214AN As to paragraph 214AN of the SOC, IAL:

(a) says that there is no:

(i) identification of the individual or individuals at Greensill Bank who were allegedly aware of the identified matters;

(ii) identification of the facts, matters and circumstances relied on to allege Greensill Bank's awareness;

(b) says that there is no identification of the matter or matters said to have induced Greensill Bank to enter into the instruments pleaded at paragraph 215 of the SOC and to acquire the Delta IPUs, or which individual or individuals at Greensill Bank were so induced; and

(c) denies the paragraph.

214AO IAL denies paragraph 214AO of the SOC and says further that the allegation does not identify who at GCUK and Greensill Bank was responsible for making the decisions which, allegedly, would not have been made but for the alleged conduct.

214AP As to paragraph 214AP of the SOC, IAL:

(a) denies paragraph 214AP and repeats paragraphs 214AL to 214AO of this Defence; and

(b) says further that, to the extent IAL is liable for the loss or damage as alleged paragraph 214AP of the SOC (which is denied) it refers to and repeats paragraph 322 of this defence.

F2 Claims against BCC

Breach of Warranty of Authority

215 Save to repeat that, for the reasons set out in paragraphs 5(d), 8 and **Error! Reference source not found.**66A of this Defence, it denies that BCC or Brereton had the authority of IAL to enter into the instruments pleaded at paragraph 215 of the SOC, IAL does not know and cannot admit paragraphs 215 to 219 of the SOC, which do not make allegations against it.

216-219 [Not used].

219A As to paragraph 219A of the SOC, IAL:

(a) repeats paragraphs 85(a) to 85(k) of this Defence;

(b) further repeats paragraphs 97(b) to 97(c) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 219A(b) of the SOC says that the financial service the subject of the allegation in paragraph 219A(b) is not identified;

(d) denies paragraph 219A(c) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraph 215 of the SOC was conduct on which Greensill Bank could reasonably be expected to rely;

(iii) the “rel[iance]” referred to in section 917A(1)(b) is the “rel[iance]” referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 219A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 219A(c) of the SOC; and

(v) the conduct of BCC in paragraph 215 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 85(e)(v) of this Defence.

(e) denies paragraph 219A(d) of the SOC and says further that:

(i) there is no pleading as to the manner in which Greensill Bank in fact relied on the conduct referred to in paragraph 215 of the SOC or as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 219A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 219A(c) of the SOC; and

(iii) further, IAL reserves the right to rely on section 917D of the *Corporations Act* and contends that BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied); and

Particulars

Particulars under paragraphs **Error! Reference source not found.**66A(g) and 66A(i) of this Defence.

Particulars under paragraph 89(j), 97(o), 165(k) and 168(j) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 97(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) does not know and therefore cannot admit paragraph 219A(f) of the SOC; and

(g) otherwise denies paragraph 219A of the SOC.

Misleading or Deceptive Conduct

220 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, **Error! Reference source not found.**66A and 215 to 219A of this Defence, it denies that BCC or Brereton was an agent of IAL for the purposes of engaging in the alleged BCC/Brereton conduct,

IAL does not know and cannot admit paragraphs 221 to 228 of the SOC, which do not make allegations against it.

221-228 [Not used].

228A As to paragraph 228A of the SOC, IAL:

(a) repeats paragraphs 85(a) to 85(k) of this Defence;

(b) further repeats paragraphs 97(b) to 97(c) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 228A(b) of the SOC:

(i) says that the financial service the subject of the allegation in paragraph 228A(b) is not identified; and

(ii) subject to paragraphs 85(a) and 85(b) of this Defence, admits that if the conduct of BCC pleaded at paragraphs 220 to 222 of the SOC is established (which is denied), that conduct related to the provision of a financial service within the meaning of section 917A of the Corporations Act;

(d) denies paragraph 228A(c) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 220 to 222 of the SOC was conduct on which Greensill Bank could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 228A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 228A(c) of the SOC; and

(v) the conduct of BCC in paragraphs 220 to 222 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 85(e)(v) of this Defence.

(e) denies paragraph 228A(d) of the SOC and says further that:

(i) there is no pleading as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 228A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 228A(c) of the SOC; and

(iii) further, IAL reserves the right to rely on section 917D of the *Corporations Act* and contends that BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied); and

Particulars

Particulars under paragraphs ~~**Error! Reference source not found.**~~66A(g) and 66A(i) of this Defence.

Particulars under paragraph 89(j), 97(o), 165(k) and 168(j) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 97(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) does not know and therefore cannot admit paragraph 228A(f) of the SOC; and

(g) otherwise denies paragraph 228A of the SOC.

Section 1041E Claim

229 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, **Error! Reference source not found.**66A and 215 to 228A of this Defence, it denies that BCC or Brereton was authorised by IAL to make an agreement in terms of any of the documents referred to in paragraph 215 of the SOC, IAL does not know and cannot admit paragraphs 229 to 233 of the SOC, which do not make allegations against it.

230-233 [Not used].

233A As to paragraph 233A of the SOC, IAL:

(a) repeats paragraphs 85(a) to 85(k) of this Defence;

(b) further repeats paragraphs 97(b) to 97(c) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 233A(b) of the SOC says that the financial service the subject of the allegation in paragraph 233A(b) is not identified;

(d) denies paragraph 233A(c) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 229 to 231 of the SOC was conduct on which Greensill Bank could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 233A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 233A(c) of the SOC; and

(v) the conduct of BCC in paragraphs 229 to 231 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 85(e)(v) of this Defence.

(e) denies paragraph 233A(d) of the SOC and says further that:

(i) there is no pleading as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 233A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 233A(c) of the SOC;

(iii) further, IAL reserves the right to rely on section 917D of the *Corporations Act* and contends that BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied); and

Particulars

Particulars under paragraphs ~~**Error! Reference source not found.**~~66A(g) and 66A(i) of this Defence.

Particulars under paragraph 89(j), 97(o), 165(k) and 168(j) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 97(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) does not know and therefore cannot admit paragraph 233A(f) of the SOC; and

(g) otherwise denies paragraph 233A of the SOC.

F3 Claims against Greg Brereton

Breach of Warranty of Authority

234 Save to repeat that, for the reasons set out in paragraphs 5(d), 8 and **Error! Reference source not found.**66A of this Defence, it denies that BCC or Brereton had the authority of IAL to enter into the instruments pleaded at paragraph 215 of the SOC, IAL does not know and cannot admit paragraphs 234-238 of the SOC, which do not make allegations against it.

