



CHINA INSURANCE GROUP FINANCE COMPANY LIMITED

Case: S E C 20 03899

Filed on: 15/02/2022 06:12 PM

PHILLIP JAMES KINGSTON

Defendant

**AMENDED DEFENCE TO FURTHER AMENDED STATEMENT OF CLAIM AND
COUNTERCLAIM**

(Filed pursuant to orders made by Delany J on 14 February 2022)

Date of document:	16 October 2020 <u>15 February 2022</u>
Filed on behalf of:	2021 26 October 2021 <u>15 February 2022</u>
Prepared by:	The defendant
HWL Ebsworth Lawyers	Solicitors Code: 179
Level 26, 530 Collins Street	DX 564 Melbourne
Melbourne VIC 3000	Tel: (03) 8644 3501
	Ref : 1005261
	Email: rmereine@hwle.com.au

To the plaintiff's contentions in section C of the Commercial List Statement filed in the Supreme Court of New South Wales (in case number 2020/00246363) on 24 August 2020 ~~further amended statement of claim dated 17 December 2020~~ 23 September 2021, the defendant says:

The parties

1. He admits paragraph 1 and says further that: at all relevant times, the plaintiff:
 - (a) ~~has been~~ is and was a company within the "China Taiping Insurance Group", a group of companies controlled by the Chinese government (**China Taiping**) and headquartered in Hong Kong, ~~of which Taiping Trustees Limited (a company incorporated under the laws of Hong Kong) (Taiping) has also a member;~~

PARTICULARS

- In addition to the plaintiff, companies within the China Taiping group with whom the defendant dealt included Taiping Financial Holdings Company Ltd, Taiping Trustees Ltd, Taiping Assets Management (Hong Kong) Company Ltd, Taiping Securities (HK) Co Ltd and the Australian registered office of China Taiping Insurance Holdings Co Ltd.
- (b) was a licensed money lender under the *Money Lenders Ordinance* (Cap 163) (HK);
 - (c) ~~[Not used] was not licensed to carry on the regulated businesses of:~~
 - ~~(i) dealing in securities (also referred to as "Type 1 regulated activity"); or~~
 - ~~(ii) securities margin financing (also referred to as "Type 8 regulated activity");~~~~under ss 116 or 117 of the *Securities and Futures Ordinance* (Cap 571) (HK).~~

2. He admits paragraph 2, and says further that he is not able to speak or read the Chinese language.

Background to the Loan Agreement

Sargon and GrowthOps

2.0 In 2015, the defendant founded Sargon Capital Pty Ltd (**Sargon**) to provide administration, compliance and fund management services and associated software solutions to superannuation and pension funds, in Australia and internationally.

2.0.1 As at November 2017, the share capital of Sargon comprised:

- (a) 2,000,000 ordinary shares, of which 1,000,000 ordinary shares were held by Trimantium Capital Pty Ltd (**Trimantium Capital**); and
- (b) 500,000 preference shares, issued fully-paid at \$100 per share, of which 475,000 preference shares were held by Trimantium Capital Funds Management Ltd (**TCFM**) as trustee for the Trimantium Sargon Investment Trust (the **TSIT**).

2.1 In 2017, a company with which the defendant was associated, Trimantium GrowthOps Limited (**GrowthOps**), was planning an initial public offering (**IPO**).

Initial discussions with China Taiping

2.2 In about May 2017, the defendant was introduced to representatives of ~~the~~ China Taiping ~~Insurance Group~~, namely, Wang Zhen (Andy) (**Mr Wang**) and Li Xudong (**Mr Li**).

2.2.1 Mr Wang, Mr Li and the defendant subsequently discussed the prospect of China Taiping entering into a partnership and co-operation arrangement with Sargon to be known as “Trimantium Taiping”, through which China Taiping would:

- (a) provide investment and insurance services to pension and superannuation funds for which Sargon acted as trustee or investment manager; and
- (b) invest capital in Sargon.

2.2.2 In September 2017, the defendant told Mr Wang about the forthcoming GrowthOps IPO, and Mr Wang expressed interest in China Taiping investing in the IPO.

2.3 ~~During subsequent discussions with the defendant, Mr Wang said that:~~[Not used]

- ~~(a) the China Taiping Insurance Group wanted to make an equity investment in GrowthOps and another company associated with the defendant, Sargon Capital Pty Ltd (**Sargon**); and~~
- ~~(b) the investment in GrowthOps would be made by a company in the China Taiping Insurance Group, Taiping Financial Holdings Company Limited (**Taiping Financial**).~~

2.4 On 20 October 2017, Taiping Financial Holdings Company Ltd (**Taiping Financial**) wrote to the defendant, “to express our interest in participation in the upcoming IPO of Trimantium GrowthOps Ltd. with an expected capacity of c.HKD100m”.

PARTICULARS

The letter was in writing. A copy is available from the defendant's solicitors for inspection.

2.5 In about late October 2017, in discussions with the defendant:

(a0) Mr Li said that:

(i) the GrowthOps IPO would be a good opportunity to seed the Trimantium Taiping investment partnership;

(ii) it was easier for China Taiping to invest in listed companies than unlisted ones; and

(iii) China Taiping could invest in the GrowthOps IPO, then sell those shares onto the market slowly and invest that capital in Sargon, or in the equity of an insurance joint venture between Sargon and China Taiping;

(a) Mr Wang:

(i) told Mr Kingston that a direct equity investment by Taiping Financial was going to be a protracted endeavour because of internal processes or reasons within the China Taiping Insurance Group and issues relating to Australia's Foreign Investment Review Board (**FIRB**), and would not be capable of completion in time for the proposed IPO; and

(ii) proposed an alternative solution which would enable an equity-like investment by means of loan to a corporate borrower that would invest in the IPO;

(b) the defendant said that:

(i) he did not care whether a loan or equity structure was used, provided that there would be no recourse to him or to Trimantium Capital or TCFM beyond the shares purchased with the China Taiping funds;

(ii) interest on the loan would have to be self-funding as Trimantium Capital and TCFM had no ability to service the interest requirements; and

(c) Mr Li said to the defendant that a loan would not have any recourse to the defendant or to the Trimantium entities beyond the security pool.

PARTICULARS

These discussions occurred at a dinner attended by the defendant, Mr Li, Mr Wang and Liu Hongbo (Mr Liu) of China Taiping in Auckland on or around 25 October 2017.

2.6 Subsequently, Mr Wang and the defendant discussed structures by which funds could be loaned to a company – to be called Trimantium Taiping Pty Ltd – which:

(a) was to be incorporated for the purpose of the investment;

(b) would invest in the IPO; and

(c) over which China Taiping ~~Insurance Group~~ would exercise control.

- 2.7 On 9 November 2017, Mr Wang sent the defendant:
- (a) a suite of standard-form documents, including the plaintiff's "Application Form (Companies)" (by which a corporation could apply for a loan from the plaintiff); and
 - (b) a Chinese-language draft agreement titled "Supplementary Agreement 1", between Trimantium Taiping Pty Ltd, as borrower; the plaintiff, as lender; and an unnamed party, as custodian.

PARTICULARS

The documents were sent by an email dated 9 November 2017 from Mr Wang to the defendant. Copies of the email and the documents are available from the defendant's solicitors for inspection.

China Taiping proposes and approves a personal loan agreement

- 2.8 On about 11 November 2017:
- (a) Mr Wang told the defendant, that for internal reasons, including "know your client" (KYC) requirements, within the China Taiping Insurance Group, the loan to finance the investment in the IPO could not be through a corporate entity, and would instead need to be made to the defendant personally;
 - (b) the defendant told Mr Wang that he had no ability to service the interest on a personal loan; and
 - (c) Mr Wang told the defendant that this would not change anything substantive about the loan or put liability on the defendant personally.

2.8.1 On 16 November 2017, the Margin Committee of Taiping Securities (HK) Company Ltd (Taiping Securities) conditionally approved the making of a loan of HK\$100 million to the defendant:

- (a) on the basis that the main purpose of the loan was to invest in the listing and subscription for GrowthOps and to acquire more Sargon shares with the remaining funds, in circumstances where the Sargon stock collateral was of great strategic value to China Taiping;
- (b) on the basis that credit risk would be controlled by requiring a surplus "margin value" of the pledged collateral to be maintained, failing which the margin would be liquidated, and that enough cash would be maintained in the escrow account to pay the total interest on the loan;
- (c) on the basis that the loan had limited risk exposure, by reason of the Sargon stock security, the cash retention and interest payment arrangements and automatic stock replenishment mechanism; and
- (d) without any information about the defendant's wealth or income.

PARTICULARS

Materials for the Meeting of the Margin Committee on 16 November 2017 [CIG.001.001.0026]

Taiping Securities (Hong Kong) Margin Committee, Project Review Conclusion, 16 November 2017 [CIG.001.035.3906]

Copies of those documents have been produced by the plaintiff in discovery.

- 2.9 In mid November 2017, Mr Wang and Mr Kingston discussed different ways to achieve the investment.

PARTICULARS

The discussions occurred by telephone. The defendant will also refer at trial to emails titled "Share pledge to do list" between Mr Wang and the defendant on 16 and 17 November 2017.

- 2.10 ~~Subsequently:~~ [Not used.]

- ~~(a) Mr Wang told the defendant that the investment would need to be by a loan to the defendant;~~
- ~~(b) the defendant told Mr Wang that:~~
- ~~(i) he (the defendant) would not be able repay the loan or interest on it; and~~
- ~~(ii) if the loan was to be made to him, it could not be a loan for which he would be personally liable;~~
- ~~(c) Mr Wang told the defendant that~~
- ~~(i) he (the defendant) would not be personally liability liable under the loan; and~~
- ~~(ii) a "supplementary agreement" would be drawn that would exclude any personal liability of the defendant to repay principal and interest under the loan.~~

- 2.11 On 24 November 2017, during a meeting with the defendant, Mr Wang and Mr Li of ~~the China Taiping Insurance Group~~ said that:

- (a) they were sorry for all of the changes since August to the investment structure for the deal, but it was their job to match up the investment opportunity with the most accessible capital within ~~the China Taiping Insurance Group~~;
- (b) the latest change from a corporate loan to personal loan was only an "internal change" to enable the loan to be approved faster, because it would avoid KYC complexities; and
- (c) the loan would create no personal liability for the defendant or affect his personal credit rating or borrowing capacity.

PARTICULARS

The meeting occurred at Lee Garden Two, Causeway Bay in Hong Kong.

- 2.12 On 25 November 2017, Mr Wang sent the defendant a suite of standard-form documents, including the plaintiff's "Application Form (Individuals)" and a "Loan Agreement."

PARTICULARS

The documents were sent by an email dated 9 November 2017 from Mr Wang to the defendant. Copies of the email and the documents are available from the defendant's solicitors for inspection.

- 2.13 On 28 November 2017, the defendant completed the "Application Form (Individuals)" and, in doing so, disclosed that he had income of AUD 16,666 per month and other income of AUD300,000 per year.

The Loan Agreement

3. As to paragraph 3:

- (a) Subject to the matters set out in paragraphs 3.2 to 3.46 below, he admits that he and the plaintiff were parties to a loan agreement under which the plaintiff agreed to make a loan to the defendant (**Loan Agreement**).
- (b) Otherwise, he does not admit paragraph 3.

- 3.2 The Loan Agreement is evidenced by the following documents:

- (a) a loan agreement made on or about 30 November 2017 (**Original Loan Agreement**) comprising:
- (i) a "Loan Schedule"; and
- (ii) the "Loan Terms and Conditions";
- (b) a "Supplementary Agreement to the Loan Agreement" made on or about 1 December 2017 (**SA 1**);
- (c) a "Supplementary Agreement II to the Loan Agreement" made on or about 25 January 2018 (**SA 2**);
- (d) a "Supplementary Agreement III to the Loan Agreement" made on or about 20 April 2018 (**SA 3**); and
- (e) a "Supplementary Agreement IV to the Loan Agreement" made on or about 28 September 2018 (**SA 4**).

PARTICULARS

The documents are respectively the documents referred to in the particulars to 3 of the Commercial List Statement.

Original Loan Agreement and the first Supplementary Agreement

Original Loan Agreement

- 3.3 On or around 28 November 2017:

- (a) the plaintiff provided the defendant with:
- (i) a copy of the Original Loan Agreement signed by the plaintiff, which was in the plaintiff's standard form and in the English language; and

- (ii) a summary of the provisions of Parts III and IV of the Money Lenders Ordinance (an **MLO summary**).
 - (b) the defendant, relying on the matters pleaded in paragraphs 2.5(c), 2.8(c), 2.10(c) and 2.11(c) above, signed the Original Loan Agreement.
- 3.4 The Original Loan Agreement (the full terms and effect of which the defendant will refer to at trial) purported to provide a loan of HK\$100 million to the defendant, at a fixed interest rate of 8.1% per annum, with interest to be paid quarterly in arrears and the principal to be repaid in full on 6 June 2019, to be used for an investment in an initial public offering on the Australian Securities Exchange (sections 2 and 3 of "Loan Schedule").
- 3.5 There were terms of the Original Loan Agreement that:
- (a) the plaintiff makes the Loan available to defendant in accordance with the terms and conditions (cl 2.1);
 - (b) the Loan must be used for the purpose set out in the Loan Schedule (cl 2.2);
 - (c) the defendant agrees to place Collateral with Taiping Securities as Security for the Loan (cl 24.1), where,
 - (i) "Taiping Securities" was Taiping Securities (HK) Co Limited, another member of the "China Taiping Insurance Group" (definition of "Taiping Securities", cl 1); and
 - (ii) "Collateral" means the securities and/or other assets maintained, or required to be maintained, with Taiping Securities by the Customer or one or more other person(s) acceptable to the plaintiff (definition of "Collateral", cl 1);
 - (d) There is an Event of Default if, among other matters:
 - (i) the defendant fails to perform or observe any obligation under the Loan Agreement in a material respect, including an obligation to pay an amount on time; and
 - (ii) the defendant does not pay interest, fees or other amounts due under the Loan Agreement
 (cl 32.1(a)-(b));
 - (e) Where there is an Event of Default, the plaintiff may take any action it considers appropriate to enforce the Loan Agreement or any security, including:
 - (i) employing any third party agent to collect any amount owing to the plaintiff;
 - (ii) taking steps to enforce the plaintiff's rights against the defendant's assets such as by lodging caveats; and
 - (iii) commencing legal proceedings against the defendant,
 (cl 33);

- (f) If an Event of Default occurs and the plaintiff requires the defendant to do so, the defendant must repay all or part of the amount owing within 2 business days after notice is given to the defendant (cl 7.5);
- (g) the agreement is governed by the laws of Hong Kong (Terms and Conditions, clause 59.1).

