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 4:16:21 PM AEST
Date Accepted for Filing:	1/05/2026 4:16:25 PM AEST
File Number:	NSD177/2023
File Title:	GREENSILL BANK AG & ANOR v INSURANCE AUSTRALIA LTD & 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. NSD177 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 the **2019 Policy**) and related endorsements to Greensill Bank AG (**Greensill Bank**). Greensill Bank claims that it is entitled to indemnity from IAL under the 2019 Policy.

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

A2 A total of 113 endorsements are relied upon by the Applicants in the various **Greensill Proceedings**,[1] of which 8 are specifically relied on in this proceeding. The SOC refers to them as "debt endorsements", "customer endorsements" and "loss payee endorsements". These endorsements were written by BCC and Brereton between 13 March 2019 and 2 July 2020. The Applicants allege that the claims made in the Greensill Proceedings fall within the scope of the 2019 Policy and endorsements pleaded.

A2A 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.

A3 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.

A3A The core bases upon which IAL denies liability in this proceeding are set out below.

No authority

A4 *First,* BCC and Brereton did not have any authority from IAL to write the risks the subject of claims in the Greensill Proceedings. BCC 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"

---

[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) and NSD177 of 2023 (Simec Proceeding).

(**Approved Wording**). The endorsements that BCC and Brereton could issue on behalf of IAL were also prescribed and in set terms (**Approved Endorsements**). 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 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 A7A of this Defence).

A5 The 2019 Policy (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) The 2019 Policy 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) The premium for the 2019 Policy 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.

(e) It permitted credit terms for insured debts which exceeded the maximum authorised credit term of 180 days.

(f) The 2019 Policy did not have a minimum excess, when the minimum required was 0.75%.

(g) Policies could not exceed a policy term of 12 months, but the 2019 Policy did so.

(h) The 2019 Policy was in breach of BCC's and Brereton's contractual obligation to act efficiently, honestly and fairly.

A6 Moreover, the purported insureds failed to pay any consideration/premium for the 2019 Policy, such that it is not valid or binding.

A7 The endorsements pleaded and purportedly issued by BCC/Brereton on behalf of IAL pursuant to the 2019 Policy 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 the 2019 Policy, they also lacked authority to enter into the endorsements.

(c) The endorsements (including, in relation to this proceeding, Endorsements 9, 17, 18 and 23, Debt Endorsement 1 and Customer Endorsement 2(ii)) 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 Manuals.

(d) Many of the endorsements (including, in relation to this proceeding, Endorsement 23) were entered into after 30 June 2019 after BCC and Brereton's appointment as authorised representatives of IAL ceased. Moreover, as 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*.

A7A The Greensill Group knew or ought to have known that BCC/Brereton lacked authority to enter into the 2019 Policy 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 the 2019 Policy, 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 the 2019 Policy and or any endorsements.

A8 Even if BCC/Brereton had authority to write the endorsements (which IAL denies), those endorsements were inconsistent with numerous terms of the 2019 Policy, and were not of a kind contemplated by it, i.e., they were not permitted by the terms of the

2019 Policy, and are therefore invalid, of no effect and not binding or enforceable against IAL.

A8A For the reasons summarised at paragraph A4, A5 and A10 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 the 2019 Policy (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 80B and 80C 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 A10(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

A9 *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 the 2019 Policy and endorsements. This is so because, *inter alia*:

(a) Greensill Bank was not a "client" with respect to the 2019 Policy for the purpose of section 917A(1)(b) of the *Corporations Act*.

(b) [Not used].

(c) If Greensill Bank was a "client" with respect to the 2019 Policy and endorsements for the purpose of section 917A(1)(b) of the *Corporations Act* (which IAL denies), then the purported entry into the 2019 Policy 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* for the reasons given in paragraph A11 of this Defence.

(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 the 2019 Policy and endorsements.

A10 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 the 2019 Policy 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.

A11 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 the 2019 Policy

A12 *Third,* even if the Applicants can establish that IAL is bound by (or otherwise responsible for) the 2019 Policy and the endorsements to it, they face a number of insurmountable obstacles in showing that the 2019 Policy covered the claims they now make.

A13 To the extent that this Defence sets out coverage defences that are based on the wording of the 2019 Policy and its endorsements, it should be understood that those defences arise only in the alternative to IAL's primary position that the 2019 Policy and its endorsements are not valid and binding. The 2019 Policy, 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 the 2019 Policy 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". Various "Debt Endorsements" (and parts of "Debt Endorsements") are relied on in the claims. Each "Debt Endorsement" brings with it a host of additional conditions which a debt must meet in order to qualify as an "Eligible Debt". IAL denies that the Debt Endorsements bind it, but the Applicants' case depends on the Debt Endorsements.

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 various "Customer Endorsements" and "Debt Endorsements" 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 the 2019 Policy 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 which endorsements to the policy were valid, binding and enforceable; secondly, to construe the policy and endorsements 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 typically (but not invariably) involve the following parties and transactions:

(a) a supply or possible supply of goods or services from a supplier (A) to a purchaser (B);

(b) the provision of finance from C (typically another Greensill Group entity, GCUK) to either A (as purported trade credit finance, to obtain advance cash flow in respect of a future payment obligation of B) or B (as purported supply chain finance, to allow B to meet its payable to A);

(c) the assumption of payment obligations by A or B (as the case may be) to C in consideration for the supply of finance by C. "A" or "B" is, ordinarily, then the "Customer" relied on by the Applicants, and the payment obligations of "A" or "B" are ordinarily then the obligations which give rise to the asserted "Eligible Debts" (often described in the Statements of Claim as "Payment Obligations" or some variation thereof);

(d) an assignment by C (the financier) to D (typically, a foreign special purpose vehicle) of the payment obligations of A or B;

(e) the issuing of a financial instrument, a "Note", by D to E (typically, a person who asserts that it is a "Loss Payee" in respect of the policy e.g. Credit Suisse Virtuoso);

(f) default in payment of the payment obligations securitised under the Note; and

(g) thereafter, the transfer of the Note from E to the alleged Insured F (typically Greensill Bank), in order to found a claim under the 2019 Policy.

A17 There are other permutations – for example, sometimes the alleged payment obligations (and thus the "Eligible Debts") are said to be owed by a guarantor of either A or B; and sometimes there is no "Note", but there is instead an alleged direct ownership of the debt by the Insured.

A18 IAL contends that the Applicants' pleading falls well short of pleading material facts capable of establishing the multiple steps in the transactional chain which could ground indemnity under the 2019 Policy, even assuming that it, and relevant endorsements, are valid and binding on IAL.

A19 Further, the Applicants' pleaded case 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.

A20 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 the 2019 Policy or the endorsements; they bear no resemblance to the

Approved Wording or the Approved Endorsements; and the policy and endorsements were in fact drafted by the purported “Insureds” themselves without approval by or even recourse to IAL.

A21 Once the propositions, implicit in or necessary to the Applicants’ case, are exposed, it is apparent that there are significant gaps throughout the Applicants’ case. These are identified throughout the Defence (and correspondingly in IAL's defences to related claims). By way of example only:

(a) In most cases, the “Assets” relied on by the Applicants were first acquired by Greensill Bank after the underlying debt was already in default. The policy, both in its terms and as a matter of commercial common-sense, does not extend coverage to Assets acquired in those circumstances. Nor is a debt an "Eligible Debt" if the related "Asset" was acquired when the debt was outstanding.

(b) In most cases, the “Assets” relied on were first acquired by Greensill Bank after the policy period. Again, that is sufficient to deny coverage.

(c) In most cases, the “Assets” relied on are said to be “Notes”. The policy makes clear that a note is only a “Note” if it was issued under a “Master Trust Deed” as defined. But the deed relied on by the Applicants does not meet the description of being a “Master Trust Deed”.

(d) In many cases, there was in fact no underlying account receivable as between A and B. Rather, the finance from C was structured to allow A or B (as the case may be) to obtain finance *irrespective* of whether there was an actual (or even a possible) account receivable; rather, a *purported* and *possible future* account receivable was sufficient to unlock finance. There can be no “Eligible Debt” without an actual underlying account receivable.

(e) In many cases, C (the financier, GCUK) did not settle or agree to settle the underlying account payable. Rather, the finance was structured such that C supplied finance to B, with B then being entitled to use the finance as it saw fit and without any duty to use it to discharge the account receivable owed to A. The “Debt Endorsements” relied on do not permit this.

A22 Examples could be multiplied. Many of the problems in the Applicants’ case 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. The 2019 Policy and related debt endorsements

ultimately require there to be some real-world root to the “Assets” and “Eligible Debts” the subject of the claim.

A23 There are further coverage defences in this case and other cases. By way of example:

(a) The 2019 Policy requires "Insureds" to mitigate loss and to act in good faith. In many cases, the pleaded case shows that Greensill Bank acquired the insured Asset *for free* and *after the underlying debt was already in default* (and sometimes just days before lodging the claim), and in a manner calculated to create an alleged right to indemnity (because the insured “Asset” must be held by an “Insured”) where none would otherwise exist. To take a step with no commercial justification other than to create a right to claim on insurance is not mitigation; nor is it in good faith.

(b) The 2019 Policy provides for an *indemnity*. It does not provide for windfall gains. In many cases, on the pleaded cases, Greensill Bank has suffered no loss at all because it did not pay for the “Asset” it now says is impaired by a default.

(c) The 2019 Policy provides that “Assets” acquired after the delivery of a “Stop Asset Acquisition Instruction” are not covered. There is a deemed delivery of such an instruction 10 Business Days after an underlying debt goes into default. In many cases, the underlying debts were well in default at the time that the “Assets” were acquired by Greensill Bank and Stop Asset Acquisition Instructions had issued, with the result that “Assets” thereafter acquired are not covered.

Misrepresentations and Non-Disclosures

A24 Further, for the reasons as pleaded by BCC in paragraphs 145.d and 219 of BCC's Defence to the SOC and as pleaded by IAL in Annexure A to this 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 the 2019 Policy and endorsements to be avoided. IAL says that if, contrary to its primary position, it is bound by the 2019 Policy and endorsements, it is entitled to, and does, avoid the 2019 Policy (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

A25 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 whom 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

A26 IAL says that the Applicants' case fails at multiple stages. IAL was not a party to the 2019 Policy 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 the 2019 Policy and endorsements to be avoided. And, even if the policies 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

A27 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 the 2019 Policy 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.

A28 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.

A28A 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

A29 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 the 2019 Policy and the endorsements pleaded in the SOC;

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

(c) the validity of the 2019 Policy and the endorsements purportedly issued under or in relation to it;

(d) the scope of the coverage under the 2019 Policy (if valid and effective, which is denied), if any;

(e) the duty of Greensill Bank to mitigate under the 2019 Policy (if valid and effective, which is denied);

(f) whether the 2019 Policy (if valid and effective, which is denied) can be avoided; and

(g) whether there were misrepresentations or non-disclosures which entitle IAL to avoid the 2019 Policy 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 paragraph 6 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 paragraph 6 of the SOC) between 12 July 2018 and 8 April 2019; and

(E) Underwriting Manual Version 3.0 (referred to in paragraph 6 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; and

(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 in paragraph 46 of the SOC, and referenced as the “Brereton-CGU Authorisation Agreement” in paragraph 6 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 was limited in accordance with the terms of:

(i) the IAGA/IAL Brereton Authorisation (defined in paragraph 55 of the SOC, and referenced as the “Brereton-IAGA Authorisation Agreement” in paragraph 6 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, 80 and 81 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 281(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, 80 and 81 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 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** referred to 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** referred to in paragraphs 6 and 46 of the SOC, 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, a document entitled “BCC Trade Credit Pty Ltd Underwriting Manual … (Version 1.0)” (**Underwriting Manual Version 1.0**) was issued, being 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)(vi) of this Defence;

(B) Major Debtors / Multi Buyer Limit: AUD 40 million, subject to the special acceptance stipulation in paragraph 8(h)(vi) of this Defence;

(C) Single Risks Limit: AUD 35 million (page 9);

(viii) BCC’s authority is up to AUD 35 million, with policies and buyers with limits up to AUD 50 million for Whole of Turnover policies and up to AUD 40 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, a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines … (Version 2.0)" was issued (**Underwriting Manual Version 2.0**), being 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 paragraph 8(l)(viii) and 8(l)(ix) 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) to 8(i) and 13 to 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 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 the 2019 Policy or any endorsements purportedly issued pursuant to the 2019 Policy, including that the 2019 Policy 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 Greensill Capital Pty Ltd (**GCPL**);

Particulars

The bordereaux that BCC provided to IAL identified the policies issued by BCC as being "Trade Credit" Products with policy numbers that 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 the 2019 Policy, had been issued by BCC to any Greensill entity;

(ix) did not disclose that the insured percentage on 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 the 2019 Policy) 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 (being the 2019 Policy) with an inception date of 22 February 2019, or any earlier incepted policy of which the 2019 Policy 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 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.

(d) otherwise denies paragraph 19 of the SOC.

20 IAL admits paragraph 20 of the SOC.

21 IAL repeats paragraph 8(h) to 8(l) of this Defence and otherwise admits paragraph 21 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 (**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 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 says further that:

(a) Underwriting Manual Version 2.0 was the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement, between 12 July 2018 to 8 April 2019;

(b) Underwriting Manual Version 2.0 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 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, described on page 9 using approved wording (respectively, Versions “WOT 1.4 Aug 2017”; “MB 1.4 Aug 2017”; and “SR 1.4 Aug 2017”);

(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 paragraph 31(b)(viii) and 31(b)(ix) of this Defence was a maximum sum (i.e. 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) 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);

(xvii) 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); 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).

32 As to paragraph 32 of the SOC, IAL:

(a) says that on and from 9 April 2019, **Underwriting Manual 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 Tokio Marine Management (Australasia) Pty Ltd via the Policy & Claims Administration Outsourcing Deed dated 9 April 2019 (**PACAO**) (page 9);

(e) says that 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: AUD 50 million;

(B) Major Debtors Limit: AUD 50 million;

(C) Single Risks Limit: AUD 50 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 paragraph 32(f)(xiii) and 32(f)(xiv) 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 referred to in 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 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 the 2019 Policy or policies akin to the 2019 Policy; and

(ii) that BCC was IAL's corporate authorised representative in relation to the 2019 Policy or policies akin to the 2019 Policy;

(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 the 2019 Policy or policies akin to the 2019 Policy.

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

BCC and IAL:

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

(b) 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", being relevantly 9 April 2019;

Particulars

Letter from IAL to the Directors of BCC Trade Credit Pty Ltd 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 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 the 2019 Policy or policies akin to the 2019 Policy;

(ii) that BCC was IAL's corporate authorised representative in relation to the 2019 Policy or policies akin to the 2019 Policy.

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;

(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;

(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 clause 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;

(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) 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 Bordereau 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 paragraph 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 19(c) of this Defence; and

(d) otherwise denies paragraph 40 of the SOC.

41 As to paragraph 41 of the SOC, IAL:

(a) says the iterations of the bordereaux that BCC provided to IAL:

(i) referred only to Approved Products, being trade credit insurance policies, having been issued by BCC as agent for IAL;

Particulars

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

(ii) did not refer to non-trade credit insurance policies, or insurance policies using non-approved wording, having been issued by BCC as agent for IAL; and

(iii) did not refer to the 2019 Policy or any endorsements purportedly issued pursuant to the 2019 Policy;

(b) repeats paragraphs 19(c) and 40(a) of this Defence; and

(c) 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 paragraph 41 of this Defence.

(b) repeats paragraph 19(c) 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;

(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(a) and 42(b) of this Defence;

(b) denies that BCC remitted premiums to IAL in respect of the 2019 Policy or any of the endorsements purportedly issued pursuant to the 2019 Policy;

(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 paragraph 41(a)(i) 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 the 2019 Policy or any of the endorsements purportedly issued pursuant to the 2019 Policy;

(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 paragraph 41(a)(i) 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; and

(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 to undertake the activities pleaded in paragraphs 26.a, 26.b and 26.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 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) 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 Brereton's status as authorised representative 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.

(e) Brereton did not have any authority to act on behalf of IAL 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 admits paragraph 58 of the SOC.

59 IAL admits paragraph 59 of the SOC.

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

(a) 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

(b) 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) 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;

(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 64 of the SOC.

DA. REGULATORY REQUIREMENTS

DA.1 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 Note (including a Greensill Bank Simec Note) is not a purchase of a receivable;

(ii) an assumption of the Applicants' pleaded case is that the purchase of a Note (including from GCUK or Lagoon Park) 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 Note (including from GCUK or Lagoon Park) 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.

DA.2 Capital Requirements Regulation (EU) No. 575/2013

DA.0.1 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.0.2 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, the 2019 Policy is not valid and binding;

(b) says further that even if the 2019 Policy is valid and binding (which is denied), IAL relies on the terms of the 2019 Policy for their full effect;

(c) says further:

(i) clause 4.5 of the 2019 Policy 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 the 2019 Policy did not state that the Insured gave no warranty or had no responsibility regarding information provided in "Information Packs";

(iii) clause 7.3 of the 2019 Policy 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 3690

D1. Entry into Policy 3690

[Not used].

66 As to paragraph 66 of the SOC, IAL:

(a) says that the 2019 Policy, entitled "Comprehensive Trade Credit Insurance Policy, Policy Number TB-03690" with unique market reference B0509FINCW1900009, was signed by Brereton on or about 13 March 2019; and

(b) otherwise denies paragraph 66 of the SOC.

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

(a) in March 2019, Brereton signed the 2019 Policy and backdated it to 22 February 2019;

(b) the terms of the 2019 Policy 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 Policy;

(c) in March 2019 and on 22 February 2019 and at all material times, including between 28 July 2016 and 8 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 maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018;

(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;

(viii) relevantly extended only to arranging and issuing policies with a maximum credit limit / credit term of 180 days; and

(ix) relevantly extended only to arranging and issuing policies with 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 the 2019 Policy and/or to renew or extend the 2019 Policy, because:

(i) the 2019 Policy was 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 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Policy was not written on Approved Wording 1.4;

(B) the wording of the 2019 Policy had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(D) the "Insured" under the policy need not be a "Seller" for the purposes of each applicable Underwriting Manual and could, for example, be the owner of a "Note";

(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 Policy was $1 (Schedule 5 of the 2019 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the Policy limit of the 2019 Policy was in excess of that limitation;

(E) issue policies with limits or terms in excess of AUD50 million and the 2019 Policy did not have a limit of AUD50 million or less;

(F) insure credit terms in excess of 180 days and the 2019 Policy 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 Policy did not have any minimum excess;

(H) 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 Policy exceeded 12 months;

(iii) entering into the 2019 Policy 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 honestly;

Particulars

The 2019 Policy was not a "Trade Credit Product". The 2019 Policy was not written on Approved Wording. Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2019 Policy exceeded 95% of Debt. The Policy Limit of the 2019 Policy was not AUD50 million or less. The Policy Period exceeded 12 months. The credit terms were in excess of 180 days. There was no minimum excess.

Further, the obligation referred to in paragraph 66A(d)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason where the 2019 Policy 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;

(e) the authority given by IAL to Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy, because:

(i) pursuant to the IAGA/IAL Brereton Authorisation, 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 Policy in the circumstances referred to in paragraph 66A(d) of this Defence;

(ii) the 2019 Policy was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation because:

(A) the wording of the 2019 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Policy was not written on Approved Wording 1.4;

(B) the wording of the 2019 Policy had not otherwise been approved by IAL and its reinsurers;

(C) the risks insured purportedly 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, 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 Policy was $1 (Schedule 5 of the 2019 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the Policy limit of the 2019 Policy was USD100 million, in excess of that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Policy did not have any minimum excess;

(F) 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 Policy exceeded 12 months;

(G) insure credit limits in excess of 180 days and the 2019 Policy credit limits exceeded that limitation;

(iv) entering into the 2019 Policy 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, the obligation referred to in paragraph 66A(e)(iv) did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason where the 2019 Policy was to take effect by almost a month prior to its purported entry.

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

(f) by reason of the matters in paragraphs 66A(g), 66A(h) and 66A(i) of this Defence, as at 22 February 2019 and March 2019 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2019 Policy, 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 the 2019 Policy; and

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy; and

Particulars

Particulars under paragraph 66A(j) of this Defence.

(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 the 2019 Policy;

(g) 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 (collectively, 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 will be provided after discovery, compulsory production and evidence.

(h) 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), BCC, IAL and Scor Re, in the

context of negotiating a proposed insurance policy in 2017, in the course of which GCUK (directly or indirectly), 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 (or a Greensill entity or entities) 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.	

(i) since September 2017, IAL and Scor Re have not communicated to the Greensill Group, Lex Greensill or Marsh that the matters referred to in paragraphs 66A(f)(i) and 66A(f)(ii) of this Defence had changed;

(j) in the premises, as at 15 December 2017 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known that:

(i) before BCC and Brereton could agree to the 2019 Policy, 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 the 2019 Policy;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy; and

(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 the 2019 Policy;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 66A(f), 66A(g), 66A(h) and 66A(j) of this Defence. Insofar as the emails referred to in the particulars under paragraph 66A(h) 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.

(k) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2019 Policy:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of the 2019 Policy;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for the 2019 Policy;

(iii) by reason of the matters in paragraph 66A of this Defence, the 2019 Policy is not valid and binding;

(l) if, which is denied, GCPL and Greensill Bank entered into the 2019 Policy on 22 February 2019, the 2019 Policy expired on 1 March 2020 and was not validly renewed or extended after that date by BCC and Brereton on behalf of IAL;

(m) at all material times, BCC had not informed IAL and IAL did not know that:

(i) the 2019 Policy had been issued; and

(ii) the 2019 Policy 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; and

(n) it otherwise denies paragraph 66A of the SOC.

