

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

Hochtief Aktiengesellschaft

(ARBN 101 525 651)

Level 18, 55 Market Street

SYDNEY NSW 2000

(Hochtief AG)

1. DEFINITIONS

- 1.1 In addition to terms defined elsewhere in this undertaking, the following definitions are used:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth)

ASX means the financial market known as ASX operated by ASX Limited ACN 008 624 691

Beneficiaries means each of the companies named in paragraph 3.1.1

Chi-X means the financial market known as Chi-X Australia operated by Chi-X Australia Pty Ltd ACN 129 584 667

Corporations Act means the *Corporations Act 2001* (Cth)

Hochtief AG means Hochtief Aktiengesellschaft ARBN 101 525 651

Hochtief Australia means Hochtief Australia Holdings Limited ACN 103 181 675

Leighton means Leighton Holdings Limited ACN 004 482 982 (now known as Cimic Group Limited)

2. BACKGROUND

2.1 ASIC's role

- 2.1.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

2.2 Details of the conduct of Hochtief AG

- 2.2.1 On 29 November 2013, Hochtief AG issued a direction to its wholly owned subsidiary, Hochtief Australia to purchase 4.8 million shares in Leighton in the period between 6 January 2014 and 31 January 2014 (**Instruction**).
- 2.2.2 On 14 January 2014, at a meeting of the Audit Committee of Leighton, Hochtief AG, through its Chief Financial Officer, came into possession of information in relation to Leighton's expected financial result for the year ended 31 December 2013, which information Hochtief AG ought reasonably to have known was inside information within the meaning of sections 1042A and 1042D of the Corporations Act (**the inside information**).
- 2.2.3 On 27 January 2014, Hochtief AG, whilst in possession of the inside information, extended the completion date for the acquisition of the shares in Leighton by Hochtief Australia from 31 January 2014 to 14 February 2014 (**Variation of Instruction**).
- 2.2.4 On 29 January 2014, Hochtief AG whilst in possession of the inside information, issued the Variation of Instruction to various officers of Hochtief Australia, thereby procuring Hochtief Australia to apply for and acquire shares in Leighton in contravention of section 1043A(1)(d) of the Corporations Act.
- 2.2.5 On 3 February 2014, Hochtief Australia applied for and acquired 200,000 shares at an average price of \$16.1763 a share.

2.3 Admission of Contravention

- 2.3.1 ASIC alleges and Hochtief AG admits that on 29 January 2014, Hochtief AG whilst in possession of the inside information, issued the Variation of Instruction to various officers of Hochtief Australia, thereby procuring Hochtief Australia to apply for and acquire shares in Leighton in contravention of section 1043A(1)(d) of the Corporations Act (**the Contravention**).

3. UNDERTAKINGS

- 3.1 Under section 93AA of the ASIC Act, Hochtief AG has offered and ASIC agrees to accept, the following undertakings:

Notional Profit

- 3.1.1 Hochtief AG undertakes to pay an amount equal to 50% of the notional profit, as calculated in accordance with clause 3.2 below (**the Notional Profit**), to each of and as directed by the following beneficiaries:

- (a) the Australian Shareholders' Association ACN 000 625 669 for the advancement of shareholder education in Australia, or, for company monitoring, or both; and
- (b) the First Nations Foundation ACN 117 794 466 for its initiatives with the Financial Services Council on My Moola, the Foundation's adult financial literacy program (**the Beneficiaries**);

- 3.1.2 Hochtief AG undertakes to pay 50% of the Notional Profit to each of the **Beneficiaries** no later than 28 days after the date of ASIC signing and thereby accepting this enforceable undertaking.

Formula for calculation of the Notional Profit

- 3.2 Hochtief AG undertakes to calculate the total amount of the notional profit made on the days that trading occurred by reason of the Contravention according to the following formula:

$$\text{notional profit} = \text{NS} \times (\text{LP} - \text{AP});$$

where;

- (a) **NS** is the number of shares purchased by Hochtief Australia by reason of the Contravention;
- (b) **LP** is \$17.21, which is the last traded price in Leighton Shares on 20 February 2014; and
- (c) **AP** is the average price at which the shares in Leighton were applied for or acquired by Hochtief Australia on each of the trading days that resulted from the Contravention.

3.3 Hochtief AG undertakes that it will pay the costs of its compliance with this enforceable undertaking.

3.4 Hochtief AG undertakes to provide all documents and information requested by ASIC for the purpose of ASIC assessing Hochtief AG's compliance with the terms of this enforceable undertaking.

3.5 Acknowledgements

3.5.1 Hochtief AG acknowledges that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking;
- (c) will report publicly on whether the undertakings given by Hochtief AG in this enforceable undertaking have been complied with; and
- (d) will make this undertaking available for public inspection.

3.5.2 Further Hochtief AG acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention other than the Contravention or arising from future conduct;
- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

3.5.3 Hochtief AG acknowledges that this undertaking has no operative force until accepted by ASIC, and Hochtief AG and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

EXECUTED by Hochtief)
Aktiengesellschaft (ACN 101)
525 651) in accordance with)
section 127(1) of the)
Corporations Act 2001 by)
authority of its directors:



Director



Director

Dated 21 April 2016

Accepted by the Australian Securities and Investments Commission under s93AA
of the ASIC Act by its duly authorised delegate:


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Chris Savundra

Delegate of Australian Securities and Investments Commission

Dated

~~April 2016~~ *CS*

8 DECEMBER 2016