3.6 The Original Loan Agreement did not contain the following information that it was required to contain under s 18(1)(a) and (2) of the *Money Lenders Ordinance*:

- (a) all of the terms of the agreement;

PARTICULARS

The defendant refers to the terms of SA 1.

- (b) further or alternatively:
 - (i) the form of security for the loan;
 - (ii) the amount of the principal in words and figures; and
 - (iii) the date of making the Original Loan Agreement.

The Supplementary Agreement (SA 1)

3.7 On ~~4~~¹³ December 2017, the defendant, relying on the matters pleaded in paragraphs ~~2.10(c) and 2.5(c), 2.8(c), and 2.11(c)~~ above, signed SA 1 (the full terms and effect of which he will refer to at trial), in separate Chinese language and English language versions.

3.7.1 The plaintiff entered into the Loan Agreement and SA 1 in order to enable China Taiping subsequently to acquire an equity interest in Sargon.

PARTICULARS

The defendant refers to paragraphs 2.2.1, 2.5 and 2.8.1 above.

3.8 There were terms of SA 1 that:

- (a) the parties agree to the terms of SA 1 to supplement the Original Loan Agreement (Recitals to SA 1, second bullet point);
- (b) SA 1 will be considered part of the Original Loan Agreement (Recitals to SA 1, third bullet point);
- (c) if there are any inconsistencies between the terms in SA 1 and the Original Loan Agreement or any other loan documents, then SA 1 shall prevail (Recitals to SA 1, fourth bullet point);
- (d) SA 1 is governed by and construed in accordance with the laws of Hong Kong (SA 1, cl 16);
- (e) in the event of any inconsistency between the Chinese version and English version of SA 1, then the Chinese version shall prevail (SA 1, cl 18);
- (f) in respect of the HD\$100 million loan provided by the plaintiff to the defendant, the defendant shall provide no less security than the mortgage of:
 - (i) HK\$300 million market value of Sargon common stock;

- (ii) HK\$87 million shares in GrowthOps listed on the Australian Stock Exchange (the **SA 1 GrowthOps collateral**);
 - (iii) 100% of the shares in Trimantium International Holdings Pty Ltd (**Trimantium Holdings**);
 - (iv) HK\$13 million in cash held in a bank account in the defendant's name (the **Margin Account**) for the payment of interest; and
 - (v) any other assets such as cash or shares that the plaintiff accepts as security at its absolute discretion,
- (together, the **SA 1 Collateral**) (SA 1, cl 1);
- (g) the SA 1 GrowthOps Collateral will be held in a share trading account in the name of Trimantium Holdings, but the plaintiff would have the exclusive right to dispose of the shares comprising the SA 1 GrowthOps Collateral (SA 1, cl 1);

PARTICULARS

As to the underlined text in sub-paragraph (g), the defendant refers to the Chinese language text of cl 1, specifically:

股票 ii 作為上市股票將寄存于丙方公司下的股票帳戶中，丙方同意在借款期內授權乙方 [Party B] 就股票帳戶內股票有獨家處置權。

- (h) within 5 business days, the defendant will pay the funds through to Trimantium Holdings [who will] finally remit it to the underwriter of GrowthOps for the public account for stock subscription [to] invest in GrowthOps (SA 1 cl 3(2));
- (i) if GrowthOps shares fail to complete a listing on the Australian Stock Exchange within six months, or do not find an acceptable alternative that is approved by the plaintiff, the money should be returned within 5 working days to Trimantium Holding's share trading account to repay the Loan to the plaintiff (SA 1, cl 3(3));
- (j) if there are any remaining funds (excluding the part of the deposit) for the subscription to GrowthOps, the defendant can use the cash to purchase Sargon shares and hold the shares in custody of the plaintiff in the same manner as for Stock I (SA 1, cl 3(4));
- (k) the current mortgage rate is 25%, that is the value of the principal of the Loan divided by the SA 1 Collateral (the **Mortgage Ratio**) (SA 1, cl 4);
- (l) the loan interest rate is the Bank of China prime rate (currently 5%) plus 3.1% (SA 1, cl 6); and
- (m) the Loan has a term of 18 months (SA 1, cl 7);
- (n) interest accumulates daily, and is paid monthly on the last business day of each month (SA 1, cl 7);
- (o) the defendant's cash deposit in his Hong Kong bank account will be used to pay interest automatically (SA 1, cl 7);
- (p) repayment of principal and outstanding interest payables and other approved payables are paid on maturity of the Loan. The defendant authorizes the plaintiff

to use the Margin to pay the plaintiff all the reasonable expenses incurred by the Margin Account, such as account service fees, and the repayment of the Loan principal due and any unpaid interest and other approved payables (SA 1, cl 8);

- (q) the plaintiff can monitor and synthesize the value of the Collateral at any time until the defendant completely repays the principal and interest of the Loan and other approved payables. The defendant must maintain the approved holding levels in the Margin Account on the last trading day of each month (SA 1, cl 9);
- (r) the "Normal Position Value" refers to the outstanding balance of the Loan divided by Margin Value, where the plaintiff shall endeavor to, at all times, keep equal to or below 100% ($\leq 100\%$), where:
 - (i) "Margin Value" means ((the number of Stock II shares in the Party C [Trimantium Holdings] security account x the Stock II Price + Stock I valuation + Margin) x the Mortgage Ratio);
 - (ii) "Stock II Price" refers to the stock price determined by the plaintiff its absolute discretion based on the market price of the relevant day, (definitions in SA 1, cl 9), where:
 - (A) "Stock I" was the common stock of Sargon referred to in sub-paragraph (f)(i) above; and
 - (B) "Stock II was the GrowthOps shares referred to in sub-paragraph (f) (ii) above,
- (s) the defendant will ensure that at all times there is enough cash in the Margin Account for interest (and other amounts due) to be deducted by the plaintiff on the loan repayment dates. If the defendant does not have sufficient cash on the relevant date, the defendant authorises the plaintiff to sell any collateralised shares to pay interest payable and other approved payables, without notice to the defendant. The amount of shares sold by the plaintiff must not exceed the level sufficient to pay the minimum interest payable and other due approved payables (SA 1, cl 10);

PARTICULARS

As to the underlined text in sub-paragraph (s), the defendant refers to the Chinese language text of cl 10, specifically:

如相關日期未有足夠現金，甲方 [Party A] 授權乙方可沽出任何抵押股票並用沽出所得款項(扣除開支)支付應付利息及其他應付款項，

- (t) if the Normal Position Value $\geq 120\%$, if the defendant fails to provide enough funds or the collateral recognized by the plaintiff, the plaintiff may immediately liquidate it without further notification to the defendant. If the amount of the proceeds (net of expenses) is not sufficient to repay the Loan principal and all interest payable and other approved amounts payable, the defendant must repay the outstanding debts within the same business day (SA 1, cl 11(3));

- (u) if the defendant fails to repay the Loan principal and interest on the loan maturity date, if the defendant cannot repay the principal and interest of the plaintiff within 20 working days of breach of contract, the plaintiff shall directly obtain all collateral under this Supplementary Agreement (SA 1, cl 11(4)).

The Original Loan Agreement and SA 1 are illegal, void and unenforceable

- 3.9 Clause 11(4) of SA 1 provides directly or indirectly for the rate or amount of interest being increased by reason of any default in payment of sums due under the agreement otherwise than as permitted by s 22(1)(c) of the *Money Lenders Ordinance*, in that it purports to authorise the plaintiff to realise the whole of the SA 1 Collateral, which is required to be maintained to a value that far exceeds the outstanding principal and interest.
- 3.10 SA 1 did not contain, and the defendant was not otherwise provided with a note or memorandum containing, the following information that it was required to contain or have attached to it under s 18(1) and (2) of the *Money Lenders Ordinance*:
- (a) the rate of interest charged on the loan expressed as a rate per cent per annum, or the effective rate of interest calculated in accordance with Sch 2 to the *Money Lenders Ordinance* (the **effective rate of interest**);
 - (b) the address of the money lender;
 - (c) the address of the surety;
 - (d) the amount of the principal in words and figures;
 - (e) the date of making SA 1;
 - (f) the date of making the loan;
 - (g) a declaration as to the place of negotiation and completion of SA 1; or
 - (h) an MLO summary.

PARTICULARS

On 25 November 2017, Mr Wang emailed a Chinese-language draft of SA 1 to the defendant.

Subsequently, the defendant himself translated the draft agreement into English using Google Translate.

- 3.11 ~~[Not used] By entering into the Loan Agreement as varied by SA 1, alternatively by entering into SA 1, and by advancing the First Tranche pursuant thereto, the plaintiff:~~
- ~~(a) — provided a financial accommodation to facilitate the acquisition and/or continued holding of securities listed on the Australian Stock Exchange (ASX), namely shares in GrowthOps;~~

PARTICULARS

- ~~(a) — The defendant refers to paragraphs 3.8(f)(i) and (ii), (h) and (i) above.~~
- ~~(b) — The loan purpose stated on the Loan Schedule was “Investment in IPO on ASX”.~~

- ~~(e) Further particulars may be provided after the completion of all interlocutory steps~~
- ~~(b) made an agreement with the defendant for or with a view to the plaintiff acquiring securities and the purpose of which was to secure a profit to the plaintiff by reference to fluctuations in the value of securities;~~
- ~~(c) thereby carried on, or held itself out as carrying on, business of dealing in securities and/or securities margin financing, within the meaning of Schedule 5, Part 2 to the *Securities and Futures Ordinance*; and~~
- ~~(d) thereby carried on, or held itself out as carrying on, business in a regulated activity in contravention of s 114(1) of the *Securities and Futures Ordinance*.~~

PARTICULARS

- ~~(a) Regulated activity is defined as meaning any of the regulated activities specified in Part 1 of Schedule 5 to the *Securities and Futures Ordinance*, which include, among other regulated activities, dealing in securities and securities margin financing.~~
 - ~~(b) Section 114(1) of the *Securities and Futures Ordinance* provides that, subject to specified exceptions, no person shall carry on a business in a regulated activity; or hold himself out as carrying on a business in a regulated activity.~~
 - ~~(c) Section 114(2)(a) provides that s 114(1) shall not apply to, among other persons, a corporation licensed under ss 116 or 117 for the regulated activity.~~
 - ~~(d) The defendant refers to paragraph 1(c) above.~~
- 3.12 ~~[Not used] Accordingly, the Original Loan Agreement as varied by SA 1, alternatively SA 1, is void for illegality by reason of having been entered into in contravention of s 114(1) of the *Securities and Futures Ordinance*.~~
- 3.13 Further or alternatively:
- (a) by reason of the matter referred to in paragraph 3.9 above, the Original Loan Agreement as varied by SA 1, alternatively SA 1, is illegal and therefore void or unenforceable by operation of s 22(1) of the *Money Lenders Ordinance*; and
 - (b) further or alternatively, by reason of the matters referred to in paragraphs 3.6 and 3.10 above, the Original Loan Agreement as varied by SA 1, alternatively each of SA 1 and the Original Loan Agreement, is unenforceable by operation of s 18(1) of the *Money Lenders Ordinance*.

Supplementary Agreement II (SA 2)

Supplementary Agreement II

3.13.1 On 16 January 2018, the Taiping Securities (Hong Kong) Margin Committee approved the loan of a further HK\$100 million to the defendant, duplicating the equity pledge loan structure used in SA1:

- (a) on the basis that the main purpose of the loan was to subscribe for an enlarged allotment of GrowthOps shares, in circumstances where the Sargon stock collateral was of great strategic value to China Taiping;

- (b) on the basis that credit risk would be controlled by requiring a surplus “margin value” of the pledged collateral to be maintained, failing which the margin would be liquidated, and that enough cash would be maintained in the escrow account to pay the total interest on the loan;
- (c) on the basis that the loan had limited risk exposure, owing to the Sargon stock security, the cash retention and interest payment arrangements and automatic stock replenishment mechanism; and
- (d) without any information about the defendant’s wealth or income.

PARTICULARS

Materials for the Meeting of the Margin Committee on 16 January 2018. [CIG.001.001.0146]

Taiping Securities (Hong Kong) Margin Committee, Member’s review forms, 16 November 2018. [CIG.001.001.0153]

Copies of those documents have been produced by the plaintiff in discovery.

- 3.14 On or around 25 January 2018, the plaintiff and the defendant entered into Supplementary Agreement II (SA 2), as described further below, under which the plaintiff advanced HK\$100 million to the defendant on 1 February 2018 (the **Second Tranche**).
- 3.15 On or around 25 January 2018, the defendant, relying on the matters pleaded in paragraphs 2.5(c), 2.8(c), ~~2.10(c)~~ and 2.11(c) above, signed SA 2 (the full terms and effect of which he will refer to at trial) in separate Chinese language and English language versions.
- 3.15.1 The plaintiff entered into SA 2 in order to enable China Taiping subsequently to acquire an equity interest in Sargon.

PARTICULARS

The defendant repeats the particulars to paragraph 3.7.1 above and refers to paragraph 3.13.1, above.