235-238 [Not used].

238A As to paragraph 238A of the SOC, IAL:

(a) repeats paragraph 219A of this Defence;

(b) does not know and therefore cannot admit paragraph 238A(f) of the SOC; and

(c) otherwise denies paragraph 238A of the SOC.

Misleading or Deceptive Conduct

239 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, **Error! Reference source not found.**66A and 234 to 238A of this Defence, it denies that BCC or Brereton was an agent of IAL for the purposes of engaging in the alleged BCC/Brereton conduct, IAL does not know and cannot admit paragraphs 239 to 247 of the SOC, which do not make allegations against it.

240-247 [Not used].

247A As to paragraph 247A of the SOC, IAL:

(a) repeats paragraph 228A of this Defence;

(b) does not know and therefore cannot admit paragraph 247A(f) of the SOC; and

(c) otherwise denies paragraph 247A of the SOC.

Section 1041E Claim

248 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, **Error! Reference source not found.**66A and 239 to 247A of this Defence, it denies that BCC or Brereton was authorised by IAL to make an agreement in terms of any of the documents referred to in paragraph 215 of the SOC, IAL does not know and cannot admit paragraphs 248 to 252 of the SOC, which do not make allegations against it.

249-252 [Not used].

252A As to paragraph 252A of the SOC, IAL:

(a) repeats paragraph 233A of this Defence;

(b) does not know and therefore cannot admit paragraph 252A(f) of the SOC; and

(c) otherwise denies paragraph 252A of the SOC.

F4 Claims against Marsh and Marsh Pty Ltd

252B-315 As to paragraphs 252B to 315, IAL:

(a) says that:

(i) insofar as the allegations refer to BCC and/or Brereton's authority to act for or on behalf of IAL (including in relation to Policy 5369), IAL refers to and repeats paragraphs 5(d), 6(e), 8, 66A, and 83 to 84 of this Defence;

(ii) insofar as the allegations refer to a "LOS Policy":

(A) this term is not defined in the SOC;

(B) IAL otherwise refers to and repeats paragraphs 83A to 83O and 66A of this Defence;

(iii) it does not plead to paragraphs 309YA to 309ZC of the SOC, which makes no allegation against IAL;

(b) says further that:

(i) the allegations concern communications between, and relations of, Marsh, Marsh Pty Ltd, BCC, Brereton and Greensill entities;

(ii) IAL was not, and is not alleged to be, a party (or a direct party) to those communications and relations;

(iii) where those paragraphs paraphrase allegations made by IAL in its Defence, repeats the allegations from its Defence and does not adopt the paraphrase;

G FURTHER ANSWER

G1 Misrepresentations and Non-Disclosures

316 In further answer to the whole of the claim, if:

(a) which is denied, IAL is bound by Policy 5369 and the pleaded endorsements; and

(b) IAL establishes the matters pleaded by IAL in Annexure A to its Defence to the SOC:

(i) pursuant to clause 15.4 of Policy 5369 or section 28(2) of the *ICA*, Policy 5369 and any endorsements under that policy are liable to be avoided and IAL hereby avoids them;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in IAL's Annexure A to its Defence to the SOC.

(ii) further or alternatively, pursuant to section 28(3) of the *ICA*, if Policy 5369 and the pleaded endorsements are not avoided, the right to indemnity of Greensill Bank is reduced to the amount that would place IAL in the position it would have been had the matters pleaded by IAL in Annexure A to its Defence to the SOC not occurred, that amount being nil;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in IAL's Annexure A to its Defence to the SOC.

(iii) further, or alternatively, pursuant to clause 9.7 of Policy 5369, each of Greensill Bank and GCPL failed to comply with its duty of fair presentation and those failures together or separately had a "Material

Policy Impact" such that IAL has no liability to indemnify Greensill Bank for the loss claimed in these proceedings;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in IAL's Annexure A to its Defence to the SOC.

317 In further answer to the Applicants' claim, IAL:

(a) says that, under Policy 5369, the "Insurer" has or may have contractual rights of subrogation under clause 12.1, being rights exercisable against any person or organisation the subject of otherwise involved in "Loss" (Policy 5369 clause 12.1);

(b) says that, under Policy 5369, payment of a "Claim" under the policy is subject to and conditional upon the receivables, insurance proceeds or other sources of recovery to which the "Insurer" shall be subrogated in relation to that "Loss" not being subject to any lien, security interest or other third party claim superior to that of the "Insurer" created or granted by the "Insured" (Policy 5369 clause 12.2); and

(c) says that, it reserves its right to rely on clause 12.2 in the event that the "Loss" the subject of the claim is subject to liens or other interests or claims referred to in clause 12.2.

318 In further answer to the Applicants' claim, IAL says:

(a) that it was an express term of Policy 5369 that the Insurer shall be deemed to have delivered a Stop Asset Acquisition Instruction to the Insured in relation to Assets arising from a Customer or if applicable a Customer Group (which in either case has a 'repurchase obligation' type Debt covered under Policy 5369), where the Customer or any member of the applicable Customer Group has failed to pay a Debt on the relevant Due Date and such failure to pay has not been remedied within 10 Business Days after the Due Date (clause 8.3(a));

(b) that, upon the deemed delivery of a "Stop Asset Acquisition Instruction", no "Asset" (arising from the applicable "Customer" or "Customer Group") acquired after the deemed delivery of the "Stop Asset Acquisition Instruction" shall attach to Policy 5369;

(c) on the Applicants' case (which is denied), the Delta HoldCos had repurchase obligation type Debts covered under Policy 5369 (being debts to repay a loan amount, and thus an obligation to repurchase a freedom from the loan payment

obligation), and the balance of this paragraph is pleaded on the assumption (which is denied) that the Applicants' case is, to that extent, correct;

(d) the asserted failures to pay occurred from no later than 5 March 2021 (SOC, paragraph 197) and, ten days following the first asserted failure to pay, IAL was deemed to have issued a "Stop Asset Acquisition Instruction" (under clause 8.3(a));

(e) in the event that the IPA Supplementary Letters did not have the effect pleaded in the SOC and/or there was otherwise no rolling over of the Delta IPUs as pleaded expressly or impliedly in the SOC (and particularly at SOC, paragraphs 123-125), then:

(i) on and from the day after the "Repayment Date" (or otherwise the day after the date on which payment was owing) under each of the Delta IPUs, each of the Delta HoldCos failed to pay any "Debt" the subject of the Delta IPU; and

(ii) ten days following the first failure to pay, IAL was deemed to have issued a "Stop Asset Acquisition Instruction" (under clause 8.3(a)).

