



**Annexure A – Notice of Proposed Settlement**

**FEDERAL COURT OF AUSTRALIA NOTICE**

**CIMIC SHAREHOLDER CLASS ACTION**

**NOTICE OF PROPOSED SETTLEMENT**

*Miciulis Superannuation Pty Ltd (ACN 146 559 426) aff The Miciulis Superannuation Fund v  
CIMIC Group Limited (ACN 004 482 982) (VID564 of 2020)*

This notice contains important information about the proposed settlement of the class action proceeding commenced by Miciulis Superannuation Pty Ltd (ACN 146 559 426) ATF The Miciulis Superannuation Fund (the **Applicant**) against CIMIC Group Limited (**CIMIC**) in the Federal Court of Australia (the **Court**) (*VID564 of 2020*) (**CIMIC Class Action**).

**Please read it carefully. If you are a group member in the CIMIC Class Action, your legal rights will be affected by the proposed settlement if approved by the Court. It is proposed that only Registered Group Members will be entitled to share in the benefits from the proposed settlement. To work out whether you are a group member or a Registered Group Member, see section C below.**

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**SUMMARY OF YOUR OPTIONS**

1. If you **do not object** to the Proposed Settlement, you do not need to do anything.
2. If you wish to **object** to the Proposed Settlement then you **must**, by no later than **4:00pm (AEDT) on 3 March 2025**, fill in the form entitled '**Notice of Objection** to Proposed Settlement' annexed to this notice, sign it, and file it with the Court by sending it to the address on the form, and send it to the Lawyers by email to: [cimicshareholders@phifinneymcdonald.com](mailto:cimicshareholders@phifinneymcdonald.com). Any group member who has filed a Notice of Objection with the Court **must** at the same time send any evidence and written submissions they wish to rely upon in support of the Notice of Objection to the Court by sending it to the address on the form and to the Lawyers by email to [cimicshareholders@phifinneymcdonald.com](mailto:cimicshareholders@phifinneymcdonald.com).



#### A. WHAT IS THIS NOTICE ABOUT?

1. This notice provides important information about a proposed settlement of AU\$45.25 million to resolve the claims of all group members that are the subject of the CIMIC Class Action. As the settlement needs to be approved by the Court, it is referred to in this notice as the "**Proposed Settlement**". The Proposed Settlement is on the basis that there is no admission of liability by CIMIC.
2. The Applicant (who brought the CIMIC Class Action on its own behalf and on behalf of the group members) is represented by solicitors, Phi Finney McDonald (**Lawyers**). The CIMIC Class Action is funded by Omni Bridgeway (Fund 5) Australian Invnt. Pty Ltd (**Funder**).
3. A previous Court notice was issued on 11 May 2023 (**Registration and Opt Out Notice**). In accordance with that notice, it is proposed that only Registered Group Members will be entitled to share in the benefits from the Proposed Settlement. You are a Registered Group Member if, on or before 4:00pm (AEST) on 22 June 2023 (**Registration Deadline**):
  - (a) you executed and returned a funding agreement with the Funder; or
  - (b) you otherwise registered for the CIMIC Class Action by completing and submitting a registration form in accordance with the orders of the Honourable Justice Button dated 26 April 2023 (**Registration and Opt Out Orders**).
4. The Proposed Settlement requires Court approval. The Court must assess whether any class action settlement is fair and reasonable in the interests of group members. The Court will hear the application to approve the Proposed Settlement at a hearing to be held at 10:00am on 24 March 2025. You are entitled to attend the hearing if you wish to.
5. The settlement approval hearing will take place in the Victorian Registry of the Federal Court of Australia located at the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000.
6. If there is anything in this notice that you do not understand or if you have any questions, you should seek independent legal advice or contact the Funder using the contact details available at <https://portal.omnibridgeway.com/cases/register/cimic-group-overview>. Please do **not** contact the Court.

#### B. WHAT IS THE CIMIC CLASS ACTION ABOUT?

7. The CIMIC Class Action is brought by the Applicant on behalf of group members who acquired an interest in ordinary shares in CIMIC during the period from 7 February 2018 until the close of trading on 22 January 2020 (**Claim Period**).
8. The Applicant alleges that during the Claim Period, CIMIC breached its continuous disclosure obligations under the *Corporations Act 2001* (Cth) (**Corporations Act**), and engaged in misleading or deceptive conduct in contravention of the *Corporations Act*, the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Australian Consumer Law*, in respect of its disclosures to the market about:
  - (a) CIMIC's use of factoring facilities, and the impact of factoring on CIMIC's operating cash flow and EBITDA cash conversion; and
  - (b) CIMIC's accounting for its exposure to its Middle Eastern joint venture, BIC Contracting LLC (**BICC**).
9. The Applicant alleged that they and the group members suffered loss as a result of those alleged breaches. The class action alleged that the falls in share price value reflected the removal of "inflation" from CIMIC's share price, and that investors who acquired CIMIC shares during the Claim Period are entitled to compensation for loss and damage they have suffered as a consequence of CIMIC's conduct.