- 3.16 There were terms of SA 2 that:
- (a) the parties agree to the terms of SA 2 to supplement the Original Loan Agreement and SA 1 (Recitals to SA 1, first bullet point);
 - (b) the parties agreed to the provisions of SA 2 to complement the contents of the Original Loan Agreement and SA 1 (Recitals to SA 2, second bullet point);
 - (c) SA 2 will be considered part of the Loan Agreement (Recitals to SA 2, second bullet point);
 - (d) if there are any inconsistencies between the terms in SA 2 and the Loan Agreement, SA 1 or any other loan documents, then SA 2 shall prevail (Recitals to SA 2, second bullet point);
 - (e) SA 2 is governed by and construed in accordance with the laws of Hong Kong (SA 2, cl 16);

- (f) in the event of any inconsistency between the Chinese version and English version of SA 2, then the Chinese version shall prevail (SA 2, cl 18);
- (g) in respect of the HK\$100 million loan provided by the plaintiff to the defendant, the defendant shall provide no less security than a mortgage of:
 - (i) HK\$360 million market value of Sargon's common stock;
 - (ii) HK\$87 million GrowthOps shares listed on the Australian Stock Exchange held by Asia Selangor Investments Pty Ltd (**Asia Selangor**) (**SA 2 GrowthOps collateral**);
 - (iii) 100% of the shares in Asia Selangor
 - (iv) HK\$13 million in cash held in a bank account in the defendant's name (the **Margin Account**) for the payment of interest; (together, the **SA 2 Collateral**) and
 - (v) any other assets such as cash or shares that the plaintiff accepts as security at its absolute discretion, (SA 2, cl 1);
- (h) for the avoidance of doubt, the Collateral as defined in SA 2 under Clause 1: Borrowing Limit cannot be used to satisfy the Collateral as defined in the SA 1 Clause 1: Borrowing Limit. With this SA 2 in force, the plaintiff must provide a total of HK\$200 million loan to the defendant, and the defendant must maintain a total of HK\$860 million of Collateral or any other asset such as cash or shares that the plaintiff accepts as security at its absolute discretion (SA 2, cl 1);
- (i) the SA 2 GrowthOps Collateral will be held in a share trading account in the name of Asia Selangor, but the plaintiff would have the exclusive right to dispose of the shares comprising the SA 2 GrowthOps Collateral (SA 2, cl 1);

PARTICULARS

The corresponding Chinese language text was in the same terms as the text of SA 1 extracted in the particulars to paragraph 3.8(g) above.

- (j) if GrowthOps shares fail to complete a listing on the Australian Stock Exchange within six months, or do not find an acceptable alternative that is approved by the plaintiff, the money should be returned within 5 working days to Asia Selangor's share trading account to repay the Loan to the plaintiff (SA 2, cl 3(3));
- (k) if there are any remaining funds (excluding the part of the deposit) for the subscription to GrowthOps, the defendant can use the cash to purchase Sargon shares and hold the shares in custody of the plaintiff in the same manner as for Stock I (SA 2, cl 3(4));
- (l) the current mortgage rate is 25%, that is the value of the principal of the Loan divided by the SA 2 Collateral (the **Mortgage Ratio**) (SA 2, cl 4);
- (m) the loan interest rate is the Bank of China prime rate (currently 5%) plus 3.1% (SA 2, cl 6);
- (n) the Loan has a term of 18 months (SA 2, cl 7); and

- (o) interest accumulates daily, and is paid monthly on the last business day of each month (SA 2, cl 7);
- (p) the defendant's cash deposit in his Hong Kong bank account will be used to pay interest automatically (SA 2, cl 7);
- (q) repayment of principal and outstanding interest payables and other approved payables are paid on maturity of the Loan. The defendant authorizes the plaintiff to use the Margin to pay the plaintiff all the reasonable expenses incurred by the Margin Account, such as account service fees, and the repayment of the Loan principal due and any unpaid interest and other approved payables (SA 2, cl 8);
- (r) the plaintiff can monitor and synthesize the value of the Collateral at any time until the defendant completely repays the principal and interest of the Loan and other approved payables. The defendant must maintain the approved holding levels in the Margin Account on the last trading day of each month (SA 2, cl 9);
- (s) the "Normal Position Value" refers to the outstanding balance of the Loan divided by Margin Value, where the plaintiff shall endeavor to, at all times, keep equal to or below 100% ($\leq 100\%$), where:
 - (i) "Margin Value" means ((the number of Stock II shares held in the Party D [Asia Selangor] security account x the Stock II Price + Stock I valuation + Margin) x the Mortgage Ratio);
 - (ii) "Stock II Price" refers to the stock price determined by the plaintiff its absolute discretion based on the market price of the relevant day,
 (definitions in SA 2, cl 9), where:
 - (A) "Stock I" was the common stock of Sargon referred to in sub-paragraph 3.16(g)(i) above; and
 - (B) "Stock II was the GrowthOps shares referred to in sub-paragraph 3.16(g)(ii) above;
- (t) the defendant will ensure that at all times there is enough cash in the Margin Account for interest (and other amounts due) to be deducted by the plaintiff on the loan repayment dates. If the defendant does not have sufficient cash on the relevant date, the defendant authorises the plaintiff to sell any collateralised shares to pay interest payable and other approved payables, without notice to the defendant. The amount of shares sold by the plaintiff must not exceed the level sufficient to pay the minimum interest payable and other due approved payables (SA 2, cl 10);

PARTICULARS

The corresponding Chinese language text was in the same terms as the text of SA 1 extracted in the particulars to paragraph 3.8(s) above.

如相關日期未有足夠現金，甲方 [Party A] 授權乙方可沽出任何抵押股票並用沽出所得款項(扣除開支)支付應付利息及其他應付款項，

- (u) if the Normal Position Value \geq 120%, if the plaintiff fails to provide enough funds or the collateral recognized by the plaintiff, the plaintiff may immediately liquidate it without further notification to the defendant. If the amount of the proceeds (net of expenses) is not sufficient to repay the Loan principal and all interest payable and other approved amounts payable, the defendant must repay the outstanding debts within the same business day (SA 2, cl 11(3));
- (v) if the defendant fails to repay the Loan principal and interest on the loan maturity date, if the defendant cannot repay the principal and interest of the plaintiff within 20 working days of breach of contract, the plaintiff shall directly obtain all collateral under this Supplementary Agreement (SA 2, cl 11(4)).

The Loan Agreement, SA 1 and SA 2 are illegal, void and unenforceable

3.17 Clause 11(4) of SA 2 provides directly or indirectly for the rate or amount of interest being increased by reason of any default in payment of sums due under the agreement otherwise than as permitted by s 22(1)(c) of the *Money Lenders Ordinance*, in that it purports to authorise the plaintiff to realise the whole of the SA 2 Collateral, which is required to be maintained to a value that far exceeds the outstanding principal and interest.

3.18 SA 2 did not contain, and the defendant was not otherwise provided with a note or memorandum containing, the following information that it was required to contain or have attached to it under s 18(1) and (2) of the *Money Lenders Ordinance*:

- (a) the rate of interest charged on the loan expressed as a rate per cent per annum, or the effective rate of interest calculated in accordance with Sch 2 to the *Money Lenders Ordinance*;
- (b) the address of the money lender;
- (c) the address of the surety;
- (d) the amount of the principal in words and figures;
- (e) the date of making SA 2;
- (f) the date of making the Second Tranche loan;
- (g) a declaration as to the place of negotiation and completion of SA 2; or
- (h) an MLO summary.

PARTICULARS

On 19 January 2018, Mr Wang emailed the defendant a Chinese-language execution draft of SA 2 between the plaintiff, the defendant and Trimantium Holdings (as "IPO shares subscriber"), and asked him to sign 3 copies of the Chinese version and to prepare and sign 3 copies of the respective English version.

- 3.19 ~~[Not used] By entering into the Loan Agreement as varied by SA 1 and SA 2, alternatively by entering into SA 2, and by advancing the Second Tranche pursuant thereto, the plaintiff:~~
- ~~(a) — provided a financial accommodation to facilitate the acquisition and/or continued holding of securities listed on ASX, namely shares in GrowthOps;~~
 - ~~(b) — made an agreement with the defendant for or with a view to the plaintiff acquiring securities and the purpose of which was to secure a profit to the plaintiff by reference to fluctuations in the value of securities;~~
 - ~~(c) — thereby carried on, or held itself out as carrying on, business of dealing in securities and/or securities margin financing, within the meaning of Schedule 5, Part 2 to the *Securities and Futures Ordinance*; and~~
 - ~~(d) — thereby carried on, or held itself out as carrying on, business in a regulated activity in contravention of s 114(1) of the *Securities and Futures Ordinance*.~~
- 3.20 ~~[Not used] Accordingly, the Loan Agreement as varied by SA 1 and SA 2, alternatively SA 2, is void for illegality by reason of having been entered into in contravention of s 114(1) of the *Securities and Futures Ordinance*.~~
- 3.21 Further or alternatively:
- (a) by reason of the matter referred to in paragraph 3.17 above, the Loan Agreement as varied by SA 1 and SA 2, alternatively SA 2, is illegal and therefore void or unenforceable by operation of s 22(1) of the *Money Lenders Ordinance*; and
 - (b) further or alternatively, by reason of the matter referred to in paragraph 3.18 above, the Loan Agreement as varied by SA 1 and SA 2, alternatively SA 2, is unenforceable by operation of s 18(1) of the *Money Lenders Ordinance*.

Promissory Note between Taiping Trustees and TTIM (P Note 1)

3.21.1 From early January 2018, Mr Wang and the defendant discussed a transaction by which an entity within China Taiping would provide, through a trust vehicle, a secured loan of A\$85 million to fund acquisitions, international expansion and technology development by Sargon and to enable China Taiping subsequently to acquire an equity interest in Sargon.

3.21.2 On or around 29 January 2018, Trimantium Taiping Investment Management Pty Ltd (TTIM) was incorporated to be the trust vehicle for the secured loan.

3.21.3 On 4 February 2018, the Trimantium Taiping Investment Fund I (the Fund) was established:

(a) of which TTIM was appointed trustee;

(b) in which the unitholders were:

(i) Taiping Trustees Ltd (Taiping Trustees) (which was a Hong Kong company and a member of China Taiping) – as to 100 Class A units; and

(ii) the defendant and Roderick Thomson – as to 1 Class B unit each; and

(c) the purpose of which was to make investments on behalf of unit holders.

3.21.4 On 9 February 2018:

- (a) TTIM (in its own right and as trustee of the Fund) entered into a HK\$500 million secured promissory note (P Note 1) with Taiping Trustees, under which:
- (i) Taiping Trustees was required to pay the principal amount into an Australian-domiciled escrow account;
 - (ii) TTIM was only permitted to draw down from the escrow account with Taiping Trustees' written approval; and
 - (iii) interest at 8% per annum was payable quarterly by TTIM to Taiping Trustees;
- (b) TTIM entered into a general security deed with Taiping Trustees, under which TTIM granted security to Taiping Trustees of all its present and after-acquired property, in its own right and as trustee of the Fund.
- (c) TCFM entered into a general security deed with Taiping Trustees, under which TCFM granted security to Taiping Trustees of all its present and after-acquired property, both in its own right and as trustee of the TSIT.

3.21.5 By reason of the general security deeds referred to in paragraph 3.21.4(b) and (c) above, Taiping Trustees held, as security for the moneys advanced under P Note 1, security interests over preference shares in Sargon over which the plaintiff already held, or would subsequently hold, security interests for moneys lent to the defendant under SA 1 to SA 4 (pleaded below).

PARTICULARS

As to the security interests taken by the plaintiff over preference shares in Sargon, the defendant refers to paragraphs 3.24(i)(ii) and 3.34(i)(iv)-(v) below.

As to the preference shares directly or indirectly owned by TCFM and TTIM, over which security was given by the General Security Deeds, the defendant refers to paragraph 2.0.1(b) above and paragraphs 3.31.7 – 3.31.8 below.

3.21.6 On 14 February 2018, TTIM entered into a share sale deed with TCFM to purchase 333,334 preference shares in Sargon for A\$50,000,100.

3.21.7 On 20 February 2018, Taiping Trustees approved TTIM's drawdown request for A\$50,100,000 under P Note 1, to enable TTIM to complete its purchase of preference shares in Sargon.

Supplementary Agreement III (SA 3)

Supplementary Agreement III

3.21.8 On 9 April 2018, the Taiping Securities (Hong Kong) Lending Business Management Committee approved the lending of a further HK\$200 million to the defendant, adding to the equity pledge security used in SA1 and SA 2:

- (a) on the basis that the main purposes of the loan were to set up and develop an insurance business in Australia (into which China Taiping would be given a

right to invest) and to purchase preference shares in Sargon from other additional investors, in circumstances where the Sargon stock collateral would now comprise more than 50% of Sargon's equity, which was of great strategic value to China Taiping and would potentially provide China Taiping with an absolute strategic shareholding in Sargon;

- (b) on the basis that the main risks faced by China Taiping were the risk of stock price declines and long-term stock suspensions, which would be controlled by:
- (i) the fact that the collateral was worth HK\$1.9 billion in total, giving a mortgage ratio of 20.67%;
- (ii) the existence of a pledge over a majority of Sargon's equity; and
- (iii) that the listing of TGO (in which the defendant had pledged 62% of the stock) would realise Taiping's strategic target to hold a platform listed in Australia with strategic synergy; and
- (c) without any information about the defendant's wealth or income.

PARTICULARS

Materials for the Meeting of the Lending Business Management Committee on 9 April 2018. [CIG.001.001.0307]

Minutes of the Taiping Securities (Hong Kong) Lending Business Management Committee, 9 April 2018. [CIG.001.001.7719]

Copies of those documents have been produced by the plaintiff in discovery.

3.21.9 On or around 20 April 2018:

- (a) the defendant told Mr Wang that he was concerned that the plaintiff's standard lending terms gave the plaintiff the right to demand an early repayment on 2 business days' notice and so create a default entitling it to take possession of all of the pledged collateral, which was more than 4 times the value of the loans; and
- (b) Mr Wang replied that the plaintiff would have no recourse to the defendant in relation to the Supplementary Agreements, and that he would check that the Supplementary Agreements did allow for reasonable time to sell the collateral or otherwise to raise funds to enable any early repayment and provide email confirmation to the plaintiff.

PARTICULARS

The statements were made in a telephone conversation between the defendant and Mr Wang.