67 IAL denies paragraph 67 of the SOC and repeats paragraph 66A of this Defence.

68 IAL denies paragraph 68 of the SOC and repeats paragraph 66A of this Defence.

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 "Risk Details" of the 2019 Policy states that the Policy Period is from "22nd February 2019" to "1st March 2020" both days inclusive at the "Principal Address of the Insured";

(c) says that the 2019 Policy includes in Schedule 1 the following definitions:

(i) "Policy Period" means "the twelve consecutive months commencing from and including the Commencement Date"; and

(ii) "Commencement Date" means "the date on which this Policy comes into force, being 22nd February 2019"; and

(d) 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 the 2019 Policy states that the governing law of the 2019 Policy 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 the 2019 Policy is valid (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 3690

73 As to paragraph 73 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) says that the 2019 Policy (if valid and effective, which is denied):

(i) states the definitions set out in paragraphs 73.a, 73.b, 73.e, 73.f, 73.g, 73.i, 73.j, 73.m, 73.n, 73.p, 73.q, 73.r and 73.s of the SOC;

(ii) states the definition, set out in paragraph 73.c of the SOC, of "Claim Form" save for the words "pro forma version" which should read "a specimen"; and

(iii) states the definition, set out in paragraph 73.d of the SOC, of "Claim Offer Letter" save for the words "pro forma version" which should read "a specimen";

(c) as to paragraph 73.h of the SOC, says that the 2019 Policy (if valid and effective, which is denied) states the definition of "Debt" is, "as the context requires, a debt of the type described in the relevant Debt Endorsement";

(d) as to paragraph 73.k of the SOC, says that:

(i) the term "**Eligible Debt**" was defined to have the meaning set out in Schedule 7 of the 2019 Policy;

(ii) the effect of Schedule 7 was that to be an "Eligible Debt", a "Debt" had to satisfy the following eligibility criteria at the time of acquisition of the relevant "Asset" by the "Insured":

(A) the obligor (being the Customer) of which (a) is not an Affiliate of the parties to the Transaction Documents (other than any Origination Documentation); (b) is not a government or a governmental subdivision or agency, other than a legal entity that does not benefit from immunity from being sued for non-payment of debt or breach of contract; (c) is a corporate entity and not an individual or sole trader or partnership; (d) is not Insolvent and (e) has a Customer Limit established in accordance with the terms of the 2019 Policy;

(B) in relation to which the "Due Date" does not exceed the "Maximum Tenor";

(C) which is not outstanding after its "Due Date";

(D) which is denominated and payable only in an "Approved Currency"; and

(E) which satisfies any further criteria set out in the relevant "Debt Endorsement" relating to that “Debt”;

(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(d)(ii) of this Defence;

(iv) the form of "Debt Endorsement" appended to the 2019 Policy (and incorporated in debt endorsements including Debt Endorsement 1) 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

(v) denies that the definition of “Eligible Debt” was amended by Endorsement 23 (if valid and effective, which is denied) (pleaded in paragraph 105 of the SOC);

(e) as to paragraph 73.l of the SOC, says that:

(i) the definition of “Expected Allocation” set out at paragraph 73.l of the SOC accurately reflects the text of the 2019 Policy; and

(ii) there was only an "Expected Allocation" if there was in existence an "Asset";

(f) as to paragraph 73.o of the SOC, says that:

(i) the term “Loss” is defined in the 2019 Policy (pages 24 to 25), and IAL relies on the text of that definition for its full force and effect (if any);

(ii) "Direct Asset" was defined to mean a direct ownership in an Eligible Debt;

(iii) "Face Amount" means the amount of a Debt as shown in the File relating thereto inclusive of VAT;

(iv) "File" means the file and/or records held by the Servicer in the form from time to time specified in the Transaction Documents relating to each “Debt” (which may include the Platform);

(v) "Servicer" was defined to mean “GCUK”;

(vi) "Transaction Documents" was defined to mean (1) the 2019 Policy; (2) each deed creating a “Participant Trust” relating to a “Customer”; (3) all relevant Origination Documentation; (4) the Master Funded Participation Agreement; (5) each Information Pack submitted by the “Servicer” to the Insurer; (6) the “Master Trust Deed” and the 'Issue Documents' (as defined in the “Master Trust Deed”); and (7) any assignment agreement entered into between the “Insured” and the “Servicer’ in relation to the assignment or transfer of “Eligible Debts”; and

(vii) it denies that the definition of “Eligible Debt” was amended by Endorsement 23 (if valid and effective, which is denied) (pleaded in paragraph 105 of the SOC).

74 As to paragraph 74 of the SOC, IAL:

(a) repeats paragraph 66A of this Defence;

(b) refers to clause 1.1 of the 2019 Policy for its full force and effect (if any);

(c) says that on the proper construction of the 2019 Policy (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” (which is a “Note”):

(i) owned by the “Insured” (or a “Loss Payee”) during the “Policy Period” and owned by the “Insured” immediately prior to the payment of the claim;

(ii) derived from an “Eligible Debt”, comprising receivables generated by a "Supplier" referred to in a valid "Debt Endorsement", owed by an “Eligible Customer”;

(iii) arising under the “Transaction Documents” defined in the 2019 Policy (if valid and effective, which is denied); and

(iv) where by reason of an “Insured Cause”, the “Insured” has failed to receive its “Expected Allocation”;

(d) says that the terms, conditions and limitations of the 2019 Policy (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 the policy 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 the policy where such failure has a “Material Policy Impact” (clause 9.7); and

(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, the policy 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, 82 and 85 of this Defence;

(b) refers to clause 4.1 of the 2019 Policy 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, 82 and 85 of this Defence;

(b) refers to clauses 4.1, 4.4 and 4.5 of the 2019 Policy 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, 82 and 85 of this Defence;

(b) refers to clause 10 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise admits paragraph 77 of the SOC.

78 As to paragraph 78 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 82 and 85 of this Defence;

(b) refers to clause 14 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise admits paragraph 78 of the SOC.

79 As to paragraph 79 of the SOC, IAL:

(a) repeats paragraphs 66A, 74, 80, 81, 82, 83 and 85 of this Defence;

(b) refers to clause 5.5 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise denies paragraph 79 of the SOC.

D3. BCC had authority to enter into Policy 3690

D3.1 Actual authority

80 IAL repeats paragraphs 5(d), 8 and 66A of this Defence and otherwise denies paragraph 80 of the SOC.

D3.2 Ostensible authority

The Proposed Greensill Policy Structure and Proposed Greensill Policy Wording

80A IAL admits paragraph 80A of the SOC and says further that it relies on the terms of the Greensill Policy Proposal (as defined and particularised in paragraph 80A of the SOC) for their full force and effect.

80B As to paragraph 80B 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 80A 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 80B(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 80B(c) of the SOC, IAL:

(i) refers to and repeats paragraphs 80B(b)(i)(A) and 80B(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 80B(c);

(d) as to paragraph 80B(d) of the SOC, IAL;

(i) refers to and repeats paragraphs 80B(b)(i)(A) and 80B(b)(ii) of this Defence; and

(ii) otherwise denies paragraph 80B(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.

80C IAL admits paragraph 80C of the SOC and says further that:

(a) the documents particularised at paragraph 80C of the SOC were embedded in a document attached to the email pleaded at 80A 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 80A of the SOC also embedded two other documents which are not particularised at 80C.

Particulars

'Aus – master [] Customer End 2017'

'Trade Credit QS – 2017 Final Wording'

80D IAL admits paragraph 80D of the SOC.

80E As to paragraph 80E of the SOC, IAL:

(a) denies paragraph 80E of the SOC;

(b) repeats paragraph 66A(h) 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].

80F IAL denies paragraph 80F of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A, 80B, 80C and 80E(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 80D of the SOC do not establish the matters pleaded at paragraph 80F.

The 2017 LOS Policies

80G IAL denies paragraph 80G 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 80G(b) to 80G(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 80G(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 80G(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 80A of the SOC);

Particulars

In respect of the particulars to paragraph 80G(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 80E and 80F 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 80G(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 80E(c) and 80E(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 80G(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 80G(l) to 80G(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 80G(s)(i) and 80G(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 80G(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 80G(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.

80H IAL denies paragraph 80H of the SOC and repeats paragraphs 66A and 80G above.

80I IAL denies paragraph 80I of the SOC and says further that:

(a) it repeats paragraph 80G 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].

80J IAL denies paragraph 80J 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.

80K IAL denies paragraph 80K of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80J 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 80K of the SOC) at any relevant time.

80L As to paragraph 80L of the SOC, IAL:

(a) repeats paragraphs 80J and 80K above, particularly paragraph 80K(b); and

(b) does not know and therefore cannot admit 80L of the SOC.

80M As to paragraph 80M of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80G 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 80G of the SOC;

(ii) from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 80G of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(c) otherwise denies paragraph 80M of the SOC.

80N IAL denies paragraph 80N 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 80M of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 80G to 80M of this Defence.

80O IAL denies paragraph 80O and repeats paragraphs 80G to 80N of this Defence.

2018 Excess Policies

80P IAL denies paragraph 80P 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 80P(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 80P(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 80P(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80P(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 80G(h) to 80G(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 80G(l) to 80G(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 80P(j)(i) and 80P(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.

80Q IAL denies paragraph 80Q of the SOC and repeats paragraphs 66A and 80P of this Defence.

80R IAL denies paragraph 80R of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80P 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 80B(d); and

(c) otherwise, denies the paragraph.

80S IAL denies paragraph 80S 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.

80T IAL denies paragraph 80T of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80S 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 80T) at any relevant time.

80U As to paragraph 80U, IAL:

(a) repeats paragraphs 80S and 80T above, particularly paragraph 80T(b); and

(b) does not know and therefore cannot admit paragraph 80U of the SOC.

80V As to paragraph 80V of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80P 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 80P of the SOC; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80V of the SOC.

80W As to paragraph 80W 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 80P of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80V of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 80P to 80V of this Defence; and

(B) otherwise denies that paragraph of the SOC.

80X IAL denies paragraph 80X and repeats paragraphs 80P to 80W above.

Sub-Direct Policies

80Y IAL denies paragraph 80Y 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:

(A) identifies itself as a "Comprehensive Trade Credit Insurance Policy … made on the 18th day of May 2018" (page 2);

(B) was signed by Greg Brereton, GCPL and GCUK on or about 18 May 2018 (page 45);

(C) has a "Contract Number", being FINCW1800032;

(D) 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 80Y(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 80Y(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 80Y(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80Y(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 80G(h) to 80G(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 80G(l) to 80G(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 80Y(j)(i) and 80Y(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.

80Z IAL denies paragraph 80Z of the SOC and repeats paragraphs 66A and 80Y above.

80AA IAL denies paragraph 80AA of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80Y 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 80B(d); and

(c) otherwise, denies the paragraph.

80AB IAL denies paragraph 80AB 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.

80AC IAL denies paragraph 80AC of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80AB 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 80AC) at any relevant time.

80AD As to paragraph 80AD, IAL:

(a) repeats paragraphs 80AB and 80AC above, particularly paragraph 80AC(b); and

(b) does not know and therefore cannot admit paragraph 80AD of the SOC.

80AE As to paragraph 80AE of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80Y 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 80Y 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 80Y of the SOC; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80AE of the SOC.

80AF As to paragraph 80AF 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 80Y of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80AE of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 80Y to 80AE of this Defence; and

(B) otherwise denies that paragraph of the SOC.

80AG IAL denies paragraph 80AG and repeats paragraphs 80Y to 80AF above.

2017 Standalone Policies

80AH IAL denies paragraph 80AH 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 80AH(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 80AH(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 80AH(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80AH(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 80G(h) to 80G(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 80G(l) to 80G(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 80AH(j)(i) and 80AH(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.

80AI IAL denies paragraph 80AI of the SOC and repeats paragraphs 66A and 80AH above.

80AJ IAL denies paragraph 80AJ of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80AH 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 80B(d); and

(c) otherwise, denies the paragraph.

80AK IAL denies paragraph 80AK 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.

80AL IAL denies paragraph 80AL of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80AK 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 80AL) at any relevant time.

80AM As to paragraph 80AM, IAL:

(a) repeats paragraphs 80AK and 80AL above, particularly paragraph 80AL(b); and

(b) does not know and therefore cannot admit paragraph 80AM of the SOC.

80AN As to paragraph 80AN of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80AH 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 80AH 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 80AH of the SOC;

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80AN of the SOC.

80AO As to paragraph 80AO 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 80AH of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80AN of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(iii) in respect of sub-paragraph (c):

(A) repeats paragraphs 80AH to 80AN of this Defence; and

(B) otherwise denies that paragraph of the SOC.

80AP IAL denies paragraph 80AP and repeats paragraphs 80AH to 80AO above.

2018 LOS Policies

80AQ IAL denies paragraph 80AQ 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 80AQ(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 80AQ(f)(iii) of this Defence.

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

(h) it repeats paragraphs 80G(h) to 80G(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 80G(l) to 80G(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 80AQ(j)(i) and 80AQ(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.

80AR IAL denies paragraph 80AR of the SOC and repeats paragraphs 66A and 80AQ above.

80AS IAL denies paragraph 80AS of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80AQ 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 80B(d); and

(c) otherwise, denies the paragraph.

80AT IAL denies paragraph 80AT 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.

80AU IAL denies paragraph 80AU of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80AT 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 80AU) at any relevant time.

80AV As to paragraph 80AV, IAL:

(a) repeats paragraphs 80AT and 80AU above, particularly paragraph 80AU(b); and

(b) does not know and therefore cannot admit paragraph 80AV of the SOC.

80AW As to paragraph 80AW of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80AQ 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 80AQ of the SOC;

(ii) from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 80AQ of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80AW of the SOC.

80AX IAL denies paragraph 80AX 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 80AW of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 80AQ to 80AW of this Defence.

80AY IAL denies paragraph 80AY and repeats paragraphs 80AQ to 80AX above.

Nokia Policies

80AZ IAL denies paragraph 80AZ 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 80AZ(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 80AZ(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 80AZ(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80AZ(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 80G(h) to 80G(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 80G(l) to 80G(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 80AZ(j)(i) and 80AZ(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.

80BA IAL denies paragraph 80BA of the SOC and repeats paragraphs 66A and 80AZ above.

80BB IAL denies paragraph 80BB of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80AZ 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 80B(d); and

(c) otherwise, denies the paragraph.

80BC IAL denies paragraph 80BC 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.

80BD IAL denies paragraph 80BD of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80BC 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 80BD) at any relevant time.

80BE As to paragraph 80BE, IAL:

(a) repeats paragraphs 80BC and 80BD above, particularly paragraph 80BD(b); and

(b) does not know and therefore cannot admit paragraph 80BE of the SOC.

80BF As to paragraph 80BF of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80AZ 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 80AZ) 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 80AZ of the SOC; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80BF of the SOC.

80BG As to paragraph 80BG 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 80AZ of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80BF of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(c) in respect of sub-paragraph (c):

(i) repeats paragraphs 80AZ to 80BF of this Defence; and

(ii) otherwise denies that paragraph of the SOC.

80BH IAL denies paragraph 80BH and repeats paragraphs 80AZ to 80BG above.

2019 Excess Policies

80BI IAL denies paragraph 80BI 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 80BI(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 80BI(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) 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) the wording of the 2019 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 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 80BI(f)(iii) of this Defence. Further, the obligation referred to in paragraph 80BI(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 80G(h) to 80G(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) 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) IAL and Scor Re did not approve of the wording and structure of the 2019 Excess Policies;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 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 2019 Excess Policies;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 80G(l) to 80G(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 80BI(j)(i) and 80BI(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.

80BJ IAL denies paragraph 80BJ of the SOC and repeats paragraphs 66A and 80BI above.

80BK IAL denies paragraph 80BK of the SOC and says further that:

(a) it repeats paragraphs 80B, 80C, 80F and 80BI 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 80B(d); and

(c) otherwise, denies the paragraph.

80BL IAL denies paragraph 80BL 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.

80BM IAL denies paragraph 80BM of the SOC and says further that:

(a) it repeats paragraphs 5(d), 8, 66A and 80BL 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 80BM) at any relevant time.

80BN As to paragraph 80BN, IAL:

(a) repeats paragraphs 80BL and 80BM above, particularly paragraph 80BM(b); and

(b) does not know and therefore cannot admit paragraph 80BN of the SOC.

80BO As to paragraph 80BO of the SOC, IAL:

(a) repeats paragraphs 19, 40 to 42 and 80BI 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 80BI 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 80 of the SOC; and

Particulars

IAL repeats the particulars to paragraph 19(c)(xi) of this Defence.

(e) otherwise denies paragraph 80BO of the SOC.

80BP As to paragraph 80BP 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 80BI of this Defence;

(ii) in respect of sub-paragraph (b):

(A) repeats paragraph 80BO of this Defence; and

(B) otherwise denies that paragraph of the SOC;

(c) in respect of sub-paragraph (c):

(i) repeats paragraphs 80BI to 80BO of this Defence; and

(ii) otherwise denies that paragraph of the SOC.

80BQ IAL denies paragraph 80BQ of the SOC and repeats paragraphs 80BI to 80BP of this Defence.

2019 Standalone Policies

80BR IAL denies paragraph 80BR of the SOC and says further that:

(a) it repeats paragraphs 66A, 80B, 80C and 80F 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 80B(d); and

(c) otherwise, denies the paragraph.

80BS IAL denies paragraph 80BS of the SOC.

81 As to paragraph 81 of the SOC, IAL:

(a) repeats paragraphs 5 8, 19(c), 66A, 80O, 80X, 80AG, 80AP, 80AY, 80BH, 80BQ and 80BS of this Defence; and

(b) otherwise denies paragraph 81 of the SOC.

D3.3 Statutory responsibility

82 As to paragraph 82 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 102(a) to 102(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 the 2019 Policy or any of the endorsements (including Endorsements 9, 17, 18 and 23, Debt Endorsement 1 and Customer Endorsement 2(ii)) 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) of the *Corporations Act*;

(iii) mere execution of, or entry into, the 2019 Policy 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 917B and 917C 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 82.a of the SOC, that, at the time BCC executed and/or entered into the 2019 Policy, it was an authorised representative of IAL, which was a financial services licensee;

(d) admits, in relation to paragraph 82.b of the SOC, that execution of a policy of general insurance is, subject to subparagraphs 82(a), 82(aa) and 82(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 82(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) 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 82 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 linking the actual reliance alleged in paragraph 82.d of the SOC with the reasonable expectation as to reliance alleged in paragraph 82.c of the SOC; and

(v) the conduct of BCC in entering into and/or executing the 2019 Policy was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Paragraphs 66A(b) to 66A(k) of this Defence. Further, IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

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

(f) denies paragraph 82.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 82 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 82.d of the SOC with the reasonable expectation as to reliance alleged in paragraph 82.c of the SOC; and

(iii) Greensill Bank did not in fact rely in good faith on the "conduct of BCC in entering into [the 2019 Policy]";

Particulars

(a) Paragraphs 66A(b) to 66A(k) of this Defence.

(b) The premium amount listed in the 2019 Policy was $1, substantially less than the risks (totalling hundreds of millions of dollars) purportedly written by BCC on behalf of IAL under this policy.

(c) Greensill Bank did not pay any premium for the 2019 Policy.

(d) IAL also relies on the matters pleaded by IAL in Annexure A to its Defence to the SOC.

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

(g) further, IAL 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 66A(h) and 66A(j) 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 82 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 82 of the SOC;

(ii) for the purposes of section 917E of the *Corporations Act*, the causal chain 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;

(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, 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-917E of the *Corporations Act*; and

(l) otherwise denies paragraph 82 of the SOC.

D4. Greg Brereton had authority to enter into Policy 3690

83 IAL repeats paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60 and 66A of this Defence and otherwise denies paragraph 83 of the SOC.

84 IAL repeats paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60 and 66A of this Defence and otherwise denies paragraph 84 of the SOC.

85 As to paragraph 85 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 85, the matters in paragraph 82 of this Defence which apply mutatis mutandis to Mr Brereton and his conduct referred to in paragraph 85; and

(b) denies paragraph 85 of the SOC.

D5. Endorsements 9, 17 and 18 to Policy 3690

86 IAL denies paragraph 86 of the SOC and says further:

(a) it relies on the terms of Endorsement 9 (if valid and effective, which is denied) for their full force and effect;

(b) on 13 March 2019, Brereton signed Endorsement 9 and backdated it to 22 February 2019;

(c) the terms of Endorsement 9 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) that as at 13 March 2019 and at all material times between 28 July 2016 and 9 April 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60 and 66A of this Defence;

(e) the amendments purportedly made by Endorsement 9 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL;

(iii) deprived IAL of the benefit of the claims procedure set out in the 2019 Policy, for no corresponding gain; and

(iv) had no commercial or other legitimate justification;

(f) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 9 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or

extend the 2019 Policy 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 the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) 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 9 was not an Approved Endorsement;

(iv) says further that the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 9 was not an endorsement of those kinds; and

(v) Endorsement 9 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;

(g) that:

(i) Endorsement 9 purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party; and

(iii) Endorsement 9 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(h) that by reason of the matters in paragraphs 86(a) to 86(g) of this Defence and each of them individually, Endorsement 9 was invalid, of no effect and not binding on or enforceable as against IAL;

(i) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute Endorsement 9:

(i) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss

Payee Endorsements, and Endorsement 9 was not an endorsement of those kinds;

(ii) Endorsement 9 purported to vary the 2019 Policy;

(iii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iv) Endorsement 9 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(v) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 9;

(vi) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 9;

(vii) any power to issue endorsements under the 2019 Policy did not authorise the issuing of endorsements purporting to operate retrospectively;

(viii) Endorsement 9 purported to operate retrospectively; and

(ix) by reason of the matters in paragraphs 86(i)(i) to 86(i)(viii) of this Defence Endorsement 9 is invalid, of no effect and not binding on or enforceable as against IAL;

(j) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 9 had been issued; and

(ii) Endorsement 9 had been purportedly issued in breach of the CGU AAR Agreement and Underwriting Manual Version 2.0 and was inconsistent with the Approved Endorsements;

(k) executing Endorsement 9 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 honestly;

Particulars

The matters in paragraphs 86(a) to 86(h) of this Defence.

(l) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 9 because entering into Endorsement 9 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 86(a) to 86(i) of this Defence.

(m) Greensill Bank and GCPL knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 9 on behalf of IAL.

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 66A(f) to 66A(j) of this Defence. Insofar as the emails referred to in the particulars under paragraph 66A(h) 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.

87 As to paragraph 87 of the SOC, IAL:

(a) says Brereton signed Endorsement 9;

(b) repeats paragraph 86 of this Defence; and

(c) otherwise denies paragraph 87 of the SOC.

88 In answer to paragraph 88 of the SOC, IAL:

(a) repeats paragraph 86 of this Defence;

(b) says that Endorsement 9 was, in terms, said to be "effective from the Commencement Date", but it did not define "Commencement Date"; and

(c) otherwise denies paragraph 88 of the SOC.

89 In answer to paragraph 89 of the SOC, IAL:

(a) repeats paragraph 86 of this Defence;

(b) says that paragraphs 89.a and 89.b of the SOC otherwise set out the general effect of Endorsement 9 (if valid and effective, which is denied) and that, if the endorsement had that general effect, its effect was (inter alia) to vary clause 10 of the 2019 Policy; and

(c) otherwise denies paragraph 89 of the SOC.

90 IAL denies paragraph 90 of the SOC and says further:

(a) the terms of Endorsement 17 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 on 21 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) and (E), 6(e)(i), 6(e)(iii), 6(e)(vi), 8(i), 8(k), 32, 33, 55, 60 and 66A of this Defence:

(c) the amendments purportedly made by Endorsement 17 (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 17 because:

(i) the authority given by IAL to BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy 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 the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) BCC and Brereton were not authorised to bind mid-term insurance policy alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 17:

(A) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied) by committing it to an additional year of coverage almost 9 months before the expiry of the policy, and did so in a manner not contemplated by the terms of the 2019 Policy;

(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 insurance policy 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 17 was not an Approved Endorsement;

(v) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 17 was not an endorsement of those kinds;

(vi) Endorsement 17 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;

(vii) BCC and Brereton were not authorised to issue an endorsement resulting in a policy having a total term exceeding 24 months, and Endorsement 17 (if valid and effective, which is denied) had the purported effect of extending the policy term beyond 24 months;

(viii) BCC and Brereton were not authorised to bind renewal insurance policies on behalf of IAL with renewal inception dates after 30 June 2019, including "any extension of policy due date", and Endorsement 17 breached this limit because, prior to Endorsement 17, the Policy had a term expiring after 30 June 2019, and Endorsement 17 had the purported effect of extending and/or renewing the term of the 2019 Policy;

(ix) that further or alternatively, pursuant to the Underwriting Manual Version 3.0, and therefore the IAL AAR Agreement and IAGA/IAL Brereton Authorisation, BCC and Brereton were not authorised:

(A) to extend the policy due date for the 2019 Policy in excess of 12 months; or

(B) to issue a 2-year contract for the 2019 Policy with the second year renewal written with IAL as the insurer;

(e) says that:

(i) Endorsement 17 purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party; and

(iii) Endorsement 17 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(f) that by reason of the matters in paragraphs 90(a) to 90(e) of this Defence, and each of them individually, Endorsement 17 was invalid, of no effect and not binding on or enforceable as against IAL;

(g) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to extend the policy end date of the 2019 Policy:

(i) Endorsement 17 purported to vary the 2019 Policy;

(ii) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 17;

(iii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 17;

(iv) by reason of the matters in paragraphs 90(g)(i) to 90(g)(iii) of this Defence Endorsement 17 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) Endorsement 17 had been issued;

(ii) Endorsement 17 had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(i) executing Endorsement 17 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 honestly;

Particulars

The matters in paragraphs 90(a) to 90(h) of this Defence.