10. The allegations are denied by CIMIC. CIMIC defended the CIMIC Class Action. The Proposed Settlement acknowledges that CIMIC makes no admissions as to liability.
11. Full details of the allegations made by the Applicant and of CIMIC's defence against those allegations are set out in the Third Further Amended Statement of Claim and the Defence to the Third Further Amended Statement of Claim, which can be obtained by downloading them from <https://phifinneymcdonald.com/action/cimic-class-action/>.

### C. GROUP MEMBERS AND REGISTERED GROUP MEMBERS

12. You are a group member in the CIMIC Class Action if you:
  - (a) acquired an interest in ordinary '**CIMIC Securities**' during the Claim Period;
  - (b) suffered loss or damage by reason of CIMIC's alleged conduct, as pleaded in the Third Further Amended Statement of Claim;
  - (c) did not opt out of the CIMIC Class Action in accordance with the Registration and Opt Out Orders; and
  - (d) are not a person excluded in the definition of group member in paragraph 2 of the Third Further Amended Statement of Claim, such as a director, officer, close associate, or a related party/body corporate/entity of CIMIC (as defined by the Corporations Act).
13. All group members will be bound by the terms of the Proposed Settlement, if approved by the Court. However, as noted in paragraphs 5.2 and 5.12 of the Registration and Opt Out Notice, the parties intend to seek an order from the Court which, if made, would have the effect that group members who were not registered for the CIMIC Class Action, will not be entitled to participate in the Proposed Settlement without leave of the Court.
14. To reiterate, **you are a Registered Group Member if:**
  - (a) on or before the Registration Deadline, you executed and returned a funding agreement with the Funder; or
  - (b) you otherwise registered for the CIMIC Class Action by completing and submitting a registration form by the Registration Deadline in accordance with the Registration and Opt Out Orders.

### D. KEY TERMS OF THE PROPOSED SETTLEMENT

15. The key terms of the Proposed Settlement which the Court will be asked to approve are as follows:
  - (a) CIMIC will pay the amount of AU\$45.25 million to settle the CIMIC Class Action. This payment is an "all in" amount which means it is a fixed and final amount to cover all claims the subject of the CIMIC Class Action, legal costs, funding commission and all costs associated with the settlement;
  - (b) the settlement covers the Applicant and all group members; and
  - (c) the payment of AU\$45.25 million is in exchange for releases in favour of CIMIC that are commonly agreed in class action settlements.
16. The releases referred to in 15(c) above are in respect of the claims that were made (or could have been made) by the Applicant on their own behalf and on behalf of the group members in this Proceeding that directly relate to the allegations against CIMIC pleaded in this Proceeding. This will prevent you from bringing any future claims against CIMIC in relation to the allegations which were the subject of the CIMIC Class Action, regardless of whether you are a Registered Group Member and whether or not you receive any benefit from the Proposed Settlement.



17. If the Proposed Settlement is not approved by the Court, the CIMIC Class Action will continue and there will be no distributions of any monies to group members unless and until the Applicant is successful in the Proceeding, or a further settlement is reached.

#### **E. PROPOSED DISTRIBUTION AND DEDUCTIONS FROM THE SETTLEMENT SUM**

18. Any reference to “**Settlement Sum**” in this notice refers to the AU\$45.25 million proposed settlement amount to be paid by CIMIC, plus any interest that accrues on that amount before distribution to Registered Group Members.
19. At the settlement approval hearing, the Applicant will seek orders from the Court to approve a proposed settlement scheme (**Settlement Scheme**) which will establish how Registered Group Members’ entitlements are to be calculated, and the process to distribute the Settlement Sum.
20. The process by which the Settlement Sum is proposed to be distributed will be outlined in the Settlement Scheme.
21. A copy of the proposed Settlement Scheme will be available by 3 February 2025. Any Group Member who wishes to object to the settlement must file their notice of objection by 3 March 2025. You may request a copy of the proposed Settlement Scheme by contacting the Lawyers by email at [cimicshareholders@phifinney-mcdonald.com](mailto:cimicshareholders@phifinney-mcdonald.com). Some parts of the Settlement Scheme may be confidential, and you may be asked to agree to keep those parts confidential by completing a confidentiality undertaking.

