

SUPREME COURT OF QUEENSLAND

**REGISTRY: Brisbane
NUMBER: 3508 of 2015**

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS APPOINTED) ACN 077 208 461

First Applicants: **JOHN RICHARD PARK AND GINETTE DAWN MULLER AS LIQUIDATORS OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**

AND

Second Applicant: **LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)(RECEIVERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**

AND

Respondent: **DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001**

CERTIFICATE OF EXHIBIT

VOLUME 2 OF 4

Pages 280 to 519

SWORN by **JOHN RICHARD PARK** on 28 January, 2016 in the presence of:



Deponent



Solicitor/~~Barrister~~/Justice of the Peace

STEPHANIE WILLIAMSON

SOLICITOR

AFFIDAVIT OF JOHN RICHARD PARK Filed on behalf of the Applicants Form 46 Rule 431	Russells Level 18 300 Queen Street BRISBANE 4000 Phone: 07 3004 8888 Fax: 07 3004 8899
	SCPR_20141565_026.doc

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IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS APPOINTED) ACN 077 208 461

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AND

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AND

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Filed on behalf of the Applicants
Form 46 Rule 431

Russells
Level 18
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

SCPR_20141565_026.doc

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Appointment of Agent

**Peregrine Beach Pty Ltd
(ACN) 127 412 864**

The Trust Company (PTAL) Limited

LM Investment Management Limited (Administrators Appointed)

Appointment of Agent

Date

9 July

2013

By this Deed Poll The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the **Mortgagee**)

Witnesses as follows:

Recitals

A

Peregian Beach Pty Ltd (ACN 127 412 864) (the Company) of:-

C/- Rhodes Docherty & Co, Suite 202, 164 Mona Vale Road, St Ives NSW 2075;

and 10 Glenside Street, Balgowlah Heights NSW 2093

is indebted to the Mortgagee.

B

The Mortgagee holds:

1. Loan Agreement dated 25 June 2012 between the Mortgagee and **Peregian Beach Pty Ltd (ACN 127 412 864)** and **David Richard Hawes and Glenside Group (QLD) Pty Ltd ACN 144 620 693**.

2. Mortgage given by **Peregian Beach Pty Ltd (ACN 127 412 864)** dated 26 June 2012 and registered with the Queensland Land Registry Office as registered dealing number 714574199.

3. General Security Deed given by **Peregian Beach Pty Ltd** dated 25 June 2012 (PPSR registration number 201206280067629).

C

In the events which have happened the security constituted by the General Security Deed and the Mortgage has become enforceable.

D

By virtue of the powers in the General Security Deed and the Mortgage, the Mortgagee is entitled to appoint any person or persons to be the agent of the Mortgagee to exercise any of the rights, powers and remedies exercisable by the Mortgagee pursuant to the General Security Deed and the Mortgage, and the Mortgagee wishes to exercise this power.

Accordingly:

1. The Mortgagee appoints **LM Investment Management Limited (Administrators Appointed) (ACN 077 208 461)** to be the agent (the **Agent**) of the Mortgagee, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the Mortgagee under and pursuant to the General Security Deed, the Mortgage and by law.

Appointment of Agent

2. The Mortgagee reserves the right at any time to:
 - (a) revoke the Agent's appointment;
 - (b) impose conditions or restrictions on the terms of appointment of the Agent; or
 - (c) appoint an additional or a replacement agent in place of the Agent.
3. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.
4. **Limit of Liability**
 - 4.1 The Mortgagee enters into this Deed only in its capacity as custodian of the LM Australian Income Fund ARSN 133 497 917 (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (Administrators Appointed) (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
 - 4.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
 - 4.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
 - 4.4 The provisions of this clause 4 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
 - 4.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
 - 4.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
 - 4.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.

Appointment of Agent

- 4.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 4.4.
- 4.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- 4.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (b) was in accordance with a lawful court order or direction or otherwise required by law.
- 4.11 All of the terms, clauses and conditions of this Deed are subject to this clause 4.
5. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

Signed by THE TRUST COMPANY (PTAL)

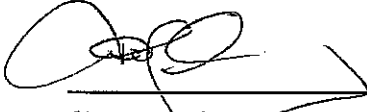
LIMITED ACN 008 412 913 as Lender,
By its attorney who states that it has had
No notice of revocation of the Power of
Attorney dated 12 July 2010 registered in
Queensland as number 7133510298
in the presence of:



Signature of Witness

VICKI SKODRAS

Name of Witness



Signature of Attorney

John Newby
Head of Property and Infrastructure Custody Services

Name of Attorney

Appointment of Agent

The Agent accepts the above appointment at the time and on the date written below:

Date Accepted: ~~3 June 2013~~ 9 July 2013

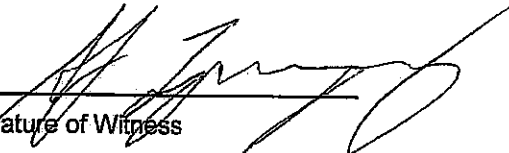
Time Accepted: 1pm

Further, to the extent necessary, by executing this notice LM Investment Management Limited ACN 077 208 461 (Administrators Appointed) in its capacity as the Responsible Entity for LM Australian Income Fund ARSN 133 497 917 joins in the giving of this notice.

Executed by LM Investment

Management Limited ACN 077 208 461

(Administrators Appointed) in its
capacity as the Responsible Entity for
LM Australian Income Fund
ARSN 133-497 917 by one of its
Duly appointed administrators in the
Presence of:



Signature of Witness



Name of Witness



Signature of Administrator



Name of Administrator

Agent's Indemnity

Peregian Beach Pty Ltd

(ACN) 127 412 864

The Trust Company (PTAL) Pty Ltd

LM Investment Management Limited (Administrators Appointed)

Agent's Indemnity

Date	9 JULY 2013
Parties	
1.	The Trust Company (PTAL) Ltd (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (with its successors in title and assigns called the Mortgagee); and
2.	LM Investment Management Limited (Administrators Appointed) (ACN 077 208 461) of c/-Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the Agent).
Recitals	
A	LM Peregian Beach Pty Ltd (ACN 127 412 864) (the Company) of:- C/- Rhodes Docherty & Co, Suite 202, 164A Mona Vale Road, St Ives NSW 2075 and 10 Glenside Street, Balgowlah Heights NSW 2093 indebted to the Mortgagee.
B	The Mortgagee holds: <ol style="list-style-type: none">1. Loan Agreement dated 25 June 2012 between the Mortgagee and Peregian Beach Pty Ltd (ACN 127 412 864) and David Richard Hawes and Glenside Group (QLD) Pty Ltd ACN 144 620 693.2. Mortgage given by Peregian Beach Pty Ltd (ACN 127 412 864) dated 26 June 2012 and registered with the Queensland Land Registry Office as registered dealing number 714574199.3. General Security Deed given by Peregian Beach Pty Ltd dated 25 June 2012 (PPSR registration number 201206280067629).
C	In the events which have happened the security constituted by the General Security Deed and the Mortgage has become enforceable.
D	By a Deed of Appointment of Agent dated 9 JULY 2013 (the Deed of Appointment), the Mortgagee has determined to appoint the Agent to be the agent of the Mortgagee.
E	The Agent agreed to accept such appointment (the Agency) on condition that the Mortgagee indemnify the Agent (so far as the Mortgagee is legally able to do so) in the manner provided in this Deed.

Agent's Indemnity

IT IS AGREED as follows:

1. Indemnity

The Mortgagee shall, subject to the provisions of clause 2 of this deed, indemnify the Agent against liabilities for or arising out of all actions, proceedings, claims, suits and demands, and all payments, costs and expenses (all included in the word *Liabilities*) incurred by the Agent in or arising out of the due exercise or purported exercise of any of the rights, powers, discretions or authorities vested or purported to be vested in the Agent by virtue of the Deed of Appointment, or otherwise incurred or to be incurred in the due course of the conduct of the Agency, including specifically:

- (a) all Liabilities arising out of any defect in the General Security Deed or the Mortgage or any invalidity or unenforceability of the General Security Deed or the Mortgage or the appointment pursuant to the Deed of Appointment;
- (b) all Liabilities consequent upon any bona fide mistake, omission, oversight, error of judgment or want of prudence on the part of the Agent;
- (c) all Liabilities incurred or threatened in respect of any matter or thing done or omitted to be done by the Agent in exercise or purported exercise of the Agent's rights, powers, discretions or authorities in the Agency; and
- (d) all Liabilities and obligations of any nature incurred by the Agent in the course of or directly or indirectly resulting from the Agency.

2. Exclusions from Indemnity

The indemnity in the preceding clause shall not extend to:

- (a) any liability arising out of the wilful default, dishonesty or gross negligence of the Agent or any of the Agent's agents or employees in the performance or exercise or purported performance or exercise of the Agent's rights, powers, discretions or authorities or as a result of the Agent or the Agent's agent or employees knowingly exceeding the scope of the Agent's rights, powers, discretions and authorities.

3. Expenses and Fees

The Mortgagee shall pay to the Agent all reasonable charges, costs, fees and expenses payable to or incurred by the Agent in relation to the Agency, to the extent to which the Agent does not apply moneys available to it as such Agent for that purpose, and the Agent is entitled to claim a lien over the General Security Deed Property and the Mortgaged Property in respect of all amounts referred to in this clause.

4. Emergency Preference Payments

Notwithstanding the provisions of the General Security Deed and the Mortgage, the Mortgagee (so far as it is competent to do so but not otherwise) authorises the Agent to apply the whole or any part of any moneys coming into the Agent's control in the Agency in

Agent's Indemnity

payment of claims of creditors of the Company (whether those claims have priority over the claims of the Mortgagee or not) if, in the reasonable opinion of the Agent, it is necessary to make such payment to protect the goodwill or other assets of the Company.