(j) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 17 because entering into Endorsement 17 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly;

Particulars

The matters in paragraphs 90(a) to 90(i) of this Defence.

(k) Greensill Bank knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 17 on behalf of IAL; and

Particulars

Paragraphs 66A(a) to 66A(k), 86(k) and 90(c) of this Defence. Further it should have been obvious to Greensill Bank that committing IAL to an extra year under a policy which still had 9 months to run was not consistent with due care and skill and, therefore, that Greensill Bank at least ought to have known that Brereton lacked authority to make that commitment.

(l) that at the time Brereton signed Endorsement 17, Greensill Bank and GCPL were aware that:

(i) his authority and that of BCC on behalf of IAL would terminate on 30 June 2019;

(ii) existing IAL policies would end at their natural expiry date, which for the 2019 Policy was 1 March 2020; and

(iii) BCC and Brereton did not have authority to extend the 2019 Policy beyond 1 March 2020.

Particulars

Email dated 15 April 2019 from Toby Guy on behalf of BCC to Ewan Berkemeier of Marsh with two market announcements (IAL.500.011.0568, IAL.500.011.0569, IAL.500.011.0570).

Email dated 16 April 2019 from Ewan Berkemeier of Marsh to BCC (IAL.500.011.0581).

91 As to paragraph 91 of the SOC, IAL:

(a) says that Brereton signed Endorsement 17;

(b) repeats paragraph 90 of this Defence; and

(c) otherwise denies paragraph 91 of the SOC.

92 As to paragraph 92 of the SOC, IAL:

(a) says that Endorsement 17 specified an "Effective Date" of 10th June 2019;

(b) repeats paragraph 90 of this Defence; and

(c) otherwise denies paragraph 92 of the SOC.

93 IAL repeats paragraph 90 of this Defence and otherwise denies paragraph 93 of the SOC.

94 IAL denies paragraph 94 of the SOC and says further:

(a) the terms of Endorsement 18 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) on 21 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) and (E), 6(e)(i), 6(e)(iii), 6(e)(vi), 8(i), 8(k), 32, 33, 55, 60 and 66A of this Defence;

(c) the amendments purportedly made by Endorsement 18 (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 18 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy 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 the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) the authority given by IAL under the IAL AAR to each of BCC and Brereton did not include an authority to enter into Endorsement 18 because BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 18:

(A) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied) by committing it to further renewal of the policy at least 6 months before its expiry, thereby depriving it of the opportunity of determining whether to renew by reference to matters arising and events occurring in the last 6 or more months of the policy, and did so in a manner not contemplated by the terms of the 2019 Policy;

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

Particulars

Endorsement 18 extended the Policy Period beyond the natural expiry date of the 2019 Policy.

(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 18 was not an Approved Endorsement;

(v) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 18 was not an endorsement of those kinds;

(vi) Endorsement 18 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;

(vii) BCC and Brereton were not authorised to issue an endorsement resulting in a policy having a total term exceeding 24 months, and

Endorsement 18 (if valid and effective, which is denied) had the purported effect of extending the policy term beyond 24 months;

(viii) BCC and Brereton were not authorised to bind renewal insurance policies on behalf of IAL with renewal inception dates after 30 June 2019, including "any extension of policy due date", and Endorsement 18 breached this limit because, prior to Endorsement 18, the Policy had a term expiring after 30 June 2019, and Endorsement 18 had the purported effect of extending and/or renewing the term of the 2019 Policy;

(e) that:

(i) Endorsement 18 purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party; and

(iii) Endorsement 18 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(f) that by reason of the matters in paragraphs 94(a) to 94(e) of this Defence, and each of them individually, Endorsement 18 was invalid, of no effect and not binding on or enforceable as against IAL;

(g) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Endorsement 18:

(i) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 18 was not an endorsement of those kinds;

(ii) Endorsement 18 purported to vary the 2019 Policy;

(iii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iv) Endorsement 18 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(v) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 18;

(vi) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 18;

(vii) any power to issue endorsements under the 2019 Policy did not authorise the issuing of endorsements purporting to operate retrospectively;

(viii) Endorsement 18 purported to operate retrospectively;

(ix) by reason of the matters in paragraphs 94(g)(i) to 94(g)(viii) of this Defence Endorsement 18 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) Endorsement 18 had been issued;

(ii) Endorsement 18 had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(i) executing Endorsement 18 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 94(a) to 94(h) of this Defence.

(j) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 18 because entering into Endorsement 18 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 94(a) to 94(i) of this Defence.

(k) Greensill Bank and/or GCPL knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 18 on behalf of IAL.

Particulars

The matters in paragraphs 66A(a) to 66A(k), 86(k) and 94(c) of this Defence.

95 As to paragraph 95 of the SOC, IAL:

(a) says that Brereton signed Endorsement 18;

(b) repeats paragraph 94 of this Defence; and

(c) otherwise denies paragraph 95 of the SOC.

96 As to paragraph 96 of the SOC, IAL:

(a) says that Endorsement 18 specified an "Effective Date" of 10th June 2019;

(b) repeats paragraph 94 of this Defence; and

(c) otherwise denies paragraph 96 of the SOC.

97 IAL repeats paragraph 94 of this Defence and otherwise denies paragraph 97 of the SOC.

D6. BCC had authority to execute Endorsements 9, 17 and 18

98 IAL denies paragraph 98 of the SOC and repeats paragraphs 86, 90 and 94 of this Defence.

99 As to paragraph 99 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 99 of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of BCC with respect to Endorsement 9, Endorsement 17 and Endorsement 18 and its conduct referred to in paragraph 99 of the SOC; and

(b) denies paragraph 99 of the SOC.

D7. Greg Brereton had authority to execute Endorsements 9, 17 and 18

100 IAL denies paragraph 100 of the SOC and repeats paragraphs 86, 90 and 94 of this Defence.

101 As to paragraph 101 of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 101 of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of Brereton with respect to Endorsement 9, Endorsement 17 and Endorsement 18 and his conduct referred to in paragraph 101 of the SOC; and

(b) denies paragraph 101 of the SOC.

D8. Endorsement 23 to Policy 3690

102 IAL denies paragraph 102 of the SOC and says further:

(a) 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*;

(b) 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;

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

(iv) Brereton was an authorised representative of only TMNF (and not IAGA or IAL) from 1 July 2019 onwards;

(c) on or about 10 April 2019, TMMA issued a media release by which it announced that it had acquired BCC;

(d) 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;

(e) on 15 April 2019, BCC provided to Marsh, on behalf of the Greensill Group, the media release and market announcement referred to in paragraphs 102(c) and 102(d) 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.

(f) the terms of Endorsement 23 (if valid and effective, which is denied) 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;

(g) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 23 because:

(i) Endorsement 23 was signed by Brereton on behalf of BCC on 5 February 2020, after BCC ceased to have authority to act for IAL as referred to in paragraphs 102(a) to 102(e) of this Defence;

(ii) the authority given by IAL to BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy 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;

(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 the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iv) BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 23:

(A) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

(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;

(h) Endorsement 23 was not in any event consistent with the application of prudent underwriting judgment, and was invalid, because:

(i) the amendments purportedly made by Endorsement 23 (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;

(ii) it materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

Particulars

The 2019 Policy purportedly required the insurer to pay claims in respect of losses suffered on Assets that were not owned by the insured at the time of the Insured Cause or the making of a Claim (and was therefore inconsistent with the existing provisions of the 2019 Policy).

(iii) 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 23 (if valid and effective, which is denied) was not an Approved Endorsement;

(iv) the only types of endorsement contemplated or permitted by the 2019 Policy were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 23 was not an endorsement of those kinds;

(v) Endorsement 23 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) of the following matters:

(A) Endorsement 23 purported to vary the 2019 Policy;

(B) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party; and

(C) Endorsement 23 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(i) that by reason of the matters in paragraphs 102(f) to 102(h)(vi) of this Defence, and each of them individually, Endorsement 23 was invalid, of no effect and not binding on or enforceable as against IAL;

(j) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Endorsement 23:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 23;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 23; and

(iii) by reason of the matters in paragraphs 102(j)(i) and 102(j)(ii) of this Defence Endorsement 23 is invalid, of no effect and not binding on or enforceable as against IAL;

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 23 had been issued;

(ii) Endorsement 23 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;

(l) executing Endorsement 23 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 honestly;

Particulars

The matters in paragraphs 102(a) to 102(k) of this Defence.

(m) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 23 because entering into Endorsement 23 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 102(a) to 102(l) of this Defence.

(n) Greensill Bank knew, or ought reasonably to have known, that Brereton did not have authority to enter into Endorsement 23 on behalf of IAL.

Particulars

Paragraphs 66A(a) to 66A(k), 86(k) and 102(g)(i) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 102(e) of this Defence) that TMMA had acquired BCC on 9 April 2019.

103 As to paragraph 103 of the SOC, IAL:

(a) says that Brereton signed Endorsement 23;

(b) repeats paragraph 102 of this Defence; and

(c) otherwise denies paragraph 103 of the SOC.

104 As to paragraph 104 of the SOC:

(a) says that Endorsement 23 stated that it was "effective on the Commencement Date 2020" but the "Commencement Date" is not defined;

(b) repeats paragraph 102 of this Defence; and

(c) otherwise denies paragraph 104 of the SOC.

105 IAL denies paragraph 105 of the SOC and repeats paragraph 102 of this Defence.

106 IAL denies paragraph 106 of the SOC and repeats paragraph 102 of this Defence.

D9. BCC had authority to execute Endorsement 23

107 IAL denies paragraph 107 of the SOC and repeats paragraph 102 of this Defence.

108 As to paragraph 108 of the SOC, IAL:

(a) repeats paragraph 102 of this Defence;

(b) repeats, in answer to the whole of paragraph 108 of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of

BCC with respect to Endorsement 23 and its conduct referred to in paragraph 108 of the SOC; and

(c) denies paragraph 108 of the SOC.

108A As to paragraph 108A of the SOC, IAL:

(a) repeats paragraphs 82 and 102 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 108A of the SOC.

D10. Greg Brereton had authority to execute Endorsement 23

109 IAL denies paragraph 109 of the SOC and repeats paragraph 102 of this Defence.

110 As to paragraph 110 of the SOC, IAL:

(a) repeats paragraph 102 of this Defence;

(b) repeats, in answer to the whole of paragraph 110 of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of Brereton with respect to Endorsement 23 and his conduct referred to in paragraph 110 of the SOC; and

(c) denies paragraph 110 of the SOC.

110A As to paragraph 110A of the SOC, IAL:

(a) repeats paragraphs 82 and 102 of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 110A of the SOC.

E. THE SIMEC TRANSACTION

E.0 INTRODUCTION TO COVERAGE ISSUES

110a Paragraphs 111 to 178 of the SOC are directed to issues of "coverage" – that is, whether the 2019 Policy (and endorsements), if valid and effective (which IAL denies), respond to the claim.

110AA In response to the whole of paragraphs 111 to 178 of the SOC, IAL says:

(a) the Applicants' case on coverage depends on propositions as to the proper construction of the 2019 Policy, endorsements (or purported endorsements) thereto and underlying instruments and agreements as between (inter alia) GCUK, Simec Group Limited (**Simec**), Bramid Outsource Limited (**Bramid**) and others;

(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 the 2019 Policy, 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 the 2019 Policy, 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 the 2019 Policy, 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 effective 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;

(h) IAL will seek disclosure in relation to the matters the subject of paragraphs 111 to 178 of the SOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced; and

(i) admissions by IAL as to the existence and terms of agreements and other documents alleged in paragraphs 111 to 178 of the SOC are made subject to the reservation referred to in the preceding subparagraphs.

110B Except where identified otherwise, the allegations in paragraphs 111 and onwards of this Defence proceed on the assumption (which is denied) that the 2019 Policy (and

alleged endorsements thereto) are valid, effective and binding and enforceable against IAL.

110C In response to the whole of paragraphs 111 to 178 of the SOC, IAL says that the following are necessary conditions of the Applicants' entitlement (if any) to indemnity:

(a) there must be an "Asset" or "Assets" (2019 Policy clause 1.1, clause 3.1; definition of "Loss"; Endorsement 23 (if valid and effective, which is denied));

(b) there must be an "Eligible Debt" (2019 Policy 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" (2019 Policy 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" (2019 Policy clause 1.1); and

(e) the "Loss" or "Losses" must be quantified in accordance with the 2019 Policy and Endorsement 23 (if valid and effective, which is denied) (as to which IAL refers to and repeats paragraph 102 of this Defence).

E.0.1 "Asset"

110D In respect of the condition that there be an "Asset" or "Assets", IAL says the following:

(a) the SOC does not articulate with precision the "Asset" (or "Assets") relied on by the Applicants;

(b) if and to the extent that the Applicants allege (which is denied) that:

(i) the "Assets" were the Greensill Bank Simec Notes (SOC, paragraphs 140 and 144); and

(ii) the Greensill Bank Simec Notes were "Notes" for the purpose of the 2019 Policy (SOC, paragraph 144),

then IAL pleads as set out in paragraphs 110D(c) to 110D(u) of this Defence;

(c) the 2019 Policy provides for three, and only three, kinds of "Assets" (2019 Policy, Sch 1, definition of "Asset");

(d) if an asset does not meet the description of one or more of the kinds of "Assets" identified in Sch 1, then it is not an "Asset";

(e) one of the kinds of “Asset” provided in Sch 1 is a “Note”;

(ea) the Applicants allege that:

(i) the Greensill Bank Simec Notes were “Notes” (see SOC, paragraph 143), and the Applicants do not contend that the Greensill Bank Simec Notes were “Assets” for any other reason;

(ii) the Greensill Bank Simec Notes were “Assets” by reason of the allegations at paragraphs 141, 143 and 157 of the SOC (SOC, paragraph 144);

(f) paragraphs 141, 143 and 157 of the SOC (as referred to in paragraph 144 of the SOC) do not identify any basis for the allegation that the Greensill Bank Simec Notes were “Assets”;

(g) an Asset is a “Note” only if (inter alia):

(i) it is a “Note relating to Eligible Debt(s)” (2019 Policy Sch 1, definition of “Asset”);

(ii) it is a “Note” issued by the “SPV” in order to raise funds (2019 Policy Sch 1, definition of “Asset”);

(iii) it is a “Note” issued by the “SPV” to allow the SPV to purchase either a participation in the relevant “Participant Trust” or, alternatively, “Eligible Debts” (2019 Policy Sch 1, definition of “Asset”);

(iv) it is a note (2019 Policy Sch 1, definition of “Note”);

(v) it is a note, which is constituted by the “Master Trust Deed”, being a master trust deed:

(A) which is entered into by an “SPV” (as defined, and which includes Lagoon Park Capital SA), TMF Luxembourg SA and Citibank N.A., London Branch; and

(B) which sets out the form and terms and conditions of the Notes issued by the SPV and by which the Notes issued by the SPV are constituted,

(2019 Policy Sch 1, definitions of “Note” and “Master Trust Deed”);

(vi) the note is for the time being outstanding (2019 Policy Sch 1, definition of “Note”); and

(vii) the note was issued pursuant to the "Issue Documents" as defined in the "Master Trust Deed" (2019 Policy Sch 1, definition of "Note");

(h) a "Participant Trust" is a trust created by the "Servicer" (being GCUK) as grantor by virtue of a trust deed in favour of the "Trustee" (being Citibank N.A., London Branch in its capacity as the trustee of a "Participant Trust") in respect of "Trust Property" (2019 Policy Sch 1, definition of "Participant Trust");

(i) the Applicants do not make any allegation as to the existence of a "Participant Trust";

(j) the Applicants allege that the applicable SPV is Lagoon Park because they allege that Lagoon Park issued the Greensill Bank Simec Notes (SOC, paragraph 138);

(k) an asset is an "Asset" only if it is derived from an "Eligible Debt" (Endorsement 23 (if valid and effective, which is denied); 2019 Policy clause 3.1; Sch 7);

(l) the Applicants do not plead any material facts capable of establishing that the Greensill Bank Simec Notes were:

(i) issued by Lagoon Park as the applicable SPV in order to raise funds;

(ii) issued by Lagoon Park to allow it to purchase a participation in a relevant "Participant Trust" or "Eligible Debts";

(iii) notes constituted by a "Master Trust Deed" (as defined);

(iv) notes issued pursuant to the "Issue Documents" as defined in the "Master Trust Deed"; and

(v) at material times, outstanding;

(m) for reasons set out in paragraph 110E of this Defence, the Applicants do not any plead material facts capable of establishing that the Greensill Bank Simec Notes:

(i) related to an "Eligible Debt";

(ii) derived from an "Eligible Debt"; and

(iii) derived from a debt owed by an "Eligible Customer";

(n) 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 (2019 Policy clause 3.1; definition of “Claim”, Sch 1; Sch 7);

(ii) owned by the “Insured” at the time of the “Insured Cause” during the “Policy Period” (2019 Policy clause 3.1; Sch 7);

(iii) owned by the “Insured” during the “Policy Period” (2019 Policy clause 4.1); and

(iv) owned by the “Insured”:

(A) immediately prior to the making of a “Claim” (2019 Policy clause 3.1; definition of “Claim”, Sch 1; definition of “Loss”; Endorsement 23 (if valid and effective, which is denied)); or

(B) alternatively, prior to the payment of a “Claim” (2019 Policy, definition of “Loss”; Endorsement 23 (if valid and effective, which is denied));

(o) the alleged “Policy Period” started no earlier than 22 February 2019 (2019 Policy, Schedule 1, definition of "Commencement Date") and ended on 22 February 2020 or, alternatively, 1 March 2020 or, alternatively, no later than 1 March 2021 (Endorsement 17 and Endorsement 18, if valid and effective which is denied) and, thus, 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”;

(p) IAL denies that Endorsements 17 and/or 18 were valid and effective to bind IAL or extend the end of the Policy Period of the 2019 Policy (if valid and effective, which is denied) from 1 March 2020 to 1 March 2021 (as to which, IAL refers to and repeats paragraphs 90 to 101 of this Defence);

(q) the Applicants allege (which is not admitted) that Greensill Bank (which is an alleged Insured) acquired the Greensill Bank Simec Notes between 9 February 2021 and 25 February 2021 (SOC, paragraph 142);

(r) in the event that the Greensill Bank Simec Notes were (as alleged) acquired by Greensill Bank between 9 February 2021 and 25 February 2021 (SOC, paragraph 142), then:

(i) there is no coverage in respect of Greensill Bank Simec Notes acquired after the expiry of the “Policy Period” on 22 February 2020

or, alternatively, 1 March 2020 or, alternatively, 1 March 2021 and which were not owned by Greensill Bank before then;

(ii) there is no coverage in respect of any Greensill Bank Simec Notes because the "Policy Period" expired on 22 February 2020 or, alternatively, 1 March 2020, which was prior to between 9 February 2021 and 25 February 2021 when the "Assets" were alleged to have been acquired by Greensill Bank; and

(iii) there is no coverage in respect of notes acquired by an "Insured" only after the expiry of the "Policy Period";

(s) the Greensill Bank Simec Notes are not "Assets" and there is no pleaded basis for a conclusion that they are "Assets";

(t) it puts the Applicants to proof on each element necessary to establish that the Greensill Bank Simec Notes to be "Assets"; and

(u) it denies that the Greensill Bank Simec Notes are "Assets".