#### *Payments to Group Members from the Settlement Sum*

22. The Applicant and Registered Group Members will receive 50% of the total amount of the Settlement Sum, being at least AU\$22,625,000 (not factoring any interest which accrues on the settlement amount paid by CIMIC).
23. At this stage it is not possible to provide a final estimate of how much individual Registered Group Members will receive from the settlement. That is because the amount of monies to be distributed to each Registered Group Member under the Settlement Scheme will depend on a number of factors, such as the number of CIMIC Securities purchased, the date of purchase, whether any of those CIMIC Securities were sold in the Claim Period, the overall losses of all Registered Group Members sharing in the Proposed Settlement, the total amount of the deductions from the Settlement Sum which are approved by the Court and any interest earned on the Settlement Sum prior to final distributions.
24. However, Registered Group Members will be sent a Notice of Estimated Distribution by 3 February 2025. In addition, anyone who attempts to register their claim and provides evidence of their claim prior to 3 March 2025 will be sent a Notice of Estimated Distribution within 14 days after they provide evidence of their claim.
25. A confidential “Loss Assessment Formula” contained in the Settlement Scheme will detail how each Registered Group Member’s entitlement will be calculated.
26. Additionally, the Applicant will seek Court approval for the payment of **\$25,375** to the Applicant to reimburse it in recognition of its time in acting as a representative party in the CIMIC Class Action. The Applicant will seek approval for this amount to be paid from the balance of the Settlement Sum which is available for distribution to Group Members.

#### *Proposed Payments to the Lawyers and Funder from the Settlement Sum*

27. The Settlement Scheme will also detail the proposed deductions from the Settlement Sum to be paid to the Lawyers and Funder.
28. The estimated amount of the proposed deductions to be paid to the Lawyers and Funders are set out in paragraph 32 below. The total amount of these deductions will not exceed 50% of the total Settlement Sum.



29. The Funder provided litigation funding for the Applicant's prosecution of the CIMIC Class Action on behalf of group members pursuant to the Litigation Funding Agreements entered into with the Applicant and certain group members. Under these agreements, the Funder:
- (a) indemnified the Applicant against any adverse costs orders;
  - (b) paid "Project Costs" comprising legal costs and other costs incurred in prosecuting the proceeding, such as the cost of solicitors, barristers, and experts, and GST where applicable;
  - (c) paid, in addition to the Project Costs, other costs and/or provided other financial support ancillary to the provision of security for the Respondent's costs, for which no reimbursement is sought to be deducted from the Settlement Sum;
  - (d) provided client liaison team services to group members; and
  - (e) in respect of the Applicant and Group Members who have entered into a Litigation Funding Agreement:
    - (i) per clause 12.3.3, agreed to return no less than 50% of the total Settlement Sum to the Applicant and Group Members; and
    - (ii) per clause 12.1.3, to the extent that there is no inconsistency with the above obligation, is contractually entitled to be paid a commission of 25% of the Settlement Sum in consideration for providing funding and other financial support prior to the commencement of and during the Proceeding.
30. The Funder will seek an order for the reimbursement of the Project Costs and, in addition, a "settlement common fund order" for payment of the Funder's commission. Paragraphs 6.1 to 6.11 of the Registration and Opt Out Notice advised that such an order would be sought at this stage of the Proceeding. The final rate of the common fund order to be sought cannot be calculated exactly at this time. It will be up to 25% of the Settlement Sum, but it may be lower to ensure that the total proposed deductions to the Lawyers and Funder do not exceed 50% of the total Settlement Sum (plus accrued interest). For example:
- (a) if all of the currently estimated Project Costs, Lawyers' other costs and administration costs (set out in paragraph 32 below) are incurred and approved, the estimated amount of the common fund order will be approximately **12.4%**;
  - (b) if a lesser amount of those costs are incurred or approved, the Funder will seek a higher common fund order of up to 25% (but not exceeding a rate which will return 50% of the Settlement Sum to Registered Group Members).
31. If granted, the order for the reimbursement of the Project Costs and payment of a funding commission would allow a deduction from the Settlement Sum for all Registered Group Members who stand to benefit from the proceeding to contribute to those amounts. Such an order is commonly made – in this regard, the Court's Class Actions Practice Note (GPN-CA) states that in an open class action (such as the CIMIC Class Action), class members may expect that if an application is made, and if in all the circumstances it is fair, just, equitable and in accordance with principle, the Court will make an appropriately framed order to prevent unjust enrichment and equitably and fairly distribute the burden of reasonable legal costs, fees and other expenses (including reasonable litigation funding charges and commission) amongst all persons who have benefited from the action.
32. While the amount of the final proposed distributions to the Lawyers and Funder cannot yet be calculated precisely, and is subject to Court approval, the total amount of all such deductions will not exceed 50% of the Settlement Sum. The current estimates are as follows:
- (a) Legal costs and disbursements paid (and to be paid) by the Funder by the time of the settlement approval hearing (**Project Costs**), in an estimated amount of approximately **\$12,743,875** (incl GST).