3.21.10 At 10:27 am on 20 April 2018, the defendant emailed pre-executed share sale agreements for ordinary and preference shares in Sargon to Mr Wang, as part of the security package for a further secured loan, on the condition that Mr Wang would send the defendant the email confirmation he had promised to send through.

PARTICULARS

Email titled "Email package from LA".

3.21.11 At 1:17 pm on 20 April 2018, Mr Wang:

- (a) emailed the defendant a final Chinese-language version of SA 3 for his perusal and execution; and
- (b) confirmed that, during the term of the loan agreements, the plaintiff would only require early repayment by giving 60 days' prior notice.

3.22 The plaintiff and the defendant entered into Supplementary Agreement III (**SA 3**) on or around 20 April 2018, as described further below, under which the plaintiff advanced HK\$200 million to the defendant on 20 April 2018 (the **Third Tranche**).

3.23 The defendant, relying on the matters pleaded in paragraphs 2.5(c), 2.8(c), ~~2.10(e)~~ and 2.11(c), 3.21.9(b) and 3.21.11(b) above, signed SA 3 the full terms and effect of which he will refer to at trial) in a Chinese language version only.

3.23.1 The plaintiff entered into SA 3 in order to enable China Taiping subsequently to acquire an equity interest in Sargon.

PARTICULARS

The defendant repeats the particulars to paragraph 3.15.1 above and refers to paragraph ~~3.21.8~~ ~~3.21.9~~ above.

3.24 There were terms of SA 3 that:

- (a) the parties agree to the terms of SA 3 to supplement the Original Loan Agreement, SA 1 and SA 2 (together the Loan Documents) (Recitals to SA 3, second bullet point);
- (b) SA 3 will be considered part of the Loan Documents (Recitals to SA 3, second bullet point);
- (c) if there are any inconsistencies between the terms in SA 3 and the Loan Documents, SA 3 shall prevail (Recitals to SA 3, second bullet point);
- (d) SA 3 is governed by and construed in accordance with the laws of Hong Kong (SA 3, cl 15);
- (e) in the event of any inconsistency between the Chinese version and English version of SA 3, then the Chinese version shall prevail (SA 3, cl 18);
- (f) the plaintiff agrees to lend an additional HKD200 million to the defendant (SA 3, cl 1);
- (g) to avoid any doubt, the plaintiff has agreed to lend HKD400 million in total to the defendant (Total Loan Amount), including:
 - (i) HKD200million under SA 1 and SA 2 (which the plaintiff has already lent to the defendant); and
 - (ii) HKD200 million under SA 3, (SA 3, cl 1);
- (h) the defendant must provide no less than HKD1.6 billion shares (Share Pledge) as security to the plaintiff (SA 3, cl 1);

- (i) the parties agree that the updated security list is as follows:
- (i) 1,000,000 ordinary shares in Sargon held by the defendant or Trimantium Capital Pty Ltd (**Trimantium Capital**) (which accounts for 50% of the total ordinary shares issued). As at the date of SA 3, the market value of the shares is around HKD915 million;
 - (ii) 475,000 preference shares in Sargon directly or indirectly held by the defendant or Trimantium Capital Funds Management Pty Ltd (**TCFM**), (which account for 57% of the total preference shares issued). As at the date of SA 3, the market value of the shares is around HKD434 million;
 - (iii) 120,000 preference shares in Sargon issued to TCFM by way of a call for capital, and the market price is about HKD110 million (the **Call for Capital shares**);
 - (iv) 58.95 million ASX-listed shares in GrowthOps (**SA 3 GrowthOps Collateral**) held directly or indirectly by:
 - (A) Trimantium Holdings; Asia Selangor; Forci Alternative Strategies Pty Ltd; or Pattani Private Capital Pty Ltd (together, the **GrowthOps Subscribers**); or
 - (B) Louis Holbrook Company Pty Ltd; Vonny Tjhin (as trustee for Selangor Trust 1); Nattiya Pothong (as trustee for Pothong Family Trust); or Thananchanok Thaicharoen (as trustee for Pattani Private Trust) (together, the **Ultimate GrowthOps Shareholders**).

As at the date of SA 3, the market value of the shares is around HKD410 million;
 - (v) 100% of the issued shares in each of the GrowthOps Subscribers, held by the respective Ultimate GrowthOps Shareholders,
 - (vi) any other stock or cash that the plaintiff accepts as appropriate;

(together, the **SA 3 Collateral**),

(SA 3, cl 1);
 - (j) the SA 3 GrowthOps Collateral will be held in the GrowthOps direct shareholders' respective stock trading accounts, but the plaintiff has the exclusive right to dispose of the SA 3 GrowthOps Collateral in the stock trading accounts (SA 3, cl 1);
 - (k) the current mortgage rate is 25% (SA 3, cl 4);
 - (l) the loan interest rate is the Bank of China prime rate (currently 5%) plus 3.1%. After the date of this SA 3, the loan interest rate will be the Bank of China prime rate (currently 5.0%) + 2% = 7% (SA 3, cl 6);
 - (m) the Loan provided by the plaintiff has changed to a term of 24 months from the date of SA 3. If the defendant does not provide written notice to terminate the loan agreement a month before the expiry of the loan term, the term will extend to a further 12 months automatically (SA 3, cl 7);

- (n) the defendant agrees that he will not repay the principal amount or terminate the loan agreement within 12 months from the date of SA 3 (SA 3, cl 7);
- (o) interest accumulates daily on the total loan amount, and is to be paid quarterly, on the last business day of each quarter (SA 3, cl 7);
- (p) the defendant's cash deposit in his Hong Kong bank account will be used to pay interest automatically (SA 3, cl 7);
- (q) repayment of principal and outstanding interest payables and other approved payables are paid on maturity of the Loan (SA 3, cl 8);
- (r) the plaintiff can monitor and calculate the value of the Collateral at any time until the defendant completely repays the principal and interest of the Loan and other approved payables. (SA 3, cl 9);
- (s) the "Normal Position Value" refers to the outstanding balance of the Loan divided by Margin Value, where the plaintiff shall endeavor to, at all times, keep equal to or below 100%, where:
 - (i) "Margin Value" means ((the number of GrowthOps shares x the Share Price) + Share 1 valuation + Share 2 valuation + Share 3 valuation) x the Mortgage Ratio);
 - (ii) "Stock II Price" refers to the stock price determined by the plaintiff its absolute discretion based on the market price of the relevant day,
(definitions in SA 3, cl 9), where:
 - (A) "Share 1" were the shares in Sargon referred to in sub-paragraph (i)(i) above;
 - (B) "Share 2" were the shares in Sargon referred to in sub-paragraph (i)(ii) above;
 - (C) "~~Share 3~~" were the shares in Sargon referred to in sub-paragraph (i)(iii) above
- (t) if the Normal Position Value is equal to or larger than 120%, if the defendant, the GrowthOps Subscribers, Ultimate GrowthOps Shareholders or Sargon Shareholders fails to provide sufficient funds or shares recognised by the plaintiff, the plaintiff can sell the Collateral it without further notification. If proceeds from the sale (minus expenses) is not sufficient to repay the principal, interest and other payables, the defendant if the defendant, the GrowthOps Subscribers, Ultimate GrowthOps Shareholders or Sargon Shareholders must repay the outstanding balance within a business day (SA 3, cl 11(3));
- (u) if the defendant, the GrowthOps Subscribers, Ultimate GrowthOps Shareholders or Sargon Shareholders fails to repay the loan and interest, it constitutes a breach of contract and if the defendant, the GrowthOps Subscribers, Ultimate GrowthOps Shareholders or Sargon Shareholders cannot repay the principal and interest of the plaintiff within 20 working days from the date of the breach, the plaintiff is entitled to take possession of Collateral

immediately without further notice to the defendant, the GrowthOps Subscribers, Ultimate GrowthOps Shareholders or Sargon Shareholders (SA 3, cl 11(4)).

The Loan Agreement, SA 1, SA 2 and SA 3 are illegal, void and unenforceable

- 3.25 Clause 11(4) of SA 3 provides directly or indirectly for the rate or amount of interest being increased by reason of any default in payment of sums due under the agreement otherwise than as permitted by s 22(1)(c) of the *Money Lenders Ordinance*, in that it purports to authorise the plaintiff to realise the whole of the SA 3 Collateral, which is required to be maintained to a value that far exceeds the outstanding principal and interest.
- 3.26 Further, the term in clause 7 of SA 3 (referred to in paragraph 3.24(n) above) directly or indirectly prohibits the repayment of the loan by instalments, within the meaning of s 22(1)(b) of the *Money Lenders Ordinance*.
- 3.27 The defendant was not provided with an English-language copy of, or other English-language note or memorandum containing the terms of, SA 3 signed personally by the defendant.

PARTICULARS

Mr Wang sent the defendant signing pages only of the Chinese language version of SA 3 on 8 April 2018, a Chinese-language draft of SA 3 on 12 April 2018.

On 18 April 2018, Sonia Chan of China Taiping's Risk Management and Compliance Department emailed the defendant a further Chinese-language draft of SA 3.

Mr Wang sent the defendant a Chinese-language final draft of SA 3 for execution on 20 April 2018.

No English-language version of SA 3 was executed by the parties thereto.

- 3.28 Further or alternatively, the Chinese language version of SA 3 that was signed by and provided to the defendant did not contain, and the defendant was not otherwise provided with a note or memorandum containing, the following information that it was required to contain or have attached to it under s 18(1) and (2) of the *Money Lenders Ordinance*:
- (a) the rate of interest charged on the loan expressed as a rate per cent per annum, or the effective rate of interest calculated in accordance with Sch 2 to the *Money Lenders Ordinance*;
 - (b) the address of the money lender;
 - (c) the address of the surety;
 - (d) the amount of the principal in words and figures;
 - (e) the date of making SA 3;
 - (f) the date of making the Third Tranche loan;
 - (g) a declaration as to the place of negotiation and completion of SA 3; or
 - (h) an MLO summary.

3.29 ~~[Not used] By entering into the Loan Agreement as varied by SA 1, SA 2 and SA 3, alternatively by entering into SA 3, and by advancing the Third Tranche pursuant thereto, the plaintiff:~~

- ~~(a) provided a financial accommodation to facilitate the acquisition and/or continued holding of securities listed on ASX, namely shares in GrowthOps;~~
- ~~(b) made an agreement with the defendant for or with a view to the plaintiff acquiring securities and the purpose of which was to secure a profit to the plaintiff by reference to fluctuations in the value of securities;~~
- ~~(c) thereby carried on, or held itself out as carrying on, business of securities margin financing and/or dealing in securities, within the meaning of Schedule 5, Part 2 to the Securities and Futures Ordinance; and~~
- ~~(d) thereby carried on, or held itself out as carrying on, business in a regulated activity in contravention of s 114(1) of the Securities and Futures Ordinance.~~

3.30 ~~[Not used] Accordingly, the Loan Agreement as varied by SA 1, SA 2 and SA 3, alternatively SA 3, is void for illegality by reason of having been entered into in contravention of s 114(1) of the Securities and Futures Ordinance.~~

3.31 Further or alternatively:

- (a) by reason of the matters referred to in paragraphs 3.25 and/or 3.26 above, the Loan Agreement as varied by SA 1, SA 2 and SA 3, alternatively SA 3, is illegal and therefore void or unenforceable by operation of s 22(1) of the *Money Lenders Ordinance*; and
- (b) further or alternatively, by reason of the matters referred to in paragraphs 3.27 and 3.28 above, the Loan Agreement as varied by SA 1, SA 2 and SA 3, alternatively SA 3, is unenforceable by operation of s 18(1) of the *Money Lenders Ordinance*.

Promissory Note between TTIM and Sargon (P Note 2)

3.31.1 On or around 28 April 2018:

- (a) Sargon entered into a HK\$190 million secured promissory note with TTIM (P Note 2), with the consent of Taiping Trustees as the ultimate lender, under which:
 - (i) TTIM was required to pay the principal amount into an escrow account; and
 - (ii) Sargon was only permitted to draw down from the escrow account with TTIM's written approval, which was to be given or withheld in accordance with the instructions of Taiping Trustees;
 - (iii) interest at 8% per annum was payable quarterly by Sargon to TTIM; and
- (b) Sargon entered into a Guarantee and General Security Deed in favour of Taiping Trustees, under which Sargon granted security to Taiping Trustees of all its present and after-acquired property, which secured obligations including TTIM's performance of P Note 1.

3.31.2 On 28 April 2018, Taiping Trustees approved Sargon's drawdown request for A\$31,001,715.64 (being equivalent to HK\$190,000,000) under P Note 2.

Supplementary Agreement IV

3.31.3 On 21 May 2018, the defendant discussed the co-operation between Sargon, Trimantium and China Taiping with Wang Bin (the chairman of China Taiping), Mr Li and Mr Wang, in the course of which:

- (a) Wang Bin said that China Taiping wanted to participate in a larger equity round in Sargon once the company was larger, but that it was harder for China Taiping to make equity investments than debt investments in foreign jurisdictions;
- (b) Wang Bin said that it was important to ensure there would be enough funding for interest coverage to allow the investments to run their full course, and the parties discussed starting work on the next supplementary agreement;
- (c) the parties discussed how China Taiping could enter the Australian insurance and asset management markets on an accelerated timeline.

PARTICULARS

The discussions occurred during a dinner at the defendant's home in Carlton.

3.31.4 On or around 25 May 2018:

- (a) the defendant told Mr Wang that an equity interest in Sargon was available for sale, for an asking price of A\$28.5 million;
- (b) Mr Wang told the defendant that he understood that China Taiping would be very interested in acquiring that equity interest.

PARTICULARS

The equity interest comprised 36 out of 100 issued Class A units in the TSIT, which was held by SC Opportunities Finance Co Ltd, and which accounted for 171,000 of the 475,000 Sargon preference shares that were held through the TSIT (the **Stock E Sargon shares**).