5. Warranties

The Agent warrants to the Mortgagee that at the time of execution of this Deed, the Agent had not received any claim in respect of the liability to which the indemnity contained in clause 1 extends or notice of any such claim, and the Agent is not aware of any circumstances in respect of which any such claim is threatened or apprehended.

6. Agent's Obligations

The Agent undertakes and agrees with the Mortgagee that:

- (a) in the event of any claim being threatened or received in respect of any liability to which the indemnity in this Deed extends, the Agent shall immediately notify the Mortgagee in writing, and shall furnish the Mortgagee with all information available to the Agent in relation to such claim;
- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (c) other than as specified in clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and
- (d) the Agent shall give full details to the Mortgagee of all liabilities admitted or debts paid pursuant to the discretion conferred by clause 4 within one month of the same being admitted incurred or paid (as the case may be).

7. Limit of Liability

- (a) The Mortgagee enters into this Deed only in its capacity as custodian of the LM Australian Income Fund ARSN 133 497 917 (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (Administrators Appointed) (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

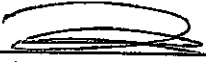
Agent's Indemnity

- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7(d).
- (i) The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
 - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (ii) was in accordance with a lawful court order or direction or otherwise required by law.
- (k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.

Agent's Indemnity

Signed by THE TRUST COMPANY (PTAL)

LIMITED ACN 008 412 913 as Lender,
By its attorney who states that it has had
No notice of revocation of the Power of
Attorney dated 12 July 2010 registered in
Queensland as number 713351029@
in the presence of:



Signature of Witness

VICKI SKODRAS

Name of Witness



Signature of Attorney

John Newby
Head of Property and Infrastructure Custody Services

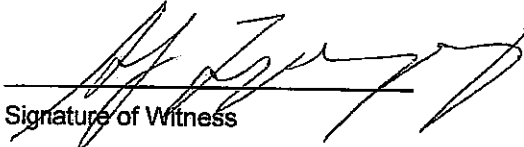
Name of Attorney

Further, to the extent necessary, by executing this notice LM Investment Management Limited ACN 077 208 461 (Administrators Appointed) in its capacity as the Responsible Entity for LM Australian Income Fund ARSN 133 497 917 joins in the giving of this notice.

Executed by LM Investment

Management Limited ACN 077 208 461

(Administrators Appointed) in its
capacity as the Responsible Entity for
LM Australian Income Fund
ARSN 133 497 917 by one of its
Duly appointed administrators in the
Presence of:



Signature of Witness

Ryan Zagdrager

Name of Witness



Signature of Administrator

John Richard Park

Name of Administrator

Appointment of Agent

**Rocola Pty Ltd
(ACN 104 964 061)**

The Trust Company (PTAL) Limited

LM Investment Management Limited

Appointment of Agent

Date	<p>By this Deed Poll The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the <i>Mortgagee</i>)</p>
Recitals	<p>Witnesses as follows:</p> <p>A Rocola Pty Ltd (ACN 104 964 061) (the <i>Company</i>) of C/- 243 Hay Street, Subiaco 6018 in the State of Western Australia is indebted to the Mortgagee.</p> <p>B The Mortgagee holds:</p> <p> (a) a company charge given by the Company dated 17 September 2007 and registered with the Australian Securities and Investments Commission as charge no. 1517886 (the <i>Charge</i>), under which the Company charged the Secured Property (as that term is defined in the Charge) (the <i>Charged Property</i>) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge); and</p> <p> (b) a mortgage of land executed by the Company on 17 September 2007 and registered with the WA Land Registry as registered dealing No. K351142 (the <i>Mortgage</i>) under which the Company mortgaged the estate and interest described in the Mortgage (the <i>Mortgaged Property</i>) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Mortgage).</p> <p>C In the events which have happened the security constituted by the Charge and the Mortgage has become enforceable.</p> <p>D By virtue of the powers in the Charge and the Mortgage, the Mortgagee is entitled to appoint any person or persons to be the agent of the Mortgagee to exercise any of the rights, powers and remedies exercisable by the Mortgagee pursuant to the Charge and the Mortgage, and the Mortgagee wishes to exercise this power.</p>

Accordingly:

2. **The Mortgagee appoints LM Investment Management Limited (ACN 077 208 461)** to be the agent (the *Agent*) of the Mortgagee, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the Mortgagee under and pursuant to the Charge, the Mortgage and by law.

Appointment of Agent

3. The Mortgagee reserves the right at any time to:
 - (a) revoke the Agent's appointment;
 - (b) impose conditions or restrictions on the terms of appointment of the Agent; or
 - (c) appoint an additional or a replacement agent in place of the Agent.
4. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.
5. **Limit of Liability**
 - 5.1 The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
 - 5.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
 - 5.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
 - 5.4 The provisions of this clause 6 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
 - 5.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
 - 5.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
 - 5.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
 - 5.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal

Appointment of Agent

liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 6.4.

- 5.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- 5.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (b) was in accordance with a lawful court order or direction or otherwise required by law.
- 5.11 All of the terms, clauses and conditions of this Deed are subject to this clause 6.
6. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

Appointment of Agent

EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

Signed Sealed and Delivered for The Trust Company (PTAL) Pty Ltd ACN 008 412 913 by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:

The Trust Company (PTAL) Limited ACN 008 412 913
by its duly appointed attorney Geoffrey Funnell
under Power of Attorney dated 12 July 2010

Registered No. 

State Manager (Corporate & Legal Services) (Qld)

Group A Attorney Signature

Group B Attorney Signature

Print Name

Print Name

The Agent accepts the above appointment at the time and on the date written below:

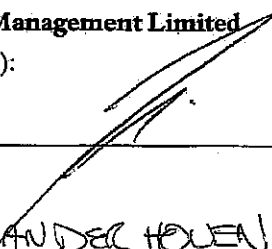
Date Accepted:

Time Accepted:

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
LM Investment Management Limited
(ACN 077 208 461):

Director Signature

Director/Secretary Signature


EGIDIO VAN DER HOUEW


SIMON JEREMY TICKNER

Print Name

Print Name

Agent's Indemnity
Rocola Pty Ltd
(ACN 104 964 061)

The Trust Company (PTAL) Pty Ltd

LM Investment Management Limited

Agent's Indemnity

Date

2011

Parties

1. **The Trust Company (PTAL) Pty Ltd** (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (with its successors in title and assigns called the *Mortgagee*); and
2. **LM Investment Management Limited** (ACN 077 208 461) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the *Agent*).

Recitals

- A **Rocola Pty Ltd (ACN 104 964 061)** (the *Company*) of C/- 243 Hay Street, Subiaco 6018 in the State of Western Australia is indebted to the Mortgagee.
- B The Mortgagee holds:
- (a) a company charge given by the Company dated 17 September 2007 and registered with the Australian Securities and Investments Commission as charge no. 1517886 (the *Charge*), under which the Company charged the Secured Property (as that term is defined in the Charge) (the *Charged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge); and
 - (b) a mortgage of land executed by the Company on 17 September 2007 and registered with the WA Land Registry as registered dealing No. K351142 (the *Mortgage*) under which the Company mortgaged the estate and interest described in the Mortgage (the *Mortgaged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Mortgage).
- C In the events which have happened the security constituted by the Charge and the Mortgage has become enforceable.
- D By a Deed of Appointment of Agent dated 10th August 2011 (the *Deed of Appointment*), the Mortgagee has determined to appoint the Agent to be the agent of the Mortgagee.
- E The Agent agreed to accept such appointment (the *Agency*) on condition that the Mortgagee indemnify the Agent (so far as the Mortgagee is legally able to do so) in the manner provided in this Deed.

Agent's Indemnity

IT IS AGREED as follows:

1. Indemnity

The Mortgagee shall, subject to the provisions of clause 2 of this deed, indemnify the Agent against liabilities for or arising out of all actions, proceedings, claims, suits and demands, and all payments, costs and expenses (all included in the word *Liabilities*) incurred by the Agent in or arising out of the due exercise or purported exercise of any of the rights, powers, discretions or authorities vested or purported to be vested in the Agent by virtue of the Deed of Appointment, or otherwise incurred or to be incurred in the due course of the conduct of the Agency, including specifically:

- (a) all Liabilities arising out of any defect in the Charge or the Mortgage or any invalidity or unenforceability of the Charge or the Mortgage or the appointment pursuant to the Deed of Appointment;
- (b) all Liabilities consequent upon any bona fide mistake, omission, oversight, error of judgment or want of prudence on the part of the Agent;
- (c) all Liabilities incurred or threatened in respect of any matter or thing done or omitted to be done by the Agent in exercise or purported exercise of the Agent's rights, powers, discretions or authorities in the Agency; and
- (d) all Liabilities and obligations of any nature incurred by the Agent in the course of or directly or indirectly resulting from the Agency.

2. Exclusions from Indemnity

The indemnity in the preceding clause shall not extend to:

- (a) any liability arising out of the wilful default, dishonesty or gross negligence of the Agent or any of the Agent's agents or employees in the performance or exercise or purported performance or exercise of the Agent's rights, powers, discretions or authorities or as a result of the Agent or the Agent's agent or employees knowingly exceeding the scope of the Agent's rights, powers, discretions and authorities; or
- (b) any liability admitted by the Agent without the prior written consent of the Mortgagee, other than any liability incurred by the Agent in the ordinary course of the business of the Company.

3. Expenses and Fees

The Mortgagee shall pay to the Agent all reasonable charges, costs, fees and expenses payable to or incurred by the Agent in relation to the Agency, to the extent to which the Agent does not apply moneys available to it as such Agent for that purpose, and the Agent is entitled to claim a lien over the Charged Property and the Mortgaged Property in respect of all amounts referred to in this clause.

Agent's Indemnity

4. Emergency Preference Payments

Notwithstanding the provisions of the Charge and the Mortgage, the Mortgagee (so far as it is competent to do so but not otherwise) authorises the Agent to apply the whole or any part of any moneys coming into the Agent's control in the Agency in payment of claims of creditors of the Company (whether those claims have priority over the claims of the Mortgagee or not) if, in the reasonable opinion of the Agent, it is necessary to make such payment to protect the goodwill or other assets of the Company.