(f) Policy 5369 did not attach to each "Asset" (including each of the Delta IPUs, the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts) arising from the Delta HoldCos acquired after the dates referred in sub-paragraph (c) and (d);

(g) in the event that the Delta IPUs, the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts were acquired by Greensill Bank after the dates referred to in sub-paragraphs (c) and (d), there is no coverage in respect of those Delta IPUs, Delta HoldCo Guarantee Debts and/or Liberty House Guarantee Debts;

(h) says further that:

(i) at all material times:

(A) Liberty OneSteel (Primary) UK Ltd was an "Affiliate" of each of the Delta HoldCos because the ultimate parent company of Liberty OneSteel and each of the Delta Holdcos is Liberty Steel Group Holdings Pte Ltd; and

(B) Liberty OneSteel and the Delta HoldCos were part of a "Customer Group" for the purposes of Policy 5369;

(ii) in the event that the allegations in paragraphs 81(g)(i) and 81(h)(iii) of the Defence filed by BCC in proceedings NSD 1039/2021 are correct and in the further event that the obligations of Liberty OneSteel referred to in paragraph 81(g)(i) were repurchase obligation type Debts, then it relies on clause 8.3(b) of Policy 5369 in respect of any "Assets" acquired after the period described in clause 8.3(a); and

(iii) says further that, in the event that the allegations in paragraphs 81(i) of BCC's Defence filed by BCC in proceedings NSD 1039/2021 are correct and in the further event that the entities referred to in that paragraph were in a "Customer Group" which included the Delta HoldCos and the debts which those entities failed to pay were repurchase obligation type Debts, then it relies on clause 8.3(b) of Policy 5369 in respect of any "Assets" acquired after each applicable period as described in clause 8.3(a).

319 In further answer to the Applicants' Claim, IAL:

(a) says that, it was an express term of Policy 5369 (if valid and effective which is denied) that the "Insured" shall ensure that, following the occurrence of an event that may reasonably be expected to result in a "Loss" under Policy 5369, it shall, by exercising the "Insured's" rights under the "Transaction Documents", act reasonably and prudently to prevent and mitigate "Losses" at all times and, in doing so, the "Insured" shall act as would a reasonable and prudent owner of the "Eligible Debt(s)" in question without assuming that any "Loss" may be covered under Policy 5369 (clause 10.7(a));

(b) says that, it was an express term of Policy 5369 that, in the event of the "Insured's" failure to mitigate "Loss" in accordance with clause 10.7, the "Insurer" is not obliged to indemnify the "Insured" to the extent that a "Loss" would reasonably be expected to have been lower but for the failure to mitigate in accordance with cl 10.7(a) (Policy 5369 cl 10.7(d));

(c) says that:

(i) on or around 25 April 2023, Greensill Bank, Sanjeev Gupta and the Delta HoldCos entered into an agreement styled "Delta Restructuring and Settlement", which purported to set out the parties' in principle agreement and understanding as to the basis on which they will negotiate and agree definitive legal documentation for the settlement of Greensill Bank's claims against the Delta HoldCos under the Delta IPAs (**Delta HoldCo Heads of Agreement**); and

Particulars

Document signed by Greensill Bank, Sanjeev Gupta and the Delta HoldCos dated 25 April 2023 titled "Delta Restructuring and Settlement" (CTRL.0000058384)

(ii) Greensill Bank and the Delta HoldCos have not agreed legal documentation for the purposes of the Delta HoldCo Heads of Agreement;

(d) says that, depending on (inter alia) the terms of any agreement, the circumstances in which it is entered into and the information known to Greensill Bank, it reserves the right to assert that any agreement between Greensill Bank and the Delta HoldCos was entered into in breach of the duty in cl 10.7(a) and/or that there should be a reduction in any indemnity under cl 10.7(c);

(e) says further that, the events that may reasonably be expected to result in a "Loss" under Policy 5369 for the purposes of clause 10.7(a) include:

(i) the alleged defaults referred to in SOC paragraphs 197 to 206; and

(ii) the failures to pay referred to in paragraph 319(d) of this Defence;

(f) says that, if, following the occurrence of the alleged events described in paragraph 319(e) of this Defence, Greensill Bank acquired the Delta IPUs, the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts, then Greensill Bank, as the "Insured" under Policy 5369, thereby, generated or created the potential for a "Loss" which would not otherwise have existed because ownership of an "Asset" by an "Insured" is an essential condition of a "Loss" and, also, is an essential condition of a right of indemnity;

(g) says that, a person in the position of Greensill Bank, acting reasonably and prudently to prevent and mitigate "Losses" would not have acquired the Delta IPUs, the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts;

(h) says that, had Greensill Bank not acquired the Delta IPUs, Delta HoldCo Guarantee Debts and/or Liberty House Guarantee Debts:

(i) there would have been no basis to allege, and it would not have been the fact, that an alleged "Insured" owned the "Asset"; and

(ii) there would have been no alleged "Loss" and/or no alleged entitlement to an indemnity under Policy 5369;

(i) says that, there is no entitlement to an indemnity under Policy 5369 (if valid and effective, which is denied) to the extent that any "Loss" said to give rise to that

entitlement has been caused by a breach of clause 10.7(a), which is, for the reasons referred to in paragraphs 319(e)-(h) of this Defence, the case here;

(j) says further that, in the premises, the Applicants have no entitlement to an indemnity;

(k) says further that:

(i) by reason of the matters alleged in paragraphs 319(e)-(h) of this Defence, for Greensill Bank (insofar as it claims to be an insured, which is denied) to rely upon provisions of Policy 5369 providing for indemnity would be for it to fail to act with the utmost good faith implied into the Policy by reason of s 13 of the *ICA*; and

(ii) in the premises and by reason of s 14 of the *ICA*, Greensill Bank may not seek or obtain indemnity under Policy 5369.