3.31.5 In early June 2018:

- (a) Mr Wang told the defendant that China Taiping would not be able to complete a direct equity purchase, or a further supplementary agreement, in time to acquire the equity interest, but China Taiping did not want to miss out on the opportunity to acquire the equity interest;
- (b) Mr Wang told the defendant that, as there were not enough surplus funds from the First, Second and Third Tranches to fund the purchase of the equity interest:
 - (i) TTIM could temporarily redraw funds advanced to Sargon under P Note 2, to allow the Stock E Sargon Shares to be brought into Taiping Trustees' security pool; and
 - (ii) the redraw could be refunded later from the proceeds of a further short-term supplementary agreement, which would enable Taiping Trustees' and/or the plaintiff's security over the Stock E Sargon shares to be

converted into equity upon Sargon completing an IPO or similar financing event.

3.31.6 On or around 7 July 2018, the defendant and Mr Wang met in Hong Kong and Shanghai to negotiate the commercial terms of a further supplementary agreement to facilitate China Taiping's acquisition of the Stock E Sargon shares.

3.31.7 On 12 July 2018:

(a) Dragon Shield Holdings Pty Ltd (**Dragon Shield**) was incorporated, with TTIM as its sole shareholder; and

(b) Dragon Shield entered into a Unit Sale Agreement with SC Opportunities Finance Co Ltd, to purchase 36 units in the TSIT, at a purchase price of A\$28,512,000.

3.31.8 Pursuant to Mr Wang's proposal referred to in paragraph 3.31.5(a) above:

(a) on or around 13 July 2018, with the permission of Taiping Trustees, the sum of A\$31,001,715.64 that had previously been advanced by TTIM to Sargon under P Note 2 was repaid to TTIM; and

PARTICULARS

Taiping Trustees gave payment approval and joint drawdown direction on 11 July 2018.

(b) on 16 July 2018, with the permission of Taiping Trustees, TTIM paid A\$28,512,028 to SC Opportunities Finance Co Ltd pursuant to the Unit Sale Agreement.

PARTICULARS

The permission was given by Mr Wang in a telephone call with the defendant.

3.31.9 On 16 August 2018, Jane Zhou of Taiping Financial Holdings Co Ltd (**Ms Zhou**) emailed the defendant to ask what investment structure China Taiping should use for its equity investment to ultimately acquire preference shares in Sargon, and about the process of applying to the FIRB.

3.31.10 On 23 August 2018, Ms Zhou emailed the defendant a proposed investment structure through which China Taiping would hold a 5.9% shareholding in Sargon.

3.31.11 On 27 August 2018, Ms Zhou emailed the defendant to ask whether, under China Taiping's proposed investment structure:

(a) China Taiping, as a state-owned entity, would be "looked through" at Sargon's IPO; and

(b) whether there would be any trust entity between China Taiping and a Hong Kong holding company "to avoid FRIB (*sic*)".

3.31.12 On 28 August 2018, a Project Initiation Committee of China Taiping approved the commencement of a project to invest HK\$256 million in Sargon preference shares on the basis that, as an equity investment, the proposed investment had considerable earning potential and the investment target had strong synergy.

PARTICULARS

Minutes of Project Initiation Meeting concerning Sargon Capital pre-IPO equity investment, 28 August 2018 [CIG.001.053.3621]

A copy of the document has been produced by the plaintiff in discovery.

3.31.13 On 24 September 2018, the Lending Business Management Committee of China Taiping approved the making of a further HK\$253 million loan to the defendant:

- (a) on the basis that the proposed loan would lock in equity in Sargon in the form of creditor's rights, and that the defendant would start the conversion of China Taiping's direct equity investment after a listing of Sargon was completed in the first half of 2019;
- (b) on the basis that the Sargon shares pledged as collateral for the First through Fourth Tranches comprised 60.5% of Sargon's issued equity capital;
- (c) on the basis that the plaintiff would be entitled to 60% of the excess income of the Stock E Sargon Shares, in addition to the repayment of principal and interest;
- (d) on the basis that, in order to ensure sufficient collateral for the plaintiff, unless agreed by the plaintiff, the defendant must repay the new loan of HK\$253 million first, and then pay off the First to Third Tranches;
- (e) on the basis that the further loan would enable China Taiping to lock in the equity interest of Sargon at a cheaper price, and that, under extreme circumstances, it could gain absolute controlling rights to Sargon at a 70% reduced price; and
- (f) without any information about the defendant's wealth or income.

PARTICULARS

Materials for the Meeting of the Lending Business Management Committee on 21 September 2018. [CIG.001.001.0091]

Minutes of the Meeting of the Lending Business Management Committee on 24 September 2018. [CIG.001.001.0001]

Copies of those documents have been produced by the plaintiff in discovery.

3.32 The plaintiff and the defendant entered into Supplementary Agreement IV (**SA 4**) on or around ~~28~~ 27 September 2018, as described further below, pursuant to which the plaintiff advanced HK\$253 million to the defendant on 18 October 2018 (the **Fourth Tranche**).

3.33 The defendant, relying on the matters pleaded in paragraphs 2.5(c), 2.8(c), ~~2.10(e)~~ and 2.11(c), 3.21.9(b) and 3.21.11(b) above, signed SA 4 (the full terms and effect of which he will refer to at trial) in a Chinese language version only.

3.33.1 The plaintiff entered into SA 4 for the primary purpose of enabling China Taiping subsequently to acquire an equity interest in Sargon.

PARTICULARS

The defendant repeats the particulars to paragraph 3.23.1 above and refers to paragraphs 3.31.3 to 3.31.5 and 3.31.9 to 3.13.13 above.

3.34 There are terms of SA 4 that:

- (a) the parties agree to the terms of SA 4 to complement the Original Loan Agreement, SA 1, SA 2 and SA 3 (SA 4, second paragraph);
- (b) SA 4 will be constructed [sic] as part of the Original Loan Agreement SA 1, SA 2 and SA 3 (SA 4, second paragraph);
- (c) if there are any inconsistencies between the terms in SA 4 and the Original Loan Agreement, SA 1, SA 2 or SA 3, SA 4 shall prevail (Recitals to SA 4, second bullet point);
- (d) SA 4 is governed by and construed in accordance with the laws of Hong Kong (SA 4, cl 15);
- (e) in the event of any inconsistency between the Chinese version and English version of SA 4, then the Chinese version shall prevail (SA 4, cl 18);
- (f) the plaintiff has agreed to lend an additional HK\$253 million to the defendant (This Loan) (SA 4, cl 1.3);
- (g) for the avoidance of doubt, the plaintiff has agreed to lend HKD653 million in total to the defendant (SA 4, cl 1.3);
- (h) the parties agree to must provide the plaintiff not less than a total of HKD1.866 billion stock collateral (SA 4, cl 1.4);
- (i) the parties agree that the updated collateral under the Loan Agreement is as follows (SA 4, cl 1.4):
 - (i) 1,000,000 ordinary shares in Sargon directly or indirectly held by the defendant or Trimantium Capital (representing 50% of the total issued shares in Sargon). As at the date of SA 4, the market value of the shares is around HK\$915 million (Stock A);
 - (ii) 140,000 ordinary shares in Sargon directly or indirectly held by the defendant or Trimantium Limited (representing 7% of the total issued shares in Sargon). As at the date of SA 4, the market value of the shares is around HK\$132 million (Stock B);
 - (iii) 200,000 ordinary shares in Sargon directly or indirectly held by the defendant or Trimantium Limited (representing 10% of the total issued shares in Sargon). As at the date of SA 4, the market value of the shares is around HK\$188 million (Stock C);
 - (iv) 304,000 preference shares in Sargon directly or indirectly held by the defendant or TCFM (representing 30.4% of the total issued preference shares in Sargon). As at the date of SA 4, the market value of the shares is around HK\$286 million (Stock D);
 - (v) 171,000 preference shares in Sargon directly or indirectly held by the defendant or TCFM (representing 30.4% of the total issued preference shares in Sargon). As at the date of SA 4, the market value of the shares is around HK\$161 million (Stock E);

- (vi) 58.95 million ASX-listed shares in GrowthOps held directly or indirectly by the GrowthOps Subscribers and the Ultimate GrowthOps Shareholders (representing 62.14% of the total shares in GrowthOps). As at the date of SA 5, the market value of the shares is around HK\$436 million (Stock F);
- (vii) 100% of the issued shares in each of the GrowthOps Subscribers, held by the respective Ultimate GrowthOps Shareholders (Stock G),
- (viii) 120 shares in Dragon Shield Holdings Pty Ltd (**Dragon Shield**) (representing 100% of the total issued ordinary shares of Dragon Shield) (Stock H),
(together, the **Stock Pool** or **Collateral**); and
- (ix) any other stock or cash that the plaintiff accepts as appropriate;
- (j) Stock F will be held in the GrowthOps direct shareholders' respective stock trading accounts, but the plaintiff has the exclusive right to dispose of the SA 3 GrowthOps Collateral in the stock trading accounts (SA 4, cl 1.4);
- (k) the current mortgage rate is approximately 30.55% (SA 3, cl 4);
- (l) the interest rate:
 - (i) on the Original Loan (being HK\$400 million) is the Bank of China prime rate (currently 5%) plus 2%;
 - (ii) on This Loan (being HK\$253 million) is 5.5%,
(SA 4, cl 6);
- (m) as to the Original Loan (being HK\$400 million):
 - (i) the term of the Original Loan is updated to 36 months from the date of SA 3 (ending 21 April 2021);
 - (ii) interest accumulates daily and is to be paid quarterly, on the last business day of each quarter;
 - (iii) the defendant agrees not to repay the principal of the Original Loan or terminate the Loan Agreement within 12 months of SA 3,
(SA 4, cl 7 (first paragraph));
- (n) as to This Loan (being HK\$253 million):
 - (i) the term of the loan is 24 months from the date of the utilisation notice to be provided by the plaintiff to the defendant under SA 4;
 - (ii) interest accumulates daily and is to be paid semi-annually, on the last business day of each half year;
 - (iii) the defendant agrees not to repay the principal of This Loan or terminate the Loan Agreement within 12 months of SA 4,
(SA 4, cl 7 (second paragraph));

- (o) unless the plaintiff agrees in writing and confirms that the collateral is sufficient in advance, the defendant undertakes and guarantees the repayment sequence as follows:
 - (i) first, fully repaid the principal and interest of This Loan and other payables;
 - (ii) second, fully repaid the principal and interest of Original Loan and other payables,(SA 4, cl 7 (third paragraph));
- (p) the defendant undertakes and guarantees that, until the principal and interest of This Loan and other payables have been fully repaid, the defendant may not repay the principal and interest of the Original Loan and other payables (SA 4, cl 7 (fourth paragraph));
- (q) the Original Loan (being HK\$400 million) shall be repaid in cash on maturity for principal, interest and other payables (SA 4, cl 8 (first paragraph));
- (r) This Loan (being HK\$253 million) shall be repaid in cash on maturity (SA 4, cl 8 (second paragraph)) and the defendant undertakes and guarantees that it will pay the plaintiff (a) the principal, (b) interest, (c) the premium and (d) other payables, where "the premium" refers to the defendant selling or procuring any of his direct or indirect affiliates to sell or transfer Stock E in any form, and use 60% of the proceeds (after deducting (i) the principal (being, HK\$253 million); and (ii) interest (including all paid and unpaid interest under this SA 4)) to pay the plaintiff ((SA 4, cl 8 (second paragraph));
- (s) the plaintiff can monitor and synthesize the value of the Collateral at any time until the defendant completely repays the principal and interest of the Loan and other approved payables. The other parties must maintain the normal position value on the last trading day of each month (SA 4, cl 9);
- (t) the "Normal Position Value" refers to the outstanding balance of the Loan divided by Margin Value, where the plaintiff shall endeavor to, at all times, keep equal to or below 100%, where "Margin Value" means ((the number of GrowthOps shares in stock accounts x the Price of GrowthOps shares) + Stock A valuation + Stock B valuation + Stock C valuation + Stock D valuation+ Stock E valuation) x the Mortgage Ratio) (SA 4, cl 9);
- (u) if the Normal Position Value is equal to or larger than 120%, and if the defendant, the GrowthOps Subscribers, Ultimate GrowthOps Shareholders, Sargon Shareholders and Dragon Shield Shareholders fail to provide enough funds or the collateral recognised by the plaintiff, the plaintiff may immediately liquidate it without further notification to the other parties. If the amount of the proceeds (net of expenses) is not sufficient to repay the Loan principal and all interest payable and other approved amounts payable, the other parties must repay the outstanding debts within the same business day (SA 4, cl 11(3));
- (v) if the defendant, the GrowthOps Subscribers, Ultimate GrowthOps Shareholders, Sargon Shareholders and Dragon Shield Shareholders fail to

repay the loan and interest on the loan maturity date, it immediately constitutes an event of default. If they are still unable repay the principal and interest of the plaintiff within 20 working days from the date of the event of default, the plaintiff shall directly obtain all collateral without further notice (SA 4, cl 11(4)).

The Loan Agreement, SA 1, SA 2, SA 3 and SA 4 are illegal, void and unenforceable

- 3.35 The premium under cl 8 of SA 4 (pleaded in sub-paragraph 3.34(r) above is “interest” on the Fourth Tranche, as defined in s 2(1) of the *Money Lenders Ordinance*.
- 3.36 Clause 11(4) of SA 4 provides directly or indirectly for the rate or amount of interest being increased by reason of any default in payment of sums due under the agreement being increased otherwise than as permitted by s 22(1)(c) of the *Money Lenders Ordinance*, in that it purports to authorise the plaintiff to realise the whole of the SA 2 Collateral, which is required to be maintained to a value that far exceeds the outstanding principal and interest.
- 3.37 Further, the terms of clause 7 of SA 4 (pleaded in paragraphs 3.34(m)(iii) and 3.34(n)(iii) above) directly or indirectly prohibits the repayment of the loan by instalments, within the meaning of s 22(1)(b) of the *Money Lenders Ordinance*.
- 3.38 The defendant was not provided with a signed English-language copy of, or other English-language note or memorandum containing the terms of, SA 4 signed personally by the defendant.