5. Warranties

The Agent warrants to the Mortgagee that at the time of execution of this Deed, the Agent had not received any claim in respect of the liability to which the indemnity contained in clause 1 extends or notice of any such claim, and the Agent is not aware of any circumstances in respect of which any such claim is threatened or apprehended.

6. Agent's Obligations

The Agent undertakes and agrees with the Mortgagee that:

- (a) in the event of any claim being threatened or received in respect of any liability to which the indemnity in this Deed extends, the Agent shall immediately notify the Mortgagee in writing, and shall furnish the Mortgagee with all information available to the Agent in relation to such claim;
- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (c) other than as specified in clause 2(b) and clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and
- (d) the Agent shall give full details to the Mortgagee of all liabilities admitted or debts paid pursuant to the discretion conferred by clauses 2(b) and 4 within one month of the same being admitted incurred or paid (as the case may be).

7. Limit of Liability

- (a) The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the

Agent's Indemnity

Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7(d).
- (i) The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
 - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (ii) was in accordance with a lawful court order or direction or otherwise required by law.

Agent's Indemnity

(k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.

EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

Signed Sealed and Delivered for The Trust Company (PTAL) Pty Ltd (ACN 008 412 913) by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:

The Trust Company (PTAL) Limited ACN 008 412 913
by its duly appointed attorney Geoffrey Funnell
under Power of Attorney dated 12 July 2010

Registered No.

State Manager (Corporate & Legal Services) (Qld)

Group A Attorney Signature

Group B Attorney Signature

Print Name

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited** (ACN 077 208 461):

Director Signature

Director/Secretary Signature

EGHARD VAN DER HOEVEN

SIMON JEREMY TUCKER

Print Name

Print Name

**Appointment of Agent
Source Developments No. 1 Pty Limited
(ACN 126 999 871)**

**Permanent Trustee Australia Limited
LM Investment Management Limited**

**Allens Arthur Robinson
Lawyers
Riverside Centre
123 Eagle Street
Brisbane QLD 4000
Tel 61 7 3334 3000
Fax 61 7 3334 3444
www.aar.com.au**

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Date	<p>By this Deed Poll Permanent Trustee Australia Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the <i>Mortgagee</i>)</p>
<p>Recitals</p>	<p>Witnesses as follows:</p>
<p>A</p>	<p>Source Developments No. 1 Pty Limited (ACN 126 999 871) (the <i>Company</i>) of Level 29, 31 Market Street, Sydney in the State of New South Wales is indebted to the Mortgagee.</p>
<p>B</p>	<p>The Mortgagee holds:</p> <ul style="list-style-type: none"> (a) a company charge given by the Company dated 14 September 2007 and registered with the Australian Securities and Investments Commission as charge no. 1515618 (the <i>Charge</i>), under which the Company charged the Secured Property (as that term is defined in the Charge) (the <i>Charged Property</i>) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge); and (b) a mortgage of land executed by the Company on 14 September 2007 and registered with the Queensland Land Registry as registered dealing No. 711052447 (the <i>Mortgage</i>) under which the Mortgagor mortgaged the Mortgaged Property (as that term is defined in the Mortgage) (the <i>Mortgaged Property</i>) to secure the payment to the Mortgagee of the Secured Money (as that term is defined in the Mortgage).
<p>C</p>	<p>In the events which have happened the security constituted by the Charge and the Mortgage has become enforceable.</p>
<p>D</p>	<p>By virtue of the powers in the Charge and the Mortgage, the Mortgagee is entitled to appoint any person or persons to be the agent of the Mortgagee to exercise any of the rights, powers and remedies exercisable by the Mortgagee pursuant to the Charge and the Mortgage, and the Mortgagee wishes to exercise this power.</p>

Accordingly:

1. The Mortgagee appoints LM Investment Management Limited (ACN 077 208 461) to be the agent (the *Agent*) of the Mortgagee, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the Mortgagee under and pursuant to the Charge, the Mortgage and by law.

2. The Mortgagee reserves the right at any time to:
 - (a) revoke the Agent's appointment;
 - (b) impose conditions or restrictions on the terms of appointment of the Agent; or
 - (c) appoint an additional or a replacement agent in place of the Agent.
3. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.
4. **Limit of Liability**
 - 4.1 The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
 - 4.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
 - 4.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
 - 4.4 The provisions of this clause 6 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
 - 4.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
 - 4.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
 - 4.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
 - 4.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 6.4.

-
- 4.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- 4.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (b) was in accordance with a lawful court order or direction or otherwise required by law.
- 4.11 All of the terms, clauses and conditions of this Deed are subject to this clause 6.
5. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

Appointment of Agent

Allens Arthur Robinson 

EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

Signed Sealed and Delivered for Permanent Trustee Australia Limited ACN 008 412 913 by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:



Group A Attorney Signature

Michael Pollard



Group B Attorney Signature

Susan Davis

The Agent accepts the above appointment at the time and on the date written below:

Date Accepted:

Time Accepted:

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited** (ACN 077 208 461):



Director Signature

Lisa Maree Darcy

Print Name



Director/Secretary Signature

Edward Van Der Hoven

Print Name

Agent's Indemnity
Source Developments No. 1 Pty Limited
(ACN 126 999 871)

Permanent Trustee Australia Limited
LM Investment Management Limited

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Date	2009
Parties	
1.	Permanent Trustee Australia Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (with its successors in title and assigns called the <i>Mortgagee</i>); and
2.	LM Investment Management Limited (ACN 077 208 461) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the <i>Agent</i>).
Recitals	
A	Source Developments No. 1 Pty Limited (ACN 126 999 871) (the <i>Company</i>) of Level 29, 31 Market Street, Sydney in the State of New South Wales is indebted to the Mortgagee.
B	The Mortgagee holds: <ul style="list-style-type: none"> (a) a company charge given by the Company dated 14 September 2007 and registered with the Australian Securities and Investments Commission as charge no. 1515618 (the <i>Charge</i>), under which the Company charged the Secured Property (as that term is defined in the Charge) (the <i>Charged Property</i>) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge); and (b) a mortgage of land executed by the Company on 14 September 2007 and registered with the Queensland Land Registry as registered dealing No. 711052447 (the <i>Mortgage</i>) under which the Mortgagor mortgaged the Mortgaged Property (as that term is defined in the Mortgage) (the <i>Mortgaged Property</i>) to secure the payment to the Mortgagee of the Secured Money (as that term is defined in the Mortgage).
C	In the events which have happened the security constituted by the Charge and the Mortgage has become enforceable.
D	By a Deed of Appointment of Agent dated 2009 (the <i>Deed of Appointment</i>), the Mortgagee has determined to appoint the Agent to be the agent of the Mortgagee.
E	The Agent agreed to accept such appointment (the <i>Agency</i>) on condition that the Mortgagee indemnify the Agent (so far as the Mortgagee is legally able to do so) in the manner provided in this Deed.

IT IS AGREED as follows:

1. Indemnity

The Mortgagee shall, subject to the provisions of clause 2 of this deed, indemnify the Agent against liabilities for or arising out of all actions, proceedings, claims, suits and demands, and all payments, costs and expenses (all included in the word *Liabilities*) incurred by the Agent in or arising out of the due exercise or purported exercise of any of the rights, powers, discretions or authorities vested or purported to be vested in the Agent by virtue of the Deed of Appointment, or otherwise incurred or to be incurred in the due course of the conduct of the Agency, including specifically:

- (a) all Liabilities arising out of any defect in the Charge or Mortgage or any invalidity or unenforceability of the Charge or Mortgage or the appointment pursuant to the Deed of Appointment;
- (b) all Liabilities consequent upon any bona fide mistake, omission, oversight, error of judgment or want of prudence on the part of the Agent;
- (c) all Liabilities incurred or threatened in respect of any matter or thing done or omitted to be done by the Agent in exercise or purported exercise of the Agent's rights, powers, discretions or authorities in the Agency; and
- (d) all Liabilities and obligations of any nature incurred by the Agent in the course of or directly or indirectly resulting from the Agency.

2. Exclusions from Indemnity

The indemnity in the preceding clause shall not extend to:

- (a) any liability arising out of the wilful default, dishonesty or gross negligence of the Agent or any of the Agent's agents or employees in the performance or exercise or purported performance or exercise of the Agent's rights, powers, discretions or authorities or as a result of the Agent or the Agent's agent or employees knowingly exceeding the scope of the Agent's rights, powers, discretions and authorities; or
- (b) any liability admitted by the Agent without the prior written consent of the Mortgagee, other than any liability incurred by the Agent in the ordinary course of the business of the Company.

3. Expenses and Fees

The Mortgagee shall pay to the Agent all reasonable charges, costs, fees and expenses payable to or incurred by the Agent in relation to the Agency, to the extent to which the Agent does not apply moneys available to it as such Agent for that purpose, and the Agent is entitled to claim a lien over the Charged Property and the Mortgaged Property in respect of all amounts referred to in this clause.

4. Emergency Preference Payments

Notwithstanding the provisions of the Charge and Mortgage, the Mortgagee (so far as it is competent to do so but not otherwise) authorises the Agent to apply the whole or any part of any moneys coming into the Agent's control in the Agency in payment of claims of creditors of the Company (whether those claims have priority over the claims of the Mortgagee or not) if, in the reasonable opinion of the Agent, it is necessary to make such payment to protect the goodwill or other assets of the Company.

5. Warranties

The Agent warrants to the Mortgagee that at the time of execution of this Deed, the Agent had not received any claim in respect of the liability to which the indemnity contained in clause 1 extends or notice of any such claim, and the Agent is not aware of any circumstances in respect of which any such claim is threatened or apprehended.

