NOTICE OF FILING

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Registrar

Important Information

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Form 33

Rule 16.32

Amended Defence to the Sixth Amended Statement of Claim

No. NSD1216 of 2021

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 listed in the schedule

Respondents

To the applicants' sixth amended statement of claim filed 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 TB-03690 with unique market reference B0509FINCW1900009 (referred to as the **2019 Policy**, being the same policy as "Policy 3690" referred to in the SOC) and related endorsements to Greensill Bank AG (**Greensill Bank**). Greensill Bank claims that it is entitled to indemnity from IAL under the 2019 Policy.

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A2 A total of 113 endorsements are relied upon by the Applicants in the various **Greensill Proceedings**,[1] of which 7 are specifically relied on in this proceedings. 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.

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

A4 Across the various Greensill Proceedings, IAL denies liability on numerous bases. It was not a party to the policies 2019 Policy and endorsements, and cannot be sued on them. Even if the policies 2019 Policy 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.

A5 The core bases upon which IAL denies liability in this proceeding are set out below.

No authority

A6 *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" (being the "**Approved Wording**" as referred to in paragraphs 6-3(j) and 6-3(k) of this Defence). The

[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).

endorsements that BCC and Brereton could issue on behalf of IAL were also prescribed and in set terms (being, the "**Approved Endorsements**" as defined in paragraph 6-3(i) of this Defence). BCC and Brereton could not issue trade credit policies and endorsements that were not in accordance with the prescribed terms without approval from IAL and its reinsurers (in particular, lead trade credit reinsurer Scor Reinsurance Asia-Pacific Pte Ltd (**Scor Re**)). This was known to the entities in the Greensill Group purportedly insured under the policies entered into by BCC and Brereton knew this (as explained in paragraph A9A below).

A7 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.

A8 Moreover, the purported insureds failed to pay any premium or other consideration for the 2019 Policy, such that it is not valid or binding.

A9 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 17 and 18, Debt Endorsement 1, Customer Endorsements 37, 37(i) and 37(ii) and Loss Payee Endorsement 3) purported to operate in favour of an insured not domiciled in Australia, which their authorities did not permit, and/or purported to vastly increase the exposure of IAL beyond the limits as stipulated in the applicable Underwriting Manual (as referred to in paragraphs 6-3(h), 6-3(l) and **Error! Reference source not found.** of this Defence).

(d) Many of the endorsements 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*.

A9A 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.

A10 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.

A10A For the reasons summarised at paragraph A6, A7 and A12 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 35AB and 35AC 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 A12(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

A11 *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 sections 917A(1)(b) or 917A(1)(c) of the *Corporations Act*.

(b) [Not used].It follows that, 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 and endorsements was not conduct on which Greensill Bank could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*, including for the reasons given in paragraph A13 and A28 below.

(c) 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.

A12 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.

A13 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

A14 *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.

A15 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 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.

A16 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". The Applicants rely on an alleged debt endorsement described as Debt Endorsement 1. Debt Endorsement 1 brings with it a host of additional conditions which a debt must meet in order to qualify as an "Eligible Debt". IAL denies that Debt Endorsement 1 binds it, but the Applicants' case depends on Debt Endorsement 1.

A17 There are numerous intersections between IAL's defence of lack of authority and the case advanced by the Applicants on coverage. The Applicants' case on coverage depends on establishing that the "Customer Endorsements" and "Debt Endorsement" they rely on were valid, binding on and enforceable against IAL. For example, there is no "Eligible Debt" unless it is owed by a "Customer" which, in turn, is a person endorsed to the policy under a "Customer Endorsement". If there is no valid or effective "Customer Endorsement", there is no "Customer" and no "Eligible Debt".

A18 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: firstly, to identify whether Debt Endorsement 1 was valid, binding and enforceable; secondly, to construe the 2019 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 transaction in this proceeding involves the following parties and transactions:

(a) a supply or possible supply of goods or services from a supplier (A) to a purchaser (B, here EHG) creating an alleged payment obligation from B to A;

(b) an agreement between B and a "Platform" provider (C, here DEMICA Limited (**Demica**));

(c) the provision of finance from D (here GCUK) to A (as trade credit finance, to obtain advance payment of the payable from B to A);

(d) an assignment by D to E (here, Hoffman) of the payment obligations of B to D;

(e) the issuing of a financial instrument, a "Note", by E to F (here, Credit Suisse Virtuoso) said to be secured over the EHG Independent Payment Undertakings;

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

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

A19 IAL contends that the SOC falls well short of pleading material facts capable of establishing the multiple steps in the transactional chain which could ground indemnity under the 2019 Policy, even assuming that it, and relevant endorsements, are valid and binding on IAL.

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

A21 The complexity of the endorsements, and the related multiplicity of conditions necessary for there to be coverage, are not matters for which IAL is responsible: IAL did not draft the 2019 Policy or the endorsements; they bear no resemblance to the Approved Wording or the Approved Endorsements; and the 2019 Policy and endorsements were in fact drafted by the purported "Insureds" themselves without approval by or even recourse to IAL.

A22 As noted, Greensill Bank relies on an alleged Debt Endorsement 1. That endorsement has multiple parts, each of which sets out numerous conditions before a "debt" will meet the description of being a "Debt". The Statement of Claim does not articulate, with any precision or at all, the basis on which the obligations said to have arisen here meet any of the conditions in those various parts. In the circumstances, IAL has identified necessary conditions for a debt to be an "Eligible Debt", but otherwise has not pleaded to them.

A23 Once the propositions implicit in or necessary to the Applicants' case are exposed (as they are in other Greensill Proceedings), it is apparent that there are significant gaps throughout the Applicants' case. These are identified throughout this Defence. By way of example only:

(a) The “Assets” relied on by the Applicants (being the “EHG Notes”) were first acquired by Greensill Bank after the underlying debt was already in default. The 2019 Policy, both in its terms and as a matter of commercial common-sense, does not extend coverage to “Assets” acquired in those circumstances.

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

(c) The “Assets” relied on are said to be “Notes”. The 2019 Policy makes clear that a note is only a “Note” if it was issued under a “Master Trust Deed” as defined. The deed relied on by the Applicants does not relevantly meet the description of being a “Master Trust Deed”.

A24 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. The pleaded case shows that Greensill Bank acquired the insured “Asset” *after the underlying debt was already in default*, 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 obvious 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 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

A25 Further, for the reasons as pleaded by IAL in paragraph 215 below and set out in Annexure A to IAL's Defence, there were misrepresentations and non-disclosures made by the purported Insureds relating to (inter alia) the true nature of the arrangements between GCUK and the purported Customers and the character of the risk being insured which call for 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 knew, or ought to have known, of the absence of authority

A26 In October 2018, Lex Greensill approached Brereton concerning a proposed endorsement to the policies which was said to enable Greensill Bank "*to treat insurance provided by [BCC] as a risk substitution*" for the purpose of satisfying the insurance compliance requirements of the Federal Financial Supervisory Authority (**BaFin**), the German banking regulator [BCC.0001.0002.2344]. Under the proposed arrangement, when a claim was made by Greensill Bank on the proposed policy, GCUK would advance funds equivalent to the claim amount to BCC and BCC would then pay that claim amount to Greensill Bank within five days from the date of the claim [BCC.0001.0001.1168].

A27 To give effect to the arrangement, on 20 December 2019, Brereton signed Claims Endorsement 10 to Policy TB-03690 with unique market reference B0509FINCW1800045 (being the **2018 Policy**), prepared by the Greensill Group. Claims Endorsement 10 recorded *inter alia* that "The Insurer will pay any Claim… in full up to the amount of the relevant Loss, within 5 Business Days of such Claim being made by Greensill Bank AG, without the need for any further requirement to be met." The endorsement was silent as to the proposed funding arrangement referred to in the preceding paragraph. An endorsement setting out the funding arrangement was issued on a Master Policy, under which GCUK and GCPL were purportedly insured. On 13 March 2019, Brereton signed Claims Endorsement 9 to the 2019 Policy, which contained the same terms as Claims Endorsement 10. On 24 April 2019 Lex Greensill requested Brereton to confirm the effect of Claims Endorsement 9 to BaFin in a form of letter drafted by the Greensill Group (the **BaFin Letter**). On 29 April 2019, Greensill Bank's CEO also requested that Brereton place the BaFin Letter on BCC letterhead. Brereton provided to Greensill Bank's CEO and Lex Greensill the BaFin Letter on BCC letterhead dated 30 April 2019. The BaFin Letter did not disclose the GCUK funding arrangement and was materially misleading. IAL and Scor Re's consent to BCC issuing Claims Endorsements 9 and 10 or the BaFin Letter was not sought by the Greensill Group.

A28 The conduct in paragraph A27 of purporting to issue Claims Endorsements 9 and 10 was conduct which had no commercial benefit for IAL, and was conduct which was likely to mislead BaFin that IAL had agreed to pay claims within 5 days when it had not and involved the deliberate hiding from BaFin that GCUK was in fact funding any claims payment. The proper inference in the circumstances is that the conduct was intended to deceive the regulator and was fraudulent. IAL contends that no reasonable Insured could, in circumstances where BCC's authority was limited to underwriting trade credit insurance, reasonably rely upon the conduct of BCC in entering into the endorsements and the parallel funding arrangement.

A29 BCC and Brereton's authority to manage claims on the 2019 Policy, on behalf of IAL, ceased at the time of the sale of BCC to Tokio Marine Management (Australasia) Pty Ltd (**TMMA**). On and from 1 July 2019, the "Administrators" under the "Policy and Claims Administration Outsourcing Deed" (**PACAO**) (being Bond and TMMA) had authority to manage all claims for the life of IAL's run-off policies, including the 2019 Policy. Under the terms of the PACAO, the "Administrators" were to report in writing to IAL upon notice of:

(a) any new claim deemed to be a "Contentious Claim", which included any high value claims (PACAO Schedule 4, clause 3.1); and

(b) any claim where the Claim amount was equal to or greater than AUD 500,000 (PACAO Schedule 4, clause 3.3).

A30 IAL could also provide instructions to the "Administrators" on the terms of settlement and the "Administrators" had to act in accordance with those instructions.

A31 Upon receipt of the Claim Form in respect of the "EHG Default", the "Administrators" acted in breach of their claims authority by failing to notify IAL of the Claim pursuant to the terms of the PACAO.

A32 In this proceeding, upon receipt of the claim in respect of the alleged "EHG Default", the Applicants allege that Brereton and BCC acted on behalf of IAL to enter into the "Recovery Proposal Letter" dated 18 June 2020 and the "Claim Offer Letter" dated 19 June 2020, pursuant to which:

(a) IAL purportedly agreed to pay Greensill Bank's claim in respect of the alleged "EHG Default" in full on or before 10 July 2020;

(b) GCUK agreed to fund IAL's payment of the claim to Greensill Bank in the amount of USD 34,998,726; and

(c) IAL allegedly agreed to pay the amount of USD 34,998,726, less any recoveries obtained by GCUK from EHG, to GCUK by 15 June 2021.

A33 The arrangements in the "Claim Offer Letter" and the "Recovery Proposal Letter" appear to give effect to the claims management arrangement proposed by Lex Greensill in October 2018 (as described at paragraph A26 above). A third draft letter provided by Lex Greensill to Brereton, but not signed, proposed that GCUK would agree to pay BCC the Claim Amount in consideration of BCC accepting the Claim on the terms of the third letter, to pay to GCUK or Greensill Bank by 15 June 2021 an amount equal to the "Unrecovered Relevant Amount" and for Greensill Bank to retain on its balance sheet the underlying "Debts".

A34 Insofar as the "Claim Offer Letter" and the "Recovery Proposal Letter" were entered into by BCC and/or Brereton in June 2020, BCC and/or Brereton did not have authority to manage or accept claims with a value above AUD 500,000 on behalf of IAL at that time. Any purported acceptance of the Claim was therefore outside of BCC and/or Brereton's claim authority. To the extent that BCC and/or Brereton were acting as Bond's delegate when entering into the Letters, Bond's claims management authority was limited to the terms of the PACAO and did not extend to accepting such a Claim or entering into the arrangements in the Letters.

A35 IAL's case is that Greensill Bank knew or ought to have known that it was beyond the authority of BCC and Brereton to enter into the Claim Offer Letter and the Recovery Proposal Letter on behalf of IAL. Further, or alternatively, for the same reasons, the Applicants cannot establish that there was apparent authority.

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

A36 Finally, so far as the Applicants assert an indirect claim against IAL via a deemed responsibility under Division 6 of Part 7.6 of the *Corporations Act* for contraventions of the *Corporations Act*, the *Australian Consumer Law* (***ACL***) and the *Australian Securities and Investments Commission Act 2001* (Cth) (***ASIC Act***), or in the alternative, a direct claim against IAL under Division 2 of Part 7.10 of the Corporations Act, the ACL or the ASIC Act in respect of allegedly misleading or deceptive conduct, IAL also advances a concurrent wrongdoer/apportionment defence. The basis of this defence is the proposition that IAL's deemed responsibility is not, and cannot be, greater than that of BCC or Brereton, being the persons for whose conduct IAL is said to be responsible – so, if a concurrent wrongdoer defence is available to BCC or Brereton, it is also available to IAL. A concurrent wrongdoer is a person whose acts or omissions (whether wrongful at law or not) caused the loss the subject of the claim. Here, there were multiple concurrent wrongdoers, including the numerous participants in the transactional chain relied upon as the factual foundation for the Applicants' pleaded case, and there is contributory negligence of Greensill Bank.

Applicants' case fails against IAL at every stage

A37 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 2019 Policy 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

A38 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.

A39 Save where expressly stated to the contrary, this pleading adopts the sub-headings and definitions used in the SOC where appropriate and for convenience only. No admissions are implicit in or to be inferred from the use of these sub-headings in the Defence.

A40 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

A41 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 (if any) under the 2019 Policy (if valid and effective, which is denied);

(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;

(g) if Division 6 of Part 7.6 of the *Corporations Act* applies the reduction of liability by reason of conduct of concurrent wrongdoers;

(h) whether there were misrepresentations or non-disclosures which entitle IAL to avoid the 2019 Policy or otherwise resist an obligation to indemnify; and

(i) the validity of the Claims Offer letter and Recovery Proposal letter.

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.

4-1 IAL admits paragraph 4-1 of the SOC.

4-2 IAL admits paragraph 4-2 of the SOC.

5 IAL admits paragraph 5 of the SOC.

6 As to paragraph 6 of the SOC, IAL:

(a1) admits paragraph 6(a1) of the SOC;

(a) as to paragraph 6(a) of the SOC;

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

(ii) [Not used]

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

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

(b) admits paragraph 6(b) 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 6-3 of the SOC) and Underwriting Manual Version 1.0 (referred to in paragraph 6-3(h) of this Defence);

(c) admits paragraph 6(c) 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 6-33C 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 6-1 of the SOC) between 12 July 2018 and 8 April 2019;

(E) Underwriting Manual Version 3.0 (referred to in paragraph 6-1 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 6(c) of the SOC:

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

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

(d) as to paragraph 6(d) of the SOC:

(i) repeats paragraphs 6-3, 6-33B, 6-33C and 6-56J 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 6(d) of the SOC.

(e) admits paragraph 6(e) of the SOC.

6-1 As to paragraph 6-1 of the SOC, IAL:

(a) does not know and cannot admit paragraph 6-1(a) of the SOC;

(b) admits that Brereton held the title "Head of Trade Credit" but otherwise denies paragraph 6-1(b) of the SOC;

(c) admits paragraph 6-1(c) 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 Agreement (defined in paragraph 6-56J of the SOC, and referenced as the "Brereton-IAGA Authorisation" in paragraph 6-1 of the SOC);

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

(iii) the IAL AAR Agreement 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;

(c1) admits paragraph 6-1(c1) of the SOC and repeats paragraph 6-1(c) of this Defence;

(d) admits paragraph 6-1(d) 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) CGU/Brereton Authorisation Agreement (referred to in paragraph 6-3(f) of this Defence);

(ii) Underwriting Manual Version 1.0; and

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

(e) admits paragraph 6-1(e) of the SOC and repeats paragraph 6(d) of this Defence;

(f) as to paragraph 6-1(f) of the SOC:

(i) repeats paragraphs 6-33B(j), 6-33C(k), 6-56A, 6-56H and 6-56J 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 6-1(f) of the SOC; and

(g) as to paragraph 6-1(g) 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 6-1(g) of the SOC.

6-1A IAL admits paragraph 6-1A of the SOC.

6-1B As to paragraph 6-1B of the SOC, IAL:

(a) admits paragraph 6-1B(a) of the SOC;

(b) admits paragraph 6-1B(b) of the SOC;

(c) admits paragraph 6-1B(c) of the SOC;

(d) admits paragraph 6-1B(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 6(b), 6(c), 6-3, 13, 35A and 35B of this Defence; and

(ii) otherwise, does not know and therefore cannot admit paragraph 6-1B(f) of the SOC;

(g) denies paragraph 6-1B(g) of the SOC;

(h) says, in respect of paragraph 6-1B(h) of the SOC, that:

(i) it repeats paragraph 133(u)(i)(A)b of this Defence; and

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

6-1C As to paragraph 6-1C of the SOC, IAL:

(a) admits paragraph 6-1C(a) of the SOC;

(b) says, in respect of paragraph 6-1C(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 6-1C(c) of the SOC;

(d) says, in respect of paragraph 6-1C(d) of the SOC, that:

(i) it repeats paragraphs 6(b), 6(c), 6-3, 13, 35A and 35B 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 6-1C(e) of the SOC;

(f) does not know and therefore cannot admit paragraph 6-1C(f) of the SOC; and

(g) does not know and therefore cannot admit paragraph 6-1C(g) of the SOC.

B AGENCY ARRANGEMENTS BETWEEN BCC AND IAL

B.1 Agency arrangements between CGU and BCC

6-2 IAL admits paragraph 6-2 of the SOC on the assumption that “IAGL” is a reference to Insurance Australia Group Limited.

6-3 IAL admits paragraph 6-3 of the SOC, and says further that:

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

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

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

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

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

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

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

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

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

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

(ix) **Guidelines,** meaning the written authorisations, procedures, guidelines (including any claims handling guidelines issued pursuant to clause 9), directions and requirements notified or provided by CGU to BCC from time to time in relation to the provision of the Authorised

Services by BCC or BCC's obligations under the CGU AAR Agreement and including the compliance manual;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ix) the Guidelines (being Underwriting Manual Version 1.0 and Underwriting Manual Version 2.0 referred to in paragraphs 6-3(h) and 6-3(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 6-4 of this Defence (defined as the “Authorisation Notice” in paragraph 6-4 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 6-3(j) of this Defence) or Approved Wording 1.4 (referred to in paragraph 6-3(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 an agreement titled "Individual Authorisation Agreement and Authorisation Notice for Brereton" (being the "Individual Authorisation Agreement" referred to in paragraph 6-1 of the SOC and which will be referred to in this Defence as the **CGU/Brereton Authorisation Agreement**), to which was attached an "Individual Authorisation Notice" (the **CGU/Brereton Authorisation Notice** in this Defence);

(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 6-3(j) of this Defence) or Approved Wording 1.4 (referred to in paragraph 6-3(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 Guidelines… (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 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"); and

(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 6-3(h)(viii) of this Defence;

(B) Major Debtors Limit: AUD40 million, subject to the special acceptance stipulation in paragraph 6-3(h)(viii) of this Defence;

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

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

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

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

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

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

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

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

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

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

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

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

(i) on or around 24 July 2016, CGU approved a set of "Policy Endorsement Clauses" (**Approved Endorsements**) for use by BCC in accordance with the terms of the Underwriting Manual Version 1.0 and subsequent versions as referred to below, and says further that:

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

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

Particulars

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

(j) in or around October 2016, CGU issued the following approved wording (**Approved Wording 1.3**), being the "core base wording" for the purposes of

Underwriting Manual Version 1.0 and the "Trade Credit Products" listed in the Commission Schedule to the CGU AAR Agreement;

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

Particulars

Trade Credit Insurance Whole of Turnover dated October 2016 (Version WOT 1.3) (IAL.015.005.5038).

(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.015.005.5037).

(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.015.005.5036).

(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, from the time it came into effect on 12 July 2018 until 8 April 2019, the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement and which (inter alia) set out the following express terms:

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

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

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

(A) a “Buyer”, who receives goods/services 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: AUD 50 million;

(B) Major Debtors/ Multi Buyer Limit: AUD 50 million; and

(C) Single Risks Limit: AUD 50 million (page 9);

(ix) BCC's binding authority is up to AUD 50 million, with policies and buyers with limits up to AUD 75 million considered by Special Acceptance (page 9);

(x) BCC's authority as set out in paragraphs 6-3(l)(viii), 6-3(l)(ix) and 6-3(l)(xvii) of this Defence was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons (page 9, page 56) (the **Buyer Group limit v 2.0**);

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

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

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

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

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

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

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

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

6-4 As to paragraph 6-4 of the SOC, IAL:

(a) admits paragraph 6-4 of the SOC;

(b) repeats paragraphs 6-3(d) and 6-3(e) of this Defence; and

(c) says that it will refer to the “Authorisation Notice” in paragraph 6-4 of the SOC as the “BCC Authorisation Notice” in this Defence.

6-5 IAL admits paragraph 6-5 of the SOC and repeats paragraph 6-3 of this Defence.

6-6 IAL admits paragraph 6-6 of the SOC and repeats paragraphs 6-3(d) and 6-3(e) of this Defence.

6-7 [Not used]:

6-7A IAL admits paragraph 6-7A of the SOC.

6-7B IAL admits paragraph 6-7B and says further that:

(a) it refers to and repeats paragraph 6-3 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.

6-7C IAL admits paragraph 6-7C 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.

6-7D IAL admits paragraph 6-7D 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 6(b), 6-3(a) to 6-3(i), and 6-7B to 6-7C of this Defence.

6-8 As to paragraph 6-8 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 6-3(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 6-8 of the SOC.

6-9 As to paragraph 6-9 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 6-9 of the SOC.

6-10 As to paragraph 6-10 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;

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

Particulars

Reporting Schedule to CGU AAR Agreement.

(d) otherwise denies paragraph 6-10 of the SOC.

6-11 As to paragraph 6-11 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 6-10(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; and

(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 6-11 of the SOC.

6-11A IAL admits paragraph 6-11A of the SOC.

6-11B IAL repeats paragraph 6-3(h) to 6-3(l) of this Defence and otherwise admits paragraph 6-11B of the SOC.

6-12 [Not used].

6-13 [Not used].

6-14 [Not used].

6-15 [Not used].

6-16 [Not used].:

B.2 Transfer of CGU's business to IAL

6-17 IAL admits that the scheme at Annexure A to the orders made on 20 July 2017 by the Federal Court of Australia (the **Scheme Orders**) had the effect substantially alleged in paragraph 6-17 of the SOC and relies on the terms of the Scheme Orders for their full force and effect.

6-18 IAL admits paragraph 6-18 of the SOC.

B.3 Agency arrangements between BCC and IAL

6-19 As to paragraph 6-19 of the SOC, IAL:

(a) admits that the Scheme Orders had the effect substantially alleged in paragraph 6-19 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.