320 In further answer to the Applicants' claim, IAL:

(a) says that, each of the matters in paragraphs 319(e)-(h) of this Defence was material information which ought to have been delivered by GCUK to IAL in response to the requests referred to in paragraph 214 of this Defence but was not; and

(b) says further that, each of the matters in paragraphs 319(e)-(h) of this Defence constituted a Material Policy Impact as defined by Policy 5369, such that IAL has no liability to indemnify Greensill Bank or the Applicants for the loss claimed in these proceedings.

321 In further answer to the Applicants' claim, IAL says that:

(a) it was a term of Policy 5369 that the "Insurer" need not indemnify the "Insured" for "Losses" exceeding the lower of the "Applicable Limit of Liability" and the "Maximum Limit of Liability" (Policy 5369 clause 5.2);

(b) the "Applicable Limit of Liability" was defined in Schedule 1 and was the lower of (inter alia) the relevant "Customer Limit" of an "Eligible Customer";

(c) the "Maximum Limit of Liability" was defined in Schedule 1 and Schedule 6 and meant (inter alia), for any particular "Customer", the amount as set out in the relevant "Customer Endorsement";

(d) it was a term of Policy 5369 that the "Insurer's" maximum liability for the aggregate of all "Losses" insured under the "Policy" for the "Customer" was a

"Customer Limit", being an amount recorded in an "Endorsement" to the "Policy" (Sch 1, definition of "Customer Limit"); and

(e) if, and to the extent that the "Loss" in respect of the Delta IPUs, the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts exceeds the "Applicable Limit of Liability" or the "Maximum Limit of Liability" in respect of relevant "Customers", there is no coverage.

G2 Further Answer

322 In further answer to paragraphs 85, 88, 94, 96, 102, 104, 213, 214, 214AP, 228A and 247A of the SOC, insofar as IAL is liable for any loss and damage suffered by the Applicants, which is denied, IAL says that:

(a) it repeats paragraphs 85, 88, 94, 96, 102, 104, 228A and 247A of this Defence, including the allegations as to the deficiencies in the SOC's pleading based on Division 6 of Part 7.6 of the *Corporations Act*;

(b) [Not used];

(c) [Not used];

(d) the responsibility deemed by sections 917B and 917C of the *Corporations Act* does not extend to responsibility for conduct and/or causes of action for which BCC and/or Brereton have a defence as between BCC/Brereton and the Applicants;

(e) IAL's responsibility and/or liability to the Applicants is no greater than any responsibility and/or liability of BCC and/or Brereton to the Applicants;

(f) the causes of action alleged against BCC and Brereton include contraventions of:

(i) section 1041H of the *Corporations Act* (paragraphs 222, 224, 241, and 243 of the SOC), in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 1041I of the *Corporations Act*;

(ii) section 18 of the *ACL* (paragraphs 222, 224, 241 and 243 of the SOC) in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 236 of the *ACL*; and

(iii) section 12DA of the *ASIC Act* in respect of alleged misleading or deceptive conduct (paragraphs 222, 224, 241 and 243 of the SOC)

said to give rise to a cause of action for loss or damage under section 12GF of the *ASIC Act*;

(g) the causes of action alleged against IAL include contraventions of:

(i) section 1041H of the *Corporations Act* (paragraphs 214AG, 214AI and 214AK of the SOC), in respect of alleged misleading or deceptive conduct in relation to a financial service within the meaning of section 1041H of the *Corporations Act* said to give rise to a cause of action for loss or damage under section 1041I of the *Corporations Act*;

(ii) section 18 of the *ACL* (paragraphs 214AG, 214AI and 214AK of the SOC) in respect of alleged misleading or deceptive conduct in relation to trade or commerce within the meaning of section 18 of the ACL said to give rise to a cause of action for loss or damage under section 236 of the ACL;

(iii) section 12DA of the *ASIC Act* (paragraphs 214AG, 214AI and 214AK of the SOC) in respect of alleged misleading or deceptive conduct in trade or commerce and in relation to financial services said to give rise to a cause of action for loss or damage under section 12GF of the *ASIC Act*;

(h) the loss said to have arisen because of the alleged contraventions is EUR 2,179,111,111.11 (paragraphs 214AP, 228, 233, 247, 252 of the SOC), being the amount outstanding under the Delta IPUs (paragraphs 205, 206 and 212 of the SOC);

(i) the causes of action under each of section 1041I of the *Corporations Act*, section 236 of the *ACL* and section 12GF of the *ASIC Act* are subject to relevantly analogous proportionate liability regimes, set out respectively in Part 7.10, Division 2A, of the *Corporations Act*, Part IVA of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and Part 2, Division 2, Subdivision GA of the *ASIC Act*;

(j) in respect of the each of the proportionate liability regimes, the Applicants' claim is:

(i) a claim for damages (relevantly, under sections 1041I, 236 and/or 12GF) within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act* respectively;

(ii) a claim for "economic loss" within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act*; and

(iii) a claim for loss caused by conduct allegedly done in contravention of sections 1041H, 18 and/or 12DA, within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act* respectively,

(together and individually, the **Apportionable Claims**);

(k) each of the Apportionable Claims is an "apportionable claim" for the purposes of the relevant proportionate liability regimes;

(l) under each of the relevant proportionate liability regimes, a "concurrent wrongdoer" in relation to a claim is a person who is one of two or more persons whose acts or omissions (or act or omission) caused independently of each other or jointly, the damage or loss that is the subject of the claim (section 1041L(3) of the *Corporations Act*; section 87CB(3) of the *CCA*; section 12GP(3) of the *ASIC Act*);

(m) under each of the relevant proportionate liability regimes, in any proceedings involving an apportionable claim:

(i) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the Court considers just having regard to the extent of the defendant's responsibility for the damage or loss; and

(ii) the Court may give judgment against the defendant for not more than that amount,

(section 1041N(1) of the *Corporations Act*; section 87CD(1) of the *CCA*; section 12GR(1) of the *ASIC Act*);

(n) under each of the relevant proportionate liability regimes, in apportioning responsibility between defendants in the proceeding:

(i) the Court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(ii) the Court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings,

(section 1041N(3) of the *Corporations Act*; section 87CD(3) of the *CCA*; section 12GR(3) of the *ASIC Act*);

(o) the loss the subject of the Applicants' claim for the purposes of the relevant proportionate liability regimes is the alleged loss referred to in paragraphs 205, 206 and 212 of the SOC;