6. Agent's Obligations

The Agent undertakes and agrees with the Mortgagee that:

- (a) in the event of any claim being threatened or received in respect of any liability to which the indemnity in this Deed extends, the Agent shall immediately notify the Mortgagee in writing, and shall furnish the Mortgagee with all information available to the Agent in relation to such claim;
- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (c) other than as specified in clause 2(b) and clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and
- (d) the Agent shall give full details to the Mortgagee of all liabilities admitted or debts paid pursuant to the discretion conferred by clauses 2(b) and 4 within one month of the same being admitted incurred or paid (as the case may be).


7. Limit of Liability

- (a) The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to

all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7(d).
- (i) The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
 - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (ii) was in accordance with a lawful court order or direction or otherwise required by law.
- (k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.


Agent's Indemnity

Allens Arthur Robinson 

EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

Signed Sealed and Delivered for Permanent Trustee Australia Limited (ACN 008 412 913) by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:



Group A Attorney Signature


Michael Pollard



Group B Attorney Signature

Susan Davis

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited (ACN 077 208 461)**:



Director Signature

Lisa Maree Darcy

Print Name



Director/Secretary Signature

Edward Van Der Haven

Print Name

**Appointment of Agent
St Crispin's Property Proprietary Limited
(ACN 104 769 244)**

The Trust Company (PTAL) Limited

LM Investment Management Limited

**Allens Arthur Robinson
Lawyers
Riverside Centre
123 Eagle Street
Brisbane QLD 4000
Tel 61 7 3334 3000
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Appointment of Agent

Allens Arthur Robinson 

Date

2010

By this Deed Poll The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the *Mortgagee*)

Witnesses as follows:

Recitals

- A St. Crispin's Property Proprietary Limited (ACN 104 769 244) in its own right and as trustee for The St Crispin's Property Trust (the *Mortgagor*) of '2' 10 Mallett Street, Camperdown in the State of New South Wales is indebted to the Mortgagee.
- B The Mortgagee holds:
- (a) a Fixed and Floating Charge given by the Mortgagor dated 20 September 2005 and registered with the Australian Securities and Investments Commission as charge no. 1210202 (the *Charge*), under which the Mortgagor charged the Secured Property (as that term is defined in the Charge) (the *Charged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge); and
 - (b) a mortgage of land executed by the Mortgagor on 16 November 2004 and registered with the Queensland Land Registry as registered dealing No. 708444146 and subsequently transferred to the Mortgagee (the *First Mortgage*) under which the Mortgagor mortgaged the estate and interest described in the Mortgage (the *First Mortgaged Property*) to secure the payment to the Mortgagee of the Secured Money (as that term is defined in the First Mortgage).
 - (c) a mortgage of land executed by the Mortgagor on 12 September 2005 and registered with the Queensland Land Registry as registered dealing No. 709008763 (the *Second Mortgage*) under which the Mortgagor mortgaged the estate and interest described in the Mortgage (the *Second Mortgaged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Second Mortgage).
- C In the events which have happened the security constituted by the Charge, the First Mortgage and the Second Mortgage has become enforceable.
- D By virtue of the powers in the Charge, the First Mortgage and the Second

Mortgage, the Mortgagee is entitled to appoint any person or persons to be the agent of the Mortgagee to exercise any of the rights, powers and remedies exercisable by the Mortgagee pursuant to the Charge, the First Mortgage and the Second Mortgage, and the Mortgagee wishes to exercise this power.

Accordingly:

1. The Mortgagee appoints LM Investment Management Limited (ACN 077 208 461) to be the agent (the *Agent*) of the Mortgagee, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the Mortgagee under and pursuant to the Charge, the First Mortgage, the Second Mortgage and by law.
2. The Mortgagee reserves the right at any time to:
 - (a) revoke the Agent's appointment;
 - (b) impose conditions or restrictions on the terms of appointment of the Agent; or
 - (c) appoint an additional or a replacement agent in place of the Agent.
3. The Mortgagee may, without prejudice to any or all other rights and remedies it may have under this deed or applicable law, terminate this deed by giving 7 days written notice to the Agent. The Agent must formally retire by executing an appropriate deed of retirement prior to the end of the notice period given by the Mortgagee.
4. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.
5. **Limit of Liability**
 - 5.1 The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
 - 5.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
 - 5.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
 - 5.4 The provisions of this clause 6 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.

- 5.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- 5.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- 5.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- 5.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 6.4.
- 5.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- 5.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (b) was in accordance with a lawful court order or direction or otherwise required by law.
- 5.11 All of the terms, clauses and conditions of this Deed are subject to this clause 6.
6. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

Appointment of Agent

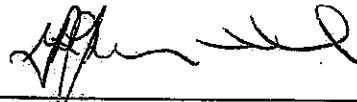
Allens Arthur Robinson 

EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

Signed Sealed and Delivered for The Trust Company (PTAL) Limited ACN 008 412 913 by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:

The Trust Company (PTAL) Limited ACN 008 412 913 by its duly appointed attorney Geoffrey Funnell under Power of Attorney dated 12 July 2010 Registered No. 7133510219



Group A Attorney Signature

Group B Attorney Signature **Geoffrey Funnell**
State Manager (Corporate & Legal Services) (Qld)

Print Name

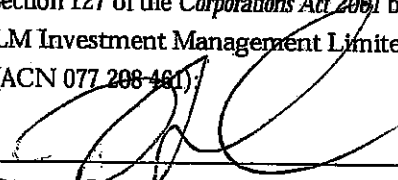
Print Name

The Agent accepts the above appointment at the time and on the date written below:

Date Accepted:


Time Accepted:

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by LM Investment Management Limited (ACN 077 208 461)



Director Signature
P. DRAKE

Print Name



Director/Secretary Signature
S. TICKNER

Print Name

**Agent's Indemnity
St Crispin's Property Proprietary Limited
(ACN 104 769 244)**

The Trust Company (PTAL) Limited

LM Investment Management Limited

**Allens Arthur Robinson
Lawyers
Riverside Centre
123 Eagle Street
Brisbane QLD 4000
Tel 61 7 3334 3000
Fax 61 7 3334 3444
www.aar.com.au**

© Copyright Allens Arthur Robinson 2010

Date	2010
Parties	
1.	The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (with its successors in title and assigns called the <i>Mortgagee</i>); and
2.	LM Investment Management Limited (ACN 077 208 461) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the <i>Agent</i>).
Recitals	
A	St. Crispin's Property Proprietary Limited (ACN 104 769 244) in its own right and as trustee for The St Crispin's Property Trust (the <i>Mortgagor</i>) of '2' 10 Mallett Street, Camperdown in the State of New South Wales is indebted to the Mortgagee.
B	The Mortgagee holds: <ul style="list-style-type: none"> (a) a Fixed and Floating Charge given by the Mortgagor dated 20 September 2005 and registered with the Australian Securities and Investments Commission as charge no. 1210202 (the <i>Charge</i>), under which the Mortgagor charged the Secured Property (as that term is defined in the Charge) (the <i>Charged Property</i>) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge); and (b) a mortgage of land executed by the Mortgagor on 16 November 2004 and registered with the Queensland Land Registry as registered dealing No. 708444146 and subsequently transferred to the Mortgagee (the <i>First Mortgage</i>) under which the Mortgagor mortgaged the estate and interest described in the Mortgage (the <i>First Mortgaged Property</i>) to secure the payment to the Mortgagee of the Secured Money (as that term is defined in the First Mortgage). (c) a mortgage of land executed by the Mortgagor on 12 September 2005 and registered with the Queensland Land Registry as registered dealing No. 709008763 (the <i>Second Mortgage</i>) under which the Mortgagor mortgaged the estate and interest described in the Mortgage (the <i>Second Mortgaged Property</i>) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Second Mortgage).

- | | |
|---|--|
| C | In the events which have happened the security constituted by the Charge, the First Mortgage and the Second Mortgage has become enforceable. |
| D | By a Deed of Appointment of Agent dated 2010 (the <i>Deed of Appointment</i>), the Mortgagee has determined to appoint the Agent to be the agent of the Mortgagee. |
| E | The Agent agreed to accept such appointment (the <i>Agency</i>) on the condition that the Mortgagee indemnify the Agent (so far as the Mortgagee is legally able to do so) in the manner provided in this Deed. |

IT IS AGREED as follows:

1. Indemnity

The Mortgagee shall, subject to the provisions of clause 2 of this deed, indemnify the Agent against liabilities for or arising out of all actions, proceedings, claims, suits and demands, and all payments, costs and expenses (all included in the word *Liabilities*) incurred by the Agent in or arising out of the due exercise or purported exercise of any of the rights, powers, discretions or authorities vested or purported to be vested in the Agent by virtue of the Deed of Appointment, or otherwise incurred or to be incurred in the due course of the conduct of the Agency, including specifically:

- (a) all Liabilities arising out of any defect in the Charge, the First Mortgage or the Second Mortgage, or any invalidity or unenforceability of the Charge, the First Mortgage, the Second Mortgage or the appointment pursuant to the Deed of Appointment;
- (b) all Liabilities consequent upon any bona fide mistake, omission, oversight, error of judgment or want of prudence on the part of the Agent;
- (c) all Liabilities incurred or threatened in respect of any matter or thing done or omitted to be done by the Agent in exercise or purported exercise of the Agent's rights, powers, discretions or authorities in the Agency; and
- (d) all Liabilities and obligations of any nature incurred by the Agent in the course of or directly or indirectly resulting from the Agency.

2. Exclusions from Indemnity

The indemnity in the preceding clause shall not extend to:

- (a) any liability arising out of the wilful default, dishonesty or gross negligence of the Agent or any of the Agent's agents or employees in the performance or exercise or purported performance or exercise of the Agent's rights, powers, discretions or authorities or as a result of the Agent or the Agent's agent or employees knowingly exceeding the scope of the Agent's rights, powers, discretions and authorities; or

- (b) any liability admitted by the Agent without the prior written consent of the Mortgagee, other than any liability incurred by the Agent in the ordinary course of the business of the Mortgagor.