6-20 IAL admits paragraph 6-20 of the SOC and repeats paragraph 6-19(b) of this Defence.

6-21 As to paragraph 6-21 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 paragraph 6-21 of the SOC, subject to the limits of authority referred to in paragraphs 6-55(b) and 6-55(c) of this Defence; and

(b) otherwise denies paragraph 6-21 of the SOC.

6-22 IAL denies paragraph 6-22 of the SOC.

6-23 [Not used].

6-24 [Not used].

6-25 [Not used].

6-26 [Not used].

6-27 [Not used].

6-28 [Not used].

6-29 [Not used].

6-30 [Not used].

6-31 As to paragraph 6-31 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 6-17 of this Defence; and

(c) otherwise denies paragraph 6-31 of the SOC.

6-32 As to paragraph 6-32 of the SOC, IAL:

(a) says that the To Whom it May Concern Letter (as defined in paragraph 6-31 of the SOC) stated that BCC was arranging "Trade Credit Insurance" under an authority provided by IAL;

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

(c) otherwise denies paragraph 6-32 of the SOC.

6-33 IAL repeats paragraphs 6-31 and 6-32 of this Defence and otherwise denies paragraph 6-33 of the SOC.

6-33A IAL admits paragraph 6-33A 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 (viii) and 6-33(b)(ix) above 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).

6-33B As to paragraph 6-33B 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 6-33B(a), 6-33B(b), 6-33B(c), and 6-33B(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: AUD50 million;

(B) Major Debtors Limit: AUD50 million;

(C) Single Risks Limit: AUD50 million;

(page 10);

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

(xv) BCC's authority in paragraph (xiii) and (xiv) above 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 13 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 6-33C 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.

6-33C IAL admits paragraph 6-33C 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 6-33B(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.

6-33D IAL admits paragraph 6-33D of the SOC.

6-33E As to paragraph 6-33E 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 6-33C 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 6-21.a, 6-21.b and 6-21.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 6-33E of the SOC.

6-33F As to paragraph 6-33F 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 13(d) and 13(e) of this Defence, it would have terminated their authority to act on its behalf at the relevant times; and

(c) otherwise denies paragraph 6-33F of the SOC.

6-34 [Not used].

6-35 [Not used].

6-36 [Not used].

6-37 [Not used].

6-38 [Not used].

6-39 [Not used].

6-40 [Not used].

6-41 [Not used].

6-42 [Not used].

6-43 [Not used].

6-44 [Not used].

6-45 [Not used].

B.4 Agency arrangements between BCC, IAL and Tokio Marine

6-46 IAL admits paragraph 6-46 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" (Schedule 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; and

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

6-47 As to paragraph 6-47 of the SOC, IAL:

(a) repeats paragraph 6-46 of this Defence;

(b) relies on the terms of the PACAO for its full force and effect;

(c) says that by the PACAO, IAL appointed "the Administrator", being TMMA and Bond, to process mid-term alterations within the rules set out in the 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 to the PACAO);

(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 6-47(c) of this Defence:

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

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

(iii) the Administrator is to process mid-term alterations within the rules set out in the 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);

(iv) 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;

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

(A) issuing premium invoices;

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

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

(D) reconciling Trust bank accounts daily;

(E) prepare and disseminate monthly Written Bordereaux;

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

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

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

(e) says that, on 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 6-33C(i) of this Defence;

(f) 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; and

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.

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

(h) otherwise denies paragraph 6-47 of the SOC.

6-48 [Not used].

6-49 [Not used].

6-49A As to paragraph 6-49A of the SOC, IAL:

(a) repeats paragraph 6-47(c) 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 6-47(f) 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 6-49A of the SOC.

B.5 BCC administered trade credit insurance policies as agent for IAL

6-50 As to paragraph 6-50 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 6-11(c) of this Defence; and

(d) otherwise denies paragraph 6-50 of the SOC.

6-51 As to paragraph 6-51 of the SOC, IAL:

(a) repeats paragraphs 6-11(c) and 6-50(a) of this Defence;

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

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

(ii) 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.

(iii) did not refer to insurance policies which did not constitute trade credit insurance policies, or which used non-approved wording, including the 2019 Policy, having been issued by BCC as agent for IAL; and

(c) otherwise denies paragraph 6-51 of the SOC.

6-52 As to paragraph 6-52 of the SOC, IAL:

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

Particulars

See particulars under paragraph 6-51 of this Defence.

(b) repeats paragraph 6-11(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 6(b), 6(c) and 6-3 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 6-46 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 6-52 of the SOC.

6-53 As to paragraph 6-53 of the SOC, IAL:

(a) says that the allegation is ambiguous and embarrassing in that it does not identify the " trade credit insurance policies" the subject of the allegation;

(b) under cover of that objection:

(i) repeats paragraphs **Error! Reference source not found.** and 6-52(b) of this Defence;

(ii) 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;

(iii) denies that BCC remitted premiums to IAL in respect of Policy 3691 (as defined in paragraph 35A of the SOC) or any endorsement purportedly issued further to that policy;

(iv) 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 none of which included the 2019 Policy or Policy 3691; and

Particulars

See particulars under paragraph 6-51(a) of this Defence.

(c) otherwise denies paragraph 6-53 of the SOC.

6-54 As to paragraph 6-54 of the SOC, IAL: says that the allegation is ambiguous and embarrassing in that it does not identify the " trade credit insurance policies" the subject of the allegation;

(a) under cover of that objection:

(i) repeats paragraphs 6-52(a) and 6-53 above;

(ii) admits that BCC received commission from IAL on some policies of trade credit insurance for which IAL was named as the Insurer;

(iii) denies that BCC received commission from IAL in relation to the 2019 Policy;

(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 6-51(a) of this Defence.

(d) otherwise denies paragraph 6-54 of the SOC.

6-55 As to paragraph 6-55 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5 and 6-33C of this Defence;

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

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

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

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

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

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

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

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

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

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

(e) otherwise denies paragraph 6-55 of the SOC.

6-56 [Not used].

C AGENCY ARRANGEMENTS BETWEEN GREG BRERETON, CGU AND IAL

C.1 Agency arrangements between Greg Brereton and CGU

6-56A IAL admits paragraph 6-56A of the SOC.

6-56B IAL repeats paragraph 6-3(g) of this Defence and otherwise admits paragraph 6-56B of the SOC.

6-56C IAL admits paragraph 6-56C of the SOC.

6-56D IAL repeats paragraph 6-3(g) of this Defence and otherwise admits paragraph 6-56D of the SOC.

6-56E IAL admits paragraph 6-56E 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.

6-56F As to paragraph 6-56F 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 6-21.a, 6-21.b and 6-21.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 6-56F of the SOC.

6-56G IAL repeats paragraph 6-3(h) of this Defence and otherwise admits paragraph 6-56G of the SOC.

C.2 Agency arrangements between Greg Brereton, IAL and IAGA

6-56H IAL admits that the Scheme Orders had the effect substantially alleged in paragraph 6-56H of the SOC and relies on the terms of the Scheme Orders for their full force and effect.

6-56I IAL admits paragraph 6-56I of the SOC on the assumption that "IAGL" is a reference to Insurance Australia Group Limited.

6-56J IAL admits paragraph 6-56J 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.

6-56K IAL admits paragraph 6-56K of the SOC.

6-56L IAL admits paragraph 6-56L of the SOC.

6-56M IAL admits paragraph 6-56M of the SOC.

6-56N IAL admits paragraph 6-56N of the SOC.

6-56O IAL admits paragraph 6-56O 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.

6-56P As to paragraph 6-56P 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 6-56P of the SOC.

6-56Q IAL repeats paragraph 6-33A of this Defence and otherwise admits paragraph 6-56Q of the SOC.

6-56R IAL admits paragraph 6-56R of the SOC.

6-56S As to paragraph 6-56S 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 6-56S(a), 6-56S(b) and 6-56S(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 13(d) and 13(e) of this Defence, it would have terminated their authority to act on its behalf at the relevant times; and

(c) otherwise denies paragraph 6-56S of the SOC.

6-57 [Not used].

6-58 [Not used].

6-59 [Not used].

6-60 [Not used].

6-61 [Not used].

6-62 [Not used].

6-63 [Not used].

6-64 [Not used].

6-65 [Not used].

6-66 [Not used].

6-67 [Not used].

6-68 [Not used].

6-69 [Not used].

6-70 [Not used].

6-71 [Not used].

6-72 [Not used].

6-73 [Not used].

6-74 [Not used].

7 [Not used].

8 [Not used]

9 [Not used]

10 [Not used]

11 [Not used]

12 [Not used]

DA. REGULATORY REQUIREMENTS

DA.1 Membership of the German Deposit Protection Fund

12A IAL does not know and therefore cannot admit paragraph 12A of the SOC.

12B IAL does not know and therefore cannot admit paragraph 12B of the SOC.

12C IAL does not know and therefore cannot admit paragraph 12C of the SOC.

12D IAL does not know and therefore cannot admit paragraph 12D of the SOC.

12E IAL does not know and therefore cannot admit paragraph 12E of the SOC.

12F IAL does not know and therefore cannot admit paragraph 12F of the SOC.

12G In response to paragraph 12G 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 12G(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 12G of the SOC.

12H In response to paragraph 12H 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.

12I In response to paragraph 12I 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 12I(c)(ii) included (amongst other "conditions"):

(A) in respect of paragraphs 12I(a) and 12I(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 12I(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 12I of the SOC.

12J In response to paragraph 12J 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 12J of the SOC.

12K In response to paragraph 12K 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 12K(c)(i) included (amongst other "conditions"):

(A) in respect of paragraphs 12K(a) and 12K(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 12K(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 12K(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 12K of the SOC.

12L In response to paragraph 12L 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 12L of the SOC.

12M In response to paragraph 12M 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 12M(c)(i) included (amongst other "conditions"):

(A) in respect of paragraphs 12M(a) and 12M(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 12M(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 12M of the SOC.

12N In response to paragraph 12N 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 12N of the SOC.

12O In response to paragraph 12O 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 12O(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 12O(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 12O(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 12O(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 12O(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 12O(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 12O(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 12O(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 12O(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 12O(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 12O(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 12O(f)(ii)(A) to 12O(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 12O of the SOC.

12P IAL does not know and therefore cannot admit 12P of the SOC.

12Q As to paragraph 12Q of the SOC, IAL:

(a) says:

(i) the purchase of a Note (including a EHG 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 Hoffman) 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 Hoffman) 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 12Q of the SOC.

DA.2 CAPITAL REQUIREMENTS REGULATION (EU) NO. 575/2013

DA.0.1 Capital Regulation Requirements

12R IAL does not know and therefore cannot admit paragraph 12R of the SOC.

12S IAL does not know and therefore cannot admit paragraph 12S of the SOC.

12T IAL does not know and therefore cannot admit paragraph 12T of the SOC.

DA.0.2 Credit Risk Mitigation

12U IAL does not know and therefore cannot admit paragraph 12U of the SOC.

12V IAL does not know and therefore cannot admit paragraph 12V of the SOC.

12W In response to paragraph 12W 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 12W of the SOC.

12X IAL does not know and therefore cannot admit paragraph 12X of the SOC.

12Y IAL does not know and therefore cannot admit paragraph 12Y of the SOC.

12Z As to paragraph 12Z of the SOC, IAL:

(a) says that by reason of the matters in paragraph 13 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 provide 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 12Z of the SOC.

D POLICY 3690

D.1 Entry into Policy 3690

13 IAL denies paragraph 13 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 on behalf of 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 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;

(vi) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vii) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018;

(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 risks purportedly insured were not trade credit risks;

(B) 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;

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

(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 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;

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

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

(E) 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 that the minimum premium;

(F) issue policies with limits in excess of AUD 50 million and the 2019 Policy did not have a limit of AUD 50 million or less;

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

(I) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and the 2019 Policy exceeded that limit;

(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 credit terms were in excess of 180 days. 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. There was no minimum excess.

Further, the obligation referred to in paragraph 13(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 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 Policy in the circumstances and on the terms referred to in paragraph 13(d) of this Defence;

(ii) the 2019 Policy was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement 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 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 Greensill Bank was not so domiciled;

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

(C) issue policies with limits in excess of AUD 50 million and the Policy limit of the 2019 Policy was USD100 million, in excess of that limitation;

(D) 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;

(E) issue policies with limits in excess of AUD 50 million and the 2019 Policy did not have a limit of AUD 50 million or less;

(F) 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;

(G) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Policy exceeded 12 months;

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

(I) issue policy limits in a foreign currency in excess of 95% of the AUD Binder limit and the 2019 Policy exceeded that limitation;

(iv) entering into the 2019 Policy 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 paragraphs 13(d)(iii) of this Defence.

Further, the obligation referred to in sub-paragraph 13(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 13(g), 13(h) and 13(i) of this Defence, as at 22 February 2019 and March 2019 and at all material times, GCPL and 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;

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

Particulars

Particulars under paragraph 13(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 13(f)(i) and 13(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 13(f), 13(g), 13(h) and 13(j) of this Defence. Insofar as the emails referred to in the particulars under paragraph 13(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 13 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:

(i) that the 2019 Policy had been issued; and

(ii) that 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 13 of the SOC.

13A IAL denies paragraph 13A of the SOC and repeats paragraph 13 of this Defence.

13B IAL denies paragraph 13B of the SOC and repeats paragraph 13 of this Defence.

13C IAL denies paragraph 13C of the SOC and repeats paragraph 13 of this Defence.

14 As to paragraph 14 of the SOC, IAL:

(a) repeats paragraph 13(d)(i) of this Defence; and

(b) otherwise denies paragraph 14 of the SOC.

14A As to paragraph 14A of the SOC, IAL:

(a) repeats paragraph 13 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 14A of the SOC.

15 [Not used].

15A [Not used].

15B [Not used].

16 [Not used].

17 [Not used].

18 [Not used].C.

19 [Not used].

20 [Not used].

21 [Not used].

22 [Not used].

23 [Not used].

24 As to paragraph 24 of the SOC, IAL:

(a) repeats paragraphs 13 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 24 of the SOC.

25 As to paragraph 25 of the SOC, IAL:

(a) repeats paragraph 13 of this Defence;

(b) if the 2019 Policy is valid (which is denied), says that it would be a contract of insurance to which the *ICA* applies; and

(c) otherwise denies paragraph 25 of the SOC.

D.2 Key terms of Policy 3690

26 As to paragraph 26 of the SOC, IAL:

(a) repeats paragraphs 13 of this Defence;

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

(i) states the definitions set out in paragraphs 26(a), (b), (e), (f), (g), (i), (j), (m), (n), (p), (q), (r) and (s) of the SOC;

(ii) states the definition, set out in paragraph 26(c) of the SOC, of "Claim Form" save for the words "pro forma version" which should read "a specimen";

(iii) states the definition, set out in paragraph 26(d) of the SOC, of "Claim Offer Letter" save for the words "pro forma version" which should read "a specimen";

(c) as to the definition of "Asset" in paragraph 26(a) of the SOC, refers to paragraph 40E of this Defence;

(d) as to paragraph 26(h) of the SOC, says that the 2019 Policy (if valid and effective, which is denied) states the definition of "Debt" is "'**Debt**' means, as the context requires, a debt of the type described in the relevant Debt Endorsement";

(e) as to paragraph 26(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 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, Schedule 7; definition of "Customer", Sch 1);

(B) the obligor must be not an "Affiliate" of any of the parties to the "Transaction Documents" (other than any "Origination Documentation") (2019 Policy, Schedule 7);

(C) the obligor must be a "corporate entity" (2019 Policy, Schedule 7);

(D) the obligor must be not "Insolvent" (2019 Policy, Schedule 7), which includes circumstances in which any corporate action, legal proceedings or other procedure or step is taken for (inter alia) winding up, administration or reorganisation;

(E) the obligor must have a "Customer Limit" (2019 Policy, Schedule 7);

(F) the "Customer Limit" must be established in accordance with the terms of the 2019 Policy (2019 Policy, Schedule 7);

(G) the debt must have a "Due Date", being a date stated in the "Platform" (being an electronic platform used by GCUK from time to time into which details of "Suppliers" and/or "Customers", "Debts", "Due Dates" and other related information is recorded) as the date by which payment of the "Debt" by the "Customer" is required to be made (2019 Policy, Schedule 7; definition of "Due Date" and definition of "Platform", Schedule 1);

(H) the "Due Date" must not exceed the "Maximum Tenor", being a period set out in a relevant "Debt Endorsement" or "Customer Endorsement" (2019 Policy, Schedule 7; definition of "Maximum Tenor", Schedule 1);

(I) the debt must not be outstanding after its "Due Date" (2019 Policy, Schedule 7);

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

(K) the debt must be denominated and payable only in an “Approved Currency” (2019 Policy, Schedule 7); and

(L) the debt must satisfy any further criteria set out in the relevant Debt Endorsement relating to that Debt (2019 Policy, Schedule 7);

(iii) for there to be an “Eligible Debt” it is necessary that there be an “Asset” owned by the “Insured” and, at the time of acquisition of that “Asset”, the “Debt” meets the criteria identified in paragraph 26(e)(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 39H of the SOC);

(f) as to paragraph 26(l) of the SOC, says that:

(i) the definition of “**Expected Allocation**” set out at paragraph 26(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";

(g) as to paragraph 26(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 interest 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";

(vii) denies that the definition of “Eligible Debt” was amended by Endorsement 23 (if valid and effective, which is denied) (pleaded in paragraph 39H of the SOC); and

(h) otherwise denies paragraph 26 of the SOC.

27 [Not used].

28 As to paragraph 28 of the SOC, IAL:

(a) repeats paragraph 13 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);

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

(d) says further that, insofar as the Applicants claim indemnity for losses suffered in respect of "Assets" which were "Notes", including the EHG Notes referred to in paragraph 65 of the SOC:

(i) the only possible loss suffered by Greensill Bank, as purported "Insured", in the circumstances pleaded in the SOC would be a loss arising from and limited to the consideration paid by it to Credit Suisse Virtuoso if and when Greensill Bank acquired the EHG Notes;

(ii) any such loss (the existence of which is not admitted) does not arise under the 2019 Policy by reason that, due to an "Insured Cause", the purported "Insured", Greensill Bank, has failed to receive its "Expected Allocation" in respect of an "Asset" and is therefore not a "Loss" for the purposes of the 2019 Policy (if valid and effective, which is denied);

(e) 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 2019 Policy where such failure has a "Material Policy Impact" (clause 9.7);

(iii) without prejudice to the other provisions of clause 10 of the 2019 Policy, 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, mitigate and minimise "Losses" at all times, and that 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));

(iv) in the event of an Insured's failure to mitigate "Loss" in accordance with clause 10.7 of the 2019 Policy, the "Insurer" shall remain obliged to indemnify the "Insured" in respect of such "Loss" but, to the extent that the "Insurer" is able to prove that a "Loss" would reasonably be expected to have been lower but for the failure to mitigate, the "Insurer" shall only be obliged to indemnify the Insured to the extent of that lower amount (clause 10.7(d));

(v) any variation of the 2019 Policy (except by way of Endorsement as provided in the 2019 Policy) may only be effected in writing signed by or on behalf of each party (clause 15.3(a));

(vi) 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

(f) otherwise denies paragraph 28 of the SOC.

29 As to paragraph 29 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 35C and 35F 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 29 of the SOC.

30 As to paragraph 30 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 35C and 35Fof 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);

(c) says that the provision made in clause 4.1 of the 2019 Policy is expressly "subject to the terms, conditions and limitations of the Policy" and those words (and their effect) are not referred to in the allegation in paragraph 30 of the SOC; and

(d) otherwise denies paragraph 30 of the SOC.

31 As to paragraph 31 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 35C and 35F of this Defence;

(b) if the 2019 Policy is valid and effective (which is denied), refers to clause 10 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise denies paragraph 31 of the SOC.

32 As to paragraph 32 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 35C and 35F of this Defence;

(b) if the 2019 Policy is valid and effective (which is denied), refers to clause 14 of the 2019 Policy for its full force and effect (if any); and

(c) otherwise denies paragraph 32 of the SOC.

33 As to paragraph 33 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 35C and 35F of this Defence;

(b) refers to clause 10.6(b) of the 2019 Policy for its full force and effect (if any); and

(c) otherwise denies paragraph 33 of the SOC.

34 As to paragraph 34 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 35C and 35F of this Defence;

(b) refers to clause 10.6(c) of the 2019 Policy for its full force and effect (if any);

(c) says further that clause 10.7 of the 2019 Policy (if valid and effective, which is denied) required the Insured to mitigate its loss, and to the extent the Insured failed to do so, IAL was not obliged to indemnify the Insured to the extent it is able to prove that a Loss would reasonably be expected to have been lower but for the failure to mitigate; and

(d) otherwise denies paragraph 34 of the SOC.

35 As to paragraph 35 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 35A, 35B, 35C, 35D and 35F 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 35 of the SOC.

D.3 BCC had authority to enter into Policy 3690

(A) Actual authority

35A IAL repeats paragraphs 6(c), 6-3 and 13 of this Defence and otherwise denies paragraph 35A of the SOC.

(B) Ostensible authority

The Proposed Greensill Policy Structure and Proposed Greensill Policy Wording

35AA IAL admits paragraph 35AB of the SOC and says further that it relies on the terms of the Greensill Policy Proposal (as defined and particularised in paragraph 35AA of the SOC) for their full force and effect.

35AB As to paragraph 35AB 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 35AA 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 35AB(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 35AB(c) of the SOC, IAL:

(i) refers to and repeats paragraphs 35AB(b)(i)(A) and 35AB(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 35AB(c);

(d) as to paragraph 35AB(d) of the SOC, IAL;

(i) refers to and repeats paragraphs 35AB(b)(i)(A) and 35AB(b)(ii) of this Defence; and

(ii) otherwise denies paragraph 35AB(d); and

(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.

35AC IAL admits paragraph 35AC of the SOC and says further that:

(a) the documents particularised at paragraph 35AC of the SOC were embedded in a document attached to the email pleaded at paragraph 35AA 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 paragraph 35AA of the SOC also embedded two other documents which are not particularised at paragraph 35AC of the SOC.

Particulars

'Aus – master [] Customer End 2017'

'Trade Credit QS – 2017 Final Wording'

35AD IAL admits paragraph 35AD of the SOC.

35AE As to paragraph 35AE of the SOC, IAL:

(a) denies paragraph 35AE of the SOC;

(b) repeats paragraph 13(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].

35AF IAL denies paragraph 35AF of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3, 13, 35AB, 35AC and 35AE(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 35AD of the SOC do not establish the matters pleaded at paragraph 35AF.

The 2017 LOS Policies

35AG IAL denies paragraph 35AG of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-1(c), 6-3 and 13 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 35AG(b) to 35AG(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 35AG(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 paragraph 13(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 35AG(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 35AA of the SOC);

Particulars

In respect of the particulars to paragraph 35AG(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 35AE and 35AF 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 35AG(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 35AE(c) and 35AE(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 35AG(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 35AG(l) to 35AG(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 35AG(s)(i) and 35AG(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 13(g) and 35AG(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 35AG(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.