(p) on the assumption, which is not admitted, that the claimed loss was loss or damage suffered because of the alleged contraventions, then:

(i) Greensill Bank was contributorily negligent as set out in paragraph 322(q) of this Defence; and

(ii) there were "concurrent wrongdoers" as set out in paragraphs 322(r)-322(y) of this Defence (**Concurrent Wrongdoers**),

in respect of that loss, such that the liability of IAL, BCC and/or Brereton should be limited under the relevant proportionate liability regimes, and any responsibility of IAL for the conduct of BCC and/or Brereton under sections 917B or 917C of the *Corporations Act* for the conduct yielding that liability should be correspondingly reduced;

Greensill Bank

(q) says that:

(i) Greensill Bank was contributorily negligent because:

(A) it failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the transactions pursuant to and in respect of which it purportedly acquired the Delta IPUs, the Delta HoldCo Guarantee Debts or the Liberty House Guarantee Debts, in circumstances where it knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Policy 5369, and its purported endorsements, and, had it done so, the damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

Particulars

IAL refers to the matters in paragraphs 66A(f) to 66A(i), 89(j), 97(d) to 97(f) and 97(o), 165(k), 168(j), 170(b) and 177(b) of this Defence.

IAL may provide further particulars after discovery.

(B) on the pleaded case (which is not admitted) it engaged in acts or omissions, including (inter alia):

a. agreeing to enter into Policy 5369 (paragraph 66A of the SOC) on the pleaded terms, alternatively agreeing to enter into Policy 5369 when it knew the facts referred to in paragraphs 66A(b), 66A(i) to 66A(j) of this Defence;

b. entering into or agreeing to enter into various endorsements thereto; and

c. acquiring the Delta IPUs, Delta HoldCo Guarantee Debts and/or Liberty House Guarantee Debts;

(C) further, Greensill Bank engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures attributed to it which are pleaded in IAL's Annexure A to its Defence to the SOC;

(D) further, at all material times Greensill Bank knew or ought to have known that:

a. BCC's and Brereton's authority on behalf of IAL before 30 June 2019 was limited to underwriting trade credit insurance and Policy 5369 and its endorsements were not trade credit insurance products;

b. BCC's and Brereton's authority on behalf of IAL to issue Approved Products was subject to Special Acceptance requirements including that any non-approved wording had to be expressly approved by IAL and Scor Re;

c. Scor Re and IAL had not approved the terms of Policy 5369;

d. since September 2017, IAL and Scor Re had not communicated to the Greensill Group, Lex Greensill or Marsh that the matters referred to in paragraphs 66A(g) to 66A(i) of this Defence had changed;

e. BCC's authority was not unlimited and as at June 2019 was limited to $50 million for any one policy, subject to Special Acceptance approval by IAL and Scor Re;

f. in the premises, at all material times, Greensill Bank knew, or ought reasonably to have known, that:

i. before BCC and Brereton could agree to enter into Policy 5369 on behalf of IAL, it was necessary for IAL and Scor Re to agree to its terms and structure;

ii. IAL and Scor Re did not approve of the wording and structure of Policy 5369; and

iii. IAL and Scor Re had not given authority to BCC and Brereton to enter into Policy 5369 or any policy or endorsement which was not an Approved Product or Approved Endorsement;

Particulars

The knowledge of Greensill Bank can be inferred from the matters pleaded in paragraphs 45(d) and 66A(f) to 66A(i) of this Defence.

Email dated 13 January 2017 from Brereton to Brad de Plater of Marsh (as agent for the Greensill entities) attaching letter dated 21 December 2016 from CGU and the "Trade Credit Insurance Whole of Turnover" dated October 2016 (Version WOT 1.3) referred to in paragraph 8(j)(i) of this Defence (MAR.0004.0001.0064).

(E) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of Policy 5369;

(F) further or alternatively, Greensill Bank was recklessly indifferent to BCC's underwriting authority;

(G) the acts or omissions of Greensill Bank caused the loss the subject of the claim (inter alia) because:

a. they caused Policy 5369 and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of Policy 5369 and entry into related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraphs 142-151 of the SOC; and

ii. Greensill Bank to acquire the Delta IPUs, Delta HoldCo Guarantee Debts or Liberty House Guarantee Debts;

then those acts or omissions caused the loss the subject of the claim;

c. they involved the acquisition of the Delta IPUs, Delta HoldCo Guarantee Debts or Liberty House Guarantee Debts by Greensill Bank which was a precondition to the arising of "Loss"; and

d. had the misrepresentations and non-disclosures alleged to have been made by the Greensill Bank as alleged in IAL's Annexure A to its Defence to the SOC not been made, then the alleged damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

(H) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

a. Greensill Bank's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

b. Greensill Bank's misrepresentations and non-disclosures were misleading or deceptive; and

c. the matters set out in paragraph 322(q)(i)(A)-322(q)(i)(G) of this Defence;

Delta HoldCos and Liberty House

(r) says that:

(i) each of the Delta HoldCos and Liberty House was a "concurrent wrongdoer" because:

(A) it is a necessary element of the Applicants' case that, by reason of an "Insured Cause", the "Insured" has failed to receive its "Expected Allocation" (Policy 5369 clause 3.1);

(B) as best IAL understands it, the loss alleged by the Applicants is the alleged "Expected Allocation" in respect of the Delta IPUs, Delta HoldCo Guarantee Debts or Liberty House Guarantee Debts (paragraph 212 of the SOC);

(C) the alleged "Insured Cause" is the alleged failures to pay referred to in paragraph 206 of the SOC;

(D) the alleged failures to pay referred to in paragraph 206 of the SOC comprise alleged failures on the part of the Delta HoldCos and Liberty House to pay amounts said to be owing to GCUK; and

(E) it is therefore a necessary element of the Applicants' case that the loss for which it claims was caused, in whole or in part, by the acts or omissions of the Delta HoldCos and Liberty House;

(ii) the liability of IAL, BCC and/or Brereton in relation to the Apportionable Claims under sections 1041I of the *Corporations Act*, 236 of the *ACL* and/or 12GF of the *ASIC Act* is limited to an amount that the Court considers just having regard to the extent of their responsibility for the economic loss alleged by the Applicants and the Court may not give judgment against IAL, BCC and/or Brereton for more than that amount;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to (inter alia) the following matters:

(A) on the Applicants' pleaded case, each of the Delta HoldCos and Liberty House was subject to voluntarily-assumed legal obligations to pay the amounts the subject of the alleged defaults;

(B) it is not alleged that BCC and/or Brereton knew and/or ought to have been aware of any facts, matters or circumstances indicating that the Delta HoldCos or Liberty House would or might commit the alleged defaults; and

(C) on the Applicants' pleaded case, had the alleged defaults not occurred, the loss the subject of the claim would not have been suffered;

GCUK

(s) says further that:

(i) GCUK is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted) it engaged in acts or omissions, including:

a. it entered into the Delta IPAs, the Delta IPA Side Letters and the amendments to the Delta IPAs and the IPA Supplementary Letters on the terms alleged (paragraphs 109-125 of the SOC);

b. it entered into the Delta HoldCo Guarantees and the Liberty House IPA Guarantee on the terms alleged (paragraphs 126-128 of the SOC);

c. it entered into the GBAG MAA, the First Assignment Agreement, the Second Assignment Agreement, the Second Assignment Agreement Supplementary Letters, the IPU Confirmation Agreement and the Consideration Acknowledgement Agreement on the terms alleged (paragraphs 129-141 of the SOC);

d. it made advances to the Delta HoldCos as alleged in paragraphs 142-151 of the SOC;

e. it submitted "Offer Files" to Greensill Bank as alleged in paragraph 152 of the SOC;

f. it entered into the SSUK RPA and the SSUK RPA Supplementary Letter on the terms alleged in paragraphs 154-162 of the SOC; and

g. it agreed to purchase the GCUK Purchased Receivables as alleged in paragraph 163 of the SOC;

(B) further, GCUK engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures

attributed to it which are pleaded in IAL's Annexure A to its Defence to the SOC;

(C) further at all material times GCUK knew or ought to have known of the matters pleaded in paragraph 322(q)(i)(D) of this Defence;

Particulars

The knowledge of GCUK can be inferred from the matters pleaded in paragraph 322(q)(i)(D) of this Defence. Insofar as the emails referred to in the particulars thereunder, including under paragraph 66A(g), were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including GCUK.

(D) further or alternatively, GCUK was recklessly indifferent to BCC's underwriting authority;

(E) the acts or omissions of GCUK caused the loss the subject of the claim (inter alia) because:

a. on the expressly or impliedly pleaded case (which is not admitted), as a result of GCUK's acts or omissions:

i. the Delta HoldCos assumed the Delta IPUs;

ii. the Delta HoldCos and Liberty House assumed or incurred the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts;

iii. thereafter, the Delta HoldCos and Liberty House failed to pay or discharge the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts each of which failure to pay is said to be an Insured Cause (paragraph 206 of the SOC); and

iv. as a result of that Insured Cause, there have been "Losses" which are the subject of the claim (note clause 1.1 of Policy 5369 and paragraph 212 of the SOC);

b. had the misrepresentations and non-disclosures alleged to have been made by GCUK in IAL's Annexure to its Defence to the SOC not been made, then the alleged damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) GCUK failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into:

a. the Delta Holdcos;

b. Liberty House;

c. the "Payables", or other purposes, to which the monies advanced by GCUK were to be put;

d. the Delta OpCos;

e. the expected accounts receivable (if any) of the Delta OpCos; and

f. the authority of BCC to bind IAL;

(B) GCUK did not operate as a reasonably prudent lender in (i) its provision of finance to the Delta Holdcos; and (ii) in failing to procure and/or enforce adequate security for the alleged debts;

(C) GCUK did not take security;

(D) on the Applicants' pleaded case as to the effect of Policy 5369 (which is not admitted), it is to be inferred in all the circumstances, including the absence of security, that GCUK elected not to bargain for security (or other protections in respect of possible default by the Delta HoldCos or Liberty House) because it was aware that the default risk was to be borne or might be borne by Greensill Bank and, via Greensill Bank, BCC and IAL, and it is not appropriate that BCC and, via BCC, IAL (as insurer) bear responsibility for loss arising because of the deliberate decision of a lender to expose the

insurer to risk instead of taking reasonable precautions against default;

(E) as pleaded in paragraphs 117(f) and 125(d)(v) of this Defence, on the Applicants' pleaded case, GCUK entered into arrangements with the Delta HoldCos which had the effect that the loans to the Delta HoldCos were automatically rolled over, without repayment of the principal from the Delta HoldCos, that being a matter which was not consistent with prudent lending practice and/or which otherwise did not reflect arms' length terms;

(F) GCUK has not taken steps, alternatively has not taken adequate steps, to recover payments from the Delta HoldCos and/or Liberty House as referred to in the SOC;

(G) the misrepresentations and non-disclosures made by GCUK were misleading or deceptive; and

(H) the matters set out in paragraph 322(s)(i) of this Defence;

GCPL

(t) says further that:

(i) GCPL is a concurrent wrongdoer because:

(A) GCPL engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures attributed to it which are pleaded in IAL's Annexure A to its Defence to the SOC;

(B) further, at all material times GCPL knew or ought to have known of the matters pleaded in paragraph 322(q)(i)(D) of this Defence;

(C) further or alternatively, GCPL was recklessly indifferent to BCC's underwriting authority;

(D) the acts or omissions of GCPL caused the loss the subject of the claim (inter alia) because:

a. they caused Policy 5369 and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of Policy 5369 and entry into the related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 322(s) of this Defence; and

ii. Greensill Bank to acquire the Delta IPUs, the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts;

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) GCPL's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) GCPL's misrepresentations and non-disclosures were misleading or deceptive; and

(C) the matters set out in paragraph 322(t)(i) of this Defence;

Lex Greensill

(u) says further that:

(i) Lex Greensill is a concurrent wrongdoer because:

(A) he engaged in acts or omissions constituted by (inter alia) the exercise of control and decision-making authority over Greensill Bank, GCPL and GCUK, and conduct on behalf of those entities;

Particulars

Evidence of Lex Greensill to Treasury Committee, Ordered by the House of Commons on 11 May 2021. IAL also refers to the particulars to paragraph 66A(g) of this Defence.