E.0.2 "Eligible Debt"

110E In respect of the condition that there be an "Eligible Debt", IAL says the following:

(a) the Applicants allege, or implicitly allege, (which is denied) that the obligations of Simec owing under the Simec IPUs (defined at SOC, paragraph 127(b)) were:

(i) "Debts" within the meaning of "Debt" in Part B of Debt Endorsement 1 (SOC, paragraph 156); and

(ii) "Eligible Debts" within the meaning of "Eligible Debt" in Sch 7 of the 2019 Policy (SOC, paragraph 157);

(b) the Applicants allege, or implicitly allege, (which is denied) that the Simec IPUs comprise undertakings:

(i) owed by Simec (SOC, paragraphs 115, 127(b) and 168);

(ii) owed to GCUK (SOC, paragraphs 115, 127(b) and 168);

(iii) undertakings to pay GCUK (as Bramid's transferee) a "Certified Amount" (SOC, paragraphs 115, 127(b) and 168); and

(iv) owed under the Simec Customer Agreement (SOC, paragraphs 115, 127 and 168);

(c) in order for a debt to be an “Eligible Debt” under Sch 7 of the 2019 Policy, the following conditions must be satisfied, and must be satisfied at the time the “Asset” is acquired by the “Insured” (which, here, is alleged to be between 9 February 2021 and 25 February 2021 (SOC, paragraph 142)):

(i) the obligor must be a “Customer”, being a “Customer” endorsed to the 2019 Policy under a “Customer Endorsement”, who is a debtor in respect of a “Debt” (2019 Policy Sch 7; definition of “Customer”);

(ia) the obligor must be an "Eligible Customer" (2019 Policy, clause 3.1);

(ii) the obligor must be not an “Affiliate” of any of the parties to the “Transaction Documents” (other than any “Origination Documentation”) (2019 Policy Sch 7);

(iii) the obligor must be a “corporate entity” (2019 Policy Sch 7);

(iv) the obligor must be not “Insolvent” (2019 Policy Sch 7, clause 10.2), 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;

(v) the obligor must have a “Customer Limit” (2019 Policy Sch 7);

(vi) the “Customer Limit” must be established in accordance with the terms of the 2019 Policy (2019 Policy Sch 7);

(vii) the debt must have a “Due Date”, being:

(A) in the event that Debt Endorsement 1 is valid and effective (which is denied), the date the “debt” becomes due and payable pursuant to the relevant “Origination Documentation” (as defined in Part B of Debt Endorsement 1);

(B) otherwise, 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 (2019 Policy Sch 7; definition of “Due Date” and definition of “Platform”);

(viii) the "Due Date" must not exceed the "Maximum Tenor", being a period set out in a relevant "Debt Endorsement" or "Customer Endorsement" (2019 Policy Sch 7; definition of "Maximum Tenor");

(ix) the debt must not be outstanding after its "Due Date" (2019 Policy Sch 7);

(x) there must (on the proper construction of the 2019 Policy and, in particular, Sch 7) be in place a "Debt Endorsement" or "Customer Endorsement" which stipulates, in respect of the debt, a "Maximum Tenor";

(xi) the debt must be denominated and payable only in an "Approved Currency" (2019 Policy Sch 7); and

(xii) the debt must satisfy any further criteria set out in the relevant Debt Endorsement relating to the Debt (2019 Policy Sch 7), with the relevant Debt Endorsement here being Part B of Debt Endorsement 1;

(d) the Applicants:

(i) rely on Debt Endorsement 1;

(ii) allege that each Simec IPU is a "Debt" within the meaning of Debt Endorsement 1; and

(iii) in this regard, rely (and rely only) on Part B of Debt Endorsement 1 (SOC, paragraph 156);

(e) it denies that Debt Endorsement 1 is valid or effective to bind IAL (as to which it refers to and repeats paragraphs 145 and 156 of this Defence);

(f) if Debt Endorsement 1 is valid and effective (which is denied), the following are necessary conditions for a debt to satisfy the criteria in Part B of Debt Endorsement 1:

(i) there must be a "debt", being an obligation to pay a sum of money;

(ii) the "debt" must be "originated" in the course of "Supply Chain Finance";

(iii) there must be a "Supplier", being a person who:

(A) is either Tower Trade Group Limited or any of its "Affiliates", Bramid Limited or any of its "Affiliates", or Bramid Outsource Limited or any of its "Affiliates";

(B) supplies a re-invoicing/paying agency service to the "Customer"; and

(C) has executed a receivables purchase agreement with the "Servicer";

(iv) there must be a "Customer", being a person who:

(A) is a "Customer" within the meaning of the 2019 Policy;

(B) is endorsed to the 2019 Policy under a valid and effective "Customer Endorsement" (2019 Policy, definition of "Customer");

(C) is a debtor in respect of a "Debt" within the meaning of the 2019 Policy (2019 Policy, definition of "Customer");

(D) has a right to receive goods or services from the "Supplier"; and

(E) has undertaken to make payment to the "Servicer", as a consequence of the acquisition by the "Servicer" from a "Supplier" of one or more accounts receivables relating to the supply of the goods or services;

(v) there must be a "Servicer" (here, GCUK) who acquires from a "Supplier" one or more account receivables relating to the supply of goods and/or services by such "Supplier" to a "Customer" or its "Affiliate";

(vi) there must be a "Contract", being a written agreement, order form, invoice or other written document customarily used or accepted by the relevant "Supplier" to evidence an agreement between the "Customer" or an "Affiliate" of the Customer relating to or for the sale of goods and/or rendering of services by the "Supplier" (2019 Policy, definition of "Contract");

(vii) the debt must relate to goods and/or services supplied under the "Contract";

(viii) there must be a "Customer Agreement", being an agreement between GCUK as "Servicer" and the "Customer", under which the "Customer" has an irrevocable and unconditional obligation to pay "Eligible Debts" to GCUK as a consequence of the acquisition by GCUK from a "Supplier" of one or more account receivables relating to the supply of goods and/or services provided by the "Supplier" to the "Customer" or its "Affiliate";

(ix) there must be an underlying account receivable, being the right of the "Supplier" to receive a future payment from the "Customer" under the "Contract";

(x) the debt must be an obligation to pay, or cause to be paid, an amount of any receivables payable by the "Customer" (or by an "Affiliate" approved by GCUK under the "Origination Documentation") to the "Supplier" in respect of goods and/or services provided by the "Supplier";

(xi) there must be an "Original Supplier" which, on the proper construction of Part B of Debt Endorsement 1, is a person, who is not Bramid, and who supplies or has supplied goods and/or services to the "Customer";

(xii) the goods and/or services supplied under the "Contract" must relate to the financing of "Original Supplier" receivables payable by the Customer (or an "Affiliate") to the "Original Supplier" in respect of goods and/or services provided by the "Original Supplier" to the "Customer" (or such "Affiliate");

(xiii) there must be "Origination Documentation", being any and all documentation relating to supply chain financing between GCUK and, among others, a "Customer" and a "Relevant Supplier", including: (1) an agreement for the transfer of receivables by such "Supplier" to GCUK, and (2) the "Customer Agreement";

(xiv) the goods and/or services provided by the "Supplier" to the "Customer" (or "Affiliate") must be acceptable to GCUK pursuant to the "Origination Documentation";

(xv) there must be a "Platform", being, relevantly, 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; and

(xvi) the payment details of the unconditional undertaking must be evidenced by payment details loaded onto the "Platform" by the "Customer" or by any "Affiliate" as agent for the "Customer" and for which receivables have been transferred or have been purportedly transferred to the "Servicer";

(g) on the proper construction of Debt Endorsement 1 (if valid and effective, which is denied), the following are necessary characteristics of "Supply Chain Finance" as therein referred to:

(i) the finance must be provided by a third-party financer to a trade debtor, not a trade creditor;

(ii) the underlying trade debt must have arisen by reason of a transaction for the supply of goods or services in the ordinary course of trade giving rise to a current expense, rather than a transaction giving rise to a capital expense;

(iii) the trade debt must be owing at the time finance is provided; and

(iv) the finance must be provided in settlement of, or in order to settle, the trade debt;

(h) on the proper construction of the 2019 Policy and Debt Endorsement 1:

(i) there must be a tripartite relationship, involving (at least) three distinct and arms-length parties, namely, the "Supplier", the "Customer" and the "Servicer" and two distinct agreements, the "Contract" and the "Customer Agreement";

(ii) accordingly, the "Servicer" (being GCUK) and the "Supplier" cannot be the same person;

(iii) the "Customer Agreement" and the "Contract" cannot be the same instrument; and

(iv) any "services" supplied under the relevant "Contract" and alleged to give rise to a "Debt":

(A) do not include the supply of finance; and

(B) are distinct from and cannot include the supply of finance by the "Servicer" under a "Customer Agreement";

(i) as best IAL understands the Applicants' case, it is that:

(i) the "Customer" was Simec;

(ii) the "Servicer" was GCUK;

(iii) the "Supplier" was Bramid;

(iv) the debts are the Simec IPUs (SOC, paragraph 127);

(v) each Simec IPU was originated in the course of supply chain finance (SOC, paragraphs 128 and 156(a));

(vi) Bramid provided a re-invoicing/paying agency service to Simec (SOC, paragraph 156(a));

(vii) the "Contract" was the Re-Invoicing Agreement (defined at paragraph 117 of the SOC), being the re-invoicing services agreement between Bramid and Simec, allegedly relating to supply chain financing between GCUK, Simec and Bramid (SOC, paragraph 156(b));

(viii) the Simec IPUs were related to goods and/or services supplied by Bramid under the Re-Invoicing Agreement (SOC, paragraph 156(b));

(ix) the "Customer Agreement" was the Simec Customer Agreement (defined at paragraph 114 of the SOC) (SOC, paragraph 156(c));

(x) each Simec IPU was an unconditional undertaking given by Simec to GCUK to pay an amount equal to the amount of any receivables payable by Simec in respect of re-invoicing/paying agency services provided by Bramid (SOC, paragraph 156(d));

(xi) the "Original Suppliers" were Taurus Metallurgicals Limited, Secant Trading DMCC, Inter Globe Enterprises Ltd and Secant Trading DMCC (SOC, paragraph 122);

(xii) the services supplied by Bramid related to the financing of "Original Supplier" receivables payable by Simec to the "Original Suppliers" in respect of goods and/or services provided to the "Original Suppliers" to Simec (SOC, paragraph 156(e));

(xiii) each of the Simec Customer Agreement, the Re-Invoicing Agreement and the Supplier Agreement (defined at paragraph 119 of the SOC) was "Origination Documentation";

(xiv) each Simec IPU was acceptable to GCUK pursuant to the "Origination Documentation" (SOC, paragraph 156(e));

(xv) each Simec IPU was evidenced by payment details loaded onto a "Platform" (SOC, paragraph 156(e)); and

(xvi) each receivable associated with the Simec IPUs was transferred or purportedly transferred to GCUK (SOC, paragraph 156(f));

(j) says that the "Simec IPUs" were not "Debts" under Part B of Debt Endorsement 1 because:

(i) Customer Endorsements 2, 2(i) and, or alternatively, 2(ii) were not valid or effective to bind IAL (as to which it refers to and repeats paragraphs 145 to 154A of this Defence); and

(ii) in the premises:

(A) Simec was not a "Customer"; and

(B) Simec did not have a "Customer Limit" established in accordance with the terms of the 2019 Policy;

(k) says that the Simec IPUs were not "Debts" under Part B of Debt Endorsement 1 because:

(i) a debt is under Part B of Debt Endorsement 1 only if it is originated in the course of "Supply Chain Finance"; and

(ii) on the Applicants' pleaded case, each Simec IPU did not originate in the course of "Supply Chain Finance" because:

(A) each Simec IPU arose because of the submission by Simec of a "PAUF" under clause 2.2 of the Simec Customer Agreement; and

(B) Simec was entitled to issue a "PAUF" under clause 2.2 of the Simec Customer Agreement whether or not:

a. Bramid supplied any service to Simec;

b. GCUK supplied any finance to Simec (or anyone);

c. there was any supply chain in existence; and

d. there was any supply chain finance provided;

(l) says that the Simec IPUs were not "Debts" under Part B of Debt Endorsement 1 because:

(i) it is a necessary condition of a "debt" meeting the description of Part B of Debt Endorsement 1 that there must be a "Contract";

(ii) the "Contract" asserted by the Applicants is the Re-Invoicing Agreement;

(iii) a "Contract" is, relevantly, a written agreement customarily used or accepted by the relevant "Supplier" to evidence the agreement between the "Supplier" and the "Customer", relating to or for the sale of goods and/or the rendering of services; and

(iv) the Re-Invoicing Agreement was not a "Contract" at least because Simec was not a "Customer";

(m) says that the Simec IPUs were not "Debts" under Part B of Debt Endorsement 1 because:

(i) a debt is not a "Debt" under Part B of Debt Endorsement 1 unless it relates to goods and/or services supplied under a "Contract";

(ii) the "Contract" relied on is the Re-Invoicing Agreement;

(iii) each Simec IPU did not "relate to" goods and/or services supplied under the Re-Invoicing Agreement because:

(A) each Simec IPU did not, as a matter of law, arise because of the supply of goods or services under the Re-Invoicing Agreement;

(B) each Simec IPU arose as a consequence of the submission by Simec of a "PAUF" under clause 2.2 of the Simec Customer Agreement; and

(C) Simec was entitled to issue a "PAUF" under clause 2.2 of the Simec Customer Agreement whether or not:

a. Bramid supplied any service to Simec;

b. Bramid supplied any service to Simec under the Re-Invoicing Agreement; and

c. the Re-Invoicing Agreement was in existence; and

(D) there is no contention that any PAUFs submitted by Simec in this case were submitted by reason of the provision of services by Bramid under the Re-Invoicing Agreement;

(n) says further that the Simec IPUs were not "Debts" under Part B of Debt Endorsement 1 because:

(i) it is a necessary condition of there being a "Debt" under Part B of Debt Endorsement 1, the debt must be owing under a "Customer Agreement" within the meaning of Part B;

(ii) the "Customer Agreement" relied on by the Applicants is the Simec Customer Agreement (SOC, paragraph 156(c));

(iii) the Simec Customer Agreement (defined at paragraph 114 of the SOC) was not a "Customer Agreement" within the meaning of Part B of Debt Endorsement 1 because:

(A) Simec was not a "Customer" within the meaning of Part B of Debt Endorsement 1 for the reasons set out at paragraphs 145 to 155 and 110E(j) of this Defence;

(B) the obligation (if any) of Simec created by clause 2.2 of the Simec Customer Agreement was not an obligation to pay "Eligible Debts"; and

(C) the obligation (if any) of Simec created by clause 2.2 of the Simec Customer Agreement was not an obligation to pay "Eligible Debts" as a consequence of the acquisition by GCUK from Bramid of one or more account receivables, but instead the obligation created by clause 2.2 of the Simec Customer Agreement arose:

a. merely upon and because of the submission of a PAUF;

b. whether or not there were account receivables in existence;

c. whether or not GCUK acquired account receivables;

d. in circumstances where there were no account receivables because they were not more than possible future rights or not more than purported rights; and

e. in circumstances where Bramid provided no performance or only partial performance of any obligation arising elsewhere to assign account receivables to GCUK; and

(D) in the circumstances, each Simec IPU was not owing pursuant to a "Customer Agreement";

(o) says further that the Simec IPUs under the Simec Customer Agreement were not "Debts" under Part B of Debt Endorsement 1 because:

(i) a debt is under Part B of Debt Endorsement 1 only if there is an underlying account receivable payable by "Customer" to "Supplier";

(ii) any debts arising under the Simec Customer Agreement were debts arising by reason of the payment obligation in clause 2.2;

(iii) the payment obligation in clause 2.2 arose in respect of an "Account Receivable" within the meaning of the Simec Customer Agreement;

(iv) there could be an "Account Receivable" within the meaning of the Simec Customer Agreement whether or not there was in fact an underlying account receivable because the definition of "Account Receivable" encompasses cases where there was no underlying account receivable, but only a possible future account receivable;

(v) the submission of a PAUF (under clause 2.1 of the Simec Customer Agreement) and the assumption by Simec of a payment obligation (under clause 2.2 of the Simec Customer Agreement) were not conditional on the existence of an underlying account receivable and the fact (which is not admitted) that PAUFs were submitted and payment obligations arose, does not mean that there were in existence underlying accounts receivable for the purposes of Part B of Debt Endorsement 1; and

(vi) if and to the extent that there were not in existence underlying accounts receivable for the purpose of B of Debt Endorsement 1, any payment obligations arising out of the submission of a PAUF by Simec were not and could not give rise to "Debts" for the purpose of B of Debt Endorsement 1;

(p) says that the Simec IPUs were not "Debts" under Part B of Debt Endorsement 1 because:

(i) in order for a debt to fall within Part B of Debt Endorsement 1, the debt must be in an amount equal to the amount of any account receivables owed by the "Customer" to the "Supplier" in respect of goods and/or services provided by the "Supplier";

(ii) the quantum of any payment obligation under each Simec IPU was the "Certified Amount" for the purposes of the Simec Customer Agreement;

(iii) the "Certified Amount" was an amount equal to the gross amount of the related "Account Receivable" as specified in the relevant "PAUF" (Simec Customer Agreement clause 1.1);

(iv) the quantum of any account receivables payable by Simec to Bramid was the amount of each "Service Invoice" (Re-Invoicing Agreement clause 2.3), which was the "Servicing Fee" (see definition of "Service Invoice" in Re-Invoicing Agreement clause 1.1);

(v) there is no pleading establishing, or capable of establishing, that the "Certified Amount" was the same as the amount of each "Service Invoice";

(vi) the Applicants allege, or implicitly allege, that the quantum of each Simec IPU included both an amount in respect of the Relevant Supplier Invoices and an amount comprising the "Servicing Fee" payable to Bramid;

(vii) in contrast, the quantum of any account receivables payable by Simec to Bramid was just the "Servicing Fee"; and

(viii) therefore, on the Applicants' pleaded case, each Simec IPU was not in an amount equal to the amount of any receivables payable by Simec in respect of re-invoicing/paying agency services provided by Bramid;

(pa) says that:

(i) the "warranties" referred to in the definition of "Eligible" included the warranties given by the "Insured" in the "Proposal" (the 2019 Policy, 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 (the 2019 Policy, definition of "Proposal", Schedule 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 the 2019 Policy, must be given by the "Insured" to the "Insurer"; and

(iv) on the proper construction of the 2019 Policy and/or in order to give business efficacy to the 2019 Policy, 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;

(q) it puts the Applicants to proof on each condition necessary for the Simec IPUs to be "Eligible Debts"; and

(r) it denies that the Simec IPUs were "Eligible Debts".

E.0.3 Failure by the "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date"

110F In respect of the condition that there be a failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date", IAL says the following:

(a) the Applicants allege, or implicitly allege, that this condition is satisfied because since approximately 13 July 2021, Simec has failed to make payments pursuant to the Simec IPUs by the applicable "Backstop Date", being within 45 days of the applicable payment due dates (SOC, paragraph 169);

(b) it puts the Applicants to proof of the failure to pay, including the existence of the obligation to pay, the alleged "Backstop Date" and the asserted failure to pay by the "Backstop Date"; and

(c) it denies that there was a relevant failure to pay an "Eligible Debt", including because:

(i) Simec was not a "Customer"; and

(ii) the Simec IPUs were not "Eligible Debts".

E.0.4 "Loss" caused by the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date"

110G 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) IAL denies that Endorsement 23 is valid or effective to bind IAL (as to which it refers to and repeats paragraphs 102 to 110 of this Defence);

(b) by the SOC, the Applicants allege, or implicitly allege that:

(i) each of the "Assets" (as best IAL understands the Applicants' case, the Greensill Bank Simec Notes) was each a "Note" (SOC, paragraph 144);

(ii) "Loss" (if any) is assessed under paragraph (iii) of the definition of "Loss" in the 2019 Policy as varied by Endorsement 23 (if valid and effective, which is denied) (SOC, paragraph 177);

(iii) "Loss" is therefore the amount equal to the difference between: (a) the "Expected Allocation" of the Insured in respect of each of the Greensill Bank Simec Notes; and (b) Greensill Bank's entitlement under the "Master Trust Deed" in respect of any amounts actually paid by the "Customer" or on its behalf in respect of the "Eligible Debt" from which the Note was derived (Endorsement 23 (if valid and effective, which is denied));

(iv) the "Expected Allocation" of the Greensill Bank Simec Notes was USD17,591,532 (SOC, paragraph 176(a));

(v) the value of Greensill Bank's relevant entitlements under the Master Trust Deed as holder of the Greensill Bank Simec Notes was nil (SOC, paragraph 176(b)); and

(vi) therefore, the "Loss" is USD17,591,532;

(c) where the "Asset" is a "Note", 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 110D(n) 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;

(iii) the "Asset" must be owned by the "Insured":

(A) immediately prior to the making of a "Claim" (2019 Policy, clause 3.1; definition of "Claim", Sch 1; definition of "Loss''); or

(B) alternatively, immediately prior to the payment of a "Claim" (Endorsement 23 (if valid and effective, which is denied); 2019 Policy, definition of "Loss");

(iv) the "Asset" must be owned by the "Insured", alternatively by the "Insured" or a "Loss Payee", during the "Policy Period";

(v) the Insured must have an "Expected Allocation" in respect of the Note (Endorsement 23 (if valid and effective, which is denied); 2019 Policy, definition of "Loss");

(vi) the Note must have a "Final Redemption Amount" or "Instalment Amounts", as set out in a "Pricing Supplement" as defined in the "Master Trust Deed" (2019 Policy, definition of "Expected Allocation");

(vii) the "Insured" must have a potential entitlement under the "Master Trust Deed" in respect of the Note (Endorsement 23 (if valid and effective, which is denied); the 2019 Policy, definition of "Loss"); and

(viii) the cause of the "Insured's" potential entitlement under the "Master Trust Deed" being less than the "Expected Allocation" of the "Insured" in respect of such "Asset" is the failure of the "Customer" to pay the "Eligible Debt" on or before the "Backstop Date" (rather than some other cause) (2019 Policy, clause 1.1);

(d) the Applicants do not plead any material facts capable of establishing:

(i) the matters in paragraph 110D(n) of this Defence;

(ii) the asserted "Loss" (being, the difference between the "Expected Allocation" and the value of Greensill Bank's entitlements under the Master Trust Deed) was caused by or resulted from the occurrence of the alleged Simec Default (defined at paragraph 168 of the SOC) or the "Insured Cause" alleged at paragraph 170 of the SOC;

(iii) in the counterfactual where the Simec Default (or any alleged Insured Cause) did not occur, the "Loss" would not have been suffered;

(iv) the Greensill Bank Simec Notes had a "Final Redemption Amount" or "Instalment Amounts";

(v) there was a "Pricing Supplement" in respect of the Greensill Bank Simec Notes;

(vi) there was a "Master Trust Deed";

(vii) Greensill Bank's entitlements under the "Master Trust Deed", whether in respect of the Greensill Bank Simec Notes or otherwise, were zero; and

(viii) the cause of Greensill Bank's entitlements under the "Master Trust Deed" in respect of the Greensill Bank Simec Notes (or otherwise) being less than the "Expected Allocation" was the failure of Simec to pay the Simec IPUs on before the "Backstop Date";

(e) it says:

(i) it is a necessary condition of an indemnity that the indemnified party in fact have suffered a loss;

(ii) under the 2019 Policy, there is an obligation to indemnify only if there is a loss in fact suffered by the "Insured" arising from the occurrence of an "Insured Cause" (2019 Policy clause 1.1, "Indemnity");

(iii) on the pleaded case, any loss on the part of Greensill Bank does not exceed the amount (if any) actually paid by Greensill Bank to acquire the Greensill Bank Simec Notes; and

(iv) in the premises, there is no coverage or, alternatively, if there is coverage (which is denied), it is confined to the actual loss (if any) suffered by Greensill Bank;

(f) it puts the Applicants to proof of all material facts necessary for the arising of a "Loss" and for the arising of an indemnity under clause 1.1 or otherwise;

(g) it puts the Applicants to proof of all material facts necessary for the existence of a "Loss"; and

(h) it denies that there was a "Loss" or "Losses", because of the matters pleaded in paragraphs 110C to 110G of this Defence.

E.0.5 "Loss" quantified in accordance with the 2019 Policy

110H In respect of the condition that the "Loss" or "Losses" must be quantified in accordance with the 2019 Policy (if valid and effective, which is denied), IAL repeats paragraph 110G of this Defence.

E1. Parties to the transaction

111 IAL admits paragraph 111 of the SOC.

112 IAL does not know and cannot admit paragraph 112 of the SOC.

113 IAL admits paragraph 113 of the SOC.

E2. Reinvoicing Facility

113A In respect of paragraphs 114 to 127, 131 to 142 and 158 to 166 of the SOC, IAL says generally that:

(a) IAL was not, and is not alleged to be, a party to the documents identified in those paragraphs of the SOC;

(b) Greensill Bank was not, and is not alleged to be, a party to the documents identified in paragraphs 114 to 127, 131 to 141, 158 to 164 and 166 of the SOC;

(c) the Applicants do not allege (and IAL would not be in a position to admit, in any event) that those paragraphs of the SOC exhaustively identify the documents or terms that govern the relationship that exists between the parties to those documents; and

(d) admissions by IAL as to the existence and terms of agreements and other documents alleged in those paragraphs of the SOC are made subject to the reservation referred to in the preceding sub-paragraph and in paragraph 110AA of this Defence.

Customer Agreement

114 As to paragraph 114 of the SOC, IAL:

(a) repeats paragraphs 110E and 113A of this Defence;

(aa) says that IAL was not, and is not alleged to be, a party to the document identified in paragraph 114 of the SOC;

(b) admits that representatives of Simec and GCUK appear to have signed a document styled "Customer Agreement" with an effective date of 4 October 2015 (referred to in the SOC as the **Simec Customer Agreement**); and

(c) otherwise does not know and cannot admit paragraph 114 of the SOC.

115 As to paragraph 115 of the SOC, IAL:

(a) repeats paragraphs 113A and 114 of this Defence;

(b) says that paragraph 115 misstates the effect of clause 2.2 of the Simec Customer Agreement (defined in paragraph 114 of the SOC);

(c) says that:

(i) under clause 2.2, it was not necessary that there be an "Account Receivable" owed by Simec to a "Supplier";

(ii) the defined expression "Account Receivable" included possible future rights; and

(iii) a possible future right is not an account receivable "owed" by a person;

(d) says further that, under clause 2.2:

(i) the clause was engaged only where a "PAUF" within the meaning of the Customer Agreement was submitted;

(ii) the obligation was to pay the "Certified Amount", not the "Certified Amount" of "that debt"; and

(iii) the "Certified Amount" was, relevantly, an amount equal to the gross amount of the related "Account Receivable" as specified in the relevant "PAUF";

(e) refers to all the terms of the Simec Customer Agreement for their full force and effect; and

(f) otherwise does not know and cannot admit paragraph 115 of the SOC.