35AH IAL denies paragraph 35AH of the SOC and repeats paragraphs 13 and 35AG above.

35AI IAL denies paragraph 35AI of the SOC and says further that:

(v) it repeats paragraph 35AG above;

(w) 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;

(x) the 2017 LOS Policies did not reflect a Master Risk Participation Agreement facility for a supply chain finance transaction; and

(y) 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].

35AJ IAL denies paragraph 35AJ of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3 and 13 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.

35AK IAL denies paragraph 35AK of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3, 13 and 35AJ 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 35AK) at any relevant time.

35AL As to paragraph 35AL of the SOC, IAL:

(a) repeats paragraphs 35AJ and 35AK above, particularly paragraph 35AK(b); and

(b) does not know and therefore cannot admit 35AL of the SOC.

35AM As to paragraph 35AM of the SOC, IAL:

(a) repeats paragraphs 6-11, 6-50 to 6-52 and 35AG 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 35AG of the SOC;

(ii) (from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 35AG of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 6-11(c)(xi) of this Defence.

(c) otherwise denies paragraph 35AM of the SOC.

35AN IAL denies paragraph 35AN 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 35AM of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 35AG to 35AM of this Defence.

35AO IAL denies paragraph 35AO and repeats paragraphs 35AG to 35AN of this Defence.

2018 Excess Policies

35AP IAL denies paragraph 35AP of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-1(c), 6-3 and 13 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 honestly;

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 35AP(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 35AP(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 35AP(f)(iii) of this Defence. Further, the obligation referred to in paragraph 35AP(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 35AG(h) to 35AG(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 35AG(l) to 35AG(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 35AP(j)(i) and 35AP(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.

35AQ IAL denies paragraph 35AQ of the SOC and repeats paragraphs 13 and 35AP of this Defence.

35AR IAL denies paragraph 35AR of the SOC and says further that:

(a) it repeats paragraphs 35AB, 35AC, 35AF and 35AP 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 35AB(d); and

(c) otherwise, denies the paragraph.

35AS IAL denies paragraph 35AS of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3 and 13 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.

35AT IAL denies paragraph 35AT of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3, 13 and 35AS 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 35AT of the SOC) at any relevant time.

35AU As to paragraph 35AU, IAL:

(a) repeats paragraphs 35AS and 35AT above, particularly paragraph 35AT(b); and

(b) does not know and therefore cannot admit paragraph 35AU of the SOC.

35AV As to paragraph 35AV of the SOC, IAL:

(a) repeats paragraphs 6-11, 6-50 to 6-52 and 35AP 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 35AP of the SOC; and

Particulars

IAL repeats the particulars to paragraph 6-11(c)(xi) of this Defence.

(e) otherwise denies paragraph 35AV of the SOC.

35AW As to paragraph 35AW 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 6(c), 6-1(c), 6-3 and 35AP of this Defence;

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

(A) repeats paragraph 35AV of this Defence; and

(B) otherwise denies that paragraph of the SOC;

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

(A) repeats paragraphs 35AP to 35AV of this Defence; and

(B) otherwise denies that paragraph of the SOC.

35AX IAL denies paragraph 35AX and repeats paragraphs 35AP to 35AW above.

Sub-Direct Policies

35AY IAL denies paragraph 35AY of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-1(c), 6-3 and 13 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 honestly;

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 35AY(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 35AY(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 35AY(f)(iii) of this Defence. Further, the obligation referred to in paragraph 35AY(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 35AG(h) to 35AG(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 35AG(l) to 35AG(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 35AY(j)(i) and 35AY(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.

35AZ IAL denies paragraph 35AZ of the SOC and repeats paragraphs 13 and 35AY above.

35BA IAL denies paragraph 35BA of the SOC and says further that:

(a) it repeats paragraphs 35AB, 35AC, 35AF and 35AY 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 35AB(d); and

(c) otherwise, denies the paragraph.

35BB IAL denies paragraph 35BB of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3 and 13 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.

35BC IAL denies paragraph 35BC of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3, 13 and 35BB 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 35BC) at any relevant time.

35BD As to paragraph 35BD, IAL:

(a) repeats paragraphs 35BB and 35BC above, particularly paragraph 35BC(b); and

(b) does not know and therefore cannot admit paragraph 35BD of the SOC.

35BE As to paragraph 35BE of the SOC, IAL:

(a) repeats paragraphs 6-11, 6-50 to 6-52 and 35AY 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 35AY 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 35AY of the SOC; and

Particulars

IAL repeats the particulars to paragraph 6-11(c)(xi) of this Defence.

(e) otherwise denies paragraph 35BE of the SOC.

35BF As to paragraph 35BF 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 6(c), 6-1(c), 6-3 and 35AY of this Defence;

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

(A) repeats paragraph 35BE of this Defence; and

(B) otherwise denies that paragraph of the SOC;

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

(A) repeats paragraphs 35AY to 35BE of this Defence; and

(B) otherwise denies that paragraph of the SOC.

35BG IAL denies paragraph 35BG and repeats paragraphs 35AY to 35BF above.

2017 Standalone Policies

35BH IAL denies paragraph 35BH of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-1(c), 6-3 and 13 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 honestly;

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 35BH(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 35BH(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 35BH(f)(iii) of this Defence. Further, the obligation referred to in paragraph 35BH(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 35AG(h) to 35AG(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 35AG(l) to 35AG(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 35BH(j)(i) and 35BH(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.

35BI IAL denies paragraph 35BI of the SOC and repeats paragraphs 13 and 35BH above.

35BJ IAL denies paragraph 35BJ of the SOC and says further that:

(a) it repeats paragraphs 35AB, 35AC, 35AF and 35BH 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 35AB(d); and

(c) otherwise, denies the paragraph.

35BK IAL denies paragraph 35BK of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3 and 13 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.

35BL IAL denies paragraph 35BL of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3, 13 and 35BK 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 35BL) at any relevant time.

35BM As to paragraph 35BM, IAL:

(a) repeats paragraphs 35BK and 35BL above, particularly paragraph 35BL(b); and

(b) does not know and therefore cannot admit paragraph 35BM of the SOC.

35BN As to paragraph 35BN of the SOC, IAL:

(a) repeats paragraphs 6-11, 6-50 to 6-52 and 35BH 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 35BH 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 35BH of the SOC;

Particulars

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

(e) otherwise denies paragraph 35BN of the SOC.

35BO As to paragraph 35BO 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 6(c), 6-1(c), 6-3 and 35BH of this Defence;

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

(A) repeats paragraph 35BN of this Defence; and

(B) otherwise denies that paragraph of the SOC;

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

(A) repeats paragraphs 35BH to 35BN of this Defence; and

(B) otherwise denies that paragraph of the SOC.

35BP IAL denies paragraph 35BP(a) and repeats paragraphs 35BH to 35BO above.

2018 LOS Policies

35BQ IAL denies paragraph 35BQ of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-1(c), 6-3 and 13 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 honestly;

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 35BQ(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 35BQ(f)(iii) of this Defence.

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

(h) it repeats paragraphs 35AG(h) to 35AG(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 35AG(l) to 35AG(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 35BQ(j)(i) and 35BQ(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.

35BR IAL denies paragraph 35BR of the SOC and repeats paragraphs 13 and 35BQ above.

35BS IAL denies paragraph 35BS of the SOC and says further that:

(a) it repeats paragraphs 35AB, 35AC, 35AF and 35BQ 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 35AB(d); and

(c) otherwise, denies the paragraph.

35BT IAL denies paragraph 35BT of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3 and 13 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.

35BU IAL denies paragraph 35BU of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3, 13 and 35BT 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 35BU) at any relevant time.

35BV As to paragraph 35BV, IAL:

(a) repeats paragraphs 35BT and 35BU above, particularly paragraph 35BU(b); and

(b) does not know and therefore cannot admit paragraph 35BV of the SOC.

35BW As to paragraph 35BW of the SOC, IAL:

(a) repeats paragraphs 6-11, 6-50 to 6-52 and 35BQ 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 35BQ of the SOC;

(ii) from time to time included entries that referred to a policy number "TW-02924" (as referred to in paragraph 35BQ of the SOC) and which recorded only "Greensill Capital Pty Limited" as the "Insured"; and

Particulars

IAL repeats the particulars to paragraph 6-11(c)(xi) of this Defence.

(e) otherwise denies paragraph 35BW of the SOC.

35AX IAL denies paragraph 35BX 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 35BW of this Defence; and

(c) in respect of sub-paragraph (c), IAL repeats paragraphs 35BQ to 35BW of this Defence.

35BY IAL denies paragraph 35BY and repeats paragraphs 35BQ to 35BX above.

Nokia Policies

35BZ IAL denies paragraph 35BZ of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-1(c), 6-3 and 13 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 honestly;

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 35BZ(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 35BZ(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 35BZ(f)(iii) of this Defence. Further, the obligation referred to in paragraph 35BZ(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 35AG(h) to 35AG(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 35AG(l) to 35AG(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 35BZ(j)(i) and 35BZ(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.

35CA IAL denies paragraph 35CA of the SOC and repeats paragraphs 13 and 35BZ above.

35CB IAL denies paragraph 35CB of the SOC and says further that:

(a) it repeats paragraphs 35AB, 35AC, 35AF and 35BZ 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 35AB(d); and

(c) otherwise, denies the paragraph.

35CC IAL denies paragraph 35CC of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3 and 13 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.

35CD IAL denies paragraph 35CD of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3, 13 and 35CC 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 35CD) at any relevant time.

35CE As to paragraph 35CE, IAL:

(a) repeats paragraphs 35CC and 35CD above, particularly paragraph 35CD(b); and

(b) does not know and therefore cannot admit paragraph 35CE of the SOC.

35CF As to paragraph 35CF of the SOC, IAL:

(a) repeats paragraphs 6-11, 6-50 to 6-52 and 35BZ 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 35BZ) 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 35BZ of the SOC; and

Particulars

IAL repeats the particulars to paragraph 6-11(c)(xi) of this Defence.

(e) otherwise denies paragraph 35CF of the SOC.

35CG As to paragraph 35CG 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 6(c), 6-1(c), 6-3 and 35BZ of this Defence;

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

(A) repeats paragraph 35CF of this Defence; and

(B) otherwise denies that paragraph of the SOC;

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

(i) repeats paragraphs 35BZ to 35CF of this Defence; and

(ii) otherwise denies that paragraph of the SOC.

35CH IAL denies paragraph 35CH and repeats paragraphs 35BZ to 35CG above.

2019 Excess Policies

35CI IAL denies paragraph 35CI of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-1(c), 6-3 and 13 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 honestly;

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 35CI(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 35CI(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 35CI(f)(iii) of this Defence. Further, the obligation referred to in paragraph 35CI(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 35AG(h) to 35AG(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 35AG(l) to 35AG(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 35CI(j)(i) and 35CI(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.

35CJ IAL denies paragraph 35CJ of the SOC and repeats paragraphs 13 and 35CI above.

35CK IAL denies paragraph 35CK of the SOC and says further that:

(a) it repeats paragraphs 35AB, 35AC, 35AF and 35CI 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 35AB(d); and

(c) otherwise, denies the paragraph.

35CL IAL denies paragraph 35CL of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3 and 13 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.

35CM IAL denies paragraph 35CM of the SOC and says further that:

(a) it repeats paragraphs 6(c), 6-3, 13 and 35CL 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 35CM) at any relevant time.

35CN As to paragraph 35CN, IAL:

(a) repeats paragraphs 35CL and 35CM above, particularly paragraph 35CM(b); and

(b) does not know and therefore cannot admit paragraph 35CN of the SOC.

35CO As to paragraph 35CO of the SOC, IAL:

(a) repeats paragraphs 6-11, 6-50 to 6-52 and 35CI 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 35CI 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 35A of the SOC; and

Particulars

IAL repeats the particulars to paragraph 6-11(c)(xi) of this Defence.

(e) otherwise denies paragraph 35CO of the SOC.

35CP As to paragraph 35CP 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 6(c), 6-1(c), 6-3 and 35CI of this Defence;

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

(A) repeats paragraph 35CO of this Defence; and

(B) otherwise denies that paragraph of the SOC;

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

(i) repeats paragraphs 35CI to 35CO of this Defence; and

(ii) otherwise denies that paragraph of the SOC.

35CQ IAL denies paragraph 35CQ and repeats paragraphs 35CI to 35CP above.

2019 Standalone Policies

35CR IAL denies paragraph 35CR of the SOC and says further that:

(a) it repeats paragraphs 13, 35AB, 35AC and 35AF 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 35AB(d); and

(c) otherwise, denies the paragraph.

35CS IAL denies paragraph 35CS of the SOC.

35B As to paragraph 35B of the SOC, IAL:

(a) Repeats paragraphs 6, and 6-3, 6-11(c), 13, 35AO, 35AX, 30BG, 35BP, 35BY, 35CH of this Defence; and

(b) otherwise denies paragraph 35B of the SOC.

(C) Statutory responsibility

35C As to paragraph 35C 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;

(b) repeats paragraphs 39E(a) to 39E(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, 23, Debt Endorsement 1, and Customer Endorsements 37 and 37(i)) referred to in the SOC on behalf of IAL;

(c) 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;

(v) in the circumstances, the whole of the paragraph is denied, and the balance of this paragraph is further and in the alternative;

(d) admits, in relation to paragraph 35C(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;

(e) admits, in relation to paragraph 35C(b) of the SOC, that execution of a policy of general insurance is, subject to subparagraphs 35C(a), 35C(b) and 35C(c) of this Defence, conduct that relates to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(f) denies paragraph 35C(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 35C 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 35C(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 35C(c) of the SOC;

(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 13(b) to 13(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.

(g) denies paragraph 35C(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 35C 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 35C(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 35C(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 13(b) to 13(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) 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.

(h) says further that, 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 13(h) and 13(j) of this Defence.

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

(i) 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 35C of the SOC and, in particular, failing to identify:

(i) whether it is alleged that Greensill Bank has suffered loss and damage, for the purposes of section 917E of the *Corporations Act*, as a result of BCC's conduct referred to in paragraph 35C 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;

(j) 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;

(k) 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;

(l) 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

(m) otherwise denies paragraph 35C of the SOC.

D.4 Greg Brereton had authority to enter into Policy 3690

35D IAL repeats paragraphs 6, 6-1, 6-3(a) to 6-3(k), 6-33A to 6-33C, 6-56J, 6-56O and 13 of this Defence and otherwise denies paragraph 35D of the SOC.

35E IAL repeats paragraphs 6, 6-1, 6-3(a) to 6-3(k), 6-33A to 6-33C, 6-56J, 6-56O and 13 of this Defence and otherwise denies paragraph 35E of the SOC.

35F As to paragraph 35F of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 35F, the matters in paragraph 35C of this Defence which apply mutatis mutandis to Mr Brereton and his conduct referred to in paragraph 35F; and

(b) denies paragraph 35F of the SOC.

D.5 Endorsements 9, 17 and 18 to Policy 3690

35G IAL denies paragraph 35G 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 6, 6-1, 6-3(a) to 6-3(k), 6-33A to 6-33C, 6-56J, 6-56O and 13 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 13of 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 6-3(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 35G(a) to 35G(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;

(ix) by reason of the matters in paragraphs 35G(i)(i) to 35G(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; and

Particulars

The matters in paragraphs 35G(a) to 35G(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 35G(a) to 35G(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 13(f), 13(g), and 13(h) to 13(j) of this Defence. Insofar as the emails referred to in the particulars under paragraph 13(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.

35H As to paragraph 35H of the SOC, IAL:

(a) says Brereton signed Endorsement 9;

(b) repeats paragraph 35G of this Defence; and

(c) otherwise denies paragraph 35H of the SOC.

35I In answer to paragraph 35I of the SOC, IAL:

(a) repeats paragraph 35G 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 35I of the SOC.

35J In answer to paragraph 35J of the SOC, IAL:

(a) repeats paragraph 35G of this Defence;

(b) says that paragraphs 35J(a) and 35J(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 35J of the SOC.

36 [Not used].

36A IAL denies paragraph 36A of the SOC and says further that:

(a) [Not used];

(b) 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;

(c) on 21 June 2019 and at all material times on and after 9 April 2019 until 30 June 2019, the authority given to each of BCC and Brereton was confined in the manner described in paragraphs 6(c)(i)(B) and (E), 6-1(c)(i), 6-1(c)(iii), 6-1(c)(vi), 6-3(i), 6-3(k), 6-33B, 6-33C, 6-56J, 6-56O and 13 of this Defence;

(d) 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;

(e) the authority given by IAL to BCC 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 13 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 given by IAL to each of BCC and Brereton; and

Particulars

Endorsement 17 extended the Policy Period beyond the natural expiry date.

(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;

Particulars

The matters in paragraph 36A(d) of this Defence.

(iv) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 6-3(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 2019 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) further, and alternatively, pursuant to the Underwriting Manual Version 3.0, and therefore the IAL AAR Agreement and IAGA/IAL Brereton Authorisation Agreement, 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 conditional 2-year contract for the 2019 Policy with the second year renewal written with IAL as the insurer;

(f) 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;

(g) 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) 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;

(ii) Endorsement 17 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 17 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 17;

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

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

(viii) Endorsement 17 purported to operate retrospectively;

(ix) by reason of the matters in:

(A) paragraph 36A(g)(i) of this Defence;

(B) paragraphs 36A(g)(ii) to 36A(g)(iv) of this Defence;

(C) paragraphs 36A(g)(v) and 36A(g)(vi) of this Defence; and/or

(D) paragraphs 36A(g)(vii) and 36A(g)(viii) 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 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 36A(a) to 36A(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 36A(a) to 36A(i) of this Defence.

(k) by reason of the matters in paragraphs 36A(b) to 36A(j) of this Defence, and each of them individually, Endorsement 17 was invalid, of no effect and not binding on or enforceable as against IAL;

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

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 13(a) to 13(k), 35G(k) and 36A(c) of this Defence. Insofar as the emails referred to in the particulars under paragraph 13(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.

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).

Further particulars may be provided after compulsory production.

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.

(m) if BCC and/or Brereton purportedly entered into Endorsement 17, IAL repeats paragraph 35C of this Defence; and

(n) 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).

36B [Not used.]

36C As to paragraph 36C of the SOC, IAL:

(a) says that Brereton signed Endorsement 17;

(b) repeats paragraph 36A of this Defence; and

(c) otherwise denies paragraph 36C of the SOC.

36D As to paragraph 36D of the SOC, IAL:

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

(b) repeats paragraph 36A of this Defence; and

(c) otherwise denies paragraph 36D of the SOC.

36E IAL repeats paragraph 36A of this Defence and otherwise denies paragraph 36E of the SOC.

37 IAL denies paragraph 37 of the SOC, and says further that:

(a) [Not used];

(b) 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;

(c) 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 6(c)(i)(B) and (E), 6-1(c)(i), 6-1(c)(iii), 6-1(c)(vi), 6-3(i), 6-3(k), 6-33B, 6-33C, 6-56J, 6-56O and 13of this Defence;

(d) 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;

(e) 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 13 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) pursuant to the terms of the IAL AAR Agreement and Underwriting Manual Version 3.0, 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 given by IAL to each of BCC and Brereton; and

Particulars

Endorsement 18 extended the Policy Period beyond the natural expiry date of the 2019 Policy and contained a condition providing for the potential renewal of the 2019 Policy despite the express advice to Marsh by TMMA that any renewal would only occur on TMNF paper.

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). For example the "Market Announcement" dated 15 April 2019 (IAL.500.011.0570) states in respect of Trade Credit: "From 1 July 2019, all new and renewal business will be underwritten by TMNF under our current underwriting guidelines".

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

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

Particulars

The matters in paragraph 37(d) of this Defence.

(iv) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 6-3(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;

(f) 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;

(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;

(g) 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:

(A) paragraph 37(g)(i) of this Defence;

(B) paragraphs 37(g)(ii) to 37(g)(iv) of this Defence;

(C) paragraphs 37(g)(v) and 37(g)(vi) of this Defence; and/or

(D) paragraphs 37(g)(vii) and 37(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; and

Particulars

The matters in paragraphs 37(a) to 37(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 37(a) to 37(i) of this Defence.

(k) by reason of the matters in paragraphs 37(a) to 37(j) of this Defence, and each of them individually, Endorsement 18 was invalid, of no effect and not binding on or enforceable as against IAL;

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

Particulars

The matters in paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** and 36A(l) of this Defence.

IAL repeats the particulars to paragraph 36A(l) of this Defence.

(m) if BCC and/or Brereton purportedly entered into Endorsement 18, IAL repeats paragraph 35C of this Defence; and

(n) that at the time Brereton signed Endorsement 18, Greensill Bank and GCPL were aware and/or ought to have been 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

IAL repeats the particulars to paragraph 36A(l) of this Defence.

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).

38 [Not used].

38A As to paragraph 38A of the SOC, IAL:

(a) says that Brereton signed Endorsement 18;

(b) repeats paragraph 37 of this Defence; and

(c) otherwise denies paragraph 38A of the SOC.

38B As to paragraph 38B of the SOC, IAL:

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

(b) repeats paragraph 37 of this Defence; and

(c) otherwise denies paragraph 38B of the SOC.

39 As to paragraph 39 of the SOC, IAL:

(a) repeats paragraph 37 of this Defence; and

(b) otherwise denies paragraph 39 of the SOC.

D.6 BCC had authority to execute Endorsements 9, 17 and 18

39A IAL denies paragraph 39A of the SOC and repeats paragraphs 35G, 36A and 37 of this Defence.

39B As to paragraph 39B of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 39B of the SOC, the matters in paragraph 35C 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 39B of the SOC; and

(b) denies paragraph 39B of the SOC.

D.7 Greg Brereton had authority to execute Endorsements 9, 17 and 18

39C IAL denies paragraph 39C of the SOC and repeats paragraphs 35G, 36A and 37 of this Defence.

39D As to paragraph 39D of the SOC, IAL:

(a) repeats, in answer to the whole of paragraph 39D of the SOC, the matters in paragraph 35C 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 39D of the SOC; and

(b) denies paragraph 39D of the SOC.

D.8 Endorsement 23 to Policy 3690

39E IAL denies paragraph 39E 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 39E(c) and 39E(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 39E(a) to 39E(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 13 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 6-3(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 39E(f) to 39E(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 39E(j)(i) and 39E(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 39E(a) to 39E(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 39E(a) to 39E(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 13(a) to 13(k), 35G(k) and 39E(g)(i) of this Defence. Further, Greensill Bank knew (by reason of the matters in paragraph 39E(e) of this Defence) that TMMA had acquired BCC on 9 April 2019.

39F As to paragraph 39F of the SOC, IAL:

(a) says that Brereton signed Endorsement 23;

(b) repeats paragraph 39E of this Defence; and

(c) otherwise denies paragraph 39F of the SOC.

39G As to paragraph 39G 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 39E of this Defence; and

(c) otherwise denies paragraph 39G of the SOC.

39H IAL denies paragraph 39H of the SOC and repeats paragraph 39E of this Defence.

39I IAL denies paragraph 39I of the SOC and repeats paragraph 39E of this Defence.

D.9 BCC had authority to execute Endorsement 23

39J IAL denies paragraph 39J of the SOC and repeats paragraph 39E of this Defence.