PARTICULARS

- (i) On 27 September 2018, at 11:27 am, Ms Zhou emailed the defendant signature pages for the Chinese-language version of SA 4, without a copy of the body of SA 4.
- (ii) At 6:56 pm, the defendant returned the executed signature pages for SA 4 by email to Ms Zhou.
- (iii) At 7:02 pm, Mr Wang thanked the defendant for the executed signature pages, and attached a Chinese-language version of SA 4 for the defendant’s reference.
- (iv) The defendant had not been provided with a copy of SA 4 (either in Chinese or in English) prior to forwarding the signature pages to Ms Zhou.
- 3.39 Further or alternatively, SA 4 did not contain, and the defendant was not otherwise provided with a note or memorandum containing, the following information that it was required to contain or have attached to it under s 18(1) and (2) of the *Money Lenders Ordinance*:
- (a) the rate of interest charged on the First to Third Tranches expressed as a rate per cent per annum, or the effective rate of interest as calculated in accordance with Sch 2 to the *Money Lenders Ordinance*;
- (b) the address of the money lender;
- (c) the address of the surety;
- (d) the amount of the principal in words and figures;
- (e) the date of making SA 4;

- (f) the date of making the 4th Tranche loan;
- (g) a declaration as to the place of negotiation and completion of SA 4; or
- (h) an MLO summary.

3.40 ~~[Not used] By entering into the Loan Agreement as varied by SA 1, SA 2, SA 3 and SA 4, alternatively by entering into SA 4, and by advancing the Fourth Tranche pursuant thereto, the plaintiff:~~

- ~~(a) provided a financial accommodation to facilitate the acquisition and/or continued holding of securities listed on ASX, namely shares in GrowthOps;~~
- ~~(b) made an agreement with the defendant for or with a view to the plaintiff acquiring securities and the purpose of which was to secure a profit to the plaintiff by reference to fluctuations in the value of securities;~~
- ~~(c) carried on, or held itself out as carrying on, business of dealing in securities and/or securities margin financing, within the meaning of Schedule 5, Part 2 to the Securities and Futures Ordinance; and~~
- ~~(d) thereby carried on, or held itself out as carrying on, business in a regulated activity in contravention of s 114(1) of the Securities and Futures Ordinance.~~

3.41 ~~[Not used] Accordingly, the Loan Agreement as varied by SA 1, SA 2, SA 3 and SA 4, alternatively SA 4, is void for illegality by reason of having been entered into in contravention of s 114(1) of the Securities and Futures Ordinance.~~

3.42 Further or alternatively:

- (a) by reason of the matters referred to in paragraphs 3.36 and/or 3.37 above, the Loan Agreement as varied by SA 1, SA 2, SA 3 and SA 4, alternatively SA 4, is illegal and therefore void or unenforceable by operation of s 22(1) of the *Money Lenders Ordinance*; and
- (b) further or alternatively, by reason of the matter referred to in paragraphs 3.38 and 3.39 above, the Loan Agreement as varied by SA 1, SA 2, SA 3 and SA 4, alternatively SA 4, is unenforceable by operation of s 18(1) of the *Money Lenders Ordinance*.

The First to Fourth Tranches are extortionate transactions

3.43 Further or alternatively, by reason of the following matters, each of the loan transactions comprising the First to Fourth Tranches grossly contravened ordinary principles of fair dealing:

- (a) the plaintiff's true purpose in making the loans to the defendant was for the plaintiff to realise a substantial equity investment in GrowthOps and Sargon;
- (b) the plaintiff required the defendant to enter into a personal loan in circumstances where:
 - (i) the plaintiff had suggested that its proposed investment in GrowthOps should be structured by way of a loan to a company, but later told the

plaintiff it was necessary to structure the investment as a personal loan due to its (the plaintiff's) own internal needs; and

- (ii) the defendant had told the plaintiff that he was not able to repay the loans, or the interest thereon, personally;
- (c) the defendant disclosed to the plaintiff that his monthly and other income totalled approximately AUD500,000 per year;
- (d) the plaintiff made no further enquiries, including at the time of SA 2, SA 3 and SA 4, whether the defendant had other assets or financial means to repay the loans or the interest thereon;
- (e) the plaintiff represented to the defendant, in response to his stated concern about his inability to repay the loans, that he would not be personally liable to repay the loan;
- (f) each of SA 1, SA 2, SA 3 and SA 4 included terms that expressly provided for the plaintiff to have recourse to the collateral in the event of non-payment of interest or principal, and which overrode the event of default provisions of the Loan Agreement;

PARTICULARS

The defendant refers to clause 11(4) of each of SA 1, SA 2, SA 3 and SA 4.

- (g) the plaintiff required the defendant to provide security with a market value of between four and six times the principal sum loaned;
- (h) each of SA 1, SA 2, SA 3 and SA 4 included terms that authorised (or purported to authorise) the plaintiff to realise the whole of the collateral in the event of non-payment of outstanding principal and interest on each loan maturity date, notwithstanding that the value of the collateral was required to be maintained at a level exceeding the outstanding amounts of principal and interest;

PARTICULARS

The defendant refers to and repeats the particulars to paragraph (f).

- (i) SA 4 further required the defendant to pay a substantial premium to the plaintiff from realisation of the Stock E collateral, in addition to principal and interest, upon the maturity of the Fourth Tranche, regardless of whether any default had occurred;
- (j) SA 3 and SA 4 were made in the Chinese language only, which the defendant is unable to read, and the was not given an English language copy or note thereof, in accordance with s 18 of the *Money Lenders Ordinance* or at all.

3.44 Accordingly, each of the First to Fourth Tranches:

- (a) was an extortionate transaction within the meaning of s 25(2) of the *Money Lenders Ordinance*; and
- (b) may be reopened by the court to do justice between the parties having regard to all the circumstances, pursuant to s 25(1) of the *Money Lenders Ordinance*.

Proper construction of the Loan Agreement

3.45 He says further that, on a proper construction of the Loan Agreement, the plaintiff's sole recourse for any failure by the defendant to pay principal and interest under the Loan Agreement was against the shares and/or collateral provided under the Loan Agreement, and not against the defendant personally for recovery of the principal and interest.

Estoppel

3.46 Further or alternatively, he says that:

- (a) the plaintiff and the defendant were in a relationship involving enforceable or exercisable rights, duties or powers;
 - (b) the plaintiff, by the words or conduct referred in paragraphs 2.5(c), 2.8(c), 2.10(c) and 2.11(c) and 3.21.9(b) above, conveyed or was reasonably understood to convey a clear and unequivocal promise or assurance to the defendant that
 - (i) the defendant would not be personally liable to repay the money loaned by the plaintiff;
 - (ii) alternatively, it (the plaintiff) would not recover from defendant the money loaned or exercise its rights, duties or powers to do so; and
 - (c) the defendant reasonably relied upon that promise and was induced to alter his or her position on the faith of it, so that it would be inequitable or unconscionable for the plaintiff to act inconsistently with the promise;
 - (d) accordingly, the plaintiff is estopped from contending that the defendant is personally liable for the loan; further or alternatively, is estopped from seeking to recover from the defendant the moneys loaned, whether in this proceeding or at all.
4. As to paragraph 4:
- (a) He admits that, under the Loan Agreement, the plaintiff agreed to lend him HKD653 million, on the terms of the Loan Agreement (as to which he refers to and repeats paragraphs 3.4, 3.5, 3.7, 3.8, 3.14, 3.16, 3.22, 3.24, 3.32 and 3.34) which was paid in four tranches,
 - (b) Otherwise, he does not admit paragraph 4.
5. He does not admit paragraph 5.
6. As to paragraph 6:
- (a) He refers to and repeats paragraphs 3.8(l) and (n), 3.16(m) and (o), 3.24(l) and (o), 3.34(l), (m)(ii) and (iii), (n)(ii), (o) and (p) above.
 - (b) Otherwise, he denies paragraph 6.
7. He denies paragraph 7.
8. He denies paragraph 8.

The sums advanced

9. He admits paragraph 9.
10. He admits paragraph 10.
11. He admits paragraph 11.

11A. As paragraphs 9, 10 and 11, he says further that:

- (a) each tranche of funds advanced was paid into the defendant's bank account (number 701328114141), held at the Central, Hong Kong branch of the Industrial and Commercial Bank of China (the **Margin Account**); and
- (b) the funds (and those referred to in paragraph 12 of the amended statement of claim were used in the manner pleaded in paragraph 26(d)(ii) below.

12. He admits paragraph 12, and says that:

- (a) the sum of HK\$252,999,990 was received into the Margin Account;
- (b) on 19 October 2018, HK\$200,000,000 was transferred from the Margin Account to TCFM;
- (c) from that amount:
 - (i) A\$28,512,000 was applied to reimburse TTIM for the Stock E Sargon shares purchased by Dragon Shield; and

PARTICULARS

The defendant refers to paragraph 3.31.8(b) above.

- (ii) A\$4.9 million was applied toward the purchase of the Sargon shares referred to in SA 4 as Stock B and Stock C from 1008 Holdings Pty Ltd; and

PARTICULARS

The defendant refers to paragraph 3.34(i)(iii)3.34(i)(ii) and (iii) above.

Alleged non-payment

12.1 In respect the First to Third Tranches, the plaintiff issued the defendant debit notes:

- (a) on or around 31 December 2018, for interest purportedly due in the sum of HK\$7,246,345.81;
- (b) on or around 31 March 2019, for interest purportedly due in the sum of HK\$7,130,419.04; and
- (c) on or around 30 June 2019, for interest purportedly due in the sum of HK\$7,229,207.06.

PARTICULARS

Debit notes PJK-2018-12, CIGF20190301 and CIGF20190603, each of which was addressed to the defendant at Level 9, 287 Collins St, Melbourne.

12.2 By reason of clause 7 (fourth paragraph) of SA 4:

- (a) interest on the First to Third Tranches was not due for payment until principal and interest on the Fourth Tranche had been fully repaid; and
- (b) the defendant was prohibited from repaying principal and interest on First to Third Tranches before principal and interest on the Fourth Tranche had been fully repaid.

PARTICULARS

The defendant refers to paragraph 3.34(o) above.

12.3 In response to each such debit note, the defendant paid:

- (a) HK\$7,246,345.81, on or around 29 January 2019;
- (b) HK\$7,130,419.04, on or around 29 April 2019; and
- (c) HK\$7,229,207.06, on or around 3 July 2019,

in the mistaken belief that those amounts of interest on the First to Third Tranches were then due for payment, as represented by the plaintiff's debit notes.

12.4 By reason of the defendant's mistaken payments of interest that was not then due, the plaintiff was overpaid in the sums of:

- (a) HK\$7,246,345.81, on or around 29 January 2019;
- (b) HK\$7,130,419.04, on or around 29 April 2019; and
- (c) HK\$7,229,207.06, on or around 3 July 2019,

together with interest on those amounts at the rate of 7% per annum, and the defendant was entitled to have those amounts set off against payments of interest on the Fourth Tranche, as and when interest fell due for payment under clause 7 of SA 4, in priority to interest on the First to Third Tranches.

12.5 Further, the plaintiff was further overpaid by reason of the plaintiff having calculated interest on a compound, rather than simple, basis on the interest payments that were in fact due and payable in respect of the First to Third and the Fourth Tranche.

PARTICULARS

The defendant refers to paragraphs 22, 24 and 25 of, and Annexure B to, the witness statement of Ke Guo dated 10 September 2021 and filed by the plaintiff.

12.6 On 30 September 2019, interest in the sum of HK\$10,082,191.78 fell due and payable by TTIM under P Note 1.

13. As to paragraph 13:

- (a) He says that:

(ia) on or around 30 September 2019, the plaintiff issued a debit note purporting to show that interest in the sum of HK\$7,252,036.89 was due on the First to Third Tranches as at 30 September 2019;

(i) by reason of clause 7 (fourth paragraph) of SA 4 (pleaded in paragraph 3.34(o) ~~3.34(p)~~ above), that interest was not due for payment until

principal and interest on the Fourth Tranche had been fully repaid, and he was prohibited from repaying interest on the First to Third Tranches until the Fourth Tranche was paid in full; and

(ii) as at 30 September 2019, he had paid all the interest payments on the Fourth Tranche.

(b) Otherwise, he denies paragraph 13.

13A As to paragraph 13A:

(a) He repeats paragraph 13 above.

(b) As to the payment made on or around 13 December 2019, he refers to paragraphs 15.3 and 15.4 below.

(c) Otherwise, he denies paragraph 13A.

13A.1 On 21 October 2019, Andy Yi Kai Huang (Mr Huang) of Taiping Financial told the defendant by email that China Taiping was starting the termination of the Supplementary Agreements and the Promissory Notes.

14. As to paragraph 14:

(aa) On or around 16 October 2019, the plaintiff issued a debit note purporting to show that interest on SA 4 of HK\$7,147,270.14 was due as at 31 October 2019.

(a) He refers to and repeats paragraphs ~~13~~ 12.1 to 12.5 above.

(a1) He says that, as at 31 October 2019:

(i) the plaintiff had been overpaid in the aggregate sum of at least HK\$21,605,971.91, plus interest; and

(ii) the defendant was entitled to have that amount set off against interest on the Fourth Tranche as and when it became due, in priority to interest due on the First to Third Tranches; and

(iii) accordingly, the defendant was not then required to make any further payment to the plaintiff in respect of interest alleged to have fallen due and payable on the Fourth Tranche.

(b) Otherwise, he denies paragraph 14.

14.1 On 5 November 2019:

(a) Mr Huang emailed the defendant draft term sheets for the proposed early termination of the First to Third Tranches, the Fourth Tranche and P Note 1, with a proposed early repayment date of 31 January 2020; and

(b) the draft term sheets stated that principal, interest and other payables for the Fourth Tranche were to be repaid before repayment of principal and interest for the First to Third Tranches.

PARTICULARS

Documents titled "Early Termination Agreement – Term sheet – 400 Million Personal Loan – Phillip James Kingston" and "Early Termination Agreement

– Term sheet – 253 Million Personal Loan – Phillip James Kingston”, attached to an email from Yi Kai Huang to the defendant.

14A. As to paragraph 14A:

- (a) He refers to and repeats paragraph 14 above.
- (b) As to the payment made on or around 13 December 2019, he refers to paragraphs 15.3 and 15.5 below.
- (c) Otherwise, he denies paragraph 14A.