(B) further, at all material times Lex Greensill knew or ought to have known of the matters pleaded in paragraph 322(q)(i)(D) of this Defence;

(C) because of Lex Greensill's acts or omissions:

a. GCUK engaged in the conduct pleaded in paragraph 322(s) of this Defence;

b. Greensill Bank engaged in the conduct pleaded in paragraph 322(q) of this Defence;

c. GCPL engaged in the conduct pleaded in paragraph 322(t) of this Defence;

and for the reasons set out in those paragraphs, thereby caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the matters set out in paragraphs 322(q), 322(s) and 322(t) of this Defence concerning apportionment to GCUK, Greensill Bank and GCPL;

(B) that at all material times Lex Greensill (and the Greensill Group) knew or ought to have known the matters set out in paragraph 322(q)(i)(D) of this Defence;

(C) further or alternatively, the fact that Lex Greensill was recklessly indifferent to BCC's underwriting authority; and

(D) Lex Greensill's central role across the entirety of the events the subject of the SOC;

Marsh

(v) says further that:

(i) Marsh, being each of Marsh Pty Ltd and Marsh Ltd (alternatively, any one of them), are concurrent wrongdoers because:

(A) each engaged in acts or omissions, including (inter alia):

a. setting up BCC as an approved underwriting agent on the Marsh billing system;

b. acting as the broker of Greensill Bank and GCPL;

c. the matters referred to in Section F4 of the SOC;

(B) they participated in the negotiations for the insurance instruments (including Policy 5369 and those referred to earlier in this Defence, and below at paragraph 322(v)(ii)(H) of this Defence), and took other steps (not presently known to IAL, but which will be the subject of requests for compulsory production) which caused or contributed to Greensill Bank and GCPL's purported entry into Policy 5369 and/or the pleaded endorsements thereto;

(C) those acts or omissions caused the loss the subject of the claim because:

a. they caused Greensill Bank and GCPL to purportedly enter into Policy 5369 and related endorsements on the terms set out in them;

b. in the event that Greensill Bank and GCPL's purported entry into Policy 5369 and related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 322(s) of this Defence; and

ii. Greensill Bank to acquire the Delta IPUs, the Delta HoldCo Guarantee Debts and/or the Liberty House Guarantee Debts;

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) Marsh's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) Marsh knew, or ought reasonably to have known, that BCC and Brereton were only permitted to underwrite trade credit insurance and Policy 5369 was not trade credit insurance;

(C) Marsh knew, or ought reasonably to have known, that:

a. before BCC and Brereton could agree to Policy 5369 and any endorsements issued pursuant to that

policy, it was necessary for IAL and Scor Re to agree to their terms and structure;

b. IAL and Scor Re did not approve of the wording and structure of Policy 5369 nor any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC;

c. IAL and Scor Re had not given authority to BCC and Brereton to enter into Policy 5369 nor any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC;

d. BCC's and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA; and

e. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

(D) at the time of first setting up BCC as an approved underwriting agency Marsh ought to have obtained, and reasonably satisfied itself of, the terms of the CGU AAR Agreement confirming the existence, duration of the agreement and related limits, to ensure that it was aware of the limitations on BCC's authority, but failed to do so;

(E) Marsh ought to have, but failed to, ensure that its employees and representatives were aware of and understood the terms of any agency agreement between IAL and BCC, and the limitation on BCC's authority;

(F) Marsh ought to have, but failed to, ensure that its employees and representatives were aware of and understood the terms of any authority arrangement between IAL and Brereton, and the limitation on Brereton's authority;

(G) Marsh ought to have, but failed to, review on an annual basis the ongoing authority of BCC and Brereton including the terms on which they were permitted to underwrite Approved Products on behalf of IAL;

(H) Marsh ought to have, but failed to, obtain any or any proper confirmation or verification of BCC's or Brereton's authority to underwrite on behalf of IAL Policy 5369, Policy TW-02924, Policy TW-03547, Policy TB-04585, Policy TW-03137, Policy TS-03088, Policy TS-03087, TB-03690, Policy TB-03691, Policy TB-04271, Policy TB-04278, Policy TB-04584, TB-05370, Policy TW-03456, Policy TW-03457, Policy TW-05411 and Policy TW-05412 in circumstances where the combined limits of the identified Policies were in excess of any other insurers underwriting trade credit insurance in the Australian market and in circumstances where BCC was a start-up underwriting agency;

(I) Marsh facilitated the execution of Policy 5369, which had a policy period of 24 months, in circumstances where Marsh knew from at the latest 15 April 2019 that TMMA had acquired BCC;

Particulars

Paragraph 97(f) of this Defence.

(J) Marsh facilitated the execution by BCC and Brereton of the endorsements pleaded in the SOC in circumstances where Marsh knew from at the latest 15 April 2019 that TMMA had acquired BCC;

Particulars

Paragraph 97(f) of this Defence.

(va) says further or alternatively that, if the matters alleged by the Applicants at paragraphs 252B to 315 of the SOC are established:

(i) Marsh is a concurrent wrongdoer for the reasons alleged in those paragraphs; and

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including those alleged in those paragraphs;

(vb) says further or alternatively that, if the matters alleged by Credit Suisse at paragraphs 106DD to 106MMMM of the Sixth Amended Statement of Claim in proceedings NSD 106 of 2022 (which will be heard together with this proceeding) are established:

(i) Marsh is a concurrent wrongdoer for the reasons alleged in those paragraphs; and

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including those alleged in those paragraphs;

TMNF

(w) says further that:

(i) TMNF was a concurrent wrongdoer because on and from 1 July 2019:

(A) it engaged in acts or omissions, including (inter alia):

a. failing to ensure that its authorised representatives, BCC and Brereton, acted within the scope of what TMNF authorised them to do;

b. failing to ensure that BCC and Brereton did not purport to enter into the endorsements referred to in paragraph 322(w)(i)(B) of this Defence in respect of Policy 5369 on behalf of IAL on and from 1 July 2019; and

c. failing to ensure that BCC provided bordereaux to IAL that contained complete and accurate information in respect of endorsements issued by BCC and Brereton on and from 1 July 2019;

(B) the acts and omissions of BCC and Brereton in purporting to enter the following instruments on behalf of IAL were engaged in (on the pleaded case) as agent and authorised representative of TMNF:

a. Endorsement 3 on 19 September 2019 referred to in paragraph 97 of the SOC;

b. the Further Delta HoldCo Customer Endorsements referred to in paragraph 168 of the SOC;

c. Limit Endorsement 3 on 14 November 2019 referred to in paragraph 177 of the SOC; and

d. “Collective Endorsements” referred to in paragraph 179 of the SOC;