3. Expenses and Fees

The Mortgagee shall pay to the Agent all reasonable charges, costs, fees and expenses payable to or incurred by the Agent in relation to the Agency, to the extent to which the Agent does not apply moneys available to it as such Agent for that purpose, and the Agent is entitled to claim a lien over the Charged Property, the First Mortgaged Property and the Second Mortgaged Property in respect of all amounts referred to in this clause.

4. Emergency Preference Payments

Notwithstanding the provisions of the Charge, the First Mortgage and the Second Mortgage, the Mortgagee (so far as it is competent to do so but not otherwise) authorises the Agent to apply the whole or any part of any moneys coming into the Agent's control in the Agency in payment of claims of creditors of the Mortgagor (whether those claims have priority over the claims of the Mortgagee or not) if, in the reasonable opinion of the Agent, it is necessary to make such payment to protect the goodwill or other assets of the Mortgagor.

5. Warranties

The Agent warrants to the Mortgagee that at the time of execution of this Deed, the Agent had not received any claim in respect of the liability to which the indemnity contained in clause 1 extends or notice of any such claim, and the Agent is not aware of any circumstances in respect of which any such claim is threatened or apprehended.

6. Agent's Obligations

The Agent undertakes and agrees with the Mortgagee that:

- (a) in the event of any claim being threatened or received in respect of any liability to which the indemnity in this Deed extends, the Agent shall immediately notify the Mortgagee in writing, and shall furnish the Mortgagee with all information available to the Agent in relation to such claim;
- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (c) other than as specified in clause 2(b) and clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and

- (d) the Agent shall give full details to the Mortgagee of all liabilities admitted or debts paid pursuant to the discretion conferred by clauses 2(b) and 4 within one month of the same being admitted incurred or paid (as the case may be).

7. Limit of Liability

- (a) The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7 (d).

- (i) The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
 - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (ii) was in accordance with a lawful court order or direction or otherwise required by law.
- (k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.

Agent's Indemnity

Allens Arthur Robinson 

EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

Signed Sealed and Delivered for The Trust Company (PTAL) Limited (ACN 008 412 913) by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:

The Trust Company (PTAL) Limited ACN 008 412 913
by its duly appointed attorney Geoffrey Funnell
under Power of Attorney dated 12 July 2010
Registered No. 713351029

Group A Attorney Signature

Group B Attorney Signature

Geoffrey Funnell

State Manager (Corporate & Legal Services) (Qld)

Print Name

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by LM Investment Management Limited (ACN 077 208 461):

Director Signature

P. DRAKE

Print Name

Director/Secretary Signature

S. TUCKER

Print Name

PTAL CP
20/11/12

**Appointment of Agent
Young Land Corporation Pty Ltd
(ACN 102 989 686)**

The Trust Company (PTAL) Limited

LM Investment Management Limited

Appointment of Agent

Date	20 November 2012
	By this Deed Poll The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the <i>Mortgagee</i>)
	Witnesses as follows:
Recitals	
A	Young Land Corporation Pty Ltd (ACN 102 989 686) (the <i>Company</i>) of Level 14, 50 Cavill Avenue, Surfers Paradise in the state of Queensland Australia is indebted to the <i>Mortgagee</i> .
B	The <i>Mortgagee</i> holds a Fixed and Floating Charge given by the <i>Company</i> dated 21 June 2004 and registered with the Australian Securities and Investments Commission as charge no. 1057997 (the <i>Charge</i>), under which the <i>Company</i> charged the Secured Property (as that term is defined in the <i>Charge</i>) (the <i>Charged Property</i>) to secure the payment to the <i>Mortgagee</i> of the Money Secured (as that term is defined in the <i>Charge</i>).
C	In the events which have happened the security constituted by the <i>Charge</i> has become enforceable.
D	By virtue of the powers in the <i>Charge</i> , the <i>Mortgagee</i> is entitled to appoint any person or persons to be the agent of the <i>Mortgagee</i> to exercise any of the rights, powers and remedies exercisable by the <i>Mortgagee</i> pursuant to the <i>Charge</i> , and the <i>Mortgagee</i> wishes to exercise this power.

Accordingly:

1. The *Mortgagee* appoints LM Investment Management Limited (ACN 077 208 461) to be the agent (the *Agent*) of the *Mortgagee*, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the *Mortgagee* under and pursuant to the *Charge* and by law.
2. The *Mortgagee* reserves the right at any time to:
 - (a) revoke the *Agent's* appointment;
 - (b) impose conditions or restrictions on the terms of appointment of the *Agent*; or
 - (c) appoint an additional or a replacement agent in place of the *Agent*.
3. This appointment of the *Agent* shall take effect from the actual time it is accepted by the *Agent* signing below.
4. **Limit of Liability**
 - 4.1 The *Mortgagee* enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the

Appointment of Agent

Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.

- 4.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- 4.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- 4.4 The provisions of this clause 6 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- 4.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- 4.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- 4.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- 4.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 6.4.
- 4.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- 4.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or

Appointment of Agent

(b) was in accordance with a lawful court order or direction or otherwise required by law.

4.11 All of the terms, clauses and conditions of this Deed are subject to this clause 6.

5. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

Appointment of Agent


EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

The Trust Company (PTAL) Limited ACN 008
412 913, by its Attorney who states that he/she has
had no notice of revocation of the Power of
Attorney dated 12 July 2010:



WITNESS VICKI SKODRAS



Attorney


Trent Franklin
Manager Property and Infrastructure Custody Services

The Agent accepts the above appointment at the time and on the date written below:

Date Accepted:

Time Accepted:

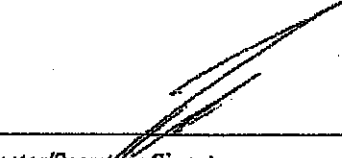
Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
LM Investment Management Limited
(ACN 077 208 461):



Director Signature

PETER CHARLES ORVILLE

Print Name



Director/Secretary Signature

EDWARD VAN DER HORST

Print Name

LM CP
20/11/12

**Appointment of Agent
Young Land Corporation Pty Ltd
(ACN 102 989 686)**

The Trust Company (PTAL) Limited

LM Investment Management Limited

Appointment of Agent

Date

20 November 2012

By this Deed Poll The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the *Mortgagee*)

Witnesses as follows:

Recitals

- A Young Land Corporation Pty Ltd (ACN 102 989 686) (the *Company*) of Level 14, 50 Cavill Avenue, Surfers Paradise in the state of Queensland Australia is indebted to the Mortgagee.
- B The Mortgagee holds a Fixed and Floating Charge given by the Company dated 21 June 2004 and registered with the Australian Securities and Investments Commission as charge no. 1057997 (the *Charge*), under which the Company charged the Secured Property (as that term is defined in the Charge) (the *Charged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge).
- C In the events which have happened the security constituted by the Charge has become enforceable.
- D By virtue of the powers in the Charge, the Mortgagee is entitled to appoint any person or persons to be the agent of the Mortgagee to exercise any of the rights, powers and remedies exercisable by the Mortgagee pursuant to the Charge, and the Mortgagee wishes to exercise this power.

Accordingly:

1. The Mortgagee appoints LM Investment Management Limited (ACN 077 208 461) to be the agent (the *Agent*) of the Mortgagee, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the Mortgagee under and pursuant to the Charge and by law.
2. The Mortgagee reserves the right at any time to:
 - (a) revoke the Agent's appointment;
 - (b) impose conditions or restrictions on the terms of appointment of the Agent; or
 - (c) appoint an additional or a replacement agent in place of the Agent.
3. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.
4. **Limit of Liability**
 - 4.1 The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the

Appointment of Agent

Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.

- 4.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- 4.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- 4.4 The provisions of this clause 6 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- 4.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
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- 4.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- 4.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 6.4.
- 4.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- 4.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
 - (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or

Appointment of Agent

(b) was in accordance with a lawful court order or direction or otherwise required by law.

4.11 All of the terms, clauses and conditions of this Deed are subject to this clause 6.

5. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

Appointment of Agent

EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

The Trust Company (PTAL) Limited ACN 008
412 913, by its Attorney who states that he/she has
had no notice of revocation of the Power of
Attorney dated 12 July 2010:

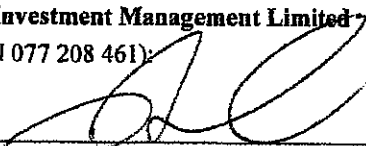
Attorney

The Agent accepts the above appointment at the time and on the date written below:

Date Accepted:

Time Accepted:

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
LM Investment Management Limited
(ACN 077 208 461):



Director Signature

PETER CHARLES ORLICE
Print Name



Director/Secretary Signature

GERARD VAN DER HOUWEN
Print Name

PTAC CP
20/11/12

Agents Indemnity
Young Land Corporation Pty Ltd (ACN 102 989
686)

The Trust Company (PTAL) Limited
LM Investment Management Limited

Agents Indemnity

Date

20 November 2012

By this Deed Poll The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the *Mortgagee*)

Witnesses as follows:

Recitals

- A **Young Land Corporation Pty Ltd** (ACN 102 989 686) (the *Company*) of Level 14, 50 Cavill Avenue, Surfers Paradise in the state of Queensland Australia is indebted to the Mortgagee.
- B The Mortgagee holds a Fixed and Floating Charge given by the Company dated 21 June 2004 and registered with the Australian Securities and Investments Commission as charge no. 1057997 (the *Charge*), under which the Company charged the Secured Property (as that term is defined in the Charge) (the *Charged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge).
- C In the events which have happened the security constituted by the Charge, the First Mortgage has become enforceable.
- D By a Deed of Appointment of Agent dated 2012 (the *Deed of Appointment*), the Mortgagee has determined to appoint the Agent to be the agent of the Mortgagee.
- E The Agent agreed to accept such appointment (the *Agency*) on the condition that the Mortgagee indemnify the Agent (so far as the Mortgagee is legally able to do so) in the manner provided in this Deed.