15. As to paragraph 15:

- (a) He admits the demands were made in respect of the First to Third Tranches and the Fourth Tranche in the amounts referred to in paragraph 15.
- (a1) He says that, under the cover email, Taiping Trustees sent letters to TTIM, TCFM and Sargon alleging an Event of Default by TTIM under P Note 1 for failure to pay the sum of HK\$10,082,191.78 on 4 October 2019.

PARTICULARS

The letters of demand were attached to an email sent by Minna Zhang of Ashurst Australia to the defendant, titled “Trimantium/Sargon Group”.

- (b) He refers to and repeats paragraphs 12.1 to 12.5, 13, 13A, and 14 and 14A above.
- (c) He says that the plaintiff was not entitled to make:

 - (i) the demands in respect of the First to Third Tranches or in respect of the Fourth Tranche, as no amount was then due and outstanding under either loan; or
 - (ii) alternatively, the demand in respect of the First to Third Tranches, as no amount was then due and outstanding in respect of the First to Third Tranches.
- (d) Otherwise, he does not admit paragraph 15.

15.1 On 6 December 2019, the plaintiff’s solicitors notified the defendant that the plaintiff and Taiping Trustees would be happy to receive the demanded interest payments to a trust account held by the plaintiff’s solicitors on behalf of the plaintiff and Taiping Trustees (the **Ashurst trust account**).

PARTICULARS

Email sent by Minna Zhang of Ashurst Australia to the defendant, titled “RE: Trimantium/Sargon Group”.

15.2 On 11 December 2019, the defendant caused a transfer of A\$4,400,000 to be made from TCFM to the Ashurst trust account, being the Australian dollar equivalent of the total outstanding interest from 1 July 2019 to 31 January 2020 (HK\$23,561,643.84) shown on the draft term sheet for early termination of P Note 1.

PARTICULARS

Document titled “Early Termination Agreement – Term sheet – Sargon 500 Million Secured Promissory Note” attached to the email referred to in the particulars to paragraph 14.1 above.

15.3 On or around 13 December 2019, those funds were remitted from the Ashurst trust account:

- (a) to Taiping Trustees in discharge of indebtedness owing by TTIM under P Note 1, in the sum of HK\$10,081,936.78; and
- (b) to the plaintiff, in the sum of HK\$13,491,628.24, which the plaintiff ~~applied, or~~ purported to apply:
 - (i) as to HK\$7,252,036.89 in discharge of the interest alleged to have been due to 30 September ~~2019~~ 2018 on the First to Third Tranches; and
 - (ii) as to HK\$~~6,239,591.35~~ 6,239,651.35 in discharge of the interest alleged to have been due to 31 October ~~2019~~ 2018 on the Fourth Tranche.

PARTICULARS

The defendant refers to the particulars to paragraphs 13A and 14A of the Further Amended Statement of Claim.

15.4 In respect of the sum ~~applied or~~ purportedly applied by the plaintiff to the First and Third Tranches as described in paragraph 15.3(b)(i) above, the defendant:

- (a) repeats paragraph 13 above; and
- (b) says that, ~~even if the sum referred to in paragraph 15.3(b) above was validly paid by Ashurst to the plaintiff (which he does not admit), the plaintiff was not permitted to apply that sum in discharge of interest on the First to Third Tranches, in priority to interest owing on the Fourth Tranche.;~~ and
- (c) [Not used] ~~says that, by reason of the plaintiff having applied that amount to the First and Third Tranches, on or around 13 December 2019, the plaintiff was overpaid in the further sum of HK\$7,252,036.89 together with interest on that amount at the rate of 7% per annum.~~

15.5 In respect of the sum ~~purportedly~~ applied by the plaintiff to the Fourth Tranche as described in paragraph 15.3(b)(ii) above, the defendant:

- (a) repeats paragraphs 12.4, 12.5, 14 and 15.4(b) above;
- (b) says that, by reason of the matters alleged at paragraph 14 above, no interest payment was then outstanding in respect of the Fourth Tranche;
- (c) alternatively, says that, even if the sum referred to in paragraph 15.3(b) above was validly paid by Ashurst to the plaintiff (which he does not admit), by reason of the matters alleged at paragraph 15.4(b) above, that sum was more than sufficient to discharge the amount of HK\$7,147,120.14 that the plaintiff had demanded in respect of the Fourth Tranche.

16. As to paragraph 16:

- (a) ~~Save that he~~ He refers to and repeats paragraphs 13, ~~13A~~, 14, ~~14A~~, and 15, and 15.2 to 15.5 above.
- (b) He says that the amended allegation is embarrassing, in that the particulars to paragraph 13 do not support the allegation originally pleaded.

- (c) ~~He~~ He admits that the amount of A\$4,400,000 transferred to the Ashurst trust account on 11 December 2019 was less than the aggregate of the amounts demanded by the plaintiff and Taiping Trustees on 2 December 2019; and
- (d) He otherwise denies paragraph 16.

16.1 On 19 December 2019, the plaintiff sent an open letter of demand to the defendant that:

- (a) was entitled “HKD\$500,000,000 Secured Promissory Note and HKD\$653,000,000 Lona Agreement – Events of Default”;
- (b) referred to the plaintiff’s letters of demand dated 2 December 2019 addressed to the defendant, Sargon, TTIM and TCFM, and to the payment of A\$4.4 million into the Ashurst trust account on 11 December 2019; and
- (c) alleged that the defendant, Sargon, TTIM and/or TCFM had failed to pay the interest payments which were due in full, without particulars of any of the alleged non-payments.

PARTICULARS

The letter was sent by email from Minna Zhang of Ashurst Australia, titled “Trimantium / Sargon Group”.

16.2 On 19 December 2019, the plaintiff sent a further letter marked “without prejudice” to the defendant, in which it:

- (a) alleged that HK\$907,618.79 of interest remained outstanding on the Fourth Tranche for the half year ending 31 October 2019;
- (b) alleged that interest in the sum of HK\$7,271,733.01 would fall due for payment on 31 December 2019 on the First to Third Tranches, comprising default interest for late payment of interest for the quarter ending 30 September 2019 and interest payment for the quarter ending 31 December 2019;
- (c) alleged that interest and default interest in the sum of HK\$10,286,636.22 would fall due for payment on 31 December 2019 under P Note 1;
- (d) asserted that each of the above amounts would need to be paid on or before 31 December 2019; and
- (e) invited the defendant to put a proposal as to how he, Sargon, TTIM and TCFM would discharge those obligations.

PARTICULARS

The letter was sent by email from Minna Zhang of Ashurst Australia, titled “RE: Trimantium / Sargon Group – WITHOUT PREJUDICE”.

The defendant relies on s 131(2)(i) and (j) of the *Evidence Act 2008*.

16.3 By directing or instructing the letters to be sent as referred to in paragraphs 16.1 and/or 16.2 above, the plaintiff demanded payment of sums that:

- (a) were not then due and owing under the First to Third Tranches or the Fourth Tranche; and

- (b) would not become due and owing under the First to Third Tranches on 31 December 2019.

PARTICULARS

The defendant refers to and repeats paragraphs 12.2 to 12.5, 13 and 14 above.

16.4 On 30 December 2019, Mr Huang emailed the defendant, asking that he arrange for interest payments including:

- (a) interest on P Note 1 accrued to 31 December 2019, in the sum of HK\$10,286,636.22;
- (b) interest on the First to Third Tranches accrued to 31 December 2019, in the sum of HK\$7,271,733.01; and
- (c) outstanding interest from the last interest payment in the sum of HK\$907,618.79, to be transferred to the Ashurst trust account before 31 December 2019.

16.5 By that email Mr Huang, on behalf of the plaintiff, demanded payment of sums that:

- (a) were not then due and owing under the First to Third Tranches or the Fourth Tranche; and
- (b) would not become due and owing under the First to Third Tranches on 31 December 2019.

PARTICULARS

The defendant repeats the particulars to paragraph 16.3 above.

17. As to paragraph 17, he:

- (a) He refers to and repeats paragraphs 12.2 and 13 ~~and 14~~ above.
- (b) He otherwise denies paragraph 17.

18. As to paragraph 18:

- (a) He refers to and repeats paragraphs 12.2 to 12.4, 13 and 14 and 15.5 above.
- (b) Otherwise, he denies paragraph 18.

Alleged events of default

19. As to paragraph 19:

- (a) He refers to and repeats paragraphs 7, 8, 13, 14, 17 and 18 above.
- (b) He says further that, by reason of clause 11(4) of SA 4, the matters referred to did not constitute "Events of Default", as alleged or at all.

(b1) Alternatively:

- (i) he refers to and repeats paragraphs 3.45 and 3.46 above; and
- (ii) says that, if any of the matters referred to did constitute an "Event of Default", the plaintiff's sole recourse was to obtain all collateral in the event that the Event of Default was not remedied within 20 business days.
- (c) Otherwise, he denies paragraph 19.

19.1 On 31 December 2019, the plaintiff caused or permitted the sum of HK\$10,054,964.81, from the HK\$13,491,688.24 which it had previously applied, or purported to apply, in diminution of the defendant's alleged indebtedness that had been remitted from the Ashurst trust account to the plaintiff, to be transferred to the loan account maintained by Taiping Trustees in respect of P Note 1.

PARTICULARS

The defendant refers to paragraph 15.3(b) above.

Transaction details for China Insurance Group Finance Company Ltd account number 012-875-1-244879-7, a copy of which is exhibited to the Witness Statement of Ke Guo made on 10 September 2021.

19.2 [Not used] Even if the sum referred to in paragraph 15.3(b) above was validly paid by Ashurst to the plaintiff (which he does not admit), the plaintiff had no lawful basis to appropriate or to permit the appropriation of moneys that the plaintiff had already received and applied in reduction of the defendant's alleged indebtedness, to be applied instead in reduction of the indebtedness of Sargon, TTIM and/or TCFM under P Note 1.

19.3 On 4 January 2020, Connie Lau (Ms Lau) of China Taiping's Finance Department notified Mr Wang and Mr Liu that:

- (a) payment of HK\$13,491,688.24 had been received from Ashurst Australia on 13 December 2019; and
- (b) pursuant to instructions of the Risk Management and Compliance Department, HK\$10,082,191.78 would be applied towards interest on P Note 1 for the quarter ending 31 December 2019, and that the balance of HK\$3,409,496.46 would be applied to pay interest on the Fourth Tranche.

19.4 On 6 January 2020, in reply to Ms Lau's email, Mr Wang told Ms Lau that the post-investment management of the Sargon project was solely led by China Taiping's Investment Department.

19.5 On 7 January 2020, Ms Lau repeated her email of 4 January 2020, this time addressed to Mr Liu and copied to Mr Wang.

PARTICULARS

Emails between Connie Lau, Andy Wang and Liu Hongbo, 4-7 January 2020, a copy of which has been produced by the plaintiff on discovery. [CIG.001.026.3759]

19.6 On 8 January 2020, in response to enquiries made by Cheng Peng (Mr Cheng) of the Investment Business Audit Department of Taiping Finance Audit Service (Shenzhen) Co Ltd, Mr Liu:

- (a) told Mr Cheng to contact him directly about the "Sargon and Phillip projects", and that China Taiping had set up a special working group to take charge of the disposal of the project; and
- (b) told Mr Cheng that, as of 6 January 2020, the First to Third Tranches and P Note 1 were owing interest again and in default.

PARTICULARS

Emails between Liu Hongbo and Cheng Peng, 8 January 2020, titled "Taiping Financial Holdings special audit report on the use of entrusted funds in 2019 (draft for comments)", a copy of which has been produced by the plaintiff on discovery.

19.7 On 9 January 2020, Mr Huang sent a further email to the defendant demanding payment before 14 January 2020 of:

- (a) interest on P Note 1, in the sum of HK\$10,286,636.22;
- (b) interest on the First to Third Tranches, in the sum of HK\$7,271,733.01; and
- (c) outstanding interest from the last interest payment on the Fourth Tranche, in the sum of HK\$907,618.79.

19.8 By that email Mr Huang, on behalf of the plaintiff and Taiping Trustees, demanded payment of sums that:

- (a) were not then due and owing under the First to Third Tranches or the Fourth Tranche; and

PARTICULARS

The defendant refers to and repeats paragraph 16.3 above and the particulars thereto.

- (b) were not due and owing by TTIM under P Note 1, by reason of the transfer of HK\$10,054,964.81 referred to in paragraph 19.1 above.

20. As to paragraph 20:

- (a) He admits that the plaintiff served the notice referred to in paragraph 20.

PARTICULARS

The letter was sent under cover of an email sent by David Greenberg of Ashurst Australia, titled "Taiping and China Insurance Group".

(a1) He repeats paragraph 19 above.

(a2) He says that, by directing or instructing that letter to be sent, the plaintiff demanded payment of sums that were not then due and owing under the First to Third Tranches or the Fourth Tranche.

- (b) He denies that the plaintiff was entitled to require repayment of outstanding principal and interest on any of the First to Fourth Tranches in the amount alleged or at all.

20A. As to paragraph 20A, he repeats paragraphs 19 and 20(b) above.

20A.1 On 20 January 2020, under cover of the same email by which the letter of demand referred to in paragraph 20 above was sent to the defendant, Taiping Trustees:

- (a) sent letters of demand to Sargon, TTIM and TCFM, each alleging that TTIM had committed an Event of Default under P Note 1 by failing to pay the interest payable under P Note 1 for the quarter ending 31 December 2019; and
- (b) did so with the plaintiff's knowledge or acquiescence.

PARTICULARS

The defendant repeats the particulars to paragraph 20(a) above.

20A.2 The letters were false, alternatively misleading or deceptive, in that they failed to take account of the transfer of HK\$10,054,964.81 referred to in paragraph 19.1 above, in satisfaction of the interest payable under P Note 1 for the quarter ending 31 December 2019.