(ii) those acts and omissions caused the loss the subject of the claim because:

(A) they caused BCC and/or Brereton to purportedly enter into the related endorsements to Policy 5369 referred to in paragraph 322(w)(i)(B) of this Defence;

(B) in the event that Greensill Bank and GCPL's entry into Policy 5369 and related endorsements caused:

a. any (or all) of the conduct of GCUK referred to in paragraph 322(s) of this Defence; and

b. Greensill Bank to acquire the Delta IPUs, the Delta HoldCo Guarantee Debts and the Liberty House Guarantee Debts;

then those acts or omissions caused the loss the subject of the claim;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the acts or omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) TMNF knew, or ought reasonably to have known, that:

a. IAL had not given authority to BCC and Brereton to enter into Policy 5369 nor any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC;

b. BCC and Brereton's authority to write new policies or risks, or extend the term or scope of existing policies, on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA;

c. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act* on and after 1 July 2019.

The Administrators

(x) says further that:

(i) each of TMMA and Bond (together, the **Administrators**) was a concurrent wrongdoer because:

(A) each engaged in acts or omissions including (inter alia):

a. providing administration services to IAL under the PACAO; and

b. failing to provide those services with due care and skill; and

(B) those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the PACAO did not confer a general authority on Bond or BCC as Bond's delegate to act as IAL's agent to administer trade credit insurance policies issued by IAL on or before 30 June 2019, as pleaded in paragraph 37(e) of this Defence;

(B) it was a term of the PACAO that, after 9 April 2019, Bond, or BCC as Bond's delegate, was not permitted to write new business or renewals on IAL paper (Sch 5, clause 2), as pleaded in paragraph 37(f) of this Defence;

(C) it was a term of the PACAO that Bond would prepare and disseminate monthly Written and Paid Bordereaux and reconcile reporting systems to bank and bordereaux reports (Sch 5, clause 2.1);

(D) it was a term of the PACAO that Bond would deliver administration services with due skill and care, efficiently and fairly (clause 5.1)

(E) it was a term of the PACAO that Bond would ensure that it properly supervised its staff and any delegates appointed under the PACAO in relation to the provision of services (clause 5.1(c));

(F) there were further restrictions on the Administrators as stipulated in the PACAO, for which IAL repeats the matters pleaded in paragraphs 38(b), (c) and (d) of its Defence;

(G) the authority of BCC and Brereton was confined at all material times on and after 9 April 2019 until 30 June 2019, in the manner described in paragraphs 5(d)(i)(B), 5(d)(i)(E), 6(e)(i), 6(e)(iii), 6(e)(vi), 8(i), 8(k), 32, 33, 55, 60 and 66A of this Defence, and this was a matter known by the Administrators;

(H) BCC and Brereton purported to issue endorsements after 9 April 2019 which were not Approved Endorsements and were outside of the authority referred to in the preceding sub-paragraph, including those referred to in paragraph 322(w)(i)(B) of this Defence;

(I) the acts or omissions of the Administrators were of substantial causal significance to the arising of the loss the subject of the claim;

(J) the Administrators knew, or ought reasonably to have known, that:

a. IAL had not given authority to BCC and Brereton to enter into Policy 5369 nor any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC;

b. IAL had only authorised BCC and Brereton to issue Approved Products and Policy 5369 was not an Approved Product;

c. BCC and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA; and

d. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

BCC and Brereton

(y) in the event that it is established that BCC and Brereton engaged in the misleading or deceptive conduct pleaded in paragraphs 215-252A of the SOC, BCC and Brereton were concurrent wrongdoers such that IAL's liability in relation to the Apportionable Claims is limited to an amount reflecting the proportion of the loss and damage claimed that is just, having regard to the extent of BCC's and Brereton's responsibility for the loss or damage suffered, pursuant to section 1041N of the *Corporations Act*, section 87CD of the *CCA*, and section 12GR of the *ASIC Act*;

Reservation

(z) says further, in relation to the whole of paragraphs 322(a)-322(y) of this Defence:

(i) it was not a party to the transactions the subject of the SOC (including Policy 5369, the endorsements thereto, and the various underlying transactional documents said to have given rise to claims under Policy 5369) which gave rise to the alleged loss and damage in respect of which the Applicants sue;

(ii) it does not know the circumstances in which the alleged loss arose, the identities of those who caused or contributed to the alleged loss and the role and culpability of those who did so; and

(iii) it intends to pursue compulsory production and, following compulsory production and the development of evidence in the proceedings:

(A) it may become apparent that there are additional persons meeting the description of being a "concurrent wrongdoer"; and

(B) it may become appropriate to supplement or vary the circumstances identified in sub-paragraphs 322(q)-322(y).

323 In further response to the Applicant's claims pleaded against it in the ASOC, IAL pleads the facts alleged in the document titled "Annexure B to Defences to IAL", which is filed in these Proceedings on 30 April 2026.

Date: 1 May 2026~~15 July 2025~~



Signed by ~~Kirsty Prinsloo, fellow partner of~~ Malcolm Stephens, solicitor on record

This pleading was prepared by ~~Kirsty Prinsloo~~Malcolm Stephens and settled by SG Finch, DFC Thomas, D Hume, C Ernst and N Wootton of Counsel

Certificate of lawyer

I Kirsty Prinsloo certify to the Court that, in relation to the defence filed on behalf of the First 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: 1 May 2026~~15 July 2025~~



Signed by ~~Kirsty Prinsloo, fellow partner of~~ Malcolm Stephens, solicitor on record

Schedule

No. NSD602/2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Applicant:	Dr Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Second Respondent:	BCC Trade Credit Pty Ltd
Third Respondent:	Greg Brereton
Fourth Respondent:	Tokio Marine & Nichido Fire Insurance Co Ltd
Fifth Respondent:	Marsh Pty Ltd
Sixth Respondent:	Marsh Limited

CROSS CLAIM

Cross-Claimant:	BCC Trade Credit Pty Ltd
Cross Respondent:	Greensill Capital (UK) Ltd
Second Cross Respondent:	Greensill Bank AG
Third Cross Respondent:	Greensill Capital Pty Ltd