- (b) Funding commission in an estimated amount of **\$5,627,077** (incl GST) paid to the Funder (as explained above).
  - (c) The Lawyers' legal costs which are not Project Costs (i.e legal costs incurred but not paid by the Funder), being deferred fees and a 25% uplift on deferred fees, which total an estimated amount of **\$4,077,197** (incl GST).
  - (d) Costs of administering the Settlement Scheme, in an estimated amount of **\$146,850** (incl GST). It is proposed that Phi Finney McDonald be appointed as settlement fund administrator under Court supervision.
  - (e) The fees of a court-appointed costs referee who has been appointed by the Court as part of the settlement approval process, to assess the reasonableness of the deductions in (a), (c) and (d) above, in an estimated amount of **\$30,000** (incl GST). The independent costs referee is to provide an opinion to the Court on the reasonableness of the amount of legal costs and disbursements. It will ultimately be a matter for the Court to determine the amount of legal costs which it considers is fair and reasonable.
33. Any variances to the individual items in paragraph 32 will not impact the amount of the total distribution to the Funder and Lawyers which they will seek, which will be 50% of the Settlement Sum.

#### **F. WHAT IS THE PROCESS FOR SETTLEMENT APPROVAL**

34. As noted at paragraph 4 above, the Proposed Settlement will only take effect if it is approved by the Court. In deciding whether to approve the Proposed Settlement, the Court will consider whether the Proposed Settlement is fair and reasonable and in the interests of the group members as a whole.
35. The Court will have a hearing at 10:00am on 24 March 2025 to determine whether to approve the Proposed Settlement. You are entitled to attend the hearing if you wish.

#### **G. YOUR OPTIONS IN RESPONSE TO THIS NOTICE**

##### *Option 1 – Do Nothing*

36. If you **do not object** to the Proposed Settlement, you do not need to do anything. If you are not a Registered Group Member and you do not do anything, then as stated above, if the Proposed Settlement is approved by the Court, you will be prevented from bringing any future claims against CIMIC in relation to the subject matter of the CIMIC Class Action and you will not be entitled to share in the benefit from the Proposed Settlement.
37. If the Proposed Settlement is approved, and you are a Registered Group Member, you may be entitled to receive a pro-rata share of the Settlement Sum as determined by the terms of the Settlement Scheme.

##### *Option 2 – Object to the Proposed Settlement of the Proceeding*

38. If you wish to **object** to the Proposed Settlement then you **must**, by no later than **4:00pm (AEDT) on 3 March 2025**, fill in the form entitled '**Notice of Objection** to Proposed Settlement' annexed to this notice, duly execute it, and file it with the Court by sending it to the address on the form and sending it to the Lawyers by email to: [cimicshareholders@phifinney-mcdonald.com](mailto:cimicshareholders@phifinney-mcdonald.com). Any group member who has filed a Notice of Objection with the Court **must** at the same time send any evidence and written submissions they wish to rely upon in support of the Notice of Objection to the Court by sending it to the address on the form and to the Lawyers by email to [cimicshareholders@phifinney-mcdonald.com](mailto:cimicshareholders@phifinney-mcdonald.com).
39. If you are not a Registered Group Member and would like to share in the benefit from the Proposed Settlement, you should complete the Notice of Objection and state in the Notice



of Objection the reasons why you believe you should be entitled to share in the Proposed Settlement. The Court will then consider your Notice of Objection and decide whether you can share in the Proposed Settlement. There is no guarantee that the Court will allow any person who is not already a Registered Group Member to share in the benefit from the Proposed Settlement.

40. If you object, you are entitled to attend the settlement approval hearing at 10:00am on 24 March 2025 to explain the basis of your objection to the Judge if you wish to do so. If you do not attend, then the Court may give consideration to your objection and to the approval of the Proposed Settlement in your absence. You may wish to seek independent legal advice in relation to opposing the Proposed Settlement.