39K As to paragraph 39K of the SOC, IAL:

(a) repeats paragraph 39E of this Defence;

(b) repeats, in answer to the whole of paragraph 39K of the SOC, the matters in paragraph 35C of this Defence which apply mutatis mutandis to the conduct of BCC with respect to Endorsement 23 and its conduct referred to in paragraph 39K of the SOC; and

(c) denies paragraph 39K of the SOC.

39L As to paragraph 39L of the SOC, IAL:

(a) repeats paragraphs 35C and 39E of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 39L of the SOC.

D.10 Greg Brereton had authority to execute Endorsement 23

39M IAL denies paragraph 39M of the SOC and repeats paragraph 39E of this Defence.

39N As to paragraph 39N of the SOC, IAL:

(a) repeats paragraph 39E of this Defence;

(b) repeats, in answer to the whole of paragraph 39N of the SOC, the matters in paragraph 35C of this Defence which apply mutatis mutandis to the conduct of Brereton with respect to Endorsement 23 and his conduct referred to in paragraph 39N of the SOC; and

(c) denies paragraph 39N of the SOC.

39O As to paragraph 39O of the SOC, IAL:

(a) repeats paragraphs 35C and 39E of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 39O of the SOC.

E THE EHG TRANSACTION

E.0 Introduction to Coverage

40A Paragraphs 40 to 102 of the SOC are directed to issues of "coverage" that is, whether the 2019 Policy (and endorsements), if valid and effective (which is denied), respond to the claim.

40B In response to the whole of paragraphs 40 to 102 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 arrangements as between (inter alia) GCUK, EHG 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 binding and bore the alleged construction (which is not admitted), then the pleaded consequences follow;

(g) for the avoidance of doubt, where it advances a construction below, that construction is not admitted, but is instead advanced for the purposes of identifying why, on the hypothesised construction, there is no coverage.

40C Except where identified otherwise, the allegations in paragraphs 40 to 102 of the 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.

40D In response to the whole of paragraphs 40 to 102 of the SOC, IAL says that the following are necessary conditions of Greensill Bank's entitlement (if any) to indemnity:

(a) there must be an "Asset" or "Assets" (2019 Policy clause 1.1, clause 3.1; definition of "Loss");

(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);

(e) the "Loss" or "Losses" must be quantified in accordance with the 2019 Policy.

E.0.1 "Asset"

40E 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 that the EHG Notes defined at paragraph 65 of the SOC are "Assets", then IAL pleads as set out in paragraphs 40E(c) to 40E(w) of this Defence;

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

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

(e) one of the kinds of "Asset" provided in Schedule 1 is a "Note";

(f) the Applicants allege (and allege only) that the EHG were "Notes" for the purposes of the 2019 Policy (SOC, paragraph 66);

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

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

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

(iv) it is a note (2019 Policy Schedule 1, definition of "Note");

(v) it 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 Hoffman S.à.r.l (**Hoffman**) (as defined in paragraph 62 of the SOC), 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 Schedule 1, definitions of "Note" and "Master Trust Deed");

(vi) the note is for the time being outstanding (2019 Policy Schedule 1, definition of "Note");

(vii) the note was issued pursuant to the "Issue Documents" as defined in the "Master Trust Deed" (2019 Policy Schedule 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., in its capacity as the trustee of a Participant Trust) in respect of "Trust Property" (2019 Policy Schedule 1, definition of "Participant Trust");

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

(j) the Applicants implicitly allege that the applicable "SPV" is Hoffman because they allege that Hoffman issued the EHG Notes (SOC, paragraph 65);

(k) an asset is an "Asset" only if is derived from an "Eligible Debt" (2019 Policy clause 3.1; Schedule 7);

(l) the Applicants do not plead any material facts establishing that the EHG Notes were:

(i) issued by Hoffman, as the applicable "SPV", in order to raise funds;

(ii) issued by Hoffman as the applicable "SPV" to allow it to purchase a participation in a relevant "Participant Trust";

(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 40F of this Defence, the Applicants do not plead material facts establishing that the EHG Notes:

(i) related to "Eligible Debt";

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

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

(n) to the extent that the Applicants allege that the relevant "Master Trust Deed" is the Lagoon Farm: Master Trust Deed dated 13 October 2017 (**Hoffman Master Trust Deed**), that Deed is not a "Master Trust Deed" at least because TMF Luxembourg SA is not (and is not pleaded by the Applicants to be) a named party to the Hoffman Master Trust Deed (SOC, paragraph 63A);

(o) 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", Schedule 1; Schedule 7);

(ii) owned by the "Insured" at the time of the "Insured Cause" (2019 Policy clause 3.1; Schedule 7)

(iii) owned by the “Insured” during the “Policy Period” or, alternatively, by the “Insured” or a “Loss Payee” during the “Policy Period” (2019 Policy clause 4.1);

(iv) owned by the “Insured”:

(A) immediately prior to the making of a “Claim” (2019 Policy clause 3.1; definition of “Claim”, Schedule 1; definition of “Loss”); or

(B) alternatively, immediately prior to the payment of a “Claim” (2019 Policy, definition of “Loss”);

(p) the alleged “Policy Period” started no earlier than 22 February 2019 (2019 Policy, Schedule 1, definition of "Commencement Date") and ended no later than 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”;

(q) 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) to 1 March 2021 (as to which, IAL refers to and repeats paragraphs 36A to 39 of this Defence);

(r) the Applicants do not specify the dates that Credit Suisse Virtuoso (which is an alleged “Loss Payee”) acquired the EHG Notes, but instead plead only that the EHG Notes were acquired by Credit Suisse Virtuoso (SOC, paragraph 71);

(s) the Applicants allege (which is not admitted) that the EHG Notes were transferred by Credit Suisse Virtuoso to Greensill Bank (which is an alleged “Insured”) on or around 10 July 2020 (SOC, paragraph 101(a));

(t) in the event that the EHG Notes were:

(i) acquired by Credit Suisse Virtuoso (which is not admitted) after the expiry of the “Policy Period” on 22 February 2020 or, alternatively, 1 March 2020, then there is no coverage in respect of the EHG Notes;

(ii) (as alleged) acquired by Greensill Bank on or around 10 July 2020 (SOC, paragraph 101(a)) then:

(A) there is no coverage in respect of the EHG Notes acquired after the expiry of the "Policy Period" on 22 February 2020 or, alternatively, 1 March 2020 and which were not owned by Greensill Bank before then;

(B) there is no coverage in respect of any of the EHG Notes because the "Policy Period" expired on 22 February 2020 or, alternatively, 1 March 2020, which was prior to 10 July 2020 when the "Assets" were alleged to have been acquired by Greensill Bank;

(u) the EHG Notes are not "Assets" and the Applicants have not pleaded material facts capable of establishing that they are "Assets";

(v) it puts the Applicants to proof on each element necessary for the EHG Notes to be "Assets"; and

(w) it denies that the EHG Notes are "Assets".

E.0.2 Eligible Debt

40F In respect of the condition that there be an "Eligible Debt", IAL says the following:

(a) the Applicants allege that the EHG Independent Payment Undertakings were "Eligible Debts" for the purposes of the 2019 Policy (SOC, paragraph 61);

(b) the Applicants rely (and rely only) on Debt Endorsement 1 as allegedly amended by Customer Endorsement 37 (SOC, paragraph 60);

(c) so far as the Applicants rely on Customer Endorsement 37 or, alternatively, Customer Endorsement 37(i) and/or Customer Endorsement 37(ii) (together, the **EHG Customer Endorsements**):

(i) the EHG Customer Endorsements do not purport to vary the meaning of "Debt" or "Eligible Debt", and

(ii) the Applicants do not assert that the EHG Customer Endorsements vary the meaning of "Debt" or "Eligible Debt" at all or in a manner relevant to the issues in the present proceeding;

(d) Debt Endorsement 1 has five Parts, A, B, C, D and E;

(e) each Part of Debt Endorsement 1 identifies different conditions which an obligation must meet before it can be a "Debt" for the purposes of the relevant part;

(f) the Applicants do not identify which Part (if any) of Debt Endorsement 1 they rely on;

(g) as best IAL understands the Applicants' case, however, the only class of obligations on which the Applicants rely as an "Eligible Debt" is the payment obligations of EHG under the Buyer Tracking and Settlement Service Agreement (being, the EHG Independent Payment Undertakings as defined in paragraph 46 of the SOC) (see SOC, paragraphs 44 to 46);

(h) if and to the extent that the Applicants allege that the "Eligible Debt" or "Eligible Debts" are amounts (allegedly) owing under the EHG Independent Payment Undertakings, IAL pleads as set out in paragraphs (i) to (r) of this Defence;

(i) the Applicants allege, or implicitly allege, that the asserted EHG Independent Payment Undertakings comprise obligations:

(i) owed by EHG (SOC, paragraphs 44 and 46);

(ii) owed to Demica, for the benefit of GCUK (SOC, paragraphs 44 and 46);

(iii) owed under the Buyer Tracking and Settlement Service Agreement (SOC, paragraphs 44 to 46);

(j) in order for a debt to be a "Eligible Debt", the following conditions must be satisfied, and must be satisfied at the time the relevant "Asset" is acquired by the "Insured":

(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 Schedule 7, definition of "Customer");

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

(iii) the obligor must be not an "Affiliate" of any of the parties to the "Transaction Documents" (other than any "Origination Documentation") (2019 Policy Schedule 7);

(iv) the obligor must be a "corporate entity" (2019 Policy Schedule 7);

(v) the obligor must be not "Insolvent" (2019 Policy Schedule 7), which includes circumstances in which any corporate action, legal proceedings or other procedure or step is taken for (inter alia) winding up, administration or reorganisation;

(vi) the obligor must have a "Customer Limit" (2019 Policy Schedule 7);

(vii) the "Customer Limit" must be established in accordance with the terms of 2019 Policy (2019 Policy Schedule 7);

(viii) the debt must have a "Due Date", being, a date stated in the "Platform" (being an electronic platform used by GCUK from time to time into which details of "Suppliers" and/or "Customers", "Debts", "Due Dates" and other related information is recorded) as the date by which payment of the "Debt" by the "Customer" is required to be made (2019 Policy Schedule 7; definition of "Due Date" and definition of "Platform");

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

(x) the debt must not be outstanding after its "Due Date";

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

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

(xiii) the debt must satisfy any further criteria set out in the relevant Debt Endorsement relating to the Debt (2019 Policy Schedule 7), with the relevant Debt Endorsement here being Debt Endorsement 1;

(k) that it denies that Debt Endorsement 1 is valid or effective to bind IAL (as to which it refers to and repeats paragraph 47 of this Defence);

(l) that it denies that the EHG Payment Obligations were "Eligible Debts" because:

(i) it is a condition of a debt being an "Eligible Debt" that it is (at material times) owed by a "Customer"; and

(ii) EHG was not a "Customer";

(m) that it denies that the EHG Payment Obligations were "Eligible Debts" because:

(i) it is a condition of a debt being an "Eligible Debt" that it is owing under a "Customer Agreement";

(ii) it is a condition of an agreement being a "Customer Agreement" that it is an agreement between, on the one hand, the "Servicer" or (depending on which part of Debt Endorsement 1 is being relied on) a "Program Partner" and, on the other hand, a "Customer";

(iii) EHG was not a "Customer";

(iv) GCUK, the "Servicer", was not a party to the Buyer Tracking and Settlement Service Agreement;

(v) there is no pleaded basis for any contention that Demica was a "Program Partner";

(n) that it denies that the EHG Payment Obligations were "Eligible Debts" because:

(i) it is a condition of a debt being an "Eligible Debt" that, at the time the "Asset" derived from the "Eligible Debt" is acquired by the "Insured", the obligor in respect of the debt must be not "Insolvent";

(ii) the "Assets" were, on the pleaded case, acquired by Greensill Bank on or around 10 July 2020 (SOC paragraph 101(a));

(iii) in or around April 2020, an application was made to the Financial Restructuring Committee of the United Arab Emirates regarding the restructuring of EHG's debts with its lenders, which ultimately resulted in the Financial Restructuring Committee requiring EHG to appoint independent financial advisors;

(iv) by reason of the procedure or steps referred to in the preceding paragraph of this Defence, by no later than May or June 2020, EHG was Insolvent as that term is defined in the 2019 Policy;

(o) that:

(i) the "warranties" referred to in the definition of "Eligible" included the warranties given by the "Insured" in the "Proposal" (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 (2019 Policy, definition of "Proposal", Sch 1);

(iii) the "Proposal" form in Schedule 2 contains two warranties which are an integral part of the "Proposal" and, on the proper construction of the 2019 Policy, must be given by the "Insured" to the "Insurer";

(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;

(p) that it denies that the EHG Independent Payment Undertakings were capable of being "Eligible Debts" and/or otherwise the subject of coverage under the 2019 Policy because:

(i) it is a condition of a debt being an "Eligible Debt" or, further or alternatively, there being coverage in respect of the debt, that it is owed by an "Eligible Customer";

(ii) the "Eligible Customer" relied on by the Applicants is EHG;

(iii) EHG was not an "Eligible Customer" because, at all material times, no "Proposal" at all, or no "Proposal" containing the required warranties, was submitted to the "Insurer";

(q) in circumstances where the Applicants have not articulated, with any precision or at all:

(i) the Part (or Parts) of Debt Endorsement 1 they rely on;

(ii) the material facts (if any) they rely on to assert that the EHG Payment Undertakings fell within the description(s) in Debt Endorsement 1;

(iii) the material facts (if any) they rely on to assert that the EHG Payment Undertakings otherwise met the description of being an "Eligible Debt" for the purposes of the 2019 Policy, at material times, or at all;

(iv) whether an Insured ever acquired the EHG Notes and, if so, the date of acquisition;

(v) the date or dates of any acquisition of the EHG Notes by Credit Suisse Virtuoso,

IAL otherwise does not plead to the Applicants' case that the EHG Payment Obligations were "Eligible Debts" and reserves its right to supplement its case and defence if and when the Applicants articulate a case;

(r) it puts the Applicants to proof on each necessary condition for "EHG Independent Payment Undertakings" to be "Eligible Debts"; and

(s) it denies that the "EHG Independent Payment Undertakings" were "Eligible Debts".

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

40G 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 (allegedly) EHG failed to pay the amount of the debt pleaded in item 1 of the table at paragraph 45 of the SOC by no later than 3 April 2020 (being the day falling 45 days after 18 February 2020) (SOC, paragraph 75);

(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 failure to pay an "Eligible Debt", including because:

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

(ii) the EHG Independent Payment Undertakings were not "Eligible Debts".

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

40H 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) the Applicants allege, or implicitly allege:

(i) each of the "Assets" (i.e. the EHG Notes) was a "Note" (SOC, paragraph 66);

(ii) "Loss" (if any) is assessed under paragraph (iii) of the definition of "Loss" in the 2019 Policy (SOC, paragraph 26(o));

(iii) "Loss" is therefore the amount equal to the difference between: (a) the "Expected Allocation" of the Insured in respect of each of the EHG 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 (SOC, paragraph 26(o));

(iv) the "Expected Allocation" of the EHG Notes was USD 34,998,726 (SOC, paragraph 81 and 101);

(v) the value of Greensill Bank's relevant entitlements under the Master Trust Deed in respect of the EHG Notes was nil (SOC, paragraph 81); and

(vi) therefore, the "Loss" is USD 34,998,726 (SOC, paragraph 101);

(b) 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 40E(o) 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 (2019 Policy clause 2.1; Schedule 7);

(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", Schedule 1; definition of "Loss'');

(B) alternatively, immediately prior to the payment of a Claim (2019 Policy Schedule 1, definition of "Loss");

(iv) the "Asset" must be owned by the "Insured", alternatively by the "Insured" or a "Loss Payee", during the "Policy Period" (2019 Policy clause 4.1);

(v) the "Insured" must have an "Expected Allocation" in respect of the "Note" (2019 Policy Schedule 1, 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 Schedule 1, definition of "Expected Allocation");

(vii) the "Insured" must have a potential entitlement under the "Master Trust Deed" in respect of the Note (2019 Policy Schedule 1, definition of "Loss");

(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);

(c) the Applicants do not plead any material facts establishing:

(i) the matters in paragraph 40E(o) 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 EHG Default (as defined in paragraph 75 of the SOC), any alleged failure on the part of EHG to discharge its alleged payment obligations by the "Backstop Date" and/or the "Insured Cause" alleged at paragraph 76 of the SOC;

(iii) in the counterfactual where the EHG Default did not occur, the "Loss" would not have been suffered;

(iv) the EHG Notes had a "Final Redemption Amount" or "Instalment Amounts";

(v) there was a "Pricing Supplement" in respect of the EHG Notes;

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

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

(viii) the cause of Greensill Bank's entitlements under the "Master Trust Deed" in respect of EHG Notes being less than the "Expected Allocation" was the alleged EHG Default, any alleged failure on the part of EHG to discharge its alleged payment obligations by the Backstop Date and/or the "Insured Cause" alleged at paragraph 76 of the SOC;

(d) 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) the Applicants do not plead or identify any particular actual loss arising from an "Insured Cause";

(iv) 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 EHG Notes; and

(v) 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;

(e) it puts the Applicant to proof of all material facts necessary for the arising of a "Loss" and for the arising of an indemnity under clause 1.1 of the 2019 Policy (if valid and effective, which is denied) or otherwise; and

(f) it denies that there was a "Loss" or "Losses" because of the matters pleaded in paragraphs 40D to 40H of this Defence.

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

40I 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 40H of this Defence.

E.1 Parties to the transaction

40 IAL does not know and cannot admit paragraph 40 of the SOC.

41 As to paragraph 41 of the SOC, IAL:

(a) says that DEMICA Limited was incorporated in the United Kingdom; and

(b) otherwise denies paragraph 41 of the SOC.

42 As to paragraph 42 of the SOC, IAL:

(a) says that GCUK was incorporated in the United Kingdom; and

(b) otherwise denies paragraph 42 of the SOC.

42A In respect of paragraphs 43, 44, 45, 46, 64, 65, 71, 72, 73, 74, 75, 85, 86, 90, 91, 92, 93, 94, 95 and 101 of the SOC, IAL says generally that:

(a) IAL was not, and is not alleged to be, a party to the documents, transactions and/or agreements identified in those paragraphs;

(b) 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

(c) IAL will seek disclosure in relation to the matters the subject of those paragraphs 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;

(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 subparagraph.

42B In respect of paragraphs 43, 44, 45, 46, 64, 65, 71, 72, 73, 74, 75, 83, 85 and 93, IAL says generally that:

(a) Greensill Bank was not, and is not alleged to be, a party to the documents identified in paragraphs 43, 44, 45, 46, 64, 65, 71, 72, 73, 74, 75, 83, 85 and 93 of the SOC;

(b) IAL will seek disclosure in relation to the matters the subject of those paragraphs 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

(c) admissions by IAL as to the existence and terms of agreement and other documents alleged in those paragraphs of the SOC are made subject to the reservation referred to in the preceding subparagraph.

E.2 EHG Independent Payment Undertakings

43 As to paragraph 43 of the SOC, IAL:

(a) repeats paragraph 42A of this Defence;

(b) says IAL was not, and is not alleged to be, a party to the document identified in paragraph 43;

(c) admits that representatives of EHG and Demica appear to have signed a document styled as a “Buyer Tracking and Settlement Service Agreement” bearing the date 23 January 2019 (**Buyer Tracking and Settlement Service Agreement**);

(d) says that to the extent an agreement was entered into in the terms of the Buyer Tracking and Settlement Service Agreement bearing the date 23 January 2019, that document referred to other documents including a "Common Definitions and Interpretation Schedule" that are not referred to in the SOC and are not available to IAL, and which are necessary to understand the terms of any agreement; and

(e) otherwise does not know and cannot admit paragraph 43 of the SOC.

44 As to paragraph 44 of the SOC, IAL:

(a) repeats paragraphs 42A and 43 of this Defence;

(b) refers to all of the terms of the Buyer Tracking and Settlement Service Agreement for their full force and effect (if any);

(c) says that GCUK was not a party to the Buyer Tracking and Settlement and Service Agreement, and any obligations in that agreement were not owed to it;

(d) says that paragraph 44 does not accurately describe the text or effect of the Buyer Tracking and Settlement Service Agreement (or clause 6.1 of that agreement), including because clause 6.1 did not in terms require the existence of a "debt" owed by EHG to one of its suppliers; and

(e) otherwise does not know and cannot admit paragraph 44 of the SOC.

45 As to paragraph 45 of the SOC, IAL:

(a) repeats paragraph 42A of this Defence;

(b) refers to clause 10.2 of the 2019 Policy (if valid and effective, which is denied) for its full force and effect; and

(c) otherwise does not know and cannot admit paragraph 45 of the SOC.

46 As to paragraph 46 of the SOC, IAL:

(a) repeats paragraphs 42A, 44 and 45 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 46 of the SOC.

E.3 Endorsements for insuring the EHG Independent Payment Undertakings

Debt Endorsement 1

47 IAL denies paragraph 47 of the SOC and says further that:

(a) it repeats paragraphs 6-3, 6-5, 6-56B, 6-56H, 6-56J, 13,35C, 35G 36A and 37 of this Defence;

(b) it relies on the terms of Debt Endorsement 1 (if valid and effective, which is denied) for their full force and effect;

(c) on 13 March 2019, Brereton signed Debt Endorsement 1 and backdated it to 22 February 2019;

(d) 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;

(e) as at 22 February 2019 and 13 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 6-1, 6-3, 6-33A to 6-33C, 6-55J, 6-55O and 13 of this Defence;

(f) the amendments purportedly made by Debt Endorsement 1 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

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

(iii) had no commercial or other legitimate justification;

(g) 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, 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 13 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 6-3(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

(h) by reason of the matters in paragraphs 47(b) to 47(g) of this Defence and each of them individually, Debt Endorsement 1 was invalid, of no effect and not binding on or enforceable as against IAL;

(i) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Debt Endorsement 1:

(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;

(iii) Debt Endorsement 1 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 Debt Endorsement 1;

(v) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Debt Endorsement 1;

(vi) any power under the terms of the 2019 Policy to issue Debt Endorsements did not authorise the issuing of a "Debt Endorsement" or, alternatively, a unilateral "Debt Endorsement" which purported to expand and/or vary the meaning of "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;

(vii) any power under the terms of the 2019 Policy to issue Debt Endorsements only authorised the issuing of Debt Endorsements describing the nature of a debt that "is after the date of such endorsement able to be a Debt for the purposes of th[e] Policy" (2019 Policy Schedule 1, definition of “Debt Endorsement”) and, therefore, any such power did not authorise the issuing of Debt Endorsements purporting to operate retrospectively;

(viii) Debt Endorsement 1 purported to operate retrospectively;

(ix) any Debt Endorsements issued under the 2019 Policy must specify a premium rate in an associated Customer Endorsement, which in turn was required to be expressed as a percentage premium rate (Appendix 1 and Appendix 2 of the 2019 Policy);

(x) Debt Endorsement 1 did not specify a premium rate which was expressed as a percentage premium rate;

(xi) by reason of the matters in:

(A) paragraphs 47(i)(i) to 47(i)(iii) of this Defence;

(B) paragraphs 47(i)(iv) and 47(i)(v) of this Defence;

(C) paragraph 47(i)(vi) of this Defence;

(D) paragraphs 47(i)(vii) and 47(i)(viii) of this Defence; and/or

(E) paragraphs 47(i)(ix) and 47(i)(x) of this Defence;

Debt Endorsement 1 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) Debt Endorsement 1 had been issued;

(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;

(k) 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 47(b) to 47(j) of this Defence.