IT IS AGREED as follows:

1. Indemnity

The Mortgagee shall, subject to the provisions of clause 2 of this deed, indemnify the Agent against liabilities for or arising out of all actions, proceedings, claims, suits and demands, and all payments, costs and expenses (all included in the word *Liabilities*) incurred by the Agent in or arising out of the due exercise or purported exercise of any of the rights, powers, discretions or authorities vested or purported to be vested in the Agent by virtue of the Deed of Appointment, or otherwise incurred or to be incurred in the due course of the conduct of the Agency, including specifically:

Agents Indemnity

- (a) all Liabilities arising out of any defect in the Charge, the First Mortgage or any invalidity or unenforceability of the Charge, the First Mortgage or the appointment pursuant to the Deed of Appointment;
- (b) all Liabilities consequent upon any bona fide mistake, omission, oversight, error of judgment or want of prudence on the part of the Agent;
- (c) all Liabilities incurred or threatened in respect of any matter or thing done or omitted to be done by the Agent in exercise or purported exercise of the Agent's rights, powers, discretions or authorities in the Agency; and
- (d) all Liabilities and obligations of any nature incurred by the Agent in the course of or directly or indirectly resulting from the Agency.

2. Exclusions from Indemnity

The indemnity in the preceding clause shall not extend to:

- (a) any liability arising out of the wilful default, dishonesty or gross negligence of the Agent or any of the Agent's agents or employees in the performance or exercise or purported performance or exercise of the Agent's rights, powers, discretions or authorities or as a result of the Agent or the Agent's agent or employees knowingly exceeding the scope of the Agent's rights, powers, discretions and authorities; or
- (b) any liability admitted by the Agent without the prior written consent of the Mortgagee, other than any liability incurred by the Agent in the ordinary course of the business of the Mortgagor.

3. Expenses and Fees

The Mortgagee shall pay to the Agent all reasonable charges, costs, fees and expenses payable to or incurred by the Agent in relation to the Agency, to the extent to which the Agent does not apply moneys available to it as such Agent for that purpose, and the Agent is entitled to claim a lien over the Charged Property, the First Mortgaged Property in respect of all amounts referred to in this clause.

4. Emergency Preference Payments

Notwithstanding the provisions of the Charge, the First Mortgage, the Mortgagee (so far as it is competent to do so but not otherwise) authorises the Agent to apply the whole or any part of any moneys coming into the Agent's control in the Agency in payment of claims of creditors of the Mortgagor (whether those claims have priority over the claims of the Mortgagee or not) if, in the reasonable opinion of the Agent, it is necessary to make such payment to protect the goodwill or other assets of the Mortgagor.

Agents Indemnity

5. Warranties

The Agent warrants to the Mortgagee that at the time of execution of this Deed, the Agent had not received any claim in respect of the liability to which the indemnity contained in clause 1 extends or notice of any such claim, and the Agent is not aware of any circumstances in respect of which any such claim is threatened or apprehended.

6. Agent's Obligations

The Agent undertakes and agrees with the Mortgagee that:

- (a) in the event of any claim being threatened or received in respect of any liability to which the indemnity in this Deed extends, the Agent shall immediately notify the Mortgagee in writing, and shall furnish the Mortgagee with all information available to the Agent in relation to such claim;
- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (c) other than as specified in clause 2(b) and clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and
- (d) the Agent shall give full details to the Mortgagee of all liabilities admitted or debts paid pursuant to the discretion conferred by clauses 2(b) and 4 within one month of the same being admitted incurred or paid (as the case may be).

7. Limit of Liability

- (a) The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.

Agents Indemnity

- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7(d).
- (i) The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
 - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (ii) was in accordance with a lawful court order or direction or otherwise required by law.
- (k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.

Agents Indemnity


EXECUTED and delivered as a deed.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

The Trust Company (PTAL) Limited ACN 008 412 913, by its Attorney who states that he/she has had no notice of revocation of the Power of Attorney dated 12 July 2010:



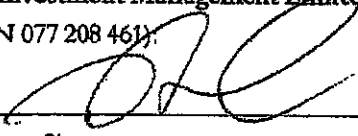
WITNESS VICKI SKODRAS



Attorney

Trent Franklin
Manager Property and Infrastructure Custody Services


Executed as a deed in accordance with section 127 of the Corporations Act 2001 by LM Investment Management Limited (ACN 077 208 461).



Director Signature

PETER CHARLES DRANCE

Print Name



Director/Secretary Signature

EDWARD JAW OEL HOEW

Print Name

LM CIP
20/11/12

Agents Indemnity
Young Land Corporation Pty Ltd (ACN 102 989
686)

The Trust Company (PTAL) Limited
LM Investment Management Limited

?

Agents Indemnity

Date	20 November 2012
	<p>By this Deed Poll The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the <i>Mortgagee</i>)</p> <p>Witnesses as follows:</p>
Recitals	
A	<p>Young Land Corporation Pty Ltd (ACN 102 989 686) (the <i>Company</i>) of Level 14, 50 Cavill Avenue, Surfers Paradise in the state of Queensland Australia is indebted to the Mortgagee.</p>
B	<p>The Mortgagee holds a Fixed and Floating Charge given by the Company dated 21 June 2004 and registered with the Australian Securities and Investments Commission as charge no. 1057997 (the <i>Charge</i>), under which the Company charged the Secured Property (as that term is defined in the Charge) (the <i>Charged Property</i>) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge).</p>
C	<p>In the events which have happened the security constituted by the Charge, the First Mortgage has become enforceable.</p>
D	<p>By a Deed of Appointment of Agent dated 2012 (the <i>Deed of Appointment</i>), the Mortgagee has determined to appoint the Agent to be the agent of the Mortgagee.</p>
E	<p>The Agent agreed to accept such appointment (the <i>Agency</i>) on the condition that the Mortgagee indemnify the Agent (so far as the Mortgagee is legally able to do so) in the manner provided in this Deed.</p>

IT IS AGREED as follows:

1. Indemnity

The Mortgagee shall, subject to the provisions of clause 2 of this deed, indemnify the Agent against liabilities for or arising out of all actions, proceedings, claims, suits and demands, and all payments, costs and expenses (all included in the word *Liabilities*) incurred by the Agent in or arising out of the due exercise or purported exercise of any of the rights, powers, discretions or authorities vested or purported to be vested in the Agent by virtue of the Deed of Appointment, or otherwise incurred or to be incurred in the due course of the conduct of the Agency, including specifically:

Agents Indemnity

- (a) all Liabilities arising out of any defect in the Charge, the First Mortgage or any invalidity or unenforceability of the Charge, the First Mortgage or the appointment pursuant to the Deed of Appointment;
- (b) all Liabilities consequent upon any bona fide mistake, omission, oversight, error of judgment or want of prudence on the part of the Agent;
- (c) all Liabilities incurred or threatened in respect of any matter or thing done or omitted to be done by the Agent in exercise or purported exercise of the Agent's rights, powers, discretions or authorities in the Agency; and
- (d) all Liabilities and obligations of any nature incurred by the Agent in the course of or directly or indirectly resulting from the Agency.

2. Exclusions from Indemnity

The indemnity in the preceding clause shall not extend to:

- (a) any liability arising out of the wilful default, dishonesty or gross negligence of the Agent or any of the Agent's agents or employees in the performance or exercise or purported performance or exercise of the Agent's rights, powers, discretions or authorities or as a result of the Agent or the Agent's agent or employees knowingly exceeding the scope of the Agent's rights, powers, discretions and authorities; or
- (b) any liability admitted by the Agent without the prior written consent of the Mortgagee, other than any liability incurred by the Agent in the ordinary course of the business of the Mortgagor.

3. Expenses and Fees

The Mortgagee shall pay to the Agent all reasonable charges, costs, fees and expenses payable to or incurred by the Agent in relation to the Agency, to the extent to which the Agent does not apply moneys available to it as such Agent for that purpose, and the Agent is entitled to claim a lien over the Charged Property, the First Mortgaged Property in respect of all amounts referred to in this clause.

4. Emergency Preference Payments

Notwithstanding the provisions of the Charge, the First Mortgage, the Mortgagee (so far as it is competent to do so but not otherwise) authorises the Agent to apply the whole or any part of any moneys coming into the Agent's control in the Agency in payment of claims of creditors of the Mortgagor (whether those claims have priority over the claims of the Mortgagee or not) if, in the reasonable opinion of the Agent, it is necessary to make such payment to protect the goodwill or other assets of the Mortgagor.

Agents Indemnity

5. Warranties

The Agent warrants to the Mortgagee that at the time of execution of this Deed, the Agent had not received any claim in respect of the liability to which the indemnity contained in clause 1 extends or notice of any such claim, and the Agent is not aware of any circumstances in respect of which any such claim is threatened or apprehended.

6. Agent's Obligations

The Agent undertakes and agrees with the Mortgagee that:

- (a) in the event of any claim being threatened or received in respect of any liability to which the indemnity in this Deed extends, the Agent shall immediately notify the Mortgagee in writing, and shall furnish the Mortgagee with all information available to the Agent in relation to such claim;
- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (c) other than as specified in clause 2(b) and clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and
- (d) the Agent shall give full details to the Mortgagee of all liabilities admitted or debts paid pursuant to the discretion conferred by clauses 2(b) and 4 within one month of the same being admitted incurred or paid (as the case may be).

7. Limit of Liability

- (a) The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.

Agents Indemnity

- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7(d).
- (i) The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
 - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
 - (ii) was in accordance with a lawful court order or direction or otherwise required by law.
- (k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.