**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

No. VID564 of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Miciulis Superannuation Pty Ltd (ACN 146 559 426) atf The Miciulis Superannuation Fund**

Applicant

**CIMIC Group Limited (ACN 004 482 982)**

Respondent

Complete this form if you wish to submit an objection to the Proposed Settlement.

**If you support the Proposed Settlement, you do NOT need to return this form.**

Please note that if you submit a Notice of Objection to Proposed Settlement, your name and your specific circumstances (including transaction details and grounds of objection) may be read out in Court and/or referred to in orders and/or judgments of the Court.

Your Notice of Objection will be considered by the Court when it is determining whether to approve the Proposed Settlement.

If you wish to object to the Proposed Settlement, or any aspect of it, by **4.00 pm (AEDT) on 3 March 2025** you must file this form and any evidence/submissions in support by sending these documents by email or post to the Victorian Registry of the Court and to the Lawyers at the address below.

Any Notice of Objection received after this deadline may not be considered by the Court when it is determining whether to approve the Proposed Settlement.

**Email Address of Victorian Registry of the Federal Court of Australia**

Email: [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)

Post: Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne VIC 3000

**Email Address of Phi Finney McDonald**

To: [cimicshareholders@phifinneymcdonald.com](mailto:cimicshareholders@phifinneymcdonald.com)

**A. DETAILS OF OBJECTING GROUP MEMBER**

- on or before 4.00pm (AEST) on 22 June 2023, I registered my involvement in the Proceeding by entering into and returning a funding agreement with the Funder; or
- on or before 4.00pm (AEST) on 22 June 2023, I registered my involvement in the proceeding by completing and returning a registration form in the CIMIC Class Action by 4.00pm (AEST) 22 June 2023; or



If you have done any of the above, you are a **Registered Group Member**.

I have not done either of the above and therefore am not a Registered Group Member.

Details of the group member, being the person or entity that acquired an interest in CIMIC Securities:

Name of Group Member	
ACN/ABN [ <i>if company</i> ]	
Person completing this form	
Capacity [ <i>e.g., individual, partnership, trustee/agent</i> ]	
Telephone	
Email	
Postal address	

**B. RELEVANT TRANSACTIONAL INFORMATION**

If you are not a registered group member, you are required to provide the following information. Further, you are required to provide documentary evidence from a third party (e.g. contract notes or transaction receipts) in support of each acquisition and disposal of CIMIC Securities during the period from 7 February 2018 until the close of trading on 22 January 2020 (inclusive).

If you are a registered group member, you are **not** required to provide the following information. Please proceed to Sections C, D and E below.

HIN/SRN under which CIMIC Securities were traded	
Number of CIMIC Securities held as at close of trade on 6 February 2018	
Total number of CIMIC Securities acquired by the objector during the period 7 February 2018 until close of trading on 22 January 2020 (inclusive)	
Total number of CIMIC Securities disposed of by the objector during the period 7 February 2018 until close of trading on 22 January 2020 (inclusive)	



**C. ATTENDANCE AT HEARING AT 10:00AM (AEDT) ON 24 MARCH 2025**

- I do not intend to appear, but wish for my submissions to be considered in my absence
- I intend to appear before the Court at the hearing at 10:00am (AEDT) on 24 March 2025

*[please tick one]*

If you intend to appear, please complete the following:

- I will appear on my own behalf
- I will be represented by a lawyer

*[please tick one if you intend to appear]*

**D. GROUND(S) OF OBJECTION**

Please state the reasons in support of your objection to the Proposed Settlement *[set out in the space below and over any submissions you wish to make, attach additional pages if necessary]*. If you are not a Registered Group Member and you would like to share in the benefit from the Proposed Settlement, please state the reasons why you believe you should do so.



**E. EXECUTION OF NOTICE**

If you are completing the Notice of Objection on behalf of an individual shareholder you must sign and have your signature witnessed.

If you are completing the Notice of Objection on behalf of a company with a sole director or as the sole trustee, the sole director or sole trustee must sign and have their signatures witnessed.

If you are completing the Notice of Objection on behalf of a company or trust (with more than one director or trustee), two directors of the company, a director and a company secretary of the company, or two trustees must sign. A witness signature is not required.

By signing below, I confirm that the information I have provided in this form is true, complete and correct:

Signed:		Second signature (if applicable):	
Name		Name	
Position		Position	
Date		Date	
Witness Signature		Witness Signature	
Name of Witness		Name of Witness	