116 As to paragraph 116 of the SOC, IAL:

(a) repeats paragraphs 113A and 114 of this Defence;

(b) admits that there is a letter from GCUK to Simec dated 22 March 2016 purportedly relating to the GCUK "Designated Accounts" for the purpose of the Simec Customer Agreement;

(c) refers to all of the terms of the Designated Account Letter (defined in paragraph 116 of the SOC) for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 116 of the SOC.

Re-Invoicing Agreement

117 As to paragraph 117 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(aa) says that IAL was not, and is not alleged to be, a party to the document identified in paragraph 117 of the SOC;

(b) admits that representatives of Bramid and Simec appear to have signed a document styled a "Re-Invoicing Service Agreement" with an "Effective Date" of 27 October 2015 (referred to in the SOC as the **Re-Invoicing Agreement**); and

(c) otherwise does not know and cannot admit paragraph 117 of the SOC.

118 As to paragraph 118 of the SOC, IAL:

(a) repeats paragraph 113A and 117 of this Defence;

(b) says that the paragraph generally sets out the effect of part of Recital B, but that Recital B did not itself rise higher than the terms of the agreement themselves;

(c) refers to all of the text of Recital B and clause 2.1 of the Re-Invoicing Agreement for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 118 of the SOC.

Supplier Agreement

119 As to paragraph 119 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(aa) says that IAL was not, and is not alleged to be, a party to the document identified in paragraph 119 of the SOC;

(b) admits that representatives of GCUK and Bramid appear to have signed a document styled a "Master Supplier Agreement" and dated 10 August 2016 (referred to in the SOC as the **Supplier Agreement**); and

(c) otherwise does not know and cannot admit paragraph 119 of the SOC.

120 As to paragraph 120 of the SOC, IAL:

(a) repeats paragraphs 113A and 119 of this Defence;

(b) says that paragraph 120 of the SOC generally sets out some of the effects of clauses 2.1 and 2.2 and the definition of Irrevocable Election in clause 1.1 of the Supplier Agreement (defined in paragraph 119 of the SOC);

(c) says, as to paragraph 120(c):

(i) the defined expression “Account Receivable” encompassed rights:

(A) which did not presently exist, but were no more than possible future rights;

(B) which did not exist, and were no more than purported rights; and

(C) which did not exist, and were no more than purported rights arising from a purported, but non-existing, business relationship;

(ii) on the proper construction of the Supplier Agreement, and as a matter of general law, there was no sale or transfer of an “Account Receivable” where the “Account Receivable” was a right which did not exist;

(d) refers to the terms of the Supplier Agreement for their full force and effect; and

(e) otherwise does not know and cannot admit paragraph 120 of the SOC.

121 As to paragraph 121 of the SOC, IAL:

(a) repeats paragraphs 113A and 119 of this Defence;

(b) says that the paragraph generally sets out the effect of parts of clauses 1.1, 2.3 and 2.4 of the Supplier Agreement;

(c) says, as to paragraph 121(a):

(i) clause 2.3 deemed a sale to have occurred, rather than imposing an obligation to sell, assign and transfer; and

(ii) there was no sale, assignment or transfer of “Accounts Receivable” which were non-existing rights;

(d) says, as to paragraph 121(b):

(i) the obligation was to pay the “Net FI Amount”, which was the “Certified Amount” of the related “Payment Obligation” less the “FI Fee”; and

(ii) the obligation was to pay on the “Advance Date”;

(e) says that, on the proper construction of the Supplier Agreement, any acceptance by GCUK for the purposes of clause 2.2 was effective only if GCUK notified Simec of the acceptance;

(f) refers to all of the terms of the Supplier Agreement for their full force and effect; and

(g) otherwise does not know and cannot admit paragraph 121 of the SOC.

E3. GCUK purchase of Accounts Receivable related to Claim

122 As to paragraph 122 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(b) says that IAL was not, and is not alleged to be, a party to the documents identified in paragraph 122 of the SOC;

(c) says, as to paragraph 122(a):

(i) the relevant invoice refers to Sales Contract No TML-16-15257;

(ii) it does not have a copy of that contract and does not know its terms, including as to:

(A) when a payment obligation on the part of Simec (and thus a possible account receivable in favour of Taurus Metallurgicals Limited) arose; and

(B) whether a payment obligation on the part of Simec arose if and when title to the goods was not delivered to Simec;

(iii) the invoice does not identify a due date (if any);

(iv) the invoice does not itself establish that:

(A) title to the relevant goods was transferred to Simec;

(B) there was a payment obligation of Simec; and

(C) there was a right to payment on the part of Taurus Metallurgicals Limited;

(v) says that the invoice refers to “Payment Terms” of “Cash Against Documents”;

(vi) says that "Cash Against Documents" is a reference to a contractual arrangement in which the supplier transfers title to goods only if and when payment is made; and

(vii) says that, in the event that Simec did not make payment to Taurus Metallurgicals Limited, Taurus Metallurgicals Limited was not obliged to, and did not, transfer title to the relevant goods and did not make a supply of goods to Simec;

(d) says, as to paragraph 122(b):

(i) the relevant invoice refers to Sales Contract No STD-156068;

(ii) it does not have a copy of that contract and does not know its terms, including as to:

(A) when a payment obligation on the part of Simec (and thus a possible account receivable in favour of Secant Trading DMCC) arose; and

(B) whether a payment obligation on the part of Simec arose if and when title to the goods was not delivered to Simec;

(iii) the invoice does not identify a due date (if any);

(iv) the invoice does not itself establish that:

(A) title to the relevant goods was transferred to Simec;

(B) there was a payment obligation of Simec; and

(C) there was a right to payment on the part of Secant Trading DMCC;

(v) says that the invoice refers to "Payment Terms" of "Cash Against Documents";

(vi) says that "Cash Against Documents" is a reference to a contractual arrangement in which the supplier transfers title to goods only if and when payment is made; and

(vii) says that, in the event that Simec did not make payment to Secant Trading DMCC, Secant Trading DMCC was not obliged to, and did not, transfer title to the relevant goods and did not make a supply of goods to Simec;

(e) says, as to paragraph 122(c):

(i) the relevant invoice refers to Contract No IGHK-13542;

(ii) it does not have a copy of that contract and does not know its terms, including as to:

(A) when a payment obligation on the part of Simec (and thus a possible account receivable in favour of Inter Globe Enterprises Ltd) arose; and

(B) whether a payment obligation on the part of Simec arose if and when title to the goods was not delivered to Simec;

(iii) the invoice does not identify a due date (if any);

(iv) the invoice does not itself establish that:

(A) title to the relevant goods was transferred to Simec;

(B) there was a payment obligation of Simec; and

(C) there was a right to payment on the part of Inter Globe Enterprises Ltd;

(v) says that the invoice refers to “Payment Terms” of “Cash Against Documents”;

(vi) says that “Cash Against Documents” is a reference to a contractual arrangement in which the supplier transfers title to goods only if and when payment is made; and

(vii) says that, in the event that Simec did not make payment to Inter Globe Enterprises Ltd, Inter Globe Enterprises Ltd was not obliged to, and did not, transfer title to the relevant goods and did not make a supply of goods to Simec;

(f) says, as to paragraph 122(d):

(i) the relevant invoice refers to Sales Contract No STD-156071;

(ii) it does not have a copy of that contract and does not know its terms, including as to:

(A) when a payment obligation on the part of Simec (and thus a possible account receivable in favour of Secant Trading DMCC) arose; and

(B) whether a payment obligation on the part of Simec arose if and when title to the goods was not delivered to Simec;

(iii) the invoice does not identify a due date (if any);

(iv) the invoice does not itself establish that:

(A) title to the relevant goods was transferred to Simec;

(B) there was a payment obligation of Simec; and

(C) there was a right to payment on the part of Secant Trading DMCC;

(v) says that the invoice refers to "Payment Terms" of "Cash Against Documents";

(vi) says that "Cash Against Documents" is a reference to a contractual arrangement in which the supplier transfers title to goods only if and when payment is made; and

(vii) says that, in the event that Simec did not make payment to Secant Trading DMCC, Secant Trading DMCC was not obliged to, and did not, transfer title to the relevant goods and did not make a supply of goods to Simec;

(g) otherwise does not know and cannot admit paragraph 122 of the SOC.

123 As to paragraph 123 of the SOC, IAL:

(a) repeats paragraph 113A and 122 of this Defence;

(b) says that it does not understand what is meant by the allegation that Simec made a request to Bramid "through" GCUK or the contractual basis (if any) for Simec to issue requests to Bramid "through" another entity;

(c) says that the particularised documents do not establish that Simec:

(i) made a request to Bramid;

(ii) made a request to Bramid through GCUK;

(iii) requested settlement of the Relevant Supplier Invoices (as defined in paragraph 122 of the SOC); and

(iv) requested settlement of the Relevant Supplier Invoices from Bramid;

(d) says that the SOC does not plead material facts necessary for any allegation that Simec complied with the process set out in clause 2.1(a) of the Re-Invoicing Agreement;

(e) says that the particularised documents evidence that:

(i) on or around 29 January 2019 at 8.49am, Val Kirkaldy of “Greensill” sent an email to Rajeev Gandhi of Simec stating that:

(A) there was a “SIMEC Group maturity today”, but there was no “new trade being submitted from your side to replace this”; and

(B) Greensill was unable to cover the maturity until it received a new trade in;

(ii) on or around 29 January 2021 at 10.50am, Val Kirkaldy of “Greensill” sent an email to Rajeev Gandhi of Simec:

(A) stating that it was too late to trade invoices provided by Rajeev Gandhi that day, "so they will be processed on Monday and the maturity will be covered on Monday also";

(B) requesting "a further invoice today to cover the maturity on the 1st Feb";

(C) requesting that Simec "ensure that new invoices are with [Greensill] the day before each maturity so we have no further delays";

(iii) on or around 12 February 2021, Rajeev Gandhi (of Simec) sent an email to Val Kirkaldy of “Greensill” attaching “invoices for upcoming maturities next week” and identifying that the “funding date” of the funding with the upcoming maturities was between 21 August 2020 and 28 August 2020; and

(iv) any funding supplied by GCUK in respect of, or arising from, the particularised documents was in substance a rollover of funding initially supplied in or around August 2020 on unspecified terms and for unspecified purposes;

(f) refers to all the text of the particularised documents for their full force and effect; and

(g) otherwise does not know and cannot admit paragraph 123 of the SOC.

124 As to paragraph 124 of the SOC, IAL:

(a) repeats paragraph 113A, 122 and 123 of this Defence;

(b) says that it does not understand what is meant by the allegation that Bramid issued invoices to Simec "through" GCUK or the contractual basis (if any) for Bramid to issue invoices "through" an entity;

(c) says that the SOC does not plead material facts necessary for any allegation that:

(i) Simec complied with clause 2.1(a) of the Re-Invoicing Agreement; and

(ii) Bramid complied with clause 2.1(b) of the Re-Invoicing Agreement;

(d) says that the particularised invoices were not "Service Invoices" within the meaning of the Re-Invoicing Agreement because they were invoices, in substantial part, for "Payment" of an amount that was not the "Servicing Fee" for the purposes of the Re-Invoicing Agreement;

(e) refers to all the text of the particularised documents for their full force and effect; and

(f) otherwise does not know and cannot admit paragraph 124 of the SOC.

125A As to paragraph 125A of the SOC, IAL:

(a) repeats paragraph 113A, 122, 123 and 124 of this Defence;

(b) says that the particularised documents do not establish that Simec submitted a PAUF to GCUK in respect of each of the Relevant Service Invoices; and

(c) otherwise does not know and cannot admit paragraph 125A of the SOC.

125 As to paragraph 125 of the SOC, IAL:

(a) repeats paragraphs 113A, 120, 121 and 124 of this Defence;

(b) says that:

(i) any offer under clause 2.1 of the Supplier Agreement was an offer to sell the "specified Account Receivables";

(ii) under the Supplier Agreement, the expression "Account Receivables" encompasses rights or purported rights to receive present and future payments of money;

(iii) any offer to sell was, contrary to the allegation in SOC, paragraph 125(a), not an offer to sell a document or documents (i.e. the Relevant Supplier Invoices), but was an offer to sell rights or purported rights;

(iv) the Relevant Supplier Invoices were documents, not "Account Receivables" within the meaning of the Supplier Agreement;

(v) whether there was an "Account Receivable", in respect of each of the Relevant Supplier Invoices, within the meaning of the Supplier Agreement turns, in significant part, on:

(A) the terms of the underlying contracts (if any) between Simec and the Relevant Suppliers; and

(B) the facts (if any) which indicate that there was an actual or purported right in the Relevant Suppliers to receive present and future payments of money from Simec;

(vi) the SOC does not plead material facts necessary to establish that there were "Accounts Receivable" within the meaning of the Supplier Agreement;

(vii) in order for there to have been an "Irrevocable Election" under the Supplier Agreement, it is necessary there to have been an irrevocable offer, submitted on GCUK's on-line trade financing platform by Bramid, to "Transfer" one or more "Accounts Receivable" in respect of which a "PAUF" has been provided; and

(viii) the SOC does not plead material facts necessary to establish the existence of the alleged Irrevocable Elections or any of them;

(c) says that the fact (which is not admitted) that Bramid issued the Relevant Service Invoices (as defined at paragraph 124 of the SOC) does not found an inference that Irrevocable Elections under the Supplier Agreement were made because:

(i) under the Re-Invoicing Agreement, "Service Invoices" are issued under clause 2.1(b) following the submission of a request by Simec (clause 2.1(a)) and are issued irrespective of whether Bramid has submitted an "Irrevocable Election" under the Supplier Agreement; and

(ii) under the Supplier Agreement, Bramid can submit an "Irrevocable Election" from time to time, and irrespective of whether it has issued a "Service Invoice" under the Re-Invoicing Agreement;

(d) refers to the terms of the Supplier Agreement as if set out in full herein; and

(e) otherwise does not know and cannot admit paragraph 125 of the SOC.

126 As to paragraph 126 of the SOC, IAL:

(a) repeats paragraphs 120, 124 and 125 of this Defence;

(b) says that:

(i) on the proper construction of the Supplier Agreement, including clause 2.2, any acceptance by GCUK of an offer is effective only if notice of the acceptance is communicated by GCUK to Bramid;

(ii) that notice is to be given in accordance with clause 8.1 of the Supplier Agreement;

(iii) the Applicants do not plead any material facts or particularise any documents establishing that GCUK:

(A) in fact elected to fund the Settlement Advance on the Relevant Service Invoices;

(B) notified Bramid of any such election;

(C) agreed to provide funding at a price equal to the "Settlement Advance"; and

(D) purchased the Relevant Service Invoices from Bramid at a price equal to the Settlement Advance (as defined in the Re-Invoicing Service Agreement) between about 5 February 2021 and 25 February 2021; 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 paragraphs 125A, 125 and 126 of this Defence;

(b) says, as to paragraph 127(a):

(i) the subject matter of any assignment under clause 2.3 was "Account Receivables", not Relevant Service Invoices;

(ii) there was an assignment of "Account Receivables" only if:

(A) there were in existence present rights, as distinct from possible future rights or purported rights; and

(B) all the conditions necessary for the making of an assignment under the Supplier Agreement were satisfied;

(iii) the Applicants do not allege material facts capable of establishing that there was in fact an assignment of "Account Receivables";

(c) says, as to paragraph 127(b):

(i) Simec assumed an obligation under clause 2.2 of the Simec Customer Agreement only if:

(A) there was a "PAUF" within the meaning of the Simec Customer Agreement;

(B) there were "Account Receivables" within the meaning of the Simec Customer Agreement; and

(C) the "Account Receivables" were set out in the "PAUF";

(ii) Simec assumed an obligation to GCUK under the Simec Customer Agreement only if:

(A) there was a "Transfer" of the relevant "Account Receivables" to GCUK within the meaning of the Simec Customer Agreement; and

(B) there were "Account Receivables", in the nature of actual, existing rights, which were assigned by Bramid to GCUK;

(iii) Simec assumed an obligation to pay the "Certified Amount" only if there was a "Certified Amount" which, in turn, required that there be a "Payment Obligation", an amount of an "Account Receivable" and an amount specified in a relevant "PAUF"; and

(iv) the Applicants do not plead material facts capable of establishing the conditions necessary for the conclusory allegation in SOC, paragraph 127(b) to be correct;

(d) otherwise does not know and cannot admit paragraph 127 of the SOC.

128 As to paragraph 128 of the SOC, IAL:

(a) repeats paragraphs 122 to 127 of the SOC;

(b) says that the expression "supply chain finance" is not defined in the SOC;

(c) says that there is no articulation in the SOC of;

(i) the asserted "supply chain";

(ii) the "finance"

(iii) the person providing supply chain finance; and

(iv) the person receiving supply chain finance;

(d) says that there is no allegation that the Simec IPUs were originated in the course of any underlying transactions as between Simec and the persons who issued the Relevant Supplier Invoices;

(e) says, as to paragraph 128(b), that the allegation that Simec caused the Relevant Service Invoices to be issued is inconsistent with the allegation at SOC, paragraph 124, that Bramid issued the Relevant Service Invoices;

(f) says, as to paragraph 128(d), that it does not understand what "Receivable" is being referred to; and

(g) otherwise does not know and does not admit paragraph 128 of the SOC.

E4. The Simec Notes

129 IAL admits paragraph 129 of the SOC.

130 As to paragraph 130 of the SOC, IAL:

(a) repeats paragraphs 66A and 80 of this Defence; and

(b) otherwise denies paragraph 130 of the SOC.

131 As to paragraph 131 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(b) says that, on or around 20 July 2015, representatives of Citibank N.A., London Branch appear to have signed a document entitled "Receivables Purchase Programmes" (referred to in the SOC as the **Supply Chain Finance Trust Deed**);

(c) says that, at a time or times presently unknown to IAL, a representative of GCUK and a representative of Lagoon Park Capital AS, in respect of its compartment CW, appear to have signed the document; and

(d) otherwise does not know and cannot admit paragraph 131 of the SOC.

132 As to paragraph 132 of the SOC, IAL:

(a) repeats paragraphs 113A and 131 of this Defence;

(b) says it is aware of the document referred to in paragraph 132 of the SOC and of an Annexure at page 17 of the "(Receivables Purchase Programmes)", which refers to Simec as "Obligor" and refers to the Simec Customer Agreement as a "Customer Agreement" dated 26 October 2015;

(c) says that nothing in that document (to which IAL and BCC were not parties) varied the meaning of the expression "Customer Agreement" in the 2019 Policy; and

(d) otherwise does not know and cannot admit paragraph 132 of the SOC.

133 As to paragraph 133 of the SOC, IAL:

(a) repeats paragraphs 113A, 131 and 132 of this Defence;

(b) says that, under the Supply Chain Finance Trust Deed, GCUK (as "Grantor") declared that it will hold the "Grantor Trust Property" on bare trust for the benefit of Citibank N.A., London Branch (as "Trustee") absolutely (clause 3(a));

(c) says that, under the Supply Chain Finance Trust Deed, Citibank N.A., London Branch (as "Trustee") declared that it will hold the "Trust Property" on bare trust for GCUK (as "Grantor") and Lagoon Park (as "Participant") on the terms of the deed and in the shares determined in accordance with clause 8 of the deed (clause 3(b));

(d) says that "Trust Property" was defined to mean Citibank N.A., London Branch's (as "Trustee") interest as beneficiary of the trust created in its favour over the "Grantor Trust Property" and the balance from time to time standing to the credit of the "Trust Account" and the "Proceeds" provided that, save for an interest in the "Eligible Accounts Receivable", the "Trust Property" shall not include any investment within the meaning specified in Articles 74 to 89 of the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001* (UK) (the ***RAO***) (clause 1.1);

(e) says that the "Grantor Trust Property" was defined to mean all "Eligible Accounts Receivable" as they arise from time to time and any interest (clause 1.1);

(f) says that paragraph 133(c) of the SOC describes, in part, the general effect of the definition of "Eligible Accounts Receivable";

(g) says that an instrument was "an instrument acknowledging indebtedness within Article 77 of the RAO" only if it was an instrument acknowledging (as distinct from creating) indebtedness for the consideration payable under a contract for the supply of goods or services;

(h) says that "Proceeds" were defined to mean all receipts, revenues and/or recoveries (including for the avoidance of doubt and without limitation, interest) received by Citibank N.A., London Branch pursuant to the deed in respect of the "Grantor Trust Property" after deducting (to the extent not already deducted) all sums which Citibank N.A. London Branch was required by applicable law or regulation to pay to any other person before distributing any such receipts or recoveries in accordance with the deed (clause 1.1);

(i) says that the proper analysis of the arrangements established by the Supply Chain Finance Trust Deed was as follows:

(i) GCUK was trustee of a trust (the "GCUK Trust");

(ii) Citibank N.A., London Branch was beneficiary of the GCUK Trust;

(iii) the trust property of the GCUK Trust comprised all "Eligible Accounts Receivable" as they arise from time to time and any interest (the "GCUK Trust Property");

(iv) a right was an "Eligible Account Receivable" only if it met the description of "Eligible Account Receivable" in clause 1.1 of the Supply Chain Finance Trust Deed, including that it was included in an instrument acknowledging indebtedness under Article 77 of the *RAO*;

(v) as beneficiary of the GCUK Trust, Citibank N.A., London Branch:

(A) did not have an interest in the GCUK Trust Property; and

(B) instead, Citibank N.A., London Branch had equitable rights to the proper administration of the GCUK Trust;

(vi) Citibank N.A., London Branch, was trustee of a second trust (the "Citi Trust");

(vii) Lagoon Park and GCUK were beneficiaries of the Citi Trust;

(viii) the trust property of the Citi Trust comprised (the "Citi Trust Property"):

(A) Citibank N.A., London Branch's rights as beneficiary of the GCUK Trust;

(B) the balance from time to time standing to the credit of the "Trust Account"; and

(C) the "Proceeds", being certain receipts, revenues or recoveries received by Citibank N.A., London Branch under the deed in respect of the GCUK Trust Property;

(ix) the respective proportionate rights of Lagoon Park and GCUK as beneficiaries of the Citi Trust were determined accordance with clause 8 of the Supply Chain Finance Trust Deed; and

(x) as beneficiaries of the Citi Trust, Lagoon Park and GCUK:

(A) did not have an interest in the Citi Trust Property; and

(B) had equitable rights to the proper administration of the Citi Trust;

(j) says that the Applicants do not plead material facts capable of establishing that, at material times:

(i) there was "Grantor Trust Property" (including "Grantor Trust Property" of a particular quantum);

(ii) there were "Eligible Accounts Receivable", including relevantly that there was a payment undertaking included in an instrument acknowledging indebtedness within the meaning of Article 77 of the *RAO*; and

(iii) there was "Trust Property" (including "Trust Property" of a particular quantum, accompanied by certain proportionate rights of Lagoon Park and GCUK);

(k) refers to all of the terms of the Supply Chain Finance Trust Deed for their full force and effect; and

(l) otherwise does not know and cannot admit paragraph 133 of the SOC.