20A.3 On 29 January 2020, relying on the purported Events of Default notified in its letter of demand to Sargon sent on 20 January 2020, Taiping Trustees, with the knowledge or acquiescence of the plaintiff:

- (a) appointed receivers to Sargon, TTIM and TCFM; and
- (b) in so doing, wrongfully impaired the value of the shares in Sargon that the plaintiff held as security for the First to Fourth Tranches.

PARTICULARS

The defendant refers to and repeats paragraph 3.21.5 above and the particulars thereto.

20A.4 On 1 February 2020, the plaintiff's solicitors, on behalf of the plaintiff and Taiping Trustees, sent a letter to the defendant's solicitors, stating that Taiping Trustees would be prepared to suspend the receiverships of Sargon, TTIM and TCFM on the condition that:

- (a) a repayment of P Note 1 in the sum of HK\$10,286,636.22 (less the balance of a Sargon bank account that had been frozen by the receivers); and
- (b) a repayment of interest allegedly due and owing by the defendant on the First to Third Tranches in the sum of HK\$7,272,733.91; and
- (c) a repayment of interest allegedly due and owing by the defendant on the Fourth Tranche in the sum of HK\$907,618.79.

were made on or before 3 February 2020.

20A.5 By instructing that letter to be sent:

- (a) the plaintiff demanded repayments of sums that were not due and owing under the First to Third Tranche or the Fourth Tranche;

PARTICULARS

The defendant refers to and repeats paragraph 16.3 above and the particulars thereto.

- (b) Taiping Trustees demanded repayment of a sum that was not due and owing under P Note 1, by reason of the transfer of HK\$10,054,964.81 referred to in paragraph 19.1 above; and
- (c) the plaintiff, together with Taiping Trustees, improperly and illegitimately attempted to exert pressure on the defendant to pay sums that were not due and owing under the First to Third or Fourth Tranches, by specifying those payments as a condition of suspending the receiverships of Sargon, TTIM and TCFM which had been triggered under a separate secured lending facility (P Note 1) advanced by a different lender to a different borrower.

21. As to paragraph 21:

- (a) He refers to and repeats paragraph 19 above.
- (b) He admits that he has not paid the plaintiff the amounts referred to in paragraph 21 but denies that the plaintiff was entitled to demand repayment of outstanding principal and interest on any of the First to Fourth Tranches in the amount alleged or at all.
- (c) Otherwise, he admits paragraph 21.

21.1 In demanding payment of principal and interest, and in asserting Events of Default, in respect of the First to Third Tranches and/or the Fourth Tranche, the plaintiff was engaging in trade or commerce in connection with the supply of financial services to the defendant.

21.2 By issuing invoices or making demands for amounts of interest that were not due, or that would not become due on the dates asserted:

- (a) on or around 31 December 2018, 31 March 2019 and 30 June 2019 as described in paragraph 12.1 and 12.2 above;
- (b) on or around 30 September 2019, as described in paragraph 13(a) above;
- (c) on or around 16 October 2019, as described in paragraph 14 above;
- (d) on 2 December 2019, as described in paragraph 15 above;
- (e) on 19 December 2019, as described in paragraphs 16.1 and 16.3 above;
- (f) on 19 December 2019, as described in paragraphs 16.2 and 16.3 above;
- (g) on 30 December 2019, as described in paragraphs 16.4 and 16.5 above;
- (h) on 9 January 2020, as described in paragraphs 19.7 and 19.8 above;
- (i) on 20 January 2020, as described in paragraph 20 above; and/or
- (j) on 1 February 2020, as described in paragraphs 20A.4 and 20A.5 above.

the plaintiff engaged in conduct in relation to financial services that was misleading or deceptive, in contravention of section 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**).

21.3 Further or alternatively, by alleging that the defendant had committed an Event or Events of Default, and/or that the plaintiff was accordingly entitled to demand immediate repayment of principal, in respect of the First to Third Tranche and the Fourth Tranche:

- (a) on 2 December 2019, as described in paragraph 15 above;
- (b) on 19 December 2019, as described in paragraph 16.1 above; and
- (c) on 20 January 2020, as described in paragraph 20 above.

the plaintiff engaged in conduct in relation to financial services that was misleading or deceptive, in contravention of section 12DA(1) of the ASIC Act.

21.4 Further, by:

- (a) demanding payment of principal and interest;
- (b) asserting Events of Default; and
- (c) pursuing this proceeding.

in respect of the First to Third Tranches and/or the Fourth Tranche, the plaintiff engaged and is continuing to engage in conduct that is, in all the circumstances, unconscionable, in contravention of section 12CB(1) of the ASIC Act.

PARTICULARS

- (i) Contrary to the representations described in paragraphs 2.5(c), 2.8(c), 2.11(c) and 3.21.9(b) above, the plaintiff has sued the defendant personally for payment of principal and interest allegedly owing under the First to Third and Fourth Tranches.
- (ii) The plaintiff demanded and received payments of interest that were not due under the First to Third Tranches, as described in paragraphs 12.1 to 12.4, 13, 15.2 and 15.3(b)(i) above.
- (iii) The plaintiff has failed to credit those amounts towards payment of interest on the Fourth Tranche, as when interest fell due for payment under clause 7 of SA 4, as described in paragraphs 12.4 and 15.4 above.
- (iv) The plaintiff demanded and received payments of interest that were not due under the Fourth Tranche, as described in paragraphs 14, 15.2 and 15.3(b)(ii) above.
- (v) The plaintiff made further demands for payment of interest that was not due, or that would not become due on the date asserted, as described in paragraphs 16.1, 16.2, 16.4, 19.6, 20 and 20A.4 above.
- (vi) ~~[Not used] If the sum referred to in paragraph 15.3(b) above was validly paid to the plaintiff (which the defendant does not admit), the plaintiff caused or permitted the sum of HK\$10,054,964.81 to be appropriated in favour of Taiping Trustees, without the defendant's authority to do so, after having applied that amount in diminution of the defendant's alleged indebtedness to the plaintiff, as described in paragraphs 19.1 and 19.2 above.~~
- (vii) ~~Despite the plaintiff having caused or permitted the sum of HK\$10,054,964.81 to be transferred to the loan account maintained by that sum having been appropriated in favour of Taiping Trustees in respect of P Note 1 and applied in reduction of the indebtedness of Sargon, TTIM and/or TCFM under P Note 1, Taiping Trustees – with the plaintiff's knowledge or acquiescence – demanded payment of interest on P Note 1 to 31 December 2019, which amount had already been received by Taiping Trustees, as described in paragraphs 19.7(a), 19.8(b), 20, 20A.1 and 20A.2 above.~~
- (viii) In reliance on ~~that those~~ false, misleading or deceptive assertions of outstanding indebtedness under P Note 1, Taiping Trustees – with the plaintiff's knowledge or acquiescence – proceeded to appoint receivers to Sargon, TTIM and TCFM prior to 31 January 2020, as described in paragraphs 20A.1 to 20A.3 above.
- (ix) Shortly thereafter, the plaintiff and Taiping Trustees improperly and illegitimately attempted to exert pressure on the defendant to pay sums that were not due and owing under the First to Third or Fourth Tranches, by specifying those payments as a condition of suspending the

receiverships of Sargon, TTIM and TCFM, as described in paragraphs 20A.4 and 20A.5 above.

- (x) The plaintiff engaged in the conduct described in paragraphs (i) to (ix) above to terminate the Loan Agreement and SA 1 to SA 4 and P Note 1:
- (A) in circumstances where China Taiping had:
- (1) through the plaintiff, negotiated and entered into the Loan Agreement and the Supplementary Agreements; and
 - (2) through Taiping Trustees, negotiated and entered into P Note 1,
- for the purpose of enabling China Taiping to acquire equity ownership interests in Sargon, as described in paragraphs 3.7.1, 3.15.1, 3.21.1, 3.23.1 and 3.33.1 above;
- (B) in circumstances where, from around October 2019, China Taiping reversed its original strategy of advancing secured loans to the defendant and TTIM in order to facilitate eventual equity investments in Sargon, and instead resolved to terminate the Loan Agreement and P Note 1 by 31 January 2020, as described in paragraphs 13A.1 and 14.1 above;
- (C) in disregard of the separate rights, obligations and interests of the defendant (on one hand) and Sargon, TTIM and TCFM (on the other hand) under separate transactions with the plaintiff and Taiping Trustees (respectively); and
- (D) in a manner that wrongfully impaired the value of the securities from which the First to Fourth Tranches were intended to be repaid, as described in paragraph 20A.3 above.

21.5 By reason of the contraventions alleged in paragraphs 21.2 to 21.4 above, the defendant has suffered, and is likely to suffer, loss and damage.

21.6 Pursuant to section 12GM(1) of the ASIC Act, the Court should:

- (a) declare that the Loan Agreement, SA 1, SA 2, SA 3 and SA 4 are void ab initio or at all times on and after such date as the Court determines;
- (b) make an order refusing to enforce the Loan Agreement, SA 1, SA 2, SA 3 and SA 4; or
- (c) make such other order or orders as it thinks appropriate against the plaintiff to prevent or reduce the loss or damage to the defendant.

22. He denies paragraph 22.

22.1 Further or alternatively, if the defendant is indebted to the plaintiff (which is denied), he is entitled to set off any amount that the plaintiff has realised from the enforcement of any of the securities referred to in paragraphs 3.8(f), 3.16(g), 3.24(i) and 3.34(i) above.

Restitution

23. As to paragraph 23:

- (a) He does not plead to paragraph 23, which does not contain any allegations of fact.

- (b) Otherwise, he refers to and repeats paragraphs 24 to 28 below and does not admit paragraph 23.
24. He denies paragraph 24, and refers to and repeats paragraphs 2.1 to 2.12 above.
25. As to paragraph 25:
- (a) He does not admit, because he does not know, paragraph 25.
- (b) He says further that, insofar as paragraph 25 seeks to plead a claim in “unjust enrichment”, it does not disclose a cause of action.
26. As to paragraph 26:
- (a) He says that, insofar as paragraph 26 seeks to plead a claim in “unjust enrichment”, it does not disclose a cause of action.
- (b) He refers to and repeats paragraphs 2.1 to 2.12, 3.5(b) and (c), 3.8(f), (g), (h), (i) and (j), 3.16(g), (h), (i), (j) and (k), 3.24(h), (i) and (j), and 3.34(h), (i) and (j) above.
- (c) Otherwise, he denies paragraph 26.
- (d) Further:
- (i) He denies that the “advances” referred to were to his benefit.
- (ii) He repeats paragraphs 9 to 12 above, and says that the “amounts advanced” (which totalled approximately A\$106 million) were used as follows:
- (A) approximately A\$62.5 million – by the GrowthOps Subscribers and Grand Circle Opportunities Pty Ltd (which was a subsidiary of Pattani) to subscribe for and/or purchase shares in GrowthOps;
- (B) approximately A\$28.5 million – by Dragon Shield Holdings Pty Ltd to purchase 36 Class A Units in the Trimantium Sargon Investment Trust, which held 475,000 seed preference shares in Sargon;
- (C) approximately A\$4.9 million – by Trimantium Limited (in its capacity as trustee for the Trimantium Taiping (HK) Trust) to acquire 340,000 ordinary shares in Sargon from 10089 Holdings Pty Ltd;
- (D) approximately A\$1.5 million – by TCFM to pay costs and expenses of establishing Trimantium Insurance Partners Pty Ltd, a company whose purpose was to enable the China Taiping Insurance Group to operate an insurance business in Australia; and
- (E) approximately A\$8.7 million was used to pay interest to the plaintiff under the Original Loan Agreement, SA1, SA2, SA3 and SA4.
- (iii) He says further that:
- (A) each use of the “amounts advanced” pleaded above occurred with the plaintiff’s prior consent or agreement;

(B) the plaintiff held security over each of the entities or the shares and securities referred to in sub-paragraphs 26(d)(ii)(A), (B) and (C) above.

27. As to paragraph 27:

- (a) He says that, by reason of its failure to specify or identify a vitiating or unjust factor, paragraph 27 does not disclose a cause of action.
- (b) Otherwise, he denies paragraph 27.

28. Further, as to paragraphs 24 to 27 of the amended statement of claim:

- (a) He says further that, as a result of the uses of the “amounts advanced” pleaded in paragraph 26(d) above, he changed his position in good faith.
- (b) He refers to and repeats the matters pleaded in paragraphs 3.12, 3.13, 3.20, 3.21, 3.30, 3.31, 3.41 to 3.42 above and says that because of the illegality there pleaded, the plaintiff is not entitled to claim in restitution the money the subject of the Loan Agreement (as varied).
- (c) He refers to and repeats paragraph 3.46 above and denies that the plaintiff is entitled to the relief claimed.

COUNTERCLAIM

29. The defendant refers to and repeats paragraphs 1, 2.0, 2.01, 2.1, 2.2, 2.2.1, 2.2.2, 2.4, 2.5, 2.8, 2.8.1, 2.11, 3, 3.2, 3.7, 3.7.1, 3.13.1, 3.14, 3.15.1, 3.21.1 to 3.21.5, 3.21.8, 3.21.9, 3.22, 3.23.1, 3.31.3 to 3.31.5, 3.31.9 to 3.31.13, 3.32, 3.33.1, 3.34(o), 12.1 to 12.4, 13, 13A.1, 14, 14.1, 15, 15.1 to 15.5, 16.1 to 16.5, 19.6 to 19.8, 20, 20A.1 to 20A.5, and 21.1 to 21.6 above.

AND THE DEFENDANT CLAIMS

- A. An order declaring that the Loan Agreement, SA 1, SA 2, SA 3 and SA 4 are void ab initio or at all times on and after such date as the Court determines.
- B. An order refusing to enforce the Loan Agreement, SA 1, SA 2, SA 3 and SA 4.
- C. Such other order or orders as the Court thinks appropriate against the plaintiff to prevent or reduce the loss or damage to the defendant.

DATED: ~~16 OCTOBER 2020~~ ~~5 FEBRUARY 2021~~ ~~26 OCTOBER 2021~~ 15 FEBRUARY 2022

C T MOLLER

T CLARKE

HWL Ebsworth Lawyers

HWL Ebsworth
Solicitors for the defendant