Agents Indemnity

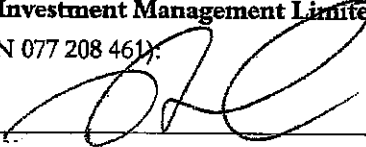
EXECUTED and delivered as a deed.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

The Trust Company (PTAL) Limited ACN 008 412 913, by its Attorney who states that he/she has had no notice of revocation of the Power of Attorney dated 12 July 2010:

Attorney

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited** (ACN 077 208 461):



Director Signature

PETER CHARLES DRANCE
Print Name



Director/Secretary Signature

GERALD VAN DER HORST
Print Name

Deed of termination of controllers

The Trust Company (PTAL) Limited ACN 008 412 913
Mortgagee

LM Investment Management Limited ABN 68 077 208 461 (In Liquidation)
(Receivers and Managers Appointed)
Controller

Clayton Utz
Lawyers
Level 18 333 Collins Street
Melbourne VIC 3000
GPO Box 9806
Melbourne VIC 3001
DX 38451 333 Collins VIC
Tel +61 3 9286 6000
Fax +61 3 9629 8488
www.claytonutz.com

Our reference 17306/18128/80146434

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Deed of termination

Date

2014

Parties

The Trust Company (PTAL) Limited ACN 008 412 913
 Level 15, 20 Bond Street, Sydney, NSW 2000 (Mortgagee)

LM Investment Management Limited ABN 68 077 208 461 (In Liquidation)
(Receivers and Managers Appointed)
 C/- FTI Consulting, 22 Market Street, Brisbane QLD 4000 (Controller)

Background

- A. Pursuant to the Deeds of Appointment, the Mortgagee appointed the Controller as the controller of the Assets.
- B. The parties now wish to terminate the appointment of the Controller under the Deeds of Appointment and release the Mortgagee with respect to its obligations under the Deeds of Indemnity.
- C. This deed sets out the terms and conditions relating to this termination.

Operative provisions

1. Definitions and Interpretation

In this deed, unless the contrary intention appears:

- (a) **Appointment** means the appointments of the Controller under the Deeds of Appointment;
- (b) **Assets** means the assets as more accurately described in Schedule 1;
- (c) **Deeds of Appointment** means the deeds of appointment as more accurately described in Schedule 1;
- (d) **Deeds of Indemnity** means the deeds of indemnity as more accurately described in Schedule 1;
- (e) **Effective Time** means 9.00am (Brisbane time) on 25 September 2014;
- (f) **Notice** means the notice of termination from the Mortgagee to the Controller dated 17 September 2014.
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) a reference to a party, clause, annexure or schedule is a reference to a party, clause of, annexure and schedule to this deed;
- (i) words importing the singular include the plural and vice versa and words importing a gender include any gender;
- (j) words importing persons include all bodies and associations, corporate and unincorporated, and vice versa;
- (k) each party includes its successors;

- (l) headings are included only for convenience and do not affect the interpretation of this deed; and
- (m) reference to any statute, regulation, proclamation, ordinance, or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

2. Mortgagee's Limitation of Liability

- (a) The Mortgagee enters into this Deed only in its capacity as mortgagee and as custodian of the LM First Mortgage Income Fund ARSN 089 343 288 (the "Trust"), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited ACN 077 208 461 (Receivers and Managers Appointed)(in Liquidation) (the "Responsible Entity") dated 4 February 1999 and as amended from time to time ("Custody Agreement") and in no other capacity.
- (b) The parties other than the Mortgagee acknowledge that the Obligations are incurred by the Mortgagee solely in its capacity as a mortgagee of the Assets of the Trust and as custodian of the Trust and that the Mortgagee will cease to have any obligation under this deed if the Mortgagee ceases for any reason to be Mortgagee of the assets of the Trust.
- (c) Subject to the provisions of clause 2(f), the Mortgagee will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified by the Responsible Entity or except out of the Assets against which it is entitled to be indemnified in respect of any liability incurred by it. The obligation of the Responsible Entity to indemnify the Mortgagee and the right of the Mortgagee to be indemnified out of the Assets are limited.
- (d) The parties other than the Mortgagee may enforce their rights against the Mortgagee arising from non-performance of the Obligations only to the extent of the Mortgagee's indemnity as provided above in clause 2(c).
- (e) If any party other than the Mortgagee does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Mortgagee in its personal capacity; or
 - (ii) applying to have the Mortgagee wound up or proving in the winding up of the Mortgagee.
- (f) Subject to the provisions of clause 2(g), the parties other than the Mortgagee waive their rights and release the Mortgagee from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - A. breach of the Mortgagee of any of its Obligations; or
 - B. non-performance by the Mortgagee of the Obligations; and
 - (ii) which cannot be paid or satisfied from the indemnity set out above clause 2(c), in respect of any liability incurred by it.
- (g) The parties other than the Mortgagee acknowledge that the whole of this deed is subject to this clause and the Mortgagee shall in no circumstances be required to satisfy any liability arising under, or for non performance or breach of any Obligations under or in respect of, this deed or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets

other than to the extent that this deed requires satisfaction out of the Assets of the Trust under the Mortgagee's control and in its possession as and when they are available to the Mortgagee to be applied in exoneration for such liability under the terms of the custody deed between the Responsible Entity and the Mortgagee PROVIDED THAT if the liability of the Mortgagee is not fully satisfied out of the assets of the Trust as referred to in this clause, the Mortgagee will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability but only to the extent of the total amount, if any, by which the assets of the Trust have been reduced by reasons of fraud, negligence or breach of the custody deed between the Mortgagee and Responsible Entity in the performance of the Mortgagee's duties.

- (h) The parties acknowledge that the Responsible Entity is responsible under its constitution for performing a variety of obligations relating to the Trust. The parties agree that no act or omission of the Mortgagee (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Mortgagee for the purposes of clause 2(g) to the extent to which the act or omission was caused or contributed to by any failure of the Responsible Entity of any other person or fulfil its obligations relating to the Trust or by any other act or omission of the Responsible Entity or any other person.
- (i) No attorney, agent or other person appointed in accordance with this deed has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Mortgagee for the purposes of clause 2(f)(g).
- (j) In this clause the "Obligations" means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Mortgagee under or in respect of this deed, "Assets" includes all assets, property and rights real and personal of any value whatsoever of the Trust that are the subject of the Securities, "Trust" means the LM First Mortgage Income Fund and "Responsible Entity" means LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 481) or any replacement responsible entity of the Trust from time to time.

3. Termination of Appointment

- (a) Pursuant to clause 2(a) of each of the Deeds of Appointment the Mortgagee terminates each Appointment of the Controller as the controller of the Assets on and from the Effective Time.
- (b) The Controller acknowledges and accepts the termination of the Appointment with effect on and from the Effective Time.

4. Mortgagee Release

- (a) Subject to clause 4(b), with effect on and from the Effective Time, the Controller unconditionally and irrevocably releases and discharges the Mortgagee from the Deeds of Indemnity.
- (b) For the avoidance of doubt, nothing in this deed affects any accrued rights and obligations which the Mortgagee has with respect to the Controller under the Deeds of Indemnity arising prior to the Effective Time (including any claim by the Controller under clause 3 of the several Deeds of indemnity).

5. Further Assurances

The parties agree that they will each do all other things necessary and sign all other necessary documents to:

- (a) terminate the Appointment;
- (b) confer upon and vest in the Mortgagee or the Mortgagee's agent appointed in substitution for the Controller, on and from the Effective Time, possession and control of:-
 - (i) the Assets;
 - (ii) all books and records (whether kept in tangible or intangible form) held or created by the Controller or its liquidators in relation to the Appointment; and
 - (iii) any and all bank accounts operated or maintained by the Controller or its liquidators for the purposes of the Appointment.

6. General


- (a) This deed is governed by the laws in force in Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
- (b) Any provision of or the application of any provision of this deed:
 - (i) which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition; and
 - (ii) which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other provision or of the remaining provisions in that or any other jurisdiction.
- (c) This deed binds and enures to the benefit of the successors of the parties.
- (d) This deed supersedes all previous agreements in respect of its subject matter.
- (e) This deed may be executed in any number of counterparts each of which shall be considered an original.
- (f) Where any clause in this deed is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other clauses in this deed.

Schedule 1 - List of Appointments

Asset	Deed of Appointment	Deed of Indemnity
Bridgewater Lake Estate Pty Limited ACN 086 203 787 (in Liquidation) (Controller Appointed)	Deed of appointment between Permanent Trustee Australia Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 1 April 2010.	Deed of indemnity between Permanent Trustee Australia Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 1 April 2010.
Pinevale Villas Morayfield Pty Ltd ACN 116 192 780 (in Liquidation) (Controller Appointed)	Deed of appointment between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 (in Liquidation) (Receivers and Managers appointed) dated 21 January 2014.	Deed of indemnity between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 (in Liquidation) (Receivers and Managers appointed) dated 21 January 2014.
Redland Bay Leisure Life Pty Ltd ACN 109 932 916 (in Liquidation) (Controllers Appointed)	Deed of appointment between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 9 February 2011.	Deed of indemnity between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 9 February 2011.
Redland Bay Leisure Life Development Pty Ltd ACN 112 002 383 (in Liquidation) (Controllers Appointed)	Deed of appointment between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 8 February 2011.	Deed of indemnity between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 8 February 2011.
OVST Pty Limited ACN 103 216 771 (in Liquidation) (Controllers Appointed)	Deed of appointment between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 29 October 2010.	Deed of indemnity between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 29 October 2010.
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd ACN 098 955 296 (Receivers and Manager Appointed) (Controllers Appointed)	Deed of appointment between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 9 February 2011.	Deed of indemnity between The Trust Company (PTAL) Limited ACN 008 412 913 and LM Investment Management Limited ACN 077 208 461 dated 9 February 2011.

Executed as a deed.