(l) 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 Agreement to act efficiently, honestly and fairly;

Particulars

The matters in paragraphs 47(b) to 47(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 Debt Endorsement 1 on behalf of IAL;

Particulars

The matters in paragraphs 13(f) to 13(j) of this Defence.

(n) if BCC and/or Brereton purportedly entered into Debt Endorsement 1, IAL repeats paragraph 35Cof this Defence; and

(o) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Debt Endorsement 1, it operated only prospectively, from the date Brereton signed Debt Endorsement 1, and applied only in relation to Assets acquired after that date.

48 [Not used].

48A As to paragraph 48A of the SOC, IAL:

(a) repeats paragraph 47 of this Defence;

(b) otherwise denies paragraph 48A of the SOC.

Customer Endorsements

49 IAL denies paragraph 49 of the SOC and says further that:

(a) it repeats paragraphs 6-3, 6-5, 6-56B, 6-56H, 6-56J, , 13, 35C, 35G, 36A and 37 of this Defence;

(b) on 13 March 2019, Brereton signed Customer Endorsement 37 and backdated it to 1 March 2019;

(c) the terms of Customer Endorsement 37 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) as at 1 March 2019 and 13 March 2019, and at all material times between 28 July 2016 and 9 April 2019, BCC and Brereton's authority was confined in the manner described in paragraphs 6, 6-1, 6-7, 6-33B, 6-33C, 6-56J, 6-56O and 13 of this Defence;

(e) the amendments purportedly made by Customer Endorsement 37 (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 37 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 13 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 6-3(i) of this Defence, and Customer Endorsement 37 was not an Approved Endorsement;

(iv) Customer Endorsement 37 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 37 was 100%, which was above the maximum indemnity limit of 95% of Debt specified in the applicable Underwriting Manual Version 2.0;

(vi) the customer limit in Customer Endorsement 37, 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) Customer Endorsement 37 was not a valid Customer Endorsement under the 2019 Policy because:

(i) any power to issue Customer Endorsements under the 2019 Policy (if valid and effective, which is denied) did not authorise the issuing of Customer Endorsements purporting to operate retrospectively; and

(ii) Customer Endorsement 37 purported to operate retrospectively and was therefore beyond any power given by the 2019 Policy;

(h) by reason of the matters in paragraphs 49(b) to 49(g) of this Defence and each of them individually, Customer Endorsement 37 was invalid, of no effect and not binding on or enforceable as against IAL;

(i) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Customer Endorsement 37:

(i) Customer Endorsement 37 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 37 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 37;

(v) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Customer Endorsement 37;

(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 37 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 37 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;

(xi) by reason of the matters in:

(A) paragraphs 49(i)(i) to 49(i)(iii) of this Defence;

(B) paragraphs 49(i)(iv) to 49(i)(v) of this Defence;

(C) paragraphs 49(i)(vi) to 49(i)(vii) of this Defence;

(D) paragraphs 49(i)(viii) to 49(i)(ix) of this Defence;

(E) paragraph 49(i)(x) of this Defence;

(F) Customer Endorsement 37 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 37 had been issued;

(ii) Customer Endorsement 37 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 37 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 49(a) to 49(j) of this Defence.

(l) the authority given by IAL to Brereton did not include an authority to enter into Customer Endorsement 37 because entering into Customer Endorsement 37

was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

The matters in paragraphs 49(a) to 49(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 37 on behalf of IAL;

Particulars

The particulars under paragraph 36A(l) of this Defence.

(n) if BCC and/or Brereton purportedly entered into Customer Endorsement 37, IAL repeats paragraph 35C of this Defence; and

(o) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Customer Endorsement 37, it operated only prospectively, from the date Brereton signed Customer Endorsement 37, and applied only in relation to Assets acquired after that date.

50 [Not used].

51 As to paragraph 51 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 6-56H, 6-56J, 13, 35C, 39B, 39K and 49 of this Defence;

(b) says that Customer Endorsement 37, if valid and effective, which is denied:

(i) identified "Emirates Hospitals Group LLC" 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 USD20,000,000, but did not identify the "Customer Limit" in general or prospectively as USD20,000,000;

(iv) did not stipulate 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 37, and which is given multiple meanings in the SOC); and

(c) otherwise denies paragraph 51 of the SOC.

52 As to paragraph 52 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 6-56H, 6-56J, 13, 35C, 39B, 39K, 49 and 51 of this Defence; and

(b) otherwise denies paragraph 52 of the SOC.

53 As to paragraph 53 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 6-56H, 6-56J, 13, 35C, 39B, 39K , 47, 49 and 51 of this Defence; and

(b) otherwise denies paragraph 53 of the SOC.

54 IAL denies paragraph 54 of the SOC and says further that:

(a) it repeats paragraphs 6-3, 6-5, 6-56H, 6-56J, 13, 35C, 39B, 39K and 49 of this Defence;

(b) on 4 September 2019, Brereton signed Customer Endorsement 37(i) referred to in paragraph 54 of the SOC and backdated it to 6 August 2019;

(c) 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*;

(d) 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;

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

(f) 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;

(g) on 15 April 2019, BCC provided to Marsh, on behalf of the Greensill Group, the media release and market announcement referred to in paragraphs 54(e) and 54(f) 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 two attachments (IAL.500.011.0568, IAL.500.011.0569, IAL.500.011.0570).

(h) the terms of Customer Endorsement 37(i) 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;

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Customer Endorsement 37(i) because:

(i) Customer Endorsement 37(i) was signed by Brereton on behalf of BCC after 30 June 2019, after BCC ceased to have authority to act for IAL as referred to in paragraph 35C 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 13 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 Customer Endorsement 37(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;

Particulars

It purported to insure a debtor for a substantial liability for a premium payable of only USD1.

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

(C) if it was otherwise capable of constituting a mid-term alteration, such as alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

Particulars

For example, the matters in paragraph 54(i)(v) of this Defence.

(v) the amendments purportedly made by Customer Endorsement 37(i) (if valid and effective, which is denied):

(A) benefited Greensill Bank;

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

(C) had no commercial or other legitimate justification;

(vi) Customer Endorsement 37(i) purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia, contrary to the authority of BCC and Brereton;

(vii) the indemnity limit in Customer Endorsement 37(i) was 100%, which was above the maximum indemnity limit of 95% of Debt specified in the applicable Underwriting Manual Version 3.0;

(viii) the customer limit in Customer Endorsement 37(i), 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;

(j) by reason of the matters in paragraphs 54(b) to 54(i) of this Defence, and each of them individually, Customer Endorsement 37(i) was invalid, of no effect and not binding on or enforceable as against IAL;

(k) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Customer Endorsement 37(i):

(i) Customer Endorsement 37(i) 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 37(i) 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 37(i);

(v) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Customer Endorsement 37(i);

(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 37(i) 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 37(i) 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;

(xi) by reason of the matters in:

(A) paragraphs 54(k)(i) to 54(k)(iii) of this Defence;

(B) paragraphs 54(k)(iv) and 54(k)(v) of this Defence;

(C) paragraphs 54(k)(vi) and 54(k)(vii) of this Defence;

(D) paragraphs 54(k)(viii) and 54(k)(ix) of this Defence; and/or

(E) paragraph 54(k)(x) of this Defence,

Customer Endorsement 37(i) is invalid, of no effect and not binding on or enforceable as against IAL;

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

(i) Customer Endorsement 37(i) had been issued;

(ii) Customer Endorsement 37(i) had been purportedly issued in breach of the IAL AAR Agreement and applicable Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(m) executing Customer Endorsement 37(i) 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 54(a) to 54(l) of this Defence.

(n) the authority given by IAL to Brereton did not include an authority to enter into Customer Endorsement 37(i) because entering into Customer Endorsement 37(i) was in breach of Brereton’s obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

The matters in paragraphs 54(a) to 54(m) of this Defence.

(o) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Customer Endorsement 37(i) on behalf of IAL; and

Particulars

The particulars under paragraph 36A(l) of this Defence.

(p) if BCC and/or Brereton purportedly entered into Customer Endorsement 37(i), IAL repeats paragraph 35C of this Defence; and

(q) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Customer Endorsement 37(i), it operated only prospectively, from the date Brereton signed Customer Endorsement 37(i), and applied only in relation to Assets acquired after that date.

55 [Not used].

56 As to paragraph 56 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 6-56H, 6-56J, 13, 35C, 39B, 39K, and 54 of this Defence;

(b) says that Customer Endorsement 37(i), if valid and effective, which is denied:

(i) identified "Emirates Hospitals Group LLC" 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 USD21,000,000, but did not identify the "Customer Limit" in general or prospectively as USD21,000,000; and

(c) otherwise denies paragraph 56 of the SOC.

57 As to paragraph 57 of the SOC, IAL:

(a) says that on 18 September 2019, Brereton signed Customer Endorsement 37(ii) referred to in paragraph 57 of the SOC;

(b) it repeats the matters in paragraph 54 of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to Customer Endorsement 37(ii); and

(c) otherwise denies paragraph 57 of the SOC.

58 [Not used].

59 As to paragraph 59 of the SOC, IAL:

(a) repeats paragraphs 13, 35C and 57 of this Defence;

(b) says that Customer Endorsement 37(ii), if valid and effective, which is denied:

(i) identified "Emirates Hospitals Group LLC" 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 USD 35,000,000, but did not identify the "Customer Limit" in general or prospectively as USD 35,000,000; and

(c) otherwise denies paragraph 59 of the SOC.

59A As to paragraph 59A of the SOC, IAL:

(a) repeats paragraphs 13, 35C, 39B, 39K, 49, 54 and 57 of this Defence; and

(b) otherwise denies paragraph 59A of the SOC.

59B As to paragraph 59B of the SOC, IAL:

(a) repeats paragraphs 54 and 57 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 59B of the SOC.

60 As to paragraph 60 of the SOC, IAL:

(a) repeats paragraphs 13, 35C, 40Eto 40H, 46, 47, 49, 54 and 57 of this Defence;

(b) says that:

(i) the Applicants have not pleaded any material facts capable of establishing that the EHG Independent Payment Undertakings were "Debts" for the purposes of Debt Endorsement 1;

(ii) in any event, the EHG Independent Payment Undertakings were not "Debts" for the purposes of Debt Endorsement 1; and

(c) otherwise denies paragraph 60 of the SOC.

61 As to paragraph 61 of the SOC, IAL:

(a) repeats paragraphs 13, 26(e), 35C, 40E to 40H, 46, 47, 49, 54 and 57 of this Defence;

(b) says that:

(i) the Applicants have not pleaded any material facts capable of establishing that the EHG Independent Payment Undertakings were “Eligible Debts”; and

(ii) in any event, the EHG Independent Payment Undertakings were not “Eligible Debts”;

(c) says further that if, which is denied, BCC had authority to issue and/or execute the 2019 Policy, Debt Endorsement 1 and/or Customer Endorsement 37, then it repeats paragraphs 40F, 46 and 47 of this Defence; and

(d) otherwise denies paragraph 61 of the SOC.

E.4 Notes Program

62 IAL admits paragraph 62 of the SOC.

63 As to paragraph 63 of the SOC, IAL:

(a) says that “special purpose vehicle” is not a defined term in “Policy 3690"

(b) says that “Policy 3690” contains a defined term, “SPV”, which encompasses “Hoffman S.a r.l” provided it is a “securitisation company within the meaning of and governed by the Luxembourg Securitisation Act 2004” ;

(c) says that it does not know whether Hoffman met that description; and

(d) does not know and cannot admit the paragraph.

63A As to paragraph 63A of the SOC, IAL:

(a) repeats paragraph 40E of this Defence;

(b) says that it is aware of a document said to be dated 13 October 2017, styled “Lagoon Farm: Master Trust Deed” and said to be between Hoffman and Citibank N.A. London Branch (**Hoffman Master Trust Deed**);

Particulars

"Lagoon Farm: Master Trust Deed" dated 13 October 2017 between Hoffman and Citibank N.A., London Branch [CMS.006.001.4240]

(c) says that it is aware of a document described as a "Base Memorandum" under the name of "Hoffman S.a.r.l" as "issuer under its Up To USD 20,000,000,000 Secured Note Lagoon Farm Programme Backed by Relevant Claims", which document is unsigned (**Base Memorandum**);

Particulars

"Base Memorandum" dated 13 October 2017 [CMS.006.001.1028]

(d) says that:

(i) the Hoffman Master Trust Deed was not a "Master Trust Deed" within the meaning of the 2019 Policy at least because TMF Luxembourg SA was not a party to it; and

(ii) the EHG Notes were not "issued pursuant to the 'Issue Documents' as defined in the Master Trust Deed";

(iii) any notes issued under the Hoffman Master Trust Deed were not "Notes" within the meaning of the 2019 Policy;

(e) refers to all of the terms of the Hoffman Master Trust Deed (as supplemented) and the Base Memorandum for their full force and effect (if any); and

(f) otherwise does not know and cannot admit paragraph 63A of the SOC.

63B As to paragraph 63B of the SOC, IAL:

(a) says that it is aware of a document said to be dated 21 December 2017, styled a "First Supplement … to the Base Memorandum dated 13 October 2017", which document has been signed by Martijn Sinninghe Damste and Fabrice Rota (**First Supplement**);

Particulars

First Supplement to the Base Memorandum, signed by Martin Sinninghe Damste and Fabrice Rota.

(b) says that it is aware of a document said to be dated 21 December 2017, styled a "Supplemental Master Trust Deed"" (**Supplemental Master Trust Deed**);

Particulars

The Supplemental Master Trust Deed dated 21 December 2017.

(c) says further that TMF Luxembourg SA was not a named party to the First Supplement or the Supplemental Master Trust Deed;

(d) refers to and repeats paragraph 63A of this Defence;

(e) says that:

(i) the Applicants have not pleaded any material facts establishing or capable of establishing that any "Notes" were "issued by Hoffman pursuant to the Hoffman Master Trust Deed";

(ii) under the Hoffman Master Trust Deed (including as supplemented):

(A) a "Note" was issued under the Deed only if it was part of a "Tranche" (cl 11.1);

(B) there was a "Tranche" only if (inter alia) there were Notes "in relation to one or more Relevant Claims from one or more Relevant Obligors and of a particular Relevant Claim Type, each as specified in the applicable Pricing Supplement" (cl 10.1);

(C) no facts are pleaded establishing that any of those conditions were met;

(D) paragraph 63C below is referred to;

(E) there were, in fact, no "Relevant Claims" or "Relevant Obligors" because there were no underlying payment obligations or persons owing payment obligations;

(f) the EHG Notes were not issued pursuant to the Hoffman Master Trust Deed;

(g) relies on the terms of the Supplemental Master Trust Deed and the First Supplement to the Base Memorandum for their full force and effect (if any); and

(h) otherwise does not know and cannot admit paragraph 63B of the SOC.

63C As to paragraph 63C of the SOC, IAL:

(a) admits that cl 10.1 of the Supplemental Master Trust Deed includes a definition of "Relevant Claim" corresponding with the quoted text in paragraph 63C of the SOC;

(b) says that in order for a payment obligation to be a "Relevant Claim", it was necessary (inter alia) for the obligation to be:

(i) a payment obligation;

(ii) a payment obligation "of a Relevant Claim Type";

(iii) owed by a "Relevant Obligor";

(iv) acquired by an "Issuer";

(v) acquired pursuant to arrangements entered into between the "Issuer" and a "Relevant Claims Seller";

(vi) acquired pursuant to a “Master Assignment Agreement”;

(vii) linked to the relevant “Tranche of Notes”, as specified in the relevant "Pricing Supplement";

(c) says that, in order for a payment obligation to be “of a Relevant Claim Type”, it was necessary that it meet each of the three conditions set out in the definition of “Relevant Claim Type” in cl 10.1;

(d) says that, in order for there to be a “Relevant Obligor”, it was necessary for the conditions set out in the definition of “Relevant Obligor” in cl 10.1 to be met, including that:

(i) the person be a body corporate;

(ii) the person be liable under a “Relevant Claim”;

(iii) the person be liable as a principal obligor or as a guarantor or as other provider of credit support;

(iv) the person be specified in the “Pricing Supplement” relating to the “Tranche of Notes” backed by the “Relevant Claim”;

(e) says that in order for there to be a “Relevant Claims Seller”, it was necessary (inter alia) that:

(i) there be an entity which has entered into a “Master Assignment Agreement” with an “Issuer”;

(ii) that the entity entered into the “Master Assignment Agreement” for the purpose of assigning “Relevant Claims” to the “Issuer”;

(f) says that, in order for there to be a “Relevant Claims Seller”, it was necessary (inter alia) that there be:

(i) a master assignment agreement;

(ii) a master assignment agreement entered into by, at least, an “Issuer”, a “Relevant Claims Seller” and the “Note Trustee”;

(iii) an agreement pursuant to which the “Relevant Claims Seller” will agree to sell, and the “Issuer” will agree to purchase, “Relevant Claims”;

Particulars

Definition of "Master Assignment Agreement", cl 10.1 of the Supplemental Master Trust Deed.

(g) says that “Payment Obligation” was not a defined term in the "Definitions" section at cl 10 of the Supplemental Master Trust Deed;

(h) says that:

(i) having regard to the various definitions in the Supplemental Master Trust Deed, it was not the case that “Payment Obligations" acquired by Hoffman from a "Relevant Claims Seller" pursuant to a "Master Assignment Agreement” were necessarily “Relevant Claims”;

(ii) the SOC does not plead material facts necessary to establish, or capable of establishing, that "Payment Obligations" acquired by Hoffman from a "Relevant Claims Seller" pursuant to a "Master Assignment Agreement” were “Relevant Claims”, including having regard to the conditions necessary for there to be such “Relevant Claims” pleaded in this paragraph;

(i) otherwise, does not know and cannot admit the paragraph.

63D As to paragraph 63D of the SOC, IAL:

(a) repeats paragraph 63C above;

(b) says that:

(i) in order for the Hoffman MAA to be a “Master Assignment Agreement” within the meaning of the Hoffman Master Trust Deed (as supplemented), it is necessary (inter alia) that it be an agreement under which the “Relevant Claims Seller will agree to sell, and [the] Issuer will agree to purchase, Relevant Claims”;

(ii) the Hoffman MAA provided for the sale by GCUK to a “Purchaser” of “Payment Obligations” and “Additional Rights” (cll 2.1, 3);

(iii) the term “Payment Obligations” in the Hoffman MAA did not correspond with the term “Relevant Claims” in the Hoffman Master Trust Deed (as supplemented);

(iv) there are no pleaded facts which establish, or are capable of establishing, that the Hoffman Master Agreement was an agreement under which the “Relevant Claims Seller will agree to sell, and [the] Issuer will agree to purchase, Relevant Claims”;

(c) says further, in respect of the particularised documents:

(i) there are no pleaded facts establishing or capable of establishing that the Supplemental Master Trust Deed and Series Supplement No. 1 (as defined in paragraph 63C of the SOC) are a "Series Supplement" within the meaning of the Hoffman Master Trust Deed (as supplemented);

(ii) there are no pleaded facts establishing that GCUK is specified as the "Relevant Claims Seller" in the "Product Annex" incorporated into such a "Series Supplement"; and

(d) otherwise, does not know and cannot admit the paragraph.

63E As to paragraph 63E of the SOC, IAL:

(a) admits that on or around 21 December 2017, GCUK, Hoffman and Citibank N.A., London Branch entered into the Master Assignment Agreement (**MAA**);

Particulars

"Master Assignment Agreement" between GCUK, Hoffman and Citibank N.A., London Branch dated 21 December 2017

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

(c) says that:

(i) it was a term of the MAA that GCUK may from time to time offer to assign and sell with full title guarantee the whole, but not part, of any "Payment Obligation" and all of its "Additional Rights" in respect thereof to a "Purchaser" and such "Purchaser" at its sole discretion may agree to purchase such "Payment Obligation" and the "Additional Rights" relating thereto from GCUK (clause 2.1); and

(ii) it was a term of the MAA that, on the terms and subject to the conditions set forth in the MAA, GCUK hereby sells, transfers, assigns, sets over and otherwise conveys absolutely with full title guarantee to the relevant "Purchaser", and the relevant "Purchaser" hereby purchases, all of GCUK's right, title and interest in, to and under each "Payment Obligation", and all of GCUK's "Additional Rights" relating thereto, which are the subject of an "Acceptance" provided to GCUK in accordance with Clause 2.3, with effect as the date falling on or before the relevant Cut-Off Settlement Time on which GCUK receives the Purchase Price in respect of such "Payment Obligations" and "Additional Rights" (clause 3);

(iii) "Payment Obligation" was defined to mean, in respect of any "Offer" or any "Assignment", a payment obligation owed by the "Relevant Obligor" and having the details and being of the type specified in the relevant "Offer File";

(iv) there was no "Payment Obligation" in existence unless there was in fact a payment obligation owed by the "Relevant Obligor"; and

(d) otherwise denies paragraph 63E of the SOC.

63F As to paragraph 63F of the SOC, IAL:

(a) refers to and repeats paragraph 63G(c) of this Defence;

(b) says that the term "Additional Rights" was defined to mean, in respect of any "Payment Obligation" all of GCUK's rights in respect of, or relating to, such "Payment Obligation" including, but not limited to, all rights of GCUK under the "Finance Documentation" (insofar as such rights relate to such "Payment Obligation"), all rights of GCUK in respect of any "Related Security" relating to such "Payment Obligation" and all rights of GCUK in respect of any "Security Filing" and any other security interest held by GCUK in respect of such "Payment Obligation", any relevant "Collection Account" or any "Finance Document", to the extent that such rights are assignable by GCUK;

(c) relies on the terms of the MAA for their full force and effect; and

(d) otherwise denies paragraph 63F of the SOC.