134 As to paragraph 134 of the SOC, IAL:

(a) repeats paragraphs 127 and 133 of this Defence;

(b) says that the Simec IPUs were not "Eligible Accounts Receivable" for the purposes of the Supply Chain Finance Trust Deed because, if the Simec IPUs

existed, they were included in instruments which created, rather than acknowledged, indebtedness;

(c) says that the Applicants do not plead the material facts necessary to establish that the Simec IPUs were "Eligible Accounts Receivable"; and

(d) otherwise does not know and cannot admit paragraph 134 of the SOC.

135 As to paragraph 135 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(b) admits that on or around 26 November 2018, representatives of Lagoon Park, Citi and TMF Luxembourg SA appear to have signed a document styled a "Supplemental Master Trust Deed" (referred to in the SOC as the **Master Trust Deed**); and

(c) otherwise does not know and cannot admit paragraph 135 of the SOC.

136 As to paragraph 136 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(b) admits that, on or around 26 November 2018, representatives of GCUK, Lagoon Park and Citi appear to have signed a document styled an "Amended and Restated Master Funded Participation Agreement", which names GCUK, Citibank and Lagoon Park as parties (referred to in the SOC as **Master Funded Participation Agreement**); 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 113A of this Defence;

(b) admits that there is a document issued by Lagoon Park identified as a "Base Prospectus" (referred to in the SOC as **Base Memorandum**); and

(c) otherwise does not know and cannot admit paragraph 137 of the SOC.

138 As to paragraph 138 of the SOC, IAL:

(a) repeats paragraph 113A, 133, 135, 136 and 137 of this Defence;

(b) says that the Applicants do not plead material facts capable of establishing:

(i) that the notes were issued pursuant to the Master Trust Deed, the Master Funded Participation Agreement and/or the Base Memorandum;

(ii) the basis (if any) upon which the notes were secured by Lagoon Park's beneficial interest in the trust property the subject of the Citi Trust (defined at paragraph 133(b) of the SOC); and

(iii) that any of the conditions necessary for the Simec Notes to be "Notes" within the meaning of the 2019 Policy were met;

(c) says that the Applicants do not plead any material facts capable of establishing the security referred to in paragraph 138 of the SOC;

(d) says that the Applicants allege, or implicitly allege that the "beneficial interest in the trust property the subject of the Citi Trust" is the rights (or interest) referred to in SOC, paragraph 133(b);

(e) says that:

(i) Lagoon Park's rights (if any) as beneficiary of the Citi Trust were equitable rights to the proper administration of the trust, and did not include an interest in the trust property;

(ii) legal title to the trust property (if any) remained, at all times, with the trustee, Citibank N.A., London Branch;

(iii) an asset "secured" over Lagoon Park's rights as beneficiary was an asset "secured over" Lagoon Park's equitable rights as beneficiary to enforce the proper administration of the trust

(iv) the holder of an asset "secured over" Lagoon Park's equitable rights did not have an interest in the trust property of the Citi Trust;

(v) the trust property (as alleged by the Applicants) is not the chose in action comprising the right of a person to enforce the payment of moneys owing by a debtor, but was instead the proceeds of such a payment if and when made;

(vi) the trust property was not a "debt", but was instead (at most) the fruits of the discharge of a debt;

(vii) there is no pleading of material fact capable of establishing that the "Eligible Accounts Receivable" referred to at paragraph 134 of the

SOC comprised amounts payable pursuant to obligations meeting the description of being an "Eligible Debt";

(viii) the Simec Notes were, if derived from anything at all "derived from" the equitable rights of Lagoon Park as beneficiary of the Citi Trust, being an equitable right to enforce the proper administration of a trust, the trust property of which included proceeds arising from the performance of obligations;

(ix) the Simec Notes were not "derived from" any underlying debts (whether "Eligible Debts" or otherwise) the discharge of which resulted in the proceeds forming trust property of the Citi Trust; and

(x) the Simec Notes were not, and could not be, secured over Lagoon Park's beneficial interest in the trust property of the Citi Trust because Lagoon Park did not have a beneficial interest in the trust property of the Citi Trust, but instead had no more than equitable rights to the proper administration of the Citi Trust;

(f) otherwise does not know and cannot admit paragraph 138 of the SOC.

139 As to paragraph 139 of the SOC, IAL:

(a) repeats paragraphs 137 and 138 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 139 of the SOC.

140 As to paragraph 140 of the SOC, IAL:

(a) repeats paragraphs 110D(g) and 137 to 139 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 140 of the SOC.

141 As to paragraph 141 of the SOC, IAL:

(a) repeats paragraphs 138 to 140 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 141 of the SOC.

142 As to paragraph 142 of the SOC, IAL:

(a) repeats paragraphs 138 to 141 of this Defence; and

(b) says that the SOC does not identify:

(i) whether there was an agreement providing for the acquisition by Greensill Bank of the Greensill Bank Simec Notes;

(ii) if there was such an agreement, the particulars of that agreement and who the parties to the agreement were; and

(iii) the circumstances which establish that there was an acquisition of the Greensill Bank Simec Notes;

(c) says that if the Greensill Bank Simec Notes were acquired by Greensill Bank between 9 and 25 February 2021 (which is not admitted), Greensill Bank did not own the Greensill Bank Simec Notes during the Policy Period which expired no later than:

(i) 22 February 2020; or

(ii) alternatively, 1 March 2020;

(iii) [Not used],

(d) otherwise does not know and cannot admit paragraph 142 of the SOC.

143 As to paragraph 143 of the SOC, IAL:

(a) repeats paragraphs 66A, 80 and 110D of this Defence; and

(b) says that an instrument is a "Note" for the purposes of the 2019 Policy (if valid and effective) only if it is a note constituted by the Master Trust Deed and is for the time being outstanding and issued pursuant to the "Issue Documents" as defined in the Master Trust Deed;

(c) says that paragraph 143 of the SOC does not identify the time at which the Greensill Bank Simec Notes are said to have been "Notes", and it is inherent to the definition of "Note" in the 2019 Policy that an instrument may, for a time, be a "Note", but thereafter cease to be a "Note" when it ceases to be "outstanding";

(d) says paragraph 143 of the SOC does not plead or particularise any facts establishing that the Greensill Bank Simec Notes were issued pursuant to "Issue Documents" as defined in the applicable Master Trust Deed; and

(e) denies paragraph 143 of the SOC.

144 As to paragraph 144 of the SOC, IAL:

(a) repeats paragraphs 66A, 80, 138 and 140 of this Defence; and

(b) otherwise denies paragraph 144 of the SOC.

E5. Insuring the Simec IPUs

145 IAL denies paragraph 145 of the SOC and says further:

(a) it repeats paragraphs 8, 10, 47, 53, 55, 82, 90, 94 and 108 of this Defence;

(b) the terms of Debt Endorsement 1 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) that, as at 13 March 2019, and at all material times between 28 July 2016 and 9 April 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60, 66A and 86 of this Defence;

(d) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Debt Endorsement 1 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements, including Debt Endorsements under it, and/or to issue endorsements, including Debt 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 the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to Approved Endorsements referred to in paragraph 8(i) of this Defence, and Debt Endorsement 1 was not an Approved Endorsement;

(iv) Debt Endorsement 1 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:

(i) Debt Endorsement 1 purported to vary the 2019 Policy;

(ii) Clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party; and

(iii) Debt Endorsement 1 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(f) that by reason of the matters in paragraphs 145(b) to 145(e) of this Defence and each of them individually, Debt Endorsement 1 was invalid, of no effect and not binding on or enforceable against IAL;

(g) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Debt Endorsement 1:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Debt Endorsement 1;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration in respect of Debt Endorsement 1;

(iii) by reason of the matters in paragraphs 145(g)(i) and 145(g)(ii) of this Defence, Debt Endorsement 1 is invalid, of no effect and not binding or enforceable as against IAL;

(iv) further, that authority did not extend to issuing backdated Debt Endorsements where (as in the case of Debt Endorsement 1) the backdating:

(A) was calculated to avoid constraints on authority; and/or

(B) had the effect of materially varying the risk attaching to the 2019 Policy;

(h) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Debt Endorsement 1 had been issued; and

(ii) Debt Endorsement 1 had been purportedly issued in breach of the CGU AAR Agreement and Underwriting Manual Version 2.0 and was inconsistent with the Approved Endorsements;

(i) executing Debt Endorsement 1 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 honestly;

Particulars

The matters in paragraphs 145(b) to 145(h) of this Defence.

(j) the authority given by IAL to Brereton did not include an authority to enter into Debt Endorsement 1 and was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation to act efficiently, honestly and fairly;

Particulars

The matters in paragraphs 145(b) to 145(h) of this Defence.

(k) Greensill Bank knew, or ought reasonably to have known, that Brereton did not have authority to enter into Debt Endorsement 1 on behalf of IAL;

Particulars

The matters in paragraph 66A(a) to 66A(k) of this Defence.

(l) further and in any event, that Debt Endorsement 1 was not a valid "Debt Endorsement" under the 2019 Policy for the following reasons and each of them:

(i) "Debt Endorsement" was defined to mean "an endorsement to this Policy that is substantially in the form of Appendix 2 or such other form as the Insured and the Insurer may agree from time to time and that describes the nature of a debt that is after the date of such endorsement able to become a Debt for the purposes of this Policy, and which may contain amendments to the terms of the Policy insofar as the Policy relates to such Debts and Assets derived from them";

(ii) Debt Endorsement 1 was not substantially in the form of Appendix 2 to the 2019 Policy;

Particulars

The definitions of "Customer Agreement", "Debt" and "Origination Documentation" differed in substance.

The definition of "Supplier" differed in substance, and in section E was removed entirely.

The specified "Maximum Tenor" differed in substance.

Debt Endorsement introduced, in section E, the concept of a "Buyer".

(iii) IAL, as insurer, did not at any time agree a different form of debt endorsement with the insured, GCPL and Greensill Bank;

(iv) the 2019 Policy did not authorise the issuing of a purported Debt Endorsement which purported to expand and/or vary the meaning of "Eligible Debt" whether at all, or in a manner which purported to bring within the 2019 Policy debts of the kind purportedly covered by Debt Endorsement 1, including debts which did not comprise receivables generated by a Supplier referred to in a Debt Endorsement owed by a Customer and arising under the Transaction Documents defined in the 2019 Policy;

(v) "Debt Endorsements", as defined:

(A) could only describe the nature of a debt that "is or after the date of such endorsement able to be a Debt for the purposes of th[e] Policy", with the result that a valid "Debt Endorsement" could not operate retrospectively; and

(B) Debt Endorsement 1 purported to operate retrospectively from the "22nd February 2019";

(vi) Debt Endorsement 1 was therefore not a "Debt Endorsement" within the meaning of the 2019 Policy, and was not valid or effective to vary the 2019 Policy;

(m) by reason of paragraphs 145(a)-145(l) of this Defence, Debt Endorsement 1 was invalid, of no effect and not binding on or enforceable as against IAL; and

(n) otherwise denies paragraph 145 of the SOC.

146 As to paragraph 146 of the SOC, IAL:

(a) repeats paragraphs 66A, 82, 108 and 145 of this Defence; and

(b) otherwise denies paragraph 146 of the SOC.

146A As to paragraph 146A of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 146A of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to Debt Endorsement 1 and their conduct referred to at paragraph 146A of the SOC; and

(b) denies paragraph 146A of the SOC.

147 IAL denies paragraph 147 of the SOC and says further that:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82 and 108 of this Defence;

(b) on 13 March 2019, Brereton signed Customer Endorsement 2 referred to in paragraph 147 of the SOC and backdated it to 1 March 2019;

(c) the terms of Customer 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;

(d) in March 2019, and at all material times between 1 August 2017 and 30 June 2019, the authority of each of BCC and Brereton was confined in the manner described in paragraphs 5, 6, 8(a) to 8(k), 31 to 33, 55, 60 and 66A of this Defence;

(e) the amendments purportedly made by Customer 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;

(f) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Customer Endorsement 2 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy and, therefore, BCC and Brereton lacked authority or power to execute or issue Customer Endorsements under it and/or to issue endorsements, including Customer 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 the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iii) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to Approved Endorsements referred to in paragraph 8(i) of this Defence, and Customer Endorsement 2 was not an Approved Endorsement;

(iv) Customer 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;

(v) the indemnity limit in Customer Endorsement 2 was 100%, which was above the maximum indemnity limit of 95% of Debt specified in the applicable Underwriting Manual Version 2.0; and

(vi) the customer limit in Customer Endorsements 2, alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under the 2019 Policy:

(A) exceeded the AUD50 million policy limit specified in the applicable Underwriting Manual Version 2.0;

(B) exceeded the Buyer Group limit v 2.0; and

(C) exceeded 95% of the AUD Binder Limit (of AUD50 million) for foreign policies specified in the applicable Underwriting Manual Version 2.0;

(g) by reason of the matters in paragraphs 147(b) to 147(f) of this Defence and each of them individually, Customer Endorsement 2 was invalid, of no effect and not binding on or enforceable as against IAL;

(h) if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute Customer Endorsement 2:

(i) Customer Endorsement 2 purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iii) Customer Endorsement 2 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of the 2019 Policy;

(iv) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of Customer Endorsement 2;

(v) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Customer Endorsement 2;

(vi) any power to issue Customer Endorsements under the 2019 Policy did not authorise the issuing of Customer Endorsements purporting to operate retrospectively;

(vii) Customer Endorsement 2 purported to operate retrospectively;

(viii) any Customer Endorsements issued under the 2019 Policy must specify a premium rate expressed as a percentage premium rate (Appendix 1 of the 2019 Policy);

(ix) Customer Endorsement 2 did not specify a premium rate expressed as a percentage premium rate, rather was a fixed amount expressed as "$1 (one U.S. dollar)";

(x) the entity named alongside "Customer Name" was not a "debtor in respect of a Debt" for the purposes of the definition of "Customer" in the 2019 Policy;

(i) by reason of the matters in:

(i) paragraphs 147(h)(i) to 147(h)(iii) of this Defence;

(ii) paragraphs 147(h)(iv) to 147(h)(v) of this Defence;

(iii) paragraphs 147(h)(vi) to 147(h)(vii) of this Defence;

(iv) paragraphs 147(h)(viii) to 147(h)(ix) of this Defence; and/or

(v) paragraphs 147(h)(x) of this Defence,

Customer Endorsement 2 is invalid, of no effect and not binding on or enforceable as against IAL;

(j) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Customer Endorsement 2 had been issued; and

(ii) Customer Endorsement 2 had been purportedly issued in breach of the CGU AAR Agreement and applicable Underwriting Manual Version 2.0 and was inconsistent with the Approved Endorsements;

(k) executing Customer Endorsement 2 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 honestly;

Particulars

The matters in paragraphs 147(a) to 147(j) of this Defence.

(l) the authority given by IAL to Brereton did not include an authority to enter into Customer Endorsement 2 because entering into Customer Endorsement 2

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 147(a) to 147(k) of this Defence.

(m) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Customer Endorsement 2 on behalf of IAL.

Particulars

Particulars under paragraphs 66A(f), 66A(g), 66A(h), 66A(j) and 86(k) of this Defence.

(n) if, which is denied, it was otherwise within the authority of BCC and/or Brereton authority to execute Customer Endorsement 2, it operated only prospectively, from the date Brereton signed Customer Endorsement 2, and applied only in relation to Assets acquired after that date.

148 As to paragraph 148 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 108 and 146A of this Defence; and

(b) otherwise denies paragraph 148.

148A As to paragraph 148A of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 148A of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to Customer Endorsement 2 and BCC and Brereton's conduct referred to at paragraph 148A of the SOC; and

(b) denies paragraph 148A of the SOC.

149 As to paragraph 149 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 108 and 146A of this Defence;

(b) says that Customer Endorsement 2 (if valid and effective to bind IAL, which is denied):

(i) identified Simec in the row "Customer Name";

(ii) identified the "Insured Percentage" as 100%;

(iii) identified the "Aggregate Customer Limit" at the date of the Endorsement as USD35,000,000, but did not identify the "Customer Limit" in general or prospectively as USD35,000,000; and

(iv) did not the stipulate that the maximum tenor of a "Debt" (that being a term which is not defined in the SOC) for the purpose of an "Independent Payment Undertaking" (that being a term which is not used in Customer Endorsement 2, and which is given multiple meanings in the SOC);

(c) otherwise denies paragraph 149 of the SOC.

150 IAL denies paragraph 150 of the SOC and says further that:

(a) it repeats paragraphs 8, 10, 47, 53, 55, 82, 108 and 146A of this Defence;

(b) on 24 April 2019, Brereton signed Customer Endorsement 2(i) referred to in paragraph 150 of the SOC and backdated it to 9 April 2019;

(c) it repeats the matters in paragraphs 147(c) to 147(n) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to Customer Endorsement 2(i), save that:

(i) references to 'Underwriting Manual Version 2.0' are replaced with 'Underwriting Manual Version 3.0'; and

(ii) references to 'Buyer Group Limit v 2.0' are replaced with 'Buyer Group Limit v 3.0';

(d) the authority given by IAL to each of BBC and Brereton did not include an authority to enter into Customer Endorsement 2(i) because:

(i) BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and Customer Endorsement 2(i):

(A) materially altered the scope of the risk of the Insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

(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.

151 As to paragraph 151 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 108 and 150 of this Defence; and

(b) otherwise denies paragraph 151.

151A As to paragraph 151A of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 151A of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to Customer Endorsement 2(i) and BCC and Brereton's conduct referred to at paragraph 151A of the SOC; and

(b) denies paragraph 151A of the SOC.

152 As to paragraph 152 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 108 and 150 of this Defence; and

(b) otherwise denies paragraph 152 of the SOC.

153 IAL denies paragraph 153 of the SOC, and says further:

(a) it repeats paragraphs 8, 10, 47, 53, 55, 82, 99, 108, 146A and 150 of this Defence;

(b) on 31 January 2020, Brereton signed Customer Endorsement 2(ii) referred to in paragraph 153 of the SOC and backdated it to 30 January 2020;

(c) it repeats paragraphs 102(a) to 102(e) of this Defence;

(d) the terms of Customer Endorsement 2(ii) were authored by the purported insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(e) the amendments purportedly made by Customer Endorsement 2(ii) (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;

(f) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Customer Endorsement 2(ii) because:

(i) Customer Endorsement 2(ii) was signed by Brereton on behalf of BCC after BCC ceased to have authority to act for IAL as referred to in paragraphs 102(a) to 102(e) of this Defence;

(ii) the authority given by IAL to BCC and Brereton did not include an authority to enter into the 2019 Policy 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;

(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 the 2019 Policy, BCC and Brereton also did not have authority to issue endorsements under the 2019 Policy;

(iv) the customer limit in Customer Endorsement 2(ii), alone or when combined with other customer limits in endorsements purportedly issued by BCC/Brereton under the 2019 Policy:

(A) exceeded the AUD50 million policy limit specified in Underwriting Manual Version 3.0;

(B) exceeded the Buyer Group limit v 3.0; and

(C) exceeded 95% of the AUD Binder Limit (of AUD50 million) for foreign currencies specified in Underwriting Manual Version 3.0;

(g) that BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and Customer Endorsement 2(ii):

(i) materially altered the scope of the risk of the insurer under the 2019 Policy (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of the 2019 Policy;

Particulars

It purported to insure a debtor for a substantial liability for a premium payable of only USD1.

(ii) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

(iii) 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;

(h) Customer Endorsement 2(ii) 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;

(i) that by reason of the matters in paragraphs 153(b) to 153(h) of this Defence, and each of them individually, Customer Endorsement 2(ii) was invalid, of no effect and not binding on or enforceable as against IAL;

(j) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Customer Endorsement 2(ii):

(i) Customer Endorsement 2(ii) purported to vary the 2019 Policy;

(ii) clause 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iii) Customer Endorsement 2(ii) was not signed by or on behalf of Greensill Bank or GCPL, and was not a valid variation of the 2019 Policy;

(iv) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of Customer Endorsement 2(ii);

(v) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Customer Endorsement 2(ii);

(vi) any power to issue Customer Endorsements under the 2019 Policy did not authorise the issuing of Customer Endorsements purporting to operate retrospectively;

(vii) Customer Endorsement 2(ii) purported to operate retrospectively;

(viii) any Customer Endorsements issued under the 2019 Policy must specify a premium rate which was expressed as a percentage premium rate (Appendix 1 of the 2019 Policy);

(ix) Customer Endorsement 2(ii) did not specify a premium rate expressed as a percentage premium rate, rather was a fixed amount expressed as "$1 (one U.S. dollar)";

(x) the entity named alongside "Customer Name" was not a "debtor in respect of a Debt" for the purposes of the definition of "Customer" in the 2019 Policy; and

(k) by reason of the matters in paragraphs 153(j)(i) to 153(j)(x) of this Defence, Customer Endorsement 2(iii) is invalid, of no effect and not binding on or enforcement as against IAL;

(l) executing Customer Endorsement 2(ii) 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 153(a) to 153(l) of this Defence.

(m) the authority given by IAL to Brereton did not include an authority to enter into Customer Endorsement 2(ii) because entering into Customer Endorsement 2(ii) 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 153(b) to 153(m) of this Defence.

(n) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Customer Endorsement 2(ii) on behalf of IAL;

Particulars

Particulars under paragraph 66A(j) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 102(d) of this Defence) that TMMA had acquired BCC on 9 April 2019.

(o) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Customer Endorsement 2(ii), it operated only prospectively, from the date Brereton signed Customer Endorsement 2(ii), and applied only in relation to Assets acquired after that date.

154 As to paragraph 154 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 108 and 153 of this Defence; and

(b) otherwise denies paragraph 154.

154A As to paragraph 154A of the SOC, IAL:

(a) repeats paragraph 102 of this Defence;

(b) repeats, in answer to the whole of paragraph 154A of the SOC, the matters in paragraph 82 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to Customer Endorsement 2(ii) and BCC and Brereton's conduct referred to at paragraph 154A of the SOC; and

(c) denies paragraph 154A of the SOC.

154B As to paragraph 154B of the SOC,

(a) repeats paragraphs 82 and 102 of this Defence;

(b) otherwise, does not know and cannot admit paragraph 154B of the SOC.

155 As to paragraph 155 of the SOC, IAL:

(a) repeats paragraphs 8, 10, 47, 53, 55, 66A, 82, 108 and 153 of this Defence; and

(b) otherwise denies paragraph 155 of the SOC.