63G As to paragraph 63G of the SOC, IAL:

(a) refers to and repeats paragraphs 63A, 63B and 63E of this Defence;

(b) says that:

(i) there was a term of the Supplemental Master Trust Deed to the effect that the "Notes" of each "Tranche" shall be constituted and secured by these presents on and as of the "Issue Date" specified in the "Pricing Supplement" (of which the relevant "Supplemental Trust Deed" forms part) relating to such "Tranche" (cl 11.1);

(ii) there was a term of the Supplemental Master Trust Deed that each "Issuer" shall, by executing and delivering the "Supplemental Master Trust Deed" in respect of any "Tranche", with full title, guarantee and as continuing security for the payment or discharge of all amounts due and payable by, the delivery of all assets deliverable by, the "Issuer"

and any other obligations or liabilities of the "Issuer", in each case, under these presents, to the "Secured Parties", in relation to all "Notes" comprising the "Series" of which such "Tranche" forms a part, effect an assignment, by way of a first ranking assignment in favour of the "Note Trustee", all of its right, title and interest present and future in, to and under, the "Relevant Claims" relating to such "Tranche" and the "Additional Rights" relating thereto whether or not against third parties and all sums and/or assets received or receivable (if any) by such "Issuer" under any such "Relevant Claims" and "Additional Rights", together with the debts represented thereby and all proceeds of such "Relevant Claims" and "Additional Rights" (except to the extent (if any) otherwise provided in such "Supplemental Trust Deed") (cl 18.1(A)(1));

(c) says that, in order for a "Note" (as alleged at SOC paragraph 63G) to be secured, because of the clauses pleaded in paragraph (b) above, by alleged "Payment Obligations" allegedly assigned pursuant to the Hoffman MAA to Hoffman by GCUK, it is necessary (inter alia):

(i) for there to be a "Tranche" of "Notes", meaning (inter alia) that there must:

(A) be a tranche of "Notes" (definition of "Tranche")

(B) be a tranche of Notes issued by an "Issuer" under its "Programme" (definition of "Tranche")

(C) be a tranche of "Notes" issued on a particular date in relation to one or more "Relevant Claims" from one or more "Relevant Obligors" and of a particular "Relevant Claim Type" (definition of "Tranche")

(D) be informed specified in the applicable "Pricing Supplement" (definition of "Tranche");

(ii) for the relevant "Issuer" to execute and deliver the "Supplemental Trust Deed" in respect of that "Tranche" of "Notes";

(iii) for there to be "Relevant Claims" within the meaning of the "Supplemental Master Trust Deed";

(d) says that the SOC does not plead material facts establishing, or capable of establishing, that any of the conditions necessary for the terms in cll 11.1 and

18.1(A)(1) to be engaged, at all or in respect of “Payment Obligations” allegedly assigned pursuant to the Hoffman MAA to Hoffman by GCUK;

(e) says further that there are no pleaded facts establishing or capable of establishing that:

(i) there ever were “Payment Obligations”;

(ii) “Payment Obligations” were assigned by GCUK to Hoffman;

(iii) “Payment Obligations” were assigned by GCUK to Hoffman pursuant to the Hoffman MAA;

(iv) any Notes issued by Hoffman were secured by “Payment Obligations”;

(f) otherwise does not know and therefore cannot admit paragraph 63G of the SOC.

E.5 EHG Notes

64 As to paragraph 64 of the SOC, IAL:

(a) repeats paragraphs 42A, 42B, 46 and 62 of this Defence;

(b) says that the Applicants do not identify:

(i) the agreement (if any) pursuant to which the assignment was allegedly effected;

(ii) the circumstances which establish that there was an assignment of the EHG Independent Undertakings;

(c) says that the pleaded case is confined to a case that what was assigned was the "EHG Independent Payment Undertakings" as defined, and there is no pleading that any other rights (or purported rights) were assigned; and

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

65 As to paragraph 65 of the SOC, IAL:

(a) repeats paragraphs 26, 40E, 42A, 42B, 46, 62, 63A and 64 of this Defence;

(b) says, in respect of the allegation that Hoffman issued the EHG Notes, that:

(i) the Applicants particularise eighteen (18) documents in paragraph 65 of the SOC with document references between AGB.003.007.0142 to AGB.0003.0159, each of which identifies itself as a "Pricing Supplement" (**Pricing Supplements**);

(ii) as best it understands the Applicants' case, the Applicants allege that Hoffman issued the EHG Notes by way of the Pricing Supplements;

(c) says further that:

(i) the Pricing Supplements stated that they were to be read in conjunction with the “Base Memorandum” and the relevant “Series Supplement”;

(ii) it was a term of the “Base Memorandum” that each “Tranche” of “Notes" issued by an “Issuer” will be linked to one or more “Relevant Claims”;

(iii) in order for a claim to be a “Relevant Claim”, it must (inter alia) meet the conditions set out in paragraph 63C of this Defence;

(iv) there is no allegation of material fact establishing or capable of establishing that any of the EHG Notes were linked to “Relevant Claims”;

(v) each of the Pricing Supplements provides for the identification of "Relevant Claims", against which:

(A) the words "Not Applicable" appear in eleven (11) of the Pricing Supplements; and

(B) alphanumeric strings appear in seven (7) of the Pricing Supplements and it is not clear on the face of the Pricing Supplements what those alphanumeric strings are intended to refer to or represent;

Particulars

ISIN Number	Pricing Supplement	"Relevant Claims" identified in the Pricing Supplement
XS1915435561	AGB.0003.0007.0142	Not Applicable
XS1915435645	AGB.0003.0007.0143	Not Applicable
XS1915435728	AGB.0003.0007.0144	Not Applicable
XS1915435991	AGB.0003.0007.0145	Not Applicable
XS1915436023	AGB.0003.0007.0146	Not Applicable
XS1915436296	AGB.0003.0007.0147	Not Applicable
XS1915436379	AGB.0003.0007.0148	Not Applicable
XS1915436619	AGB.0003.0007.0149	Not Applicable
XS1915436700	AGB.0003.0007.0150	Not Applicable
XS1915436965	AGB.0003.0007.0151	Not Applicable
XS1915437005	AGB.0003.0007.0152	Not Applicable

XS1915437187	AGB.0003.0007.0153	A00002049943
XS1915437260	AGB.0003.0007.0154	A00002079674 A00002079673 A00002079672
XS1915437344	AGB.0003.0007.0155	A00002085501
XS1915437427	AGB.0003.0007.0156	A00002099329
XS1915437690	AGB.0003.0007.0157	A00002108825
XS1915437773	AGB.0003.0007.0158	A00002131090
XS1915437856	AGB.0003.0007.0159	A00002136020

(vi) the Pricing Supplements do not evidence or establish the existence of:

(A) a payment obligation;

(B) a "Relevant Claim Type"; or

(C) any "Relevant Claims"; and

(d) otherwise does not know and cannot admit paragraph 65 of the SOC.

65A As to paragraph 65A of the SOC, IAL:

(a) repeats paragraph 40E, 63G and 65 of this Defence;

(b) says that paragraph 65A of the SOC does not identify the circumstances or material facts (if any) said to establish the EHG Notes were secured by one or more EHG Independent Payment Undertakings;

(c) says further that:

(i) the documents particularised in paragraph 65A of the SOC are the Pricing Supplements;

(ii) the Pricing Supplements do not establish or evidence:

(A) the matters in subparagraph (b) above;

(B) the particularised "Suppliers";

(C) invoices for the "Outstanding amount[s] (USD)" in respect of those "Suppliers", bearing the "Invoice date[s]" and "Due date[s]"; and

(d) otherwise does not know and cannot admit paragraph 65A of the SOC.

66 As to paragraph 66 of the SOC, IAL:

(a) repeats paragraphs 13, 26, 40E, 46, 63G and 65 of this Defence; and

(b) otherwise denies paragraph 66 of the SOC.

66A As to paragraph 66A of the SOC, IAL:

(a) repeats paragraph 66 of this Defence; and

(b) otherwise denies paragraph 66A of the SOC.

67 As to paragraph 67 of the SOC, IAL:

(a) says that Credit Suisse Virtuoso SICAV-SIF (**Credit Suisse Virtuoso**) is a company registered in Luxembourg; and

(b) otherwise does not know and cannot admit paragraph 67 of the SOC.

68 IAL denies paragraph 68 of the SOC and says further that:

(a) it repeats paragraphs 6-3, 6-5, 13, and 35C of this Defence;

(b) on 13 March 2019, Brereton signed Loss Payee Endorsement 3 and backdated it to 22 February 2019 (**Virtuoso Loss Payee Endorsement**);

(c) on 14 March 2019 and 29 March 2019, the Virtuoso Loss Payee Endorsement was executed by representatives of Greensill Bank and Credit Suisse Virtuoso respectively;

(d) it repeats the matters in paragraphs 47(b) to 47(n) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Virtuoso Loss Payee Endorsement:

(i) save for paragraphs 47(i)(vi), 47(i)(ix), 47(i)(x), 47(i)(xi)(C) and 47(i)(xi)(E) of this Defence; and

(ii) save that paragraph 47(i)(vii) of this Defence is replaced with:

"any power to issue loss payee endorsements did not authorise the issuing of an endorsement purporting to operate retrospectively, including in respect of Losses not yet suffered;"

(e) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute the Virtuoso Loss Payee Endorsement:

(i) under the terms of the Virtuoso Loss Payee Endorsement, the insurer had to pay a claim 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;

(ii) the power under clause 15.3(d) of the 2019 Policy to issue endorsements naming a loss payee was able to be exercised only in respect of a specific Loss which had arisen at the time of the endorsement;

(iii) the Virtuoso Loss Payee Endorsement purported to name Credit Suisse Virtuoso in respect of Losses irrespective of when they arose;

(iv) the effect of the Virtuoso Loss Payee Endorsement (if valid and effective, which is denied) was to stipulate an instruction from the "Insured" to the "Insurer" that Claim payments due under the 2019 Policy with respect to any Loss suffered by the Insured arising out of Assets acquired by the Insured from the Loss Payee prior to such Claim Payment shall be paid to the Loss Payee to the extent that the Claim has been accepted by the Insurer with respect to such Assets, and up to a maximum of the amount specified as the maximum amount that would be payable to the Loss Payee in respect of the relevant Customer as at the date on which the Loss Payee last acquired any Asset in respect of which such Loss was suffered;

(v) the power under clause 15.3(d) of the Policy to issue endorsements naming a loss payee could be exercised only after agreement between the Insured and the Insurer;

(vi) the Virtuoso Loss Payee Endorsement was purportedly issued at the instruction of the Insured, and not in respect of some prior agreement between the Insured and the Insurer and otherwise in the absence of agreement between the Insured and Insurer; and

(vii) by reason of the matters in:

(A) paragraph 68(e)(i) of this Defence;

(B) paragraphs 68(e)(ii) and 68(e)(iii) of this Defence; and/or

(C) paragraphs 68(e)(iv) to 68(e)(vi) of this Defence,

the Virtuoso Loss Payee Endorsement was invalid, of no effect and not binding on or enforceable as against IAL.

69 As to paragraph 69 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 13, 35C and 68 of this Defence; and

(b) otherwise denies paragraph 69 of the SOC.

70 As to paragraph 70 of the SOC, IAL:

(a) repeats paragraphs 13, 35C and 68 of this Defence; and

(b) otherwise denies paragraph 70 of the SOC.

71 As to paragraph 71 of the SOC, IAL:

(a) repeats paragraphs 42A and 65 of this Defence;

(b) says that the SOC does not identify:

(i) [Not used];

(ii) the agreement (if any) pursuant to which the acquisition was allegedly effected;

(iii) the circumstances which establish that there was an acquisition of the EHG Notes;

(iv) [Not used];

(c) says further that the Applicants particularise "Custody account entry advice(s)" which on their face appear to show the entry of certain securities into an "investment fund safekeeping account" in the name of "CS Virtuoso SICAV-SIF CS (Lux) Supply Chain Finance Fund";

(d) says that if the EHG Notes were acquired by Credit Suisse Virtuoso (which is not admitted), then there is no coverage in respect of the EHG Notes (or any of them) which were acquired after the expiry of the “Policy Period”, and which expired no later than:

(i) 22 February 2020; or

(ii) 1 March 2020; or

(e) otherwise does not know and cannot admit paragraph 71 of the SOC.

E.6 EHG default and claim by Greensill Bank under Policy 3690

72 As to paragraph 72 of the SOC, IAL:

(a) repeats paragraphs 42A and 45 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 72 of the SOC.

73 As to paragraph 73 of the SOC, IAL:

(a) repeats paragraphs 42A, 43 and 72 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 73 of the SOC.

74 As to paragraph 74 of the SOC, IAL:

(a) repeats paragraphs 42A, 43, 45 and 73 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 74 of the SOC.

75 As to paragraph 75 of the SOC, IAL:

(a) repeats paragraphs 42A, 45 and 46 of this Defence;

(b) says that it puts the Applicants to proof on each condition necessary for there to be an allegation that:

(i) there were in existence the EHG Independent Payment Undertakings;

(ii) the EHG Independent Payment Undertakings existed at all material times, including at the time of any purported assignment, at the time at which an "Asset" is said to have been derived from such debts and at the time each such "Asset" was acquired by an "Insured"; and

(iii) there was a failure by EHG to pay amounts pleaded at paragraph 45 of the SOC in relation to the EHG Payment Undertakings by 3 April 2020; and

(c) otherwise does not know and cannot admit paragraph 75 of the SOC.

76 As to paragraph 76 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 40H, 61 and 75 of this Defence;

(b) says that there is an "Insured Cause" under the 2019 Policy only if there was the failure of a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date" for any reason;

(c) says that, as best it understands the Applicants' case, it is that:

(i) EHG was a "Customer";

(ii) the "Eligible Debts" were the EHG Independent Payment Undertakings (SOC, paragraph 61);

(d) says that there is no articulation in the SOC of the "Backstop Date";

(e) as to the allegation that EHG is a "Customer":

(i) IAL denies the allegation for the reasons at paragraphs 49, 54 and 57 of this Defence;

(ii) IAL otherwise puts the Applicants to proof on each condition necessary for EHG to be a "Customer";

(f) as to the allegation that the EHG Independent Payment Undertakings were "Eligible Debts":

(i) IAL denies the allegation for the reasons at paragraph 40F of this Defence; and

(ii) IAL otherwise puts the Applicants to proof on each condition necessary for those alleged obligations to be "Eligible Debts";

(g) as to the requirement that there was a failure by EHG to make payment on or before the "Backstop Date", for the purposes of the definition of "Insured Cause" under the 2019 Policy, IAL says:

(i) the Applicants do not plead any material facts capable of establishing the "Backstop Date";

(ii) it puts the Applicants to proof on each condition necessary for there to be a failure by EHG to pay an "Eligible Debt" on or before the "Backstop Date"; and

(h) otherwise denies paragraph 76 of the SOC.

77 As to paragraph 77 of the SOC, IAL:

(a) repeats paragraphs 13 and 32 of this Defence;

(b) says that as at 12 May 2020, and at all material times prior to 26 July 2020, it was not aware of, and did not agree to or authorise the 2019 Policy, and therefore could not give any relevant notice to Greensill Bank; and

(c) otherwise denies paragraph 77 of the SOC.

78 As to paragraph 78 of the SOC, IAL:

(a) repeats paragraphs 13, 45 and 75 of this Defence;

(b) says that on 13 May 2020 BCC received a document styled "Claim Form" dated 12 May 2020 (**Claim Form**); and

Particulars

Email from Birte Kuhlmann of Greensill Bank to Brereton dated 13 May 2020 (BCC.0001.0002.5313).

(c) otherwise does not know and cannot admit paragraph 78 of the SOC.

79 As to paragraph 79 of the SOC, IAL:

(a) repeats paragraphs 65 and 78 of this Defence;

(b) says that the Claim Form:

(i) contained "Appendix 2", titled "ISIN details";

(ii) "Appendix 2" contained a table with a column entitled "Noteholder";

(iii) "CS Virtuoso" was listed as "Noteholder" in the column entitled "Noteholder"; and

(c) otherwise does not know and cannot admit paragraph 79 of the SOC.

80 As to paragraph 80 of the SOC, IAL:

(a) repeats paragraphs 13, 26, 28, 35C, 40D, 40I, 65, 78 and 79 of this Defence;

(b) says further that:

(i) on the proper construction of the 2019 Policy (if valid and effective, which is denied), the only Assets (which are Notes) in respect of which a Loss may be claimed are Assets:

(A) 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;

(B) derived from an Eligible Debt, comprising receivables generated by a Supplier referred to in a valid debt endorsement, owed by an Eligible Customer; and

(C) arising under the Transaction Documents defined in the 2019 Policy;

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

(ii) neither at the time of submitting the Claim Form, nor at any relevant time thereafter, has any Asset been relevantly owned by Greensill Bank;

Particulars

Paragraph 79 of the SOC alleges that the holder of the EHG Notes is Credit Suisse Virtuoso.

(iii) IAL otherwise does not know and cannot admit whether the EHG Notes are Assets of the kind described in paragraph 80(b)(i) of this Defence;

(c) further or alternatively says that:

(d) on the Applicants' pleaded case, the alleged Insured Cause occurred no later than 3 April 2020 (see SOC, paragraph 75);

(e) on the Applicants' pleaded case, Greensill Bank submitted a "Claim Form" no later than 12 May 2020 (see SOC, paragraph 78);

(f) on the Applicants' pleaded case, Greensill Bank acquired the "Assets", being the EHG Notes, no earlier than 10 July 2020 (see SOC, paragraph 101(a));

(g) the "Insured" did not hold the "Assets" at the time of the submission of a "Claim Form" or at the time of the alleged Insured Cause;

(h) further or alternatively, denies that the EHG Notes are derived from an "Eligible Debt" for the reasons pleaded in paragraph 61 of this Defence;

(i) further or alternatively, does not know and therefore cannot admit whether Greensill Bank has suffered a "Loss" as defined, because IAL does not know whether:

(i) the EHG Notes were owned by Greensill Bank or Credit Suisse Virtuoso during the 'Policy Period' of the 2019 Policy (if valid and effective, which is denied);

(ii) at any time after submitting the Claim Form, any 'Asset' was relevantly owned by Greensill Bank; and

(iii) any 'Loss' has arisen from an 'Insured Cause'; and

(iv) otherwise refers to and repeats paragraph 61(b) of this Defence;

(j) further or alternatively, if Greensill Bank has suffered a "Loss" as defined in the 2019 Policy (which is denied) then IAL does not know what steps Greensill Bank has taken to mitigate its 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;

(k) further or alternatively, repeats paragraph 215(b) of this Defence and says that if the matters pleaded therein are established, any loss suffered by Greensill Bank is not recoverable; and

(l) otherwise denies paragraph 80 of the SOC.

81 As to paragraph 81 of the SOC, IAL:

(a) says that the defined meaning of "Expected Allocation" in the 2019 Policy differs depending on the character of the "Asset";

(b) says that the only "Assets" alleged by the Applicants are "Notes", being the EHG 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 EHG Notes were "Assets" (which is denied), 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) says that there is no allegation as to why, in respect of the EHG Notes:

(i) there was an "Expected Allocation" (as defined) in the amount of USD USD 34,998,726;

(ii) that amount was the "Final Redemption Amount" as set out in the "Pricing Supplement" as defined in the "Master Trust Deed";

(f) says that there is no allegation or articulation as to why the value of the entitlements of a holder of the EHG Notes was nil and, for example, there is no identification of:

(i) the entitlements of a holder of the EHG Notes;

(ii) the sources of value of those entitlements;

(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 81 of the SOC.

82 As to paragraph 82 of the SOC, IAL:

(a) repeats paragraphs 13, 28, 35C, 40D to 40I, 65, and 78 to 81 of this Defence;

(b) says further that:

(i) on the proper construction of the 2019 Policy (if valid and effective, which is denied), the only entity which may make a claim is the Insured, and an Insured may do so only in respect of a Loss suffered by the Insured in respect of an Asset owned by the Insured during the Policy Period and immediately prior to the payment of the claim;

(ii) neither at the time of submitting the Claim Form, nor at any relevant time thereafter, has any Asset been relevantly owned by Greensill Bank;

Particulars

Paragraph 79 of the SOC alleges that the holder of the EHG Notes is CS Virtuoso.

(c) in the premises of paragraphs (a)-(b) of this Defence, Greensill Bank did not have a right under the 2019 Policy (if valid and effective, which is denied) to be indemnified by IAL in respect of the EHG Default; and

(d) otherwise denies paragraph 82 of the SOC.

E.7 Acceptance of the claim and entry into Recovery Proposal Letter

83 As to paragraph 83 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 13, 35C and 42B of this Defence;

(b) denies paragraph 83 of the SOC;

(c) says that insofar as the Recovery Proposal Letter purports to be in settlement of a claim under the 2019 Policy (if valid and effective, which is denied):

(i) BCC and/or Brereton did not have authority:

(A) to settle a claim of the kind described in the Recovery Proposal Letter on behalf of IAL; and/or

(B) to enter into an agreement of the kind proposed by the Recovery Proposal Letter;

(ii) in the premises of paragraph 83(c)(i) of this Defence, the Recovery Proposal Letter is invalid, of no effect and not binding on or enforceable as against IAL;

Particulars

Letter from IAL to Greensill Bank and GCPL dated 14 January 2021 (IAL.500.008.0275).

(d) says further that, at all material times, IAL did not know:

(i) that the Recovery Proposal Letter had been signed by Brereton; and

(ii) that the Recovery Proposal Letter had been issued;

(e) says further that Greensill Bank knew, or ought reasonably to have known, that Brereton did not have authority to enter into the Recovery Proposal Letter or execute the Claim Offer Letter on behalf of IAL.

Particulars

The matters in paragraphs 13(f) to 13(i) 36A(l), 37(l) and 49(m) of this Defence.

Further Greensill Bank's knowledge (through its agents Lex Greensill and/or John Whelan) can be inferred from at least the following facts:

(i) The Recovery Proposal Letter and Claim Offer Letter were drafted on behalf of GCUK and Greensill Bank and presented to Brereton by email from John Whelan of GCUK to Brereton on or about 18 June 2020 (IAL.500.002.0018);

(ii) Brereton signed those documents almost immediately after they were provided to him, and returned the signed Recovery Proposal Letter to Lex Greensill and John Whelan of GCUK by email dated on or about 18 June 2020 (BCC.0001.0001.6917; BCC.0001.0001.6918) and the signed Claim Offer Letter to Lex Greensill by email dated on or about 21 June 2020 (BCC.0001.0002.5539; BCC.0001.0002.5540);

(iii) The Recovery Proposal Letter providing for the 'pre-funding' by a related entity of the insured was not an ordinary arrangement for the settlement of an insurance claim;

(iv) It would be highly unusual, to the knowledge of Greensill Bank and its representatives, for an individual underwriter to have authority to settle a claim over USD 34,000,000 (particularly involving a highly unusual

payment arrangement) within that period of time and without any further reference to any other person at the insurer; and

(v) Further particulars may be provided following discovery.

84 As to paragraph 84 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 13 and 83 of this Defence; and

(b) otherwise denies paragraph 84 of the SOC.

85 As to paragraph 85 of the SOC, IAL:

(a) repeats paragraphs 42A, 42B and 83 of this Defence; and

(b) otherwise denies paragraph 85 of the SOC.

86 As to paragraph 86 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 13, 42A, 83 and 85 of this Defence; and

(b) otherwise denies paragraph 86 of the SOC.

87 As to paragraph 87 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, and 13, of this Defence;

(b) denies paragraph 87 of the SOC;

(c) says that insofar as the Claim Offer Letter purports to be in settlement of a claim under the 2019 Policy (if valid and effective, which is denied):

(i) BCC and/or Brereton did not have authority:

(A) to settle a claim of the kind described in the Claim Offer Letter on behalf of IAL; and/or

(B) to enter into an agreement of the kind proposed by the Claim Offer Letter;

(ii) in the premises of paragraph 87(c)(i) of this Defence, the Claim Offer Letter is invalid, of no effect and not binding on or enforceable as against IAL;

Particulars

Letter from IAL to Greensill Bank and GCPL dated 14 January 2021 (IAL.500.008.0275).

(d) says further that, at all material times, IAL did not know:

(i) that the Claim Offer Letter had been signed by Brereton; and

(ii) that the Claim Offer Letter had been issued.

88 As to paragraph 88 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 13 and 87 of this Defence; and

(b) otherwise denies paragraph 88 of the SOC.

89 As to paragraph 89 of the SOC, IAL:

(a) repeats paragraphs 6-3, 6-5, 13 and 87 of this Defence; and

(b) otherwise denies paragraph 89 of the SOC.

90 As to paragraph 90 of the SOC, IAL:

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

(b) otherwise does not know and cannot admit paragraph 90 of the SOC.

91 As to paragraph 91 of the SOC, IAL:

(a) repeats paragraphs 42A, 83 and 90 of this Defence;

(b) denies that the Recovery Proposal Letter confers any rights on GCUK or any other person as against IAL; and

(c) otherwise does not know and cannot admit paragraph 91 of the SOC.

92 As to paragraph 92 of the SOC, IAL:

(a) repeats paragraphs 42A, 83 to 85 and 91 of this Defence; and

(b) otherwise denies paragraph 92 of the SOC.

F CLAIMS

F.1 Claim under the Recovery Proposal Letter

93 As to paragraph 93 of the SOC, IAL:

(a) repeats paragraphs 42A and 83 of this Defence;

(b) says further that if the Recovery Proposal Letter is a binding agreement (which is not admitted), then as far as IAL is aware:

(i) GCUK did not use its best endeavours to obtain recoveries against EHG in order to minimise the Unrecovered Relevant Amount;

(ii) GCUK did not provide IAL with regular reports as to progress; and

(c) otherwise does not know and cannot admit paragraph 93 of the SOC.

94 As to paragraph 94 of the SOC, IAL:

(a) repeats paragraphs 42A and 65 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 94 of the SOC.

95 As to paragraph 95 of the SOC, IAL:

(a) repeats paragraphs 42A, 46, 65 and 78 of this Defence; and

(b) otherwise does not know and cannot admit paragraph 95 of the SOC.

96 As to paragraph 96 of the SOC, IAL:

(a) repeats paragraphs 83 and 85 of this Defence;

(b) further, and in the alternative, says that:

(i) even if (which is denied) the Recovery Proposal Letter had operative effect including as against IAL, the obligation on IAL pleaded in paragraph 85(c) of the SOC was in consideration for, and conditional upon, the prior payment by GCUK to BCC of USD 34,998,726, which payment is not alleged by the Applicants to have been made;

(ii) in the premises, the terms of the Recovery Proposal Letter do not oblige IAL to make a payment to Greensill Bank in the amount alleged or at all; and

(c) otherwise denies paragraph 96 of the SOC.

97 As to paragraph 97 of the SOC, IAL:

(a) repeats paragraphs 83, 85 and 96 of this Defence;

(b) admits that it has not paid the amount alleged in paragraph 97 of the SOC to Greensill Bank;

(c) denies that Greensill Bank is entitled to payment under the Recovery Proposal Letter as alleged in paragraph 97 of the SOC; and

(d) otherwise denies paragraph 97 of the SOC.

98 As to paragraph 98 of the SOC, IAL:

(a) repeats paragraphs 13, 83 and 97 of this Defence; and

(b) otherwise denies paragraph 98 of the SOC.

99 As to paragraph 99 of the SOC, IAL:

(a) repeats paragraphs 13, 83 and 97 of this Defence;

(b) if there is any breach under the Recovery Proposal Letter (which is denied), denies that damages would be an inadequate remedy;

(c) says further that Greensill Bank is not entitled to an order for specific performance; and

(d) otherwise denies paragraph 99 of the SOC.

F.2 Claim under Policy 3690

100 As to paragraph 100 of the SOC, IAL:

(a) repeats paragraphs 13,35C, 83 and 87 of this Defence; and

(b) says further that as Brereton had no authority to enter into the Claim Offer Letter, that letter did not constitute a confirmation of indemnity by IAL or require IAL to otherwise pay Greensill Bank's claim; and

(c) otherwise denies paragraph 100 of the SOC.

101 As to paragraph 101 of the SOC, IAL:

(a) repeats paragraphs 13, 35C 40E to 40H, 47, 49, 54, 57, 61, 65, 66, 68, 75 and 76 of this Defence;

(b) as to paragraphs 101(a)-101(c) of the SOC:

(i) repeats paragraphs 40H, 42A and 81 of this Defence;

(ii) does not know and cannot admit the matters alleged at paragraphs 101(a), (b) and (c) of the SOC;

(c) as to paragraph 101(d) of the SOC:

(i) repeats paragraphs 40H, 76 and 80 of this Defence;

(ii) denies that Greensill Bank has suffered Loss as alleged in paragraph 101(d) of the SOC;

(d) as to paragraphs 101(e)-101(f) of the SOC:

(i) admits that it has not indemnified Greensill Bank under the 2019 Policy;

(ii) says that Greensill Bank is not entitled to indemnity under the 2019 Policy; and

(iii) otherwise denies paragraphs 101(e) and (f) of the SOC;

(e) as to paragraph 101(g) of the SOC:

(i) repeats paragraph 101(c) of this Defence;

(ii) 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 emails dated 16 October 2020 (IAL.500.008.0329) and 21 December 2020 (IAL.500.008.0328), IAL wrote to Marsh requesting information in support of the Claim for indemnity.

By letter dated 2 June 2021 (IAL.500.008.0330) Clyde & Co, as lawyers for IAL, wrote to CMS Hasche Sigle, as lawyers for Greensill Bank, under cover of a reservation of rights, as to the validity of the 2019 Policy and endorsements, and 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.

(iii) says that Greensill Bank is not entitled to an award of interest under section 57 of the *ICA*;

(iv) otherwise denies paragraph 101(g) of the SOC; and

(f) otherwise denies paragraph 101 of the SOC.

101A IAL says further that in the alternative to paragraphs 83, 84, 87 and 88 of this Defence:

(a) under the Recovery Proposal Letter, GCUK agreed to pay to Credit Suisse Virtuoso an amount of USD 34,998,726;

(b) if, as alleged in paragraph 101(a) of the SOC, the EHG Notes were transferred from Credit Suisse Virtuoso to Greensill Bank on or around 10 July 2020, then in the premises of paragraph 101A(a) of this Defence, Greensill Bank acquired the EHG Notes for no consideration;

(c) Greensill Bank has suffered no loss because it acquired the EHG Notes for no consideration; and

(d) Greensill Bank is not entitled to an indemnity under the 2019 Policy (if valid and effective, which is denied) because it has not suffered any "Loss" as defined in the 2019 Policy.

101B In further answer to the Applicants' 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" (2019 Policy 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" (2019 Policy 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.

102 IAL does not know and cannot admit paragraph 102 of the SOC.

F.1A Misleading or deceptive conduct by IAL

The 2017 LOS Authority Representations

102A In answer to paragraph 102A of the SOC, IAL:

(a) repeats paragraphs 6-50, 35B and 35AO 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, 6-50, 35B and 35AG to 35AN) 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.

102B IAL denies paragraph 102B of the SOC.

102C IAL denies paragraph 102C of the SOC.

2018 Excess Policy Representations

102D In answer to paragraph 102D of the SOC, IAL:

(a) repeats paragraphs 6-50, 35B, 35AO and 35AX 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, 6-50, 35B, 35AG to 35AN, and 35AP to 35AW) 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.

102E IAL denies paragraph 102E of the SOC.

102F IAL denies paragraph 102F of the SOC.

Sub-Direct Policy Authority Representations

102G In answer to paragraph 102G of the SOC, IAL:

(a) repeats paragraphs 6-50, 35B, 35AO, 35AX and 35BG 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, 6-50, 35B, 35AG to 35AN, 35AP to 35AW, and 35AY to 35BF) 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:

IAL did not communicate, to the Applicants or any person, any approval of the Proposed Greensill Policy Structure and Proposed Greensill Policy Wording; and

(i) 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.

102H IAL denies paragraph 102H of the SOC.

102I IAL denies paragraph 102I of the SOC.

2017 Standalone Policy Representations

102J In answer to paragraph 102J of the SOC, IAL:

(a) repeats paragraphs 6-50, 35B, 35AO, 35AX, 35BG and 35BP 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, 6-50, 35B, 35AG to 35AN, 35AP to 35AW, 35AY to 35BF, and 35BH to 35BO) 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.

102K IAL denies paragraph 102K of the SOC.

102L IAL denies paragraph 102L of the SOC.

2018 LOS Policy Representations

102M In answer to paragraph 102M of the SOC, IAL:

(a) repeats paragraphs 6-50, 35B, 35AO, 35AX, 35BG, 35BP and 35BY 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, 6-50, 35B, 35AG to 35AN, 35AP to 35AW, 35AY to 35BF, 35BH to 35BO, and 35BQ to 35BX) 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.

102N IAL denies paragraph 102N of the SOC.

102O IAL denies paragraph 102O of the SOC.

Nokia Policy Representations

102P In answer to paragraph 102P of the SOC, IAL:

(a) repeats paragraphs 6-50, 35B, 35AO, 35AX, 35BG, 35BP, 35BY and 35CH 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, 6-50, 35B, 35AG to 35AN, 35AP to 35AW, 35AY to 35BF, 35BH to 35BO, 35BQ to 35BX, and 35BZ to 35CG) 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.

102Q IAL denies paragraph 102Q of the SOC.

102R IAL denies paragraph 102R of the SOC.

2019 Excess Policy Representations

102S In answer to paragraph 102S of the SOC, IAL:

(a) repeats paragraphs 6-50, 35B, 35AO, 35AX, 35BG, 35BP, 35BY, 35CH and 35CQ 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, 6-50, 35B, 35AG to 35AN, 35AP to 35AW, 35AY to 35BF, 35BH to 35BO, 35BQ to 35BX, 35BZ to 35CG, and 35CI to 35CP) 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.

102T IAL denies paragraph 102T of the SOC.

102U IAL denies paragraph 102U of the SOC.

The 2019 Standalone Representations

102V In answer to paragraph 102V of the SOC, IAL:

(a) repeats paragraphs 6-50, 35B, 35AO, 35AX, 35BG, 35BP, 35BY, 35CH, 35CQ and 35CS 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, 6-50, 35B, 35AG to 35AN, 35AP to 35AW, 35AY to 35BF, 35BH to 35BO, 35BQ to 35BX, 35BZ to 35CG, 35CI to 35CP, and 35CR) 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.

102W IAL denies paragraph 102W of the SOC.

102X IAL denies paragraph 102X of the SOC.

Misleading or Deceptive Conduct

102Y IAL denies paragraph 102Y of the SOC and in respect of:

(a) the "2017 LOS Policy Authority Representations", refers to and repeats paragraphs 102A to 102C of this Defence;

(b) the "2018 Excess Policy Authority Representations", refers to and repeats paragraphs 102D to 102F of this Defence;

(c) the "Sub-Direct Policy Authority Representations", refers to and repeats paragraphs 102G to 102I of this Defence;

(d) the "2017 Standalone Policy Authority Representations" refers to and repeats paragraphs 102J to 102L of this Defence;

(e) the "2018 LOS Policy Authority Representations", refers to and repeats paragraphs 102M to 102O of this Defence;

(f) the "Nokia Policy Authority Representations", refers to and repeats paragraphs 102P to 102R of this Defence;

(g) the "2019 Excess Policy Authority Representations", refers to and repeats paragraphs 102S to 102U of this Defence; and

(h) the "2019 Standalone Policy Authority Representations", refers to and repeats paragraphs 102V to 102X of this Defence.

102Z As to paragraph 102Z of the SOC, IAL:

(a) repeats paragraphs 6(c), 6-3, 13, 35A and 35B of this Defence;

(b) as to sub-paragraph (a), repeats paragraphs 35AG to 35AO of this Defence;

(c) as to sub-paragraph (b), repeats paragraphs 35AP to 35AX of this Defence;

(d) as to sub-paragraph (c), repeats paragraphs 35AY to 35BG of this Defence;

(e) as to sub-paragraph (d), repeats paragraphs 35BH to 35BP of this Defence;

(f) as to sub-paragraph (e), repeats paragraphs 35BQ to 35BY of this Defence;

(g) as to sub-paragraph (f), repeats paragraphs 35BZ to 35CH of this Defence;

(h) as to sub-paragraph (g), repeats paragraphs 35CI to 35CQ of this Defence; and

(i) insofar as the Applicants seek to rely on IAL establishing that each of the policies referred to in paragraph 102Z 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.

102AA IAL denies paragraph 102AA of the SOC and repeats and refers to paragraphs 6(c), 6-3 and 13 of this Defence.

102AB IAL denies paragraph 102AB of the SOC and repeats and refers to paragraphs 6(c), 6-3, 13, 35AO, 35AX, 35BG, 35BP, 35BY, 35CH and 35CQ of this Defence and says further that no material facts establishing the alleged reasonable expectation are pleaded.

102AC IAL denies paragraph 102AC of the SOC, repeats and refers to paragraphs 6(c), 6-3, 13, 35AG, 35AP, 35AY, 35BH, 35BQ, 35BZ, 35CI, 35CR and 35CS of this Defence.

Causation and Loss

102AD As to paragraph 102AD 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.

102AE As to paragraph 102AE 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 102AD;

(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 103 of the SOC; and

(b) denies the paragraph.

102AF As to paragraph 102AF 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 103 of the SOC and to acquire the EHG Notes, or which individual or individuals at Greensill Bank were induced; and

(c) denies the paragraph.

102AG IAL denies paragraph 102AG 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.

102AH As to paragraph 102AH of the SOC, IAL:

(a) denies paragraph 102AH and repeats paragraphs 102AD to 102AG of this Defence;

(b) says that the Applicants do not plead any material facts or particularise any documents establishing:

(i) that Greensill Bank paid out the amount of EUR 30,855,256.19 on 7 July 2020; or

(ii) the person or persons to whom the amount was paid; and

(c) says further that, to the extent IAL is liable for the loss or damage as alleged paragraph 102AH of the SOC (which is denied) it refers to and repeats paragraph 214 of this defence.

F.3 Claims against BCC

F.3.1 Breach of Warranty of Authority

103 Save to repeat that, for the reasons set out in paragraphs 6(b), 6-3, 6-5 and 13 of this Defence, IAL denies that BCC or Brereton had the authority of IAL to enter into the instruments pleaded at paragraph 103 of the SOC, IAL does not know and cannot admit paragraphs 103 to 107 of the SOC, which do not make allegations against it.

104-107 [Not used].

107A As to paragraph 107A of the SOC, IAL:

(a) repeats paragraphs 35C(a) to 35C(l) of this Defence;

(b) further repeats paragraphs 54(c) and 54(d) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 107A(b) of the SOC says that the financial service the subject of the allegation in paragraph 107A(b) is not identified;

(d) denies paragraph 107A(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 103 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 107A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 107A(c) of the SOC; and

(v) the conduct of BCC referred to in paragraph 103 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 35C(f)(v) of this Defence.

(e) denies paragraph 107A(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 103 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 107A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 107A(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 13(f), 13(g), 13(h), 13(j) and 35G(k) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 54(g) 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 cannot admit paragraph 107A(f) of the SOC; and

(g) otherwise denies paragraph 107A of the SOC.

F.3.2 Misleading or Deceptive Conduct

108 Save to repeat that, for the reasons set out in paragraphs 6(c), 6-3, 6-5, 13 and 103 to 107A of this Defence, IAL 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 108 to 116 of the SOC, which do not make allegations against it.

109-116 [Not used].

116A As to paragraph 116A of the SOC, IAL:

(a) repeats paragraphs 35C(a) to 35C(l) of this Defence;

(b) further repeats paragraphs 54(c) and 54(d) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 116A(b) of the SOC:

(i) says that the financial service the subject of the allegation in paragraph 116A(b) is not identified; and

(ii) subject to paragraphs 35C(a) to 35C(b) of this Defence, admits that if the conduct of BCC pleaded at paragraphs 108 to 110 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 116A(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 108 to 110 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 116A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 116A(c) of the SOC; and

(v) the conduct of BCC referred to in paragraphs 108 to 110 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 35C(f)(v) of this Defence.

(e) denies paragraph 116A(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 116A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 116A(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 13(f), 13(g), 13(h), 13(j) and 35G(k) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 54(g) 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 116A(f) of the SOC; and

(g) otherwise denies paragraph 116A of the SOC.

F.3.3 Section 1041E Claim

117 Save to repeat that, for the reasons set out in paragraphs 6-3, 6-5, 13 and 103 to 116A of this Defence, IAL denies that BCC or Brereton was authorised by IAL to make an agreement in terms of any of the documents referred to in paragraph 103 of the SOC, IAL does not know and cannot admit paragraphs 117 to 121 of the SOC, which do not make allegations against it.

118-121 [Not used].

121A As to paragraph 121A of the SOC, IAL:

(a) repeats paragraph 35C(a) to 35C(l) of this Defence;

(b) further repeats paragraphs 54(c) and 54(d) of this Defence in respect of any conduct of BCC on and from 1 July 2019;

(c) as to paragraph 121A(b) of the SOC, subject to paragraphs 35C(a) to 35C(l) of this Defence, admits that if the conduct of BCC pleaded at paragraphs 117 to 119 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 121A(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 117 to 119 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 121A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 121A(c) of the SOC; and

(v) the conduct of BCC referred to in paragraphs 117 to 119 of the SOC was not conduct on which Greensill Bank could reasonably be expected to rely;

Particulars

Particulars under paragraph 35C(f)(v) of this Defence.

(e) denies paragraph 121A(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 121A(d) of the SOC with the reasonable expectation as to reliance alleged in paragraph 121A(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);

Particulars

Particulars under paragraphs 13(h) and 13(j) of this Defence.

Particulars under paragraph 35G(m) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 54(g) 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 121A(f) of the SOC; and

(g) otherwise denies paragraph 121A of the SOC.

F.4 Claims against Greg Brereton

F.4.1 Breach of Warranty of Authority

122 [Not used].

123 Save to repeat that, for the reasons set out in paragraphs 6(c), 6-3 and 13 of this Defence, IAL denies that BCC or Brereton had the authority of IAL to enter into the instruments pleaded at paragraph 103 of the SOC, IAL does not know and cannot admit paragraphs 123 to 127 of the SOC, which do not make allegations against it.

124-127 [Not used].

127A As to paragraph 127A of the SOC, IAL:

(a) repeats paragraph 107A of this Defence;

(b) as to paragraph 127A(f) of the SOC:

(i) repeats paragraph 54 of this Defence; and

(ii) otherwise, does not know and cannot admit paragraph 127A(f) of the SOC; and

(c) otherwise denies paragraph 127A of the SOC.

F.4.2 Misleading or Deceptive Conduct

128 Save to repeat that, for the reasons set out in paragraphs 6-3, 6-5, 13, and 122 to 127A of this Defence, IAL 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 128 to 136 of the SOC, which do not make allegations against it.

129-136 [Not used].

136A As to paragraph 136A of the SOC, IAL:

(a) repeats paragraph 116A of this Defence;

(b) as to paragraph 136A(f) of the SOC:

(i) repeats paragraph 54 of this Defence; and

(ii) otherwise, does not know and cannot admit paragraph 136A(f) of the SOC; and

(c) otherwise denies paragraph 136A of the SOC.

F.4.3 Section 1041E Claim

137 Save to repeat that, for the reasons set out in paragraphs 6-3, 6-5, 13 and 123 to 136A of this Defence, IAL denies that BCC or Brereton was authorised by IAL to make an agreement in terms of any of the documents referred to in paragraph 103 of the SOC, IAL does not know and cannot admit paragraphs 137 to 141 of the SOC, which do not make allegations against it.

138-141 [Not used].

141A As to paragraph 141A of the SOC, IAL:

(a) repeats paragraph 121A of this Defence;

(b) does not know and cannot admit paragraph 141A(f) of the SOC; and

(c) otherwise denies paragraph 141A of the SOC.

F.5 Claims against Marsh and Marsh Pty Ltd

141B-209 As to paragraphs 141B to 209, 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 6(c), 6-1(c), 6-3, 13, and 35A to 35B 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 35AA to 35AO and 35CR of this Defence;

(iii) it does not plead to paragraphs 203AE to 203BG 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.

F.6 Further Answer to Applicants' Claim

210 In further answer to the Applicants' claim, IAL:

(a) says that it was an express term of the 2019 Policy 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 Hoffman Master 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 the alleged EHG Default;

(d) says that:

(i) on the Applicants' pleaded case (which is not admitted):

(A) the alleged EHG Default occurred by 3 April 2020 (see paragraph 75 of the SOC):

(B) Credit Suisse Virtuoso subsequently transferred the EHG Notes to Greensill Bank on or around 10 July 2020 (see paragraph 101(a) of the SOC);

(C) Greensill Bank acquired the EHG Notes when they were in default;

(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; and

(iii) Greensill Bank acquired the EHG Notes in circumstances where it was uncommercial to do so;

(e) says that, as best IAL understands the Applicants' case:

(i) in transferring the EHG Notes, Credit Suisse Virtuoso exercised rights under the Hoffman Master Trust Deed;

(ii) in acquiring the EHG Notes, Greensill Bank exercised rights under the Hoffman Master Trust Deed; and

(iii) in acquiring the EHG Notes:

(A) Greensill Bank did not act reasonably and prudently to prevent and mitigate "Losses"; and

(B) Greensill Bank instead took a step which had no commercial explanation other than being a step which would or might generate an alleged "Loss" and a potential right of indemnity under the 2019 Policy which otherwise would not have existed;

Particulars

The conclusion that there is no commercial justification is supported by the fact that the alleged transfer of the EHG Notes from Credit Suisse Virtuoso to Greensill Bank occurred when the EHG Notes were in substantial default.

The conclusion is further supported by the fact that the Applicants do not allege that Greensill Bank paid any money to Credit Suisse Virtuoso in exchange for the transfer of the EHG Notes.

(f) says that a person in the position of Credit Suisse Virtuoso or Greensill Bank, acting reasonably and prudently to prevent and mitigate "Losses" would not have transferred or acquired the EHG Notes;

(g) says that had Credit Suisse Virtuoso not transferred the EHG Notes and had Greensill Bank not acquired the EHG Notes:

(i) there would have been no basis to allege, and it would not have been the fact, that an alleged "Insured" owned the "Asset" (as the Applicants allege at paragraph 80 of the SOC); and

(ii) there would have been no alleged "Loss" and/or no alleged entitlement to an indemnity under the 2019 Policy;

(h) says that there is no entitlement to an indemnity under the 2019 Policy (if valid and effective, which is denied) to the extent that any "Loss" said to give rise to that entitlement has been caused by a breach of clause 10.7(a), which is, for the reasons referred to in paragraphs 210(a) to 210(g) of this Defence, the case here;

(i) says further that, in the premises, the Applicants have no entitlement to an indemnity;

(j) says further that:

(i) by reason of the matters alleged in paragraphs 210(a) to 210(h) of this Defence, for Greensill Bank (insofar as it claims to be an insured, which is denied) to rely upon provisions of the 2019 Policy providing for indemnity would be for it to fail to act with the utmost good faith implied into the Policy by reason of section 13 of the *ICA*; and

(ii) in the premises and by reason of section 14 of the *ICA*, Greensill Bank may not seek or obtain indemnity under the 2019 Policy.