156 As to paragraph 156 of the SOC, IAL:

(a) repeats paragraph 110D to 110G, 128, 145 and 146 of this Defence;

(b) pleads to the paragraph on the assumption (which is denied) that Debt Endorsement 1 was valid and effective, and/or valid and effective to prescribe the meaning of “Debt” for the purposes of the 2019 Policy;

(c) says that, on that assumption, Part B of Debt Endorsement 1 applies to “Debts” originated in the course of “Supply Chain Finance” where Bramid as the “Supplier” provides a re-invoicing/paying agency service to the “Customer”;

(d) says, as to paragraph 156(a), paragraphs 110E, 118 and 122 to 128 of this Defence are repeated;

(e) says, as to paragraph 156(b), paragraph 110E, particularly paragraphs 110E(k) to 110E(m), and paragraphs 117 to 118, and 122 to 128 of this Defence are repeated;

(f) says, as to paragraph 156(c), paragraph 110E, particularly paragraph 110E(j) to 110E(o), of this Defence are repeated;

(g) says, as to paragraph 156(d), paragraph 110E, particularly paragraph 110E(p), and 122 of this Defence are repeated;

(h) says, as to paragraph 156(e):

(i) paragraphs 110E and 122 to 128 of this Defence are repeated;

(ii) there is no pleading capable of establishing that each Simec IPU was acceptable to GCUK or, if it was acceptable, that it was acceptable pursuant to the "Origination Documentation"; and

(iii) the particularised documents do not establish that there was a "Platform" within the meaning of the 2019 Policy or that payment details were loaded onto such a "Platform";

(i) says, as to paragraph 156(f):

(i) there was a transfer of a Simec IPU to GCUK only if:

(A) the Simec IPU existed;

(B) the Simec IPU was an extant right; and

(C) the conditions set out in clauses 2.1 and 2.2 of the Supplier Agreement were met in respect of that Simec IPU;

(ii) the SOC does not identify material facts establishing those matters; and

(iii) it puts the Applicants to proof of each fact necessary to establish the allegation in paragraph 156(f) of the SOC;

(j) says, as to the whole of paragraph 156 of the SOC, that the debt must meet the description in the relevant Debt Endorsement at the time the "Asset" is acquired by the "Insured", and the pleading in SOC, paragraph 156 has no temporal element;

(k) it puts the Applicants to proof of each condition necessary for the Simec IPUs to be "Eligible Debts"; and

(l) otherwise denies paragraph 156 of the SOC.

157 As to paragraph 157 of the SOC, IAL:

(a) repeats paragraphs 66A, 73, 80, 82, 108, 145, 146A, 150 and 153 of this Defence;

(b) repeats paragraph 110E of this Defence;

(c) says, as to paragraph 157(a):

(i) the terms "affiliate", "Transaction Documents" and "Origination Documentation" are not defined; and

(ii) otherwise does not know and cannot admit paragraph 157(a);

(d) admits paragraph 157(b);

(e) says that it does not know and cannot admit paragraph 157(c);

(f) as to paragraph 157(d):

(i) repeats paragraphs 149, 152 and 154A of this Defence; and

(ii) denies paragraph 157(d);

(g) says as to paragraph 157(e):

(i) that it understands that, in using the term "Due Date", the Applicants intend that expression to bear its defined meaning under the 2019 Policy;

(ii) that, under the 2019 Policy, "Due Date" means, in respect of a "Debt", the date stated in the "Platform" as the date by which payment of the "Debt" by the "Customer" is required to be made;

(iii) that a "Platform" is the electronic platform used by GCUK from time to time into which (inter alia) details of "Due Dates" and other related information is recorded;

(iv) that there is no articulation in the SOC of the "Due Date" in respect of the Simec IPUs or the circumstances which indicate that any particular date or dates meet the description of "Due Date" in the 2019 Policy; and

(v) otherwise that it does not know and cannot admit paragraph 157(e);

(h) says as to paragraph 157(f):

(i) that the "Asset" is not identified, nor is the meaning of the term "Asset";

(ii) on the assumption that the "Asset" is the "Greensill Bank Simec Notes", which are alleged (at paragraphs 140 to 144 of the SOC) to have been acquired by Greensill Bank between 9 February 2021 and 25 February 2021 and to be "Notes" for the purposes of the 2019 Policy, then it refers to and repeats paragraph 110D(g) of this Defence; and

(iii) otherwise that it does not know and cannot admit paragraph 157(f);

(i) says that it does not know and cannot admit paragraph 157(g); and

(j) otherwise does not know and cannot admit paragraph 157 of the SOC.

E6. Default by Simec

158 As to paragraph 158 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(b) admits that on or around 16 July 2021, Grant Thornton on behalf of GCUK appears to have sent a letter headed "Payment Default and Reservation of Rights" to Simec;

(c) says that the paragraph does not accurately summarise the apparent contents of the letter, which states that:

(i) Simec has failed to pay the Certified Amount of USD 7,089,429.38 when due on its Maturity Date, being 13 July 2021, pursuant to Clause 2.2 of the Customer Agreement; and

(ii) failure to pay the Certified Amount within five Business Days of its Maturity Date, such date being 20 July 2021, will constitute an event of default under the Customer Agreement, following which all Certified Amounts will then become immediately due and payable without any further action by GCUK and/or any other Supplier's Transferee; and

(d)otherwise does not know and cannot admit paragraph 158 of the SOC.

159 As to paragraph 159 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(b) admits that on or around 21 July 2021 Grant Thornton on behalf of GCUK appears to have sent a letter to Simec of the kind referred to in paragraph 159 of the SOC styled as an "Acceleration and Event of Default Notice"; and

(c) otherwise does not know and cannot admit paragraph 159 of the SOC.

160 IAL does not know and cannot admit paragraph 160 of the SOC.

161 IAL does not know and cannot admit paragraph 161 of the SOC.

162 IAL does not know and cannot admit paragraph 162 of the SOC.

163 IAL does not know and cannot admit paragraph 163 of the SOC.

164 As to paragraph 164 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence; and

(b) admits that on or around 10 January 2022, GCUK appears to have sent a letter to Simec advising of payment defaults and requesting immediate payment; and

(c) otherwise does not know and cannot admit paragraph 164 of the SOC.

165 As to paragraph 165 of the SOC, IAL: and

(a) repeats paragraph 113A of this Defence; and

(b) admits that on or around 10 January 2022, Greensill Bank and Credit Suisse Asset Management (Switzerland) Limited appear to have sent a letter to Simec stating that they were supportive of the letters and notices issued by GCUK as referred to in paragraph 1.1 of that letter; and

(c) otherwise does not know and cannot admit paragraph 165 of the SOC.

166 As to paragraph 166 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence; and

(b) admits that on or around 22 March 2022, Allen & Overy on behalf of GCUK appear to have sent a letter to Simec, styled as a statutory demand, seeking payment of USD94,447,242.41 within three weeks of service; and

(c) otherwise does not know and cannot admit paragraph 166 of the SOC.

167 IAL does not know and cannot admit paragraph 167 of the SOC.

168 As to paragraph 168 of the SOC, IAL:

(a) repeats paragraphs 110F, 113A, 114, 127, and 160 to 163 of this Defence;

(b) says that:

(i) "Indebtedness Default" is defined in clause 1.1 of the "Customer Agreement";

(ii) there can be no "Indebtedness Default" unless there is a failure to pay "Borrowed Money"; and

(iii) the SOC does not plead material facts necessary to establish that there was "Borrowed Money" within the meaning of the Simec Customer Agreement";

(c) otherwise does not know and cannot admit paragraph 168 of the SOC.

169 IAL does not know and cannot admit paragraph 169 of the SOC.

170 As to paragraph 170 of the SOC, IAL:

(a) repeats paragraphs 110D, 110E and 111 to 169 of this Defence;

(b) says that there is an "Insured Cause" under the 2019 Policy only if there is a failure by a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date";

(c) says that "Eligible Debt" has the meaning set out in Schedule 7 of the 2019 Policy;

(d) says that as best it understands the Applicants' case, it is that:

(i) Simec was a "Customer";

(ii) the "Eligible Debts" were the Simec IPUs under the Simec Customer Agreement; and

(iii) the "Backstop Dates" occurred at unspecified times referred to in SOC, paragraph 169;

(e) as to the allegation that Simec is a "Customer":

(i) IAL denies the allegation for the reasons at paragraphs 110E(j), 146A, 150 and 153 of this Defence; and

(ii) IAL otherwise puts the Applicants to proof of each condition necessary for Simec to be a "Customer";

(f) as to the allegation that the Simec IPUs were "Eligible Debts":

(i) IAL denies the allegation for the reasons at paragraph 110E of this Defence; and

(ii) IAL otherwise puts the Applicants to proof of each condition necessary for those obligations to be "Eligible Debts";

(g) as to the allegation that there was a failure by Simec to make payment on or before the "Backstop Date", IAL says:

(i) the Applicants have failed to plead any material facts to establish this allegation, including any material facts establishing the "Backstop Date"; and

(ii) it puts the Applicants to proof of each condition necessary for there to be a failure to pay on or before the "Backstop Date"; and

(h) otherwise denies paragraph 170 of the SOC.

E7. Notification and claim by Greensill Bank under Policy 3690

171 As to paragraph 171 of the SOC, IAL says that:

(a) repeats paragraph 113A of this Defence;

(b) admits that on each of the dates listed in the paragraph (save for 10 February 2023), the administrator of GCUK issued a notification to BCC purportedly concerning "Potential Loss" under the 2019 Policy in respect of each customer detailed in the Appendix to each notice;

(c) says that the appendix to each notice referred to IPUs relating to Simec; and

(d) otherwise does not know and cannot admit paragraph 171 of the SOC.

172 As to paragraph 172 of the SOC, IAL:

(a) repeats paragraph 113A of this Defence;

(b) says that on each of the dates listed in paragraph 172 of the SOC, Dr Frege, on behalf of Greensill Bank, caused a notification to be issued to BCC purportedly concerning a potential loss under the 2019 Policy in relation to certain IPUs relating to Simec; and

(c) otherwise does not know and cannot admit paragraph 172 of the SOC.

173 As to paragraph 173 of the SOC, IAL:

(a) repeats paragraphs 110F and 170 of this Defence;

(b) says that:

(i) on 7 July 2022, Greensill Bank submitted a document styled "Claim Form" dated 7 July 2022 (the **Simec Claim Form**);

(ii) included with the Simec Claim Form were 63 attachments and three appendices; and

(iii) on or around 7 January 2022, the Simec Claim Form was sent by Greensill Bank to Clyde & Co as the lawyers acting for IAL;

(c) admits that if the 2019 Policy was valid (which is denied), the Simec Claim Form was a claim made by Greensill Bank on or around 7 July 2022 under the 2019 Policy;

(d) denies that the 2019 Policy was valid or binding upon IAL; and

(e) otherwise does not know and cannot admit paragraph 173 of the SOC, including the allegation that there was a "Simec Default".

174 As to paragraph 174 of the SOC, IAL:

(a) repeats paragraph 173 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 174 of the SOC.

175 As to paragraph 175 of the SOC, IAL:

(a) repeats paragraph 173 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 175 of the SOC.

176 As to paragraph 176 of the SOC, IAL:

(a) says that the meaning of "Expected Allocation" in the 2019 Policy differs depending on the character of the "Asset";

(b) says that the Applicants allege, or implicitly allege, that the "Assets" are "Notes", being the Greensill Bank Simec Notes;

(c) says that the "Expected Allocation" in respect of a "Note" for the purposes of the 2019 Policy was the "Final Redemption Amount" (as set out in the relevant "Pricing Supplement" as defined in the "Master Trust Deed") of the relevant "Asset";

(d) says that if the Greensill Bank Simec Notes were "Assets", each was a separate "Asset" for the purposes of the 2019 Policy, and it is therefore erroneous to speak of an "Expected Allocation" for all of the notes, but rather each note had its own "Expected Allocation";

(e) [Not used]

(f) says that there is no allegation or articulation of why the value of the entitlements of a holder of the Greensill Bank Simec Notes was nil and, in particular, there is no identification of:

(i) the entitlements of a holder of the Greensill Bank Simec Notes;

(ii) the sources of value of those entitlements; and

(iii) the reason why, in the circumstances, the value of those entitlements was nil;

(g) says that there is no articulation of why the difference in value (if any) between the "Expected Allocation" and the value of the entitlements under a "Master Trust Deed" was caused by, or resulted from, an "Insured Cause"; and

(h) otherwise, does not know and cannot admit paragraph 176 of the SOC.

177 As to paragraph 177 of the SOC, IAL:

(a) repeats paragraphs 66A, 102, 110D to 110G, and 176 of this Defence;

(b) says that the meaning of "Loss" in the 2019 Policy differs depending on the character of the "Asset";

(c) where the "Asset" is a "Note" (being the third category of the definition of "Loss" defined in the 2019 Policy and Endorsement 23 (if valid and effective, which is denied), which is the only category relied upon by the Applicants), the following are necessary conditions 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) the "Asset" must be owned by the Insured:

(A) immediately prior to the making of a "Claim"; and

(B) immediately prior to the payment of a "Claim" (Endorsement 23 (if valid and effective, which is denied); 2019 Policy definition of "Loss");

(ii) the Insured must have an "Expected Allocation" in respect of the Note (Endorsement 23 (if valid and effective, which is denied); 2019 Policy definition of "Loss");

(iii) the Note must have a "Final Redemption Amount", as set out in a "Pricing Supplement" as defined in the "Master Trust Deed" (2019 Policy definition of "Expected Allocation");

(iv) the "Insured" must have a potential entitlement under the "Master Trust Deed" in respect of the Note (Endorsement 23 (if valid and effective, which is denied)); and

(v) the cause of the "Insured's" potential entitlement under the "Master Trust Deed" being less than the "Expected Allocation" is the failure of the "Customer" to pay the "Eligible Debt" on or before the "Backstop Date" (rather than some other cause) (2019 Policy clause 1.1);

(d) says that the Applicants do not plead any material facts capable of establishing:

(i) the asserted "Loss" (being, the difference between the "Expected Allocation" and the value of Greensill Bank's entitlements under the "Master Trust Deed") was caused by or resulted from the occurrence of the Simec Defaults and/or from the occurrence of Simec's failure to pay Eligible Debts by the Backstop Date;

(ii) that the Greensill Bank Simec Notes had a "Final Redemption Amount" or "Instalment Amounts";

(iii) that there was a "Pricing Supplement" in respect of the Greensill Bank Simec Notes;

(iv) that Greensill Bank's entitlements under the Master Trust Deed, whether in respect of the Greensill Bank Simec Notes or otherwise, were zero; and

(v) that the cause of Greensill Bank's entitlements under the Master Trust Deed in respect of the Greensill Bank Simec Notes (or otherwise) being less than the "Expected Allocation" was the Simec Default (and/or any failure of Simec to pay the amounts due under the Simec IPUs on or before the Backstop Date) (including any counterfactual in the event that the alleged "Insured Cause" had not occurred);

(e) it puts the Applicants to proof of all material facts necessary for the arising of a "Loss";

(f) it denies that there was a "Loss", including because there was no "Insured Cause";

(g) further or alternatively, if Greensill Bank has suffered a "Loss" as defined in the 2019 Policy (which is not admitted), then:

(i) that "Loss" is not recoverable by reason of the matters pleaded in paragraph 282(b) of this Defence;

(ii) further or alternatively, IAL does not know what steps Greensill Bank has taken to mitigate Loss (if any), and reserves its right to allege that any indemnity payment to Greensill Bank should be reduced pursuant to clause 10.7 of the 2019 Policy following discovery and disclosure in this proceeding; and

(iii) further, or alternatively, IAL does not know what (if any) amounts Greensill Bank has recovered in respect of the "Assets" in issue in these proceedings, and if and to the extent Greensill Bank has recovered amounts in respect of the "Assets", any exposure of IAL is to that extent reduced; and

(h) otherwise denies paragraph 177 of the SOC.

177A In further answer to the claim, IAL:

(a) says that, under the 2019 Policy, 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 or otherwise involved in "Loss" (clause 12.1);

(b) says that, under the 2019 Policy, 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" or, alternatively, by the "Insured" or a "Loss Payee" (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.

178 As to paragraph 178 of the SOC, IAL:

(a) repeats paragraphs 110D and 177 of this Defence; and

(b) otherwise denies paragraph 178 of the SOC.

F. CLAIMS

F1. Breach of Policy 3690 by Insurer

179 As to paragraph 179 of the SOC, IAL:

(a) repeats paragraphs 66A, 82, 99, 108, 110D to 110G, and 177 to 178 of this Defence;

(b) admits that it has not indemnified Greensill Bank under the 2019 Policy;

(c) says that Greensill Bank is not entitled to indemnity under the 2019 Policy; and

(d) otherwise denies paragraphs 179 of the SOC.

180 As to paragraph 180 of the SOC, IAL:

(a) admits it has not paid the amount pleaded in paragraph 178 of the SOC; and

(b) says that if Greensill Bank is entitled to an indemnity under the 2019 Policy (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 letter dated 22 July 2022 written without prejudice to IAL's authority defence the solicitors acting for IAL, Clyde & Co, wrote to the solicitors acting for Greensill Bank, CMS Hasche Sigle, requesting information in support of the claim for indemnity. Greensill Bank has not provided any of the information requested. Further, adequate information has not been provided in the SOC or by way of particulars requested by the solicitors for IAL. (IAL.500.002.5576).

(c) says that Greensill Bank is not entitled to an award of interest under section 57 of the *ICA*; and

(d) otherwise denies paragraph 180 of the SOC.

F.1A Misleading or deceptive conduct by IAL

The 2017 LOS Authority Representations

180A In answer to paragraph 180A of the SOC, IAL:

(a) repeats paragraphs 40, 81 and 80O 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, and 80G to 80N) 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.

180B IAL denies paragraph 180B of the SOC.

180C IAL denies paragraph 180C of the SOC.

2018 Excess Policy Representations

180D In answer to paragraph 180D of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O and 80X 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, 80G to 80N, and 80P to 80W) 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.

180E IAL denies paragraph 180E of the SOC.

180F IAL denies paragraph 180F of the SOC.

Sub-Direct Policy Authority Representations

180G In answer to paragraph 180G of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X and 80AG 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, 80G to 80N, 80P to 80W, and 80Y to 80AF) 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.

180H IAL denies paragraph 180H of the SOC.

180I IAL denies paragraph 180I of the SOC.

2017 Standalone Policy Representations

180J In answer to paragraph 180J of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG and 80AP 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, 80G to 80N, 80P to 80W, 80Y to 80AF, and 80AH to 80AO) 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.

180K IAL denies paragraph 180K of the SOC.

180L IAL denies paragraph 180L of the SOC.

2018 LOS Policy Representations

180M In answer to paragraph 180M of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG, 80AP and 80AY 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, 80G to 80N, 80P to 80W, 80Y to 80AF, 80AH to 80AO, and 80AQ to 80AX) 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.

180N IAL denies paragraph 180N of the SOC.

180O IAL denies paragraph 180O of the SOC.

Nokia Policy Representations

180P In answer to paragraph 180P of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG, 80AP, 80AY and 80BH 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, 80G to 80N, 80P to 80W, 80Y to 80AF, 80AH to 80AO, 80AQ to 80AX, and 80AZ to 80BG) 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.

180Q IAL denies paragraph 180Q of the SOC.

180R IAL denies paragraph 180R of the SOC.

2019 Excess Policy Representations

180S In answer to paragraph 180S of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG, 80AP, 80AY, 80BH and 80BQ 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, 80G to 80N, 80P to 80W, 80Y to 80AF, 80AH to 80AO, 80AQ to 80AX, 80AZ to 80BG, and 80BI to 80BP) 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.

180T IAL denies paragraph 180T of the SOC.

180U IAL denies paragraph 180U of the SOC.

The 2019 Standalone Representations

180V In answer to paragraph 180V of the SOC, IAL:

(a) repeats paragraphs 40, 81, 80O, 80X, 80AG, 80AP, 80AY, 80BH, 80BQ and 80BS 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, 80G to 80N, 80P to 80W, 80Y to 80AF, 80AH to 80AO, 80AQ to 80AX, 80AZ to 80BG, 80BI to 80BP, and 80BR) 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 3690 and Policy 3691 were not communicated to IAL; and

(e) otherwise denies the paragraph.

180W IAL denies paragraph 180W of the SOC.

180X IAL denies paragraph 180X of the SOC.

NMC Claim Payment Representations

180Y IAL denies paragraph 180Y of the SOC.

180Z IAL denies paragraph 180Z of the SOC.

180AA IAL denies paragraph 180AA of the SOC.

180AB IAL denies paragraph 180AB of the SOC.

180AC IAL denies paragraph 180AC of the SOC.

Misleading or Deceptive Conduct

180AD IAL denies paragraph 180AD of the SOC and in respect of:

(a) the "2017 LOS Policy Authority Representations", refers to and repeats paragraphs 180A to 180C of this Defence;

(b) the "2018 Excess Policy Authority Representations", refers to and repeats paragraphs 180D to 180F of this Defence;

(c) the "Sub-Direct Policy Authority Representations", refers to and repeats paragraphs 180G to 180I of this Defence;

(d) the "2017 Standalone Policy Authority Representations" refers to and repeats paragraphs 180J to 180L of this Defence;

(e) the "2018 LOS Policy Authority Representations", refers to and repeats paragraphs 180M to 180O of this Defence;

(f) the "Nokia Policy Authority Representations", refers to and repeats paragraphs 180P to 180R of this Defence;

(g) the "2019 Excess Policy Authority Representations", refers to and repeats paragraphs 180S to 180U of this Defence;

(h) the "2019 Standalone Policy Authority Representations", refers to and repeats paragraphs 180V to 180X of this Defence;

(i) the "NMC Claim Payment Representations", refers to and repeats paragraphs 180Y to 180AC of this Defence; and

(j) the omissions pleaded by the Applicants at paragraphs 180C, 180F, 180I, 180L, 180O, 180R, 180U, 180X and 180AC of the SOC, refers to and repeats paragraphs 180C, 180F, 180I, 180L, 180O, 180R, 180U, 180X and 180AC of this Defence.

180AE As to paragraph 180AE of the SOC, IAL:

(a) repeats to paragraphs 5(d), 8, 66A, 80 and 81 of this Defence;

(b) as to sub-paragraph (a), repeats paragraphs 80G to 80O of this Defence;

(c) as to sub-paragraph (b), repeats paragraphs 80P to 80X of this Defence;

(d) as to sub-paragraph (c), repeats paragraphs 80Y to 80AG of this Defence;

(e) as to sub-paragraph (d), repeats paragraphs 80AH to 80AP of this Defence;

(f) as to sub-paragraph (e), repeats paragraphs 80AQ to 80AY of this Defence;

(g) as to sub-paragraph (f), repeats paragraphs 80AZ to 80BH of this Defence;

(h) as to sub-paragraph (g), repeats paragraphs 80BI to 80BQ of this Defence; and

(i) insofar as the Applicants seek to rely on IAL establishing that each of the policies referred to in paragraph 180AE 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.

180AF IAL denies paragraph 180AF of the SOC and repeats and refers to paragraphs 5(d), 8, 66A of this Defence.

180AG IAL denies paragraph 180AG of the SOC and repeats and refers to paragraphs 5(d), 8, 66A, 80O, 80X, 80AG, 80AP, 80AY, 80BH and 80BQ of this Defence and says further that no material facts establishing the alleged reasonable expectation are pleaded.

180AH IAL denies paragraph 180AH of the SOC, repeats and refers to paragraphs 5(d), 8, 66A, 80G, 80P, 80Y, 80AH, 80AQ, 80AZ and 80BI of this Defence.

Causation and Loss

180AI As to paragraph 180AI 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.

180AJ As to paragraph 180AJ 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 180AI of the SOC;

(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 181 of the SOC; and

(b) denies the paragraph.

180AK As to paragraph 180AK 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 181 of the SOC and to acquire the Greensill Bank Simec Notes, or which individual or individuals at Greensill Bank were so induced; and

(c) denies the paragraph.

180AL IAL denies paragraph 180AL 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.

180AM As to paragraph 180AM of the SOC, IAL:

(a) denies paragraph 180AM and repeats paragraphs 180AI to 180AL of this Defence; and

(b) says further that, to the extent IAL is liable for the loss or damage as alleged paragraph 180AM of the SOC (which is denied) it refers to and repeats paragraph 281 of this defence.

F2. Claims against BCC

Breach of Warranty of Authority

181 Save to repeat that, for the reasons set out in paragraphs 5(d), 8 and 66A of this Defence, it denies that BCC or Brereton had the authority of IAL to enter into the instruments pleaded at paragraph 181 of the SOC, IAL does not know and cannot admit paragraphs 181 to 185 of the SOC, which do not make allegations against it.

182 to 185 [Not used].

185A As to paragraph 185A of the SOC, IAL:

(a) repeats paragraphs 82(a) to 82(k) of this Defence;

(b) further repeats paragraphs 102(a) to 102(b) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 185A(b) of the SOC says that the financial service the subject of the allegation in paragraph 185A(b) is not identified;

(d) denies paragraph 185A(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 181 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 185A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 185A(c) of the SOC; and

(v) the conduct of BCC in paragraph 181 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 82(e)(v) of this Defence.

(e) denies paragraph 185A(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 181 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 185A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 185A(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 66A(f), 66A(g), 66A(h) and 66A(j) of this Defence.

Particulars under paragraph 86(k) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 102(e) 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 185A(f) of the SOC; and

(g) otherwise denies paragraph 185A of the SOC.

Misleading or Deceptive Conduct

186 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, 66A and 181 to 185A 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 186 to 194 of the SOC, which do not make allegations against it.

187-194 [Not used]

194A As to paragraph 194A of the SOC, IAL:

(a) repeats paragraphs 82(a) to 82(k) of this Defence;

(b) further repeats paragraphs 102(a) to 102(b) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 194A(b) of the SOC:

(i) says that the financial service the subject of the allegation in paragraph 194A(b) is not identified; and

(ii) subject to paragraphs 82(a) and 82(b) of this Defence, admits that if the conduct of BCC pleaded at paragraphs 186 to 188 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 194A(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 186 to 188 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 194A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 194A(c) of the SOC; and

(v) the conduct of BCC referred to in paragraphs 186 to 188 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 82(e)(v) of this Defence.

(e) denies paragraph 194A(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 194A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 194A(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 66A(f), 66A(g) , 66A(h) and 66A(j) of this Defence.

Particulars under paragraph 86(k) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 102(e) 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 194A(f) of the SOC; and

(g) otherwise denies paragraph 194A of the SOC.

Section 1041E Claim

195 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, 66A and 181 to 194A 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 181 of the SOC, IAL does not know and cannot admit paragraphs 195 to 199 of the SOC, which do not make allegations against it.

196-199 [Not used]

199A As to paragraph 199A of the SOC, IAL:

(a) repeats paragraphs 82(a) to 82(k) of this Defence;

(b) further repeats paragraphs 102(a) to 102(b) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 199A(b) of the SOC, subject to paragraphs 82(a) and 82(b) of this Defence, admits that if the conduct of BCC pleaded at paragraphs 195 to 197 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 199A(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 195 to 197 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 199A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 199A(c) of the SOC; and

(v) the conduct of BCC referred to in paragraphs 195 to 197 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 82(e)(v) of this Defence.

(e) denies paragraph 199A(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 199A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 199A(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 66A(f), 66A(g), 66A(h) and 66A(j) of this Defence.

Particulars under paragraph 86(k) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 102(e) 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 199A(f) of the SOC; and

(g) otherwise denies paragraph 199A of the SOC.

F3. Claims against Greg Brereton

Breach of Warranty of Authority

200 Save to repeat that, for the reasons set out in paragraphs 5(d), 8 and 66A of this Defence, it denies that BCC or Brereton had the authority of IAL to enter into the instruments pleaded at paragraph 181 of the SOC, IAL does not know and cannot admit paragraphs 200 to 204 of the SOC, which do not make allegations against it.

201-204 [Not used].

204A As to paragraph 204A of the SOC, IAL:

(a) repeats paragraph 185A of this Defence;

(b) does not know and therefore cannot admit paragraph 204A(f) of the SOC; and

(c) otherwise denies paragraph 204A of the SOC.

Misleading or Deceptive Conduct

205 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, 66A and 200 to 204A 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 205 to 213 of the SOC, which do not make allegations against it.

206-213 [Not used]

213A As to paragraph 213A of the SOC, IAL:

(a) repeats paragraph 194A of this Defence;

(b) does not know and therefore cannot admit paragraph 213A(f) of the SOC; and

(c) otherwise denies paragraph 213A of the SOC.

Section 1041E Claim

214 Save to repeat that, for the reasons set out in paragraphs 5(d), 8, 66A and 200 to 213A 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 181 of the SOC, IAL does not know and cannot admit paragraphs 214 to 218 of the SOC, which do not make allegations against it.

215-218 [Not used]

218A As to paragraph 218A of the SOC, IAL:

(a) repeats paragraph 199A of this Defence;

(b) does not know and therefore cannot admit paragraph 218A(f) of the SOC;

(c) otherwise denies paragraph 218A of the SOC.

F4. Claims against Marsh and Marsh Pty Ltd

218B-278 As to paragraphs 218B to 278, 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 3690), IAL refers to and repeats paragraphs 5(d), 6(e), 8, 66A, and 80 to 81 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 80A to 80O and 80BR of this Defence;

(iii) it does not plead to paragraphs 272Z to 272BB 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;

(c) otherwise, does not know and cannot admit the paragraphs.

G. Further Answer to Applicants' Claim

279 In further answer to the Applicants' claim, IAL:

(a) says that it was an express term of the 2019 Policy (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 the 2019 Policy, 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 the 2019 Policy (clause 10.7(a));

(b) says that, on the Applicants' case, which is not admitted, the Supply Chain Finance Trust Deed was a "Master Trust Deed" and thus a "Transaction Document";

(c) says that the events that may reasonably be expected to result in a "Loss" under the 2019 Policy for the purposes of clause 10.7(a) include each of the alleged Insured Causes and Simec Defaults;

(d) says that following the occurrence of the alleged events described in paragraph 279(c):

(i) Greensill Bank (on the Applicants' pleaded case) acquired the Greensill Bank Simec Notes; and

(ii) Greensill Bank, as the Insured under the 2019 Policy, 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;

(e) says that, as best IAL understands the Applicants' case, in acquiring the Greensill Bank Simec Notes, Greensill Bank exercised rights under the Supply Chain Finance Trust Deed;

(f) says that, there is no entitlement to an indemnity under the 2019 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 279(d) to 279(e) of this Defence, is the case here; and

(g) says further that, in the premises, the Applicants have no entitlement to an indemnity.

280 In further answer to the Applicants' claim, IAL says:

(a) it was a term of the 2019 Policy (if valid and effective, which is denied) 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" (2019 Policy clause 5.2);

(b) the "Applicable Limit of Liability" was defined in Sch 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 Sch 1 and Sch 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 the 2019 Policy 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 "Simec IPUs" exceeds the "Applicable Limit of Liability" or the "Maximum Limit of Liability" in respect of relevant "Customers", there is no coverage.

281 In further answer to paragraphs 82, 85, 99, 101, 108, 110, 179, 180, 180AM, 194A and 213A of the SOC, insofar as IAL is liable for any loss and damage suffered by the Applicants, which is denied, IAL says:

(a) it repeats paragraphs 82, 85, 99, 101, 108, 110, 180AM, 194A and 213A of this Defence, including the allegations as to the deficiencies in the Applicants' pleading based on Division 6 of Part 7.6 of the *Corporations Act*;

(b) 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;

(c) 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;

(d) the causes of action alleged against BCC and Brereton include contraventions of:

(i) s 1041H of the *Corporations Act* (SOC, paragraphs 188, 190, 207 and 209), 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) s 18 of the *Australian Consumer Law* (***ACL***) (SOC, paragraphs 188, 190, 207 and 209) 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) s 12DA of the *ASIC Act* in respect of alleged misleading or deceptive conduct (SOC, paragraphs 188, 190, 207 and 209) said to give rise to a cause of action for loss or damage under section 12GF of the *ASIC Act*;

(e) the causes of action alleged against IAL include contraventions of:

(i) section 1041H of the *Corporations Act* (paragraphs 180AD.b.i, 180AF and 180AH 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 180AD.b.ii, 180AF and 180AH 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 180AD.b.iii, 180AF and 180AH 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*;

(f) the loss said to have arisen because of the alleged contraventions is USD17,591,532 (paragraphs 180AM, 194, 199, 213, 218 of the SOC), being

the "Expected Allocation" of the Greensill Bank Simec Notes (SOC, paragraphs 176, 177);

(g) 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 in, relevantly, 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*;

(h) 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 the Apportionable Claims);

(i) each of the Apportionable Claims is an "apportionable claim" for the purposes of the relevant proportionate liability regimes;

(j) 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 (*Corporations Act section* 1041L(3); *CCA* section 87CB(3); *ASIC Act* section 12GP(3));

(k) 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,

(*Corporations Act* section 1041N(1); *CCA* section 87CD(1); *ASIC Act* section 12GR(1));

(l) 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,

(*Corporations Act* section 1041N(3); *CCA* section 87CD(3); *ASIC Act* section 12GR(3));

(m) says that 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 176, 177 and 178 of the SOC;

(n) says that on the assumption, which is not admitted, that the claimed loss was loss or damage suffered because of the alleged contraventions, then:

(i) the First Applicant, Greensill Bank, was contributorily negligent as set out in paragraph 281(o) of this Defence; and

(ii) there were "concurrent wrongdoers" as set out in paragraphs 281(p) to 281(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 917A or 917C of the *Corporations Act* for the conduct yielding that liability should be correspondingly reduced;

Greensill Bank

(o) says that:

(i) the First Applicant, 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 Greensill Bank Simec Notes (SOC, paragraph 142) in circumstances where it knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into the 2019 Policy, 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(g) to 66A(i), and 145(k) 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 the 2019 Policy (SOC, paragraphs 66A) on the pleaded terms, alternatively agreeing to enter into the 2019 Policy when it knew the facts referred to in paragraphs 66A(a) to 66A(k) of this Defence;

b. entering into or agreeing to enter into various endorsements thereto; and

c. acquiring the Greensill Bank Simec Notes (SOC, paragraph 142);

(C) further, Greensill Bank engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(D) further, at all material times Greensill Bank knew or ought to have known that:

a. BCC's authority on behalf of IAL before 30 June 2019 was limited to underwriting trade credit insurance and the 2019 Policy and its endorsements were not trade credit insurance products;

b. BCC's authority on behalf of IAL to issue Approved Products was subject to Special Acceptance requirements including that any non approved wording was expressly approved by IAL and Scor Re;

c. Scor Re and IAL had not approved the terms of the 2019 Policy;

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(h) to 66A(m) of this Defence had changed;

e. that BCC's authority was not unlimited and as at February 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 the 2019 Policy, 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 the 2019 Policy; and

iii. IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy or any policy or endorsement which was not an Approved Product; and

(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 the 2019 Policy;

(F) 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 the 2019 Policy and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of the 2019 Policy and entry into related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 281(q) of this Defence;

ii. Lagoon Park to issue the Greensill Bank Simec Notes (SOC, paragraphs 138 and 140), being notes allegedly secured over Simec IPUs (SOC, paragraphs 139 and 141); and

iii. Greensill Bank to acquire the Greensill Bank Simec Notes (SOC, paragraph 142),

then those acts or omissions caused the loss the subject of the claim;

c. they involved the acquisition of the Greensill Bank Simec Notes by Greensill Bank which was a precondition to the arising of "Loss";

(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 paragraphs 281(o)(i)(A) to 281(o)(i)(G) of this Defence;

Simec

(p) says that:

(i) Simec 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" (2019 Policy clause 3.1);

(B) the loss alleged by the Applicants is the alleged "Expected Allocation" of the Greensill Bank Simec Notes (SOC, paragraph 176);

(C) the alleged "Insured Cause" is the alleged Simec Default (SOC, paragraph 170);

(D) the Simec Default comprises alleged failures on the part of Simec to pay amounts said to be owing to GCUK, as alleged in SOC, paragraphs 158 to 163 (SOC, paragraph 168); 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 Simec, namely, the Simec Default;

(ii) the liability of IAL, BCC and/or Brereton in relation to the apportionable claims under section 1041I, section 236, and/or section 12GF 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 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, Simec was subject to voluntarily-assumed legal obligations to pay the amounts the subject of the Simec Default;

(B) on the Applicants' pleaded case, it was the voluntarily-assumed legal obligations of Simec (and correlative rights of GCUK) from which the Greensill Bank Simec Notes were derived and in respect of which, therefore, the claimed economic loss was suffered;

(C) 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 Simec would or might commit the alleged Simec Default; and

(D) on the Applicants' pleaded case, had the alleged Simec Default not occurred, the loss the subject of the claim would not have been suffered;

GCUK

(q) 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:

a. by entering into the transactions to provide financing to Simec on the terms alleged in the claim of the SOC, including:

i. it entered into the "Customer Agreement" on the terms alleged (SOC, paragraph 114); and

ii. it entered into the "Supplier Agreement" on the terms alleged (SOC, paragraph 119);

(B) further, GCUK engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(C) further, at all material times GCUK knew or ought to have known of the matters pleaded in paragraph 281(o)(i)(D) of this Defence;

(D) 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. Simec assumed the Simec IPUs and any other IPU relied on by Simec (see SOC, paragraph 127);

ii. thereafter, Simec failed to pay the Simec IPUs (and any other IPU relied on by Simec), constituting the Simec Default (SOC, paragraphs 158 to 163 and 168), which failure to pay is said to be an "Insured Cause" (SOC, paragraph 170); and

iii. as a result of that Insured Cause, there have been "Losses" which are the subject of the claim (note clause 1.1 of the 2019 Policy and the SOC, paragraph 176);

b. had the misrepresentations and non-disclosures pleaded in Annexure A to IAL's 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 the parties to the transaction (Part E1 SOC), the customer and supplier

agreements (Part E2 SOC), the Simec IPUs (being GCUK's purchase of "Accounts Receivables" related to the claim) (Part E3 SOC), the Greensill Bank Simec Notes (Part E4 SOC), the insurance arrangements, and the authority of BCC to bind IAL;

(B) GCUK did not operate as a reasonably prudent lender in its provision of finance to Simec (as alleged in paragraphs 126, 127 and 128 of the SOC), and including in failing to procure and/or enforce adequate security for the alleged debts of this Defence;

(C) GCUK has not taken steps, alternatively has not taken adequate steps, to recover payments from Simec as referred to in IAL's defence to the claim;

(D) GCUK has not taken steps, alternatively has not taken adequate steps, to enforce the personal guarantee from Sanjeev Gupta, (the **Guarantor**) pursuant to their obligations as guarantors;

(E) the misrepresentations and non-disclosures made by GCUK were misleading or deceptive; and

(F) the matters set out in paragraph 281(q)(i) of this Defence;

GCPL

(r) 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 pleaded in Annexure A to IAL's Defence to the SOC;

(B) further, at all material times GCPL knew or ought to have known of the matters pleaded in paragraph 281(o)(i)(D) of this Defence;

(C) 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 the 2019 Policy and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of the 2019 Policy and entry into the related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 281(q) of this Defence;

ii. Lagoon Park to issue the Greensill Bank Simec Notes (SOC, paragraphs 138 and 140), being notes allegedly secured over Simec IPUs (SOC, paragraphs 139 and 141); and

iii. Greensill Bank to acquire the Greensill Bank Simec Notes (SOC, paragraph 142),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to 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 281(r)(i) of this Defence;

Lex Greensill

(s) 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.

(B) further, at all material times, Lex Greensill knew or ought to have known of the matters pleaded in paragraph 281(o)(i)(D) of this Defence;

(C) because of Lex Greensill's acts or omissions:

a. GCUK engaged in the conduct pleaded in paragraph 281(q) of this Defence;

b. Greensill Bank engaged in the conduct pleaded in paragraph 281(o) of this Defence;

c. GCPL engaged in the conduct pleaded in paragraph 281(r) 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 281(o), 281(q) and 281(r) 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 281(o)(i)(D) of this Defence above;

(C) 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;

The Guarantor / Sanjeev Gupta

(t) says further that:

(i) the Guarantor referred to in paragraph 281(q)(ii)(D) is a concurrent wrongdoer because:

(A) he engaged in acts or omissions, including the failure to pay the asserted "Eligible Debts" the subject of the claim pursuant to their obligations as guarantor; and

(B) the Guarantor's acts and omissions, including his failure to pay the asserted debts, caused (on the pleaded case, which is not admitted) the debts not to be paid, the Simec Default, the "Insured Cause" (as alleged) and the "Loss" the subject of the claim;

Particulars

On or about 17 April 2020, Sanjeev Gupta and Lex Greensill (as CEO of GCUK) appear to have signed a document styled "Personal Guarantee" (IAL.500.002.5469).

(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 fact that the Guarantor was the subject of voluntarily-assumed legal obligations to discharge the debts;

Lagoon Park

(u) says further that Lagoon Park is a concurrent wrongdoer because:

(i) on the pleaded case (which is not admitted), it engaged in (inter alia) acts or omissions including:

(A) agreeing to enter into the Supply Chain Finance Trust Deed (SOC, paragraph 131);

(B) agreeing to incorporate an Appendix to the Supply Chain Finance Trust Deed defining Simec as an "Obligor" and the Simec Customer Agreement as a "Customer Agreement (SOC, paragraph 132);

(C) agreeing to enter into the Master Trust Deed (SOC, paragraph 135);

(D) agreeing to enter into the Master Funded Participation Agreement (SOC, paragraph 136);

(E) agreeing to enter into the Base Memorandum (SOC, paragraph 137);

(F) issuing the Greensill Bank Simec Notes on the terms alleged (SOC, paragraphs 138 and 140); and

(G) selling the Greensill Bank Simec Notes to Greensill Bank (SOC, paragraph 142); and

(ii) Lagoon Park's acts or omissions caused Greensill Bank to acquire the Greensill Bank Simec Notes and to suffer the "Loss" the subject of the claim; and

(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 fact that Lagoon Park did not undertake or alternatively failed to undertake adequate, investigations and/or due diligence into the parties to the transaction (Part E1 SOC), the customer and supplier agreements (Part E2 SOC), the Simec IPUs (being GCUK's purchase of Accounts Receivables related to the claim) (Part E3 SOC), the Greensill Bank Simec Notes (Part E4 SOC), the insurance arrangements, the authority of BCC to bind IAL and the transactions referred to in 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 the 2019 Policy and those referred to earlier in this Defence and below at 281(v)(ii)(H) 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 the 2019 Policy 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 the 2019 Policy and related endorsements on the terms set out in them;

b. in the event that Greensill Bank and GCPL's purported entry into the 2019 Policy and related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 281(q) of this Defence;

ii. Lagoon Park to issue the Greensill Bank Simec Notes (SOC, paragraphs, 138 and 140), being notes allegedly secured over Simec IPUs (SOC, paragraphs 139 and 141); and

iii. Greensill Bank to acquire the Greensill Bank Simec Notes (SOC, paragraph 142),

then those acts or omissions caused the loss the subject of the claim; 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 (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 was only permitted to underwrite trade credit insurance and the 2019 Policy was not trade credit insurance;

(C) Marsh knew, or ought reasonably to have known, that:

a. before BCC and Brereton could agree to the 2019 Policy 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 the 2019 Policy or any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC; and

c. IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy or any of the endorsements issued pursuant to that policy as pleaded by the Applicants in the SOC;

d. 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;

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 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 including the terms on which it was 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 authority to underwrite

on behalf of IAL the LOS Policy, Policy TW-03137, Policy TS-03088, Policy TS-03087, the 2019 Policy, Policy TB-03691, Policy TB-04271, Policy TB-04278, Policy TB-04584, TB-05370, Policy TB-05369, 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; and

(l) Marsh facilitated the execution of Endorsements 17 and 18 to purportedly extend the policy period of the 2019 Policy in circumstances when Marsh knew from 15 April 2019 and before the execution of Endorsements 17 and 18 that BCC did not have authority to extend existing insurance arrangements issued on behalf of IAL;

(va) says further or alternatively that, if the matters alleged by the Applicants at paragraphs 218B to 278 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 281(w)(i)(B) below in respect of the 2019 Policy on behalf of IAL on and from 1 July 2019;

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 instruments on behalf of IAL, which were engaged in (on the pleaded case) as agent and authorised representative of TMNF, being the entry of:

a. Endorsement 23 dated 5 February 2020 (SOC, paragraph 102); and

b. Customer Endorsement 2(ii) entered on or about 31 January 2020 (SOC, paragraph 153);

(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 the 2019 Policy (referred to in paragraph 281(w)(i)(B) of this Defence);

(B) in the event that Greensill Bank and GCPL's entry into the 2019 Policy and related endorsements caused:

a. any (or all) of the conduct of GCUK referred to in paragraph 281(q);

b. Lagoon Park to issue the Greensill Bank Simec Notes (SOC, paragraphs, 138 and 140), being notes

allegedly secured over Simec IPUs (SOC, paragraphs 139 and 141); and

c. Greensill Bank to acquire the Greensill Bank Simec Notes (SOC, paragraph 142),

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 the 2019 Policy 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; and

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;

b. failing to provide those services with due care and skill;

(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 after 9 April 2019 that 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 (including Brereton) 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), 38(c) and 38(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) to 8(k), 32, 33, 55, 60 and 66A of this Defence, 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:

a. Endorsement 17, dated 21 June 2019 (SOC, paragraphs 90 and 91);

b. Endorsement 18, dated 21 June 2019 (SOC, paragraphs 94 and 95);

c. Endorsement 23, dated 5 February 2020 (SOC, paragraphs 102 and 103);

d. Customer Endorsement 2(i), dated 24 April 2019 (SOC, paragraph 150); and

e. Customer Endorsement 2(ii), dated 31 January 2020;

(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 the 2019 Policy 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 the 2019 Policy 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;

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 186 to 204 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 87CD of the *CCA*, section 1041N of the *Corporations Act* and section 12GR of the *ASIC Act*;

Reservation

(z) says further, in relation to the whole of paragraphs 281(a) to 281(y) of this Defence:

(i) it was not a party to the transactions the subject of the SOC (including the 2019 Policy, the endorsements thereto, and the various underlying transactional documents said to have given rise to claims under the 2019 Policy) 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";

(B) it may become appropriate to supplement or vary the circumstances identified in paragraphs 281(o) to 281(y).

Misrepresentations and Non-Disclosures

282 In further answer to the whole of the claim, if:

(a) which is denied, IAL is bound by the 2019 Policy 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 the 2019 Policy or section 28(2) of the *ICA*, the 2019 Policy 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 Annexure A of IAL's Defence to the SOC.

(ii) further or alternatively, pursuant to section 28(3) of the ICA, if the 2019 Policy and 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 Annexure A of IAL's Defence to the SOC.

(iii) further, or alternatively, pursuant to clause 9.7 of the 2019 Policy, 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 Annexure A of IAL's Defence to the SOC.

283 In further response to the Applicants' claims pleaded against it in the SOC, 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

M Stephens

Signed by Malcolm Stephens, solicitor on record

This pleading was prepared by Malcolm Stephens and settled by SG Finch, DFC Thomas, D Hume, C Ernst and N Wootton of Counsel

Certificate of lawyer

I Malcolm Stephens 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

M Stephens.

Signed by Malcolm Stephens, solicitor on record

Schedule

No. NSD177 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

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