211 In further answer to the Applicants' claim, IAL says that:

(a) it was an express term of the 2019 Policy that the Insurer shall be deemed to have delivered a "Stop Asset Acquisition Instruction" to the "Insured" in relation to "Assets" arising from a "Customer" or if applicable a "Customer Group", where the "Customer" or any member of the applicable "Customer Group" has failed to pay a "Debt" on the relevant "Due Date" and such failure to pay has not been remedied within 10 "Business Days" after the "Due Date" (2019 Policy clause 8.3(a));

(b) upon the deemed delivery of a "Stop Asset Acquisition Instruction", an "Asset" (arising from the applicable "Customer" or "Customer Group") acquired after the deemed delivery of the "Stop Asset Acquisition Instruction" shall attach to the 2019 Policy;

(c) the asserted failures to pay occurred from approximately 17 February 2020 (SOC, paragraph 72) and, 10 "Business Days" following the first asserted failure to pay, IAL was deemed to have issued a "Stop Asset Acquisition" (under clause 8.3(a));

(d) the 2019 Policy did not attach to each "Asset" (including each of the EHG Notes) arising from EHG acquired thereafter; and

(e) in the event that the EHG Notes were acquired by Credit Suisse Virtuoso and/or a purported Insured after 2 March 2020, there is no coverage in respect of the EHG Notes.

212 In further answer to the Applicants' claim, IAL:

(a) refers to and repeats paragraphs 28(e)(ii) and 215 of this Defence;

(b) says that each of the matters in paragraphs 211(c) to 211(e) of this Defence was material information which ought to have been delivered by GCUK to IAL in response to the requests referred to in paragraph 101(e) of this Defence but was not; and

(c) says further that each of the matters in paragraphs 211(b) to 211(e) of this Defence constituted a Material Policy Impact as defined by the 2019 Policy, such that IAL has no liability to indemnify Greensill Bank for the loss claimed in these proceedings.

213 In further answer to the Applicants' claim, IAL says that:

(a) it was a term of the 2019 Policy 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 Schedule 1 and was the lower of (inter alia) the relevant "Customer Limit" of an "Eligible Customer";

(c) the "Maximum Limit of Liability" was defined in Schedule 1 and Schedule 6 and meant (inter alia), for any particular "Customer", the amount as set out in the relevant "Customer Endorsement";

(d) it was a term of 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" (Schedule 1, definition of "Customer Limit"); and

(e) if, and to the extent that, the "Loss" in respect of EHG Default exceeds the "Applicable Limit of Liability" or the "Maximum Limit of Liability" in respect of relevant "Customers", there is no coverage.

214 In further answer to paragraphs 35C, 35F, 39B, 39D, 39K, 100, 101(e)-(g), 102AH, 116A and 136A of the SOC, insofar as IAL is liable for any loss and damage suffered by Greensill Bank, which is denied, IAL says that:

(a) it repeats paragraphs 35C, 35F, 39B, 39D, 39K, 39N, 102AH, 116A and 136A 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) section 1041H of the *Corporations Act* (paragraphs 110, 112, 130 and 132 of the SOC), in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 1041I of the *Corporations Act*;

(ii) section 18 of the *ACL* (paragraphs 110, 112, 130 and 132 of the SOC) in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 236 of the *ACL*;

(iii) section 12DA of the *ASIC Act* in respect of alleged misleading or deceptive conduct (paragraphs 110, 112, 130 and 132 of the SOC) 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* (SOC, paragraphs 102Y, 102AA and 102AC), 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* (SOC, paragraphs 102Y, 102AA and 102AC) 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* (SOC, paragraphs 102Y, 102AA and 102AC) 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:

(i) USD 34,998,726 (paragraphs 107 and 127 of the SOC), being:

(A) the amount IAL has not paid to Greensill Bank in alleged breach of its obligations under the Recovery Proposal Letter (SOC, paragraphs 97 and 98); and

(B) the "Expected Allocation" of the EHG Notes (SOC, paragraph 101);

(ii) in the alternative, EUR 30,855,256.19 (SOC, paragraphs 102AH, 116, 121, 136 and 141);

(g) the causes of action under each of section 1041I of the *Corporations Act*, section 236 of the *ACL* and section 12GF of the *ASIC Act* are subject to relevantly analogous proportionate liability regimes, set out respectively in Part 7.10, Division 2A, of the *Corporations Act*, Part IVA of the *Competition and Consumer Act 2010* (Cth) (***CCA***) and Part 2, Division 2, Subdivision GA of the *ASIC Act*;

(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 of the *Corporations Act*, 18 of the *ACL* and/or 12DA of the *ASIC Act*, within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act* respectively;

(together and individually, the **Apportionable Claims**);

(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) the loss the subject of the Applicants' claim for the purposes of the relevant proportionate liability regimes is:

(i) the alleged loss referred to in paragraphs 98 and 101 of the SOC;

(ii) in the alternative, the alleged loss referred to in paragraphs 102AH, 116 and 136 of the SOC;

(n) on the assumption, which is not admitted, that the claimed loss was loss or damage suffered because of the alleged contraventions, then:

(i) Greensill Bank was contributorily negligent as set out in paragraph 214(o) of this Defence; and

(ii) there were "concurrent wrongdoers" as set out in paragraphs 214(p) to 214(x) of this Defence (**Concurrent Wrongdoers**),

in respect of that loss, such that the liability of IAL, BCC and/or Brereton should be limited under the relevant proportionate liability regimes, and any responsibility of IAL for the conduct of BCC and/or Brereton under sections 917B or 917C of the *Corporations Act* for the conduct yielding that liability should be correspondingly reduced;

Greensill Bank

(o) says that:

(i) Greensill Bank was contributorily negligent because:

(A) it failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the transactions pursuant to and in respect of which it purportedly acquired the EHG Notes, 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 13(g) to 13(i) and 47(c) 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, paragraph 13) on the pleaded terms, alternatively agreeing to enter into the 2019 Policy when it knew the facts referred to in paragraphs 13(g) to 13(i) of this Defence;

b. entering into or agreeing to enter into various endorsements thereto including Claims Endorsement 9; and

c. acquiring the EHG Notes (SOC, paragraph 101);

d. entering into the alleged Assignment Agreement with GCUK, pursuant to which it allegedly agreed to pay USD 34,802,291.42 to GCUK (SOC, paragraph 90);

(C) further, Greensill Bank engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures attributed to it which are pleaded by IAL in Annexure A to its Defence to the SOC;

(D) further, at all material times Greensill Bank knew or ought to have known that:

a. BCC's and Brereton's authority on behalf of IAL before 30 June 2019 was limited to underwriting trade credit insurance and the 2019 Policy and its endorsements were not trade credit insurance products;

b. BCC's and Brereton's authority on behalf of IAL to issue Approved Products was subject to Special Acceptance requirements including that any non approved wording 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 paragraph 13(h)-13(m) of this Defence had changed;

e. BCC's authority was not unlimited and as at February 2019 was limited to AUD50 million any one Policy subject to Special Acceptance approval by IAL and Scor Re;

(E) in the premises, at all material times, Greensill Bank knew, or ought reasonably to have known, that:

a. 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;

b. IAL and Scor Re did not approve of the wording and structure of the 2019 Policy;

c. 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 or Approved Endorsement;

(F) 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) further or alternatively, Greensill Bank was recklessly indifferent to BCC's underwriting authority;

(H) 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 214(q) of this Defence;

ii. Hoffman to issue the EHG Notes (SOC, paragraph 65), being notes allegedly secured by the EHG Independent Payment Undertakings (SOC, paragraph 65);

iii. Credit Suisse Virtuoso and Greensill Bank to acquire the EHG Notes (SOC, paragraphs 71 and 101(a)),

then those acts or omissions caused the loss the subject of the claim;

(I) they involved the acquisition of the EHG Notes by Greensill Bank which was a precondition to the arising of "Loss" under the 2019 Policy;

a. had the misrepresentations and non-disclosures alleged to have been made by Greensill Bank as alleged in IAL's Annexure A to its Defence to the SOC not been made, then the alleged damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

(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) 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 214(o)(i)(D) to 214(o)(i)(I) of this Defence;

EHG

(p) says that:

(i) EHG 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) as best IAL understands it, the "Loss" alleged by the Applicants is the alleged "Expected Allocation" in respect of the EHG Notes (SOC, paragraphs 98 and 101);

(C) the alleged "Insured Cause" is the alleged failure of EHG to pay the EHG Independent Payment Undertakings said to be

owing to GCUK, as referred to in paragraphs 75 and 76 of the SOC;

(D) it is therefore a necessary element of the Applicants' case that the loss for which they claim was caused, in whole or in part, by the acts or omissions of EHG;

(ii) the liability of IAL, BCC and/or Brereton in relation to the apportionable claims under sections 1041I of the *Corporations Act*, 236 of the *ACL* and/or 12GF of the *ASIC Act* is limited to an amount that the Court considers just having regard to the extent of their responsibility for the economic loss alleged by the Applicants and the Court may not give judgment against IAL, BCC and/or Brereton for more than that amount;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to (inter alia) the following matters:

(A) on the Applicants' pleaded case, EHG was subject to voluntarily-assumed legal obligations to pay the amounts the subject of the EHG Default;

(B) on the Applicants' pleaded case, it was the voluntarily-assumed legal obligations of EHG (and correlative rights of GCUK) from which the EHG 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 EHG would or might commit the alleged EHG Default;

(D) on the Applicants' pleaded case, had the alleged EHG Default not occurred, the loss the subject of the claim would not have been suffered;

GCUK

(q) says that:

(i) GCUK is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted), it engaged in acts or omissions by entering the transactions to provide finance to EHG on the terms alleged in the claim, including:

a. it entered into the "Execution Agreement" dated 1 June 2018 with Demica;

Particulars

Execution Agreement dated 1 June 2018 between GCUK and Demica (IAL.500.002.0029).

b. it accepted advance payment requests in respect of debts giving rise to the EHG Independent Payment Undertakings (SOC, paragraph 46);

c. it assigned the EHG Independent Payment Undertakings to Hoffman (SOC, paragraph 64);

(B) on the pleaded case (which is not admitted), it engaged in acts or omissions by entering into the Recovery Proposal Letter and the Assignment Agreement on the terms alleged in the claim, including:

a. it entered into the "Recovery Proposal Letter" on the terms alleged (SOC, paragraphs 83 and 85);

b. it entered into the "Assignment Agreement" on the terms alleged (SOC, paragraphs 90 and 91);

c. it agreed to fund IAL's payment of Greensill Bank's claim in the amount of USD 34,998,726 (SOC, paragraph 85(a));

d. it assigned the rights under the Recovery Proposal Letter to Greensill Bank (SOC, paragraph 91(b));

e. it failed to obtain recoveries from EHG in respect of the EHG Independent Payment Undertakings (SOC, paragraph 93);

f. it misled BaFin about the true arrangements in relation to funding of claims payments (paragraph A28 of this Defence);

(C) 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;

(D) further, at all material times GCUK knew or ought to have known of the matters in paragraphs 214(o)(i)(D) of this Defence;

(E) GCUK was recklessly indifferent to BCC's underwriting authority;

(F) 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. EHG assumed the EHG Independent Undertakings;

ii. thereafter, EHG failed to pay the amounts owing in respect of the EHG Independent Payment Undertakings as alleged, which failure to pay is said to be the EHG Default (SOC, paragraph 75);

iii. the EHG Default is said to constitute an "Insured Cause" (SOC, paragraph 76);

iv. as a result of the Insured Cause, there has been "Loss" which is the subject of the claim (note clause 1.1 of the 2019 Policy and paragraph 101 of the SOC);

b. further, on the expressly or impliedly pleaded case (which is not admitted), as a result of GCUK's acts or omissions:

i. Greensill Bank entered into the "Assignment Agreement" (SOC, paragraph 90);

ii. pursuant to the "Assignment Agreement", Greensill Bank agreed to pay USD 34,802,291.42 to GCUK;

iii. thereafter, pursuant to the "Assignment Agreement", Greensill Bank purportedly paid EUR 30,855,256.19 to GCUK on 7 July 2020 (SOC, paragraph 106), on which the Applicants rely;

c. had the misrepresentations and non-disclosures alleged to have been made by GCUK in IAL's Annexure A to its Defence to the SOC not been made, then the alleged damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

(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 Buyer Tracking and Settlement Service Agreement and related agreements (SOC, paragraph 44), the EHG Independent Payment Undertakings (SOC, paragraphs 44 and 46), the EHG Notes (SOC, paragraph 65), the insurance arrangements, and the authority of BCC or Brereton to bind IAL;

(B) GCUK did not operate as a reasonably prudent lender in (i) its provision of finance to EHG (as alleged in SOC, paragraph 46), and (ii) in failing to procure adequate security for the alleged debts;

(C) GCUK has not taken steps, alternatively has not taken adequate steps, to recover payments from EHG as referred to in the SOC;

(D) the misrepresentations and non-disclosures made by GCUK were misleading or deceptive; and

(E) the matters set out in paragraph 214(q)(i) of this Defence;

GCPL

(r) says further that:

(i) GCPL is a concurrent wrongdoer because:

(A) 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, paragraph 13) on the pleaded terms, alternatively agreeing to enter into the 2019 Policy when it knew the facts referred to in paragraph 13 of this Defence;

b. entering into or agreeing to enter into various endorsements thereto;

(B) further, GCPL engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures attributed to it which are pleaded by IAL in Annexure A to its Defence to the SOC;

(C) further, at all material times GCPL knew or ought to have known of the matters pleaded in paragraphs 214(o)(i)(D) of this Defence;

(D) further or alternatively, GCPL was recklessly indifferent to BCC's underwriting authority;

(E) 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 214(q) of this Defence;

ii. Hoffman to issue the EHG Notes, being notes allegedly secured by the EHG

Independent Payment Undertakings (SOC, paragraph 65);

iii. Credit Suisse Virtuoso and Greensill Bank to acquire the EHG Notes (SOC, paragraphs 71 and 101(a)),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) GCPL's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) GCPL's misrepresentations and non-disclosures were misleading or deceptive; and

(C) the matters set out in paragraph 214(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. IAL also refers to the particulars to paragraph 13(g) of this Defence.

(B) further, at all material times, Lex Greensill knew or ought to have known of the matters pleaded in paragraph 214(o)(i)(D) of this Defence;

(C) because of Lex Greensill's acts or omissions:

a. GCUK engaged in the conduct pleaded in paragraph 214(q) of this Defence;

b. Greensill Bank engaged in the conduct pleaded in paragraph 214(o) of this Defence;

c. GCPL engaged in the conduct pleaded in paragraph 214(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 214(o), 214(q) and 214(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 214(o)(i)(D) of this Defence;

(C) further or alternatively, the fact that Lex Greensill was recklessly indifferent to BCC's underwriting authority;

(D) Lex Greensill's central role across the entirety of the events the subject of the SOC;

Hoffman

(t) says further that:

(i) Hoffman is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted), it engaged in (inter alia) acts or omissions including:

a. agreeing to enter into the Master Trust Deed (see SOC, paragraph 65);

b. agreeing to receive or otherwise receiving assignment of the EHG Independent Payment Undertakings from GCUK (SOC, paragraph 64);

c. issuing the EHG Notes (SOC, paragraph 65) on the terms alleged; and

d. transferring the EHG Notes to Credit Suisse Virtuoso (SOC, paragraph 71);

(B) Hoffman's acts or omissions caused Credit Suisse Virtuoso and Greensill Bank to acquire the EHG Notes and to suffer the "Loss" the subject of the claim;

a. 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 Hoffman did not undertake or alternatively failed to undertake adequate, investigations and/or due diligence into the parties to the transaction (SOC, Part E1), the Buyer Tracking and Settlement Service Agreement and related agreements (SOC, paragraph 44), the EHG Independent Payment Undertakings (SOC, paragraphs 44 and 46), the EHG Notes (SOC, paragraph 65), the insurance arrangements, the authority of BCC or Brereton to bind IAL and the transactions referred to in the SOC;

Marsh

(u) says further that:

(i) Marsh, being each of Marsh Pty Ltd and Marsh Ltd, 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 paragraph 214(u)(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 214(q) of this Defence;

ii. Hoffman to issue the EHG Notes (SOC, paragraph 65), being notes allegedly secured over the EHG Independent Payment Undertakings (SOC, paragraph 65);

iii. Greensill Bank to acquire the EHG Notes (SOC, paragraph 101),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) Marsh's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) Marsh knew, or ought reasonably to have known, that BCC and Brereton were only permitted to underwrite trade credit insurance and 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;

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's and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA;

e. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

(D) at the time of first setting up BCC as an approved underwriting agency Marsh ought to have obtained, and reasonably satisfied itself of, the terms of the CGU AAR Agreement confirming the existence, duration of the agreement and related limits, to ensure that it was aware of the limitations on BCC's authority, but failed to do so;

(E) Marsh ought to have, but failed to, ensure that its employees and representatives were aware of and understood the terms of any agency agreement between IAL and BCC, and the limitation on BCC's authority;

(F) Marsh ought to have, but failed to, ensure that its employees and representatives were aware of and understood the terms of any authority arrangement between IAL and Brereton, and the limitation on Brereton's authority;

(G) Marsh ought to have, but failed to, review on an annual basis the ongoing authority of BCC and Brereton including the terms on which 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 or Brereton's authority to underwrite on behalf of IAL Policy TW-02924, TW-03547, TB-04585, 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;

(I) 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 and Brereton did not have authority to extend existing insurance arrangements issued on behalf of IAL;

(ua) says further or alternatively that, if the matters alleged by the Applicants at paragraphs 141B to 209 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;

(ub) 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;

(v) 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 214(v)(i)(B) of this Defence in respect of the 2019 Policy on behalf of IAL on and from 1 July 2019;

c. failing to ensure that BCC and Brereton did not purport to enter into the Recovery Proposal Letter and the Claim Offer Letter referred to in subparagraph 214(v)(i)(B) of this Defence in respect of the 2019 Policy on behalf of IAL on and from 1 July 2019;

d. 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 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. Customer Endorsement 37(i) dated 4 September 2019 (SOC, paragraph 55);

b. Customer Endorsement 37(ii) dated 18 September 2019 (SOC, paragraph 58);

c. the Recovery Proposal Letter dated 18 June 2020 (SOC, paragraph 83); and

d. the Claim Offer Letter dated 19 June 2020 (SOC, paragraph 87);

(C) 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 and the arrangements referred to in paragraph 214(v)(i)(B) of this Defence;

b. in the event that Greensill Bank and GCPL's entry into the 2019 Policy and related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 214(q) of this Defence;

ii. Hoffman to issue the EHG Notes, being notes allegedly secured by the EHG Independent Payment Undertakings (SOC, paragraph 65);

iii. Credit Suisse Virtuoso and Greensill Bank to acquire the EHG Notes (SOC, paragraphs 71 and 101(a)),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) 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. IAL had not given authority to BCC and Brereton to enter into the Recovery Proposal Letter and the

Claim Offer Letter as pleaded by the Applicants in the SOC;

c. BCC's 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;

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;

The Administrators

(w) 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 paragraphs 6-46 and 6-47 of this Defence;

(B) it was a term of the PACAO that, after 9 April 2019, Bond, or BCC as Bond's delegate was not permitted to write new business or renewals on IAL paper (PACAO Schedule 5, clause 2), as pleaded in paragraph 6-46(f) of this Defence;

(C) it was a term of the PACAO that was to handle all claims for the life of the run off policies (written on IAL paper) as prescribed in Schedule 3 of the PACAO (PACAO Schedule 5, clause 2) as pleaded in paragraph 6-47(d) of this Defence; and

a. was to report in writing to IAL upon notice of:

i. any new claim which in an Administrator's judgment is considered to be a "Contentious Claim", which is defined in the PACAO to include any high value claims (PACAO Schedule 4, clause 3.1);

ii. any information pertaining to an existing claim that may lead to the claim being deemed a "Contentious Claim";

iii. any claim which in the Administrator's judgment is not covered by any policy; or

iv. any claim where the amount incurred (as determined by an Administrator) is equal to or greater than AUD 500,000 (PACAO Schedule 4, clause 3.3);

(D) 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 (PACAO Schedule 5, clause 2.1);

(E) it was a term of the PACAO that Bond would deliver administration services with due skill and care, efficiently and fairly (PACAO clause 5.1)

(F) 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 (PACAO clause 5.1(c));

(G) there were further restrictions on the Administrators as stipulated in the PACAO, for which IAL repeats the matters pleaded in paragraphs 6-47(c), 6-47(d) and 6-47(e) of this Defence;

(H) 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 6(c)(i)(B), 6(c)(i)(E), 6-1(c)(i), 6-1(c)(iii), 6(c)(iv), 6-3(i), 6-3(k), 6-33B, 6-33C, 6-56J, 6-56O and 13 of this Defence, and this was a matter known by the Administrators;

(I) 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-paragraphs, including:

a. Endorsement 17 dated 21 June 2019 (SOC, paragraph 36A);

b. Endorsement 18 dated 27 June 2019 (SOC, paragraph 37);

c. Customer Endorsement 37(i) dated 4 September 2019 (SOC, paragraph 54);

d. Customer Endorsement 37(ii) dated 18 September 2019 (SOC, paragraph 57);

(J) BCC and Brereton purported to enter into arrangements after 9 April 2019 which were outside of the authority referred to in the preceding sub-paragraphs, including:

a. the Recovery Proposal Letter dated 18 June 2020 (SOC, paragraph 83); and

b. the Claim Offer Letter dated 19 June 2020 (SOC, paragraph 87);

(K) the acts or omissions of the Administrators were of substantial causal significance to the arising of the loss the subject of the claim;

(L) 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. IAL had not given authority to BCC and Brereton to enter into the Recovery Proposal Letter, the Claim Offer Letter nor any related agreements as pleaded by the Applicants in the SOC;

e. IAL had only authorised Bond, or BCC as Bond's delegate, to handle claims pursuant to the terms of the PACAO;

f. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Part 7.6 of the *Corporations Act* on and after 1 July 2019.

BCC and Brereton

(x) in the event that it is established that BCC and Brereton engaged in the misleading or deceptive conduct pleaded in paragraphs 103 to 141 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

(y) says further, in relation to the whole of paragraphs 214(a) to 214(x) 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;

(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 214(k) to 214(x).

215 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 by IAL 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 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.

216 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 August 2025~~ 1 May 2026



Signed by ~~Kirsty Prinsloo, fellow partner of~~ Malcolm Stephens, solicitor on record

This pleading was prepared by Malcolm Stephens and settled by SG Finch, DFC Thomas, D Hume, C Ernst, H Cooper and N Wootton of Counsel

Certificate of lawyer

I ~~Kirsty Prinsloo~~, 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 August 2025~~ 1 May 2026



Signed by ~~Kirsty Prinsloo, fellow partner of~~ Malcolm Stephens, solicitor on record

Schedule

No. NSD 1216 of 2021

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