Signed sealed and delivered for and on behalf of The Trust Company (PTAL) Limited ACN 008 412 913 by its duly appointed attorney pursuant to Power of Attorney Registered Book 4594 No 26 dated 12 July 2010 in the presence of:



Signature of witness

Shane Johnstone

Name of witness (please print)




Signature of attorney (I have no notice of revocation of the power of attorney under which I sign this document)

Trent Franklin
Manager Property and Infrastructure Custody Services

Name of attorney (please print)

Executed by LM Investment Management Limited ABN 68 077 208 461 (In Liquidation) (Receivers and Managers Appointed) by its joint and several liquidator in the presence of:



Signature of witness

MARUSHKA FLYNN

Full name of witness



Signature of liquidator

John Richard Park

Full name of liquidator

MEMORANDUM

FROM Ian Niccol DATE 26 May 2014

PROJECT REF LMINMAN01

SUBJECT LM First Mortgage Income Fund: Consideration of FTI Consulting request dated 12 March 2014

1. Executive Summary

1.1 The FTI Consulting letter dated 12 March 2014 (FTI Letter) requests payment of invoices for remuneration and expenses incurred for the period 19 March to 31 December 2013.

1.2 The FTI Letter categorises remuneration, fees and expenses into the following categories:

- + **Category 1** - remuneration and expenses for tasks incurred which were specific to the LM FMIF; and
- + **Category 2** - remuneration incurred for tasks categorised as 'general responsible entity work' which has been charged and allocated across the schemes of which LM is RE in accordance with the corresponding percentage of funds under management of the relevant schemes; and
- + **Category 3** - remuneration incurred for tasks specific to the FMIF controllerships.

1.3 The request made in the FTI Letter proceeds upon the premise that "where work has been undertaken in relation to [Scheme Property], the costs and expenses of the Administration, including the remuneration of the Administrators, the Liquidators and their staff, are payable from those assets".

1.4 While liquidators or administrators of corporate trustees may, in certain circumstances, be entitled to reimbursement for remuneration and expenses from trust (or scheme) property, the position is significantly more complex given the nature of FTI's appointment.

1.5 In order for us to be satisfied that it is appropriate to pay FTI Consulting's invoices for remuneration and expenses out of FMIF assets, we must be satisfied:

- + as regards the Category 1 remuneration and expenses, that:
 - the administrators and/or liquidators have established an equitable lien exercisable against the FMIF assets in accordance with the principles identified by the High Court of Australia in *Re Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171 (*Universal Distributing*); or
 - a Court, in the exercise of its inherent equitable jurisdiction, has directed that the administrators' and/or liquidators' remuneration and expenses may be paid out of FMIF assets; and

- + as regards the Category 2 remuneration, that:
 - LM as responsible entity of the FMIF incurred the remuneration (fees) in the performance of its duties as RE of the FMIF for which it is entitled to indemnification pursuant to the terms of the FMIF Constitution and that the proposed allocation and apportionment of remuneration amongst the schemes of which LM is RE is appropriate; or
 - a Court has made orders or directions as regards the RE's entitlement to the Category 2 remuneration and/or has determined that the allocation and apportionment of remuneration amongst the schemes of which LM is RE is appropriate.

2. **Statutory and contractual sources of entitlement to fees, remuneration and indemnity for disbursements**

2.1 As a general statement, an administrator or liquidator of an insolvent company which acts as a responsible entity (RE) does not have an unqualified right to reimbursement for remuneration and expenses from scheme property. Rather, different principles apply to:

- + the entitlement of an RE to fees and indemnification for such fees out of scheme property;
- + the entitlement of voluntary administrators and liquidators to remuneration and indemnity for disbursements and expenses from the estate of the insolvent (RE) company; and
- + the entitlement of voluntary administrators and liquidators to reimbursement from trust assets (or scheme property) for remuneration and expenses incurred in relation to the external administration of a corporate trustee (or RE).

2.2 A RE is entitled to fees pursuant to section 601GA(2) of the Corporations Act and the constitution of the relevant scheme of which the RE is responsible entity. Clause 18.3 of the FMIF constitution relevantly provides that the:

"RE [LM] is entitled to receive out of the Scheme Property, a management fee of up to 5.5% per annum (inclusive of GST) of the net fund value in relation to the performance of its duties as detailed in its Constitution, the Compliance Plan and the Law."

2.3 LM is expressly entitled to fees in relation to its performance of certain duties including the *winding up of the scheme* (clause 18.4(k)).

2.4 A liquidator of a company, on the other hand, is entitled, pursuant to section 499(3) of the Corporations Act, to such remuneration as is fixed either by the committee of inspection of the company or by resolution of the creditors of that entity. A voluntary administrator has an equivalent statutory right to remuneration (set out in section 449E of the Corporations Act).

2.5 A liquidator is also entitled to such remuneration as is approved by the Court on an application under section 504 of the Corporations Act.

2.6 Disbursements incurred in the course of an administration or liquidation are incurred by an administrator or liquidator as agent for the insolvent company, that is, they are an expense of the corporate entity. The administrator or liquidator has a right of indemnity out of the company's assets for payment of those expenses. Further, such expenses are accorded statutory priority pursuant to sections 556(1)(a) and (c) of the Corporations Act. Similarly, the remuneration of a voluntary administrator or liquidator, is afforded statutory priority in section 556(1)(de) of the Corporations Act.

- 2.7 Under section 501 of the Corporations Act in a voluntary winding up it is "the property of a company" that is to be applied in satisfaction of its liabilities. Importantly, therefore, disbursements and remuneration incurred by an administrator or liquidator are payable out of the assets of the insolvent company. Upon the administration or liquidation of a company which acts as an RE, section 601FH(b) of the Corporations Act provides that an administrator or liquidator of that RE is entitled to exercise the RE's rights to be indemnified out of scheme property.
3. **Application of principles to the remuneration request made in the FTI Letter**
- Category 1 invoices**
- 3.1 In terms of the remuneration and expenses in Category 1, those expenses (totalling \$1,706,919.32) are referable to tasks performed and expenses incurred by the administrators and liquidators of LM (although invoiced pursuant to invoices issued by LM bearing invoice numbers "8978inv1 - 8978inv7") (**Category 1 invoices**).
- 3.2 Applying the principles outlined above to the Category 1 invoices, absent the application of the *Universal Distributing* principle or a Court order (both of which are discussed below), the administrators and liquidators of LM would be entitled to such remuneration as is:
- + approved or fixed in accordance with sections 449E, 499(3) or 504 of the Corporations Act; and
 - + may be paid from the available assets of LM, to be paid in priority to other unsecured claims on the estate.
- 3.3 In terms of the Category 1 expenses which FTI Consulting has caused LM to incur, those expenses:
- + are payable out of the assets of LM in priority to other unsecured claims on its estate (pursuant to section 556(1)(a) and/or (c) of the Corporations Act); and
 - + if they, or a subset of them, are expenses for which LM as RE of the FMIF would be entitled to be indemnified pursuant to the terms of the FMIF constitution, FTI Consulting may cause LM to exercise its rights pursuant to section 601FH(b) of the Corporations Act (and clause 18.5 of the FMIF constitution), to meet those expenses from FMIF scheme property.
- 3.4 There are two additional principles to note in relation to the Category 1 invoices.
- 3.5 First, although property subject to a valid charge is not generally available to meet the claims of unsecured creditors, pursuant to the principles identified by the High Court in *Universal Distributing* an administrator or liquidator who has done work in **preserving and realising the property charged** has a right to be paid remuneration and expenses referable to that work out of the proceeds of realisation, in priority to the holder of the charge. An administrator or liquidator has an equitable lien for the remuneration and expenses incurred in this regard: see *Shirlaw v Taylor* (1991) 31 FCR 222 at 228-31; *Stewart v Atco Controls Pty Ltd (in liq)* [2014] HCA 15 at 22-23 (***Stewart v Atco Controls***).
- 3.6 The lien can arise in any situation where it would be inequitable for a person who has created or realised a valuable asset in which others claim an interest, not to have their costs, expenses and fees incurred in producing the asset paid out of the fund or property created: see: *Thackray and Others (in their personal capacity and as receivers and managers of Great Southern Managers Australia Ltd (rec'rs and mgrs apptd) (in liq) v Gunns Plantations Ltd* (2011) 85 ACSR 144; [2011] VSC 380 at [41] per Davies J (***Thackray v Gunns***); *Re S & D International Pty Limited (in liq) (rec'r & mgr apptd)* [2009] VSC 225.

- 3.7 In order for us to be satisfied that an equitable lien of the type identified in *Universal Distributing* has arisen, we will need FTI Consulting to identify what the administrators and/or liquidators have done to *create, preserve or realise an asset or fund* against which the equitable lien would attach. An example of the level of detail required in relation to the identification of tasks and a description of how the tasks correlated to the creation, realisation or preservation of scheme assets is found in *Thackray v Gunns* at paragraphs 16-30. Notably, only work done in connection with those steps may be reimbursed pursuant to the *Universal Distributing* principle (see: *Stewart v Atco Controls* at 40).
- 3.8 Fundamentally, it is not clear from the materials provided to us what proportion, if any, of the Category 1 invoices gives rise to an equitable lien. The schedules of invoice narratives do not assist in that they do not distinguish between remuneration or expenses incurred in the ordinary course of the administration and liquidation of LM, and remuneration and expenses giving rise to an equitable lien in accordance with *Universal Distributing*. Before we can be satisfied that it is appropriate for us to pay the Category 1 invoices from the FMIF assets further work needs to be done by FTI Consulting to:
- + identify the steps undertaken by the administrators and/or liquidators to care for, preserve and realise assets of the FMIF;
 - + describe the work performed in pursuance of those steps; and
 - + quantify the work performed in pursuance of those steps.
- 3.9 If a *Universal Distributing* equitable lien is not identifiable in relation to the Category 1 remuneration and expenses, there is a **second** pathway pursuant to which FTI Consulting may be entitled to payment of the Category 1 remuneration and expenses from the FMIF assets.
- 3.10 The authorities establish that a liquidator (or administrator) may be entitled to be indemnified out of trust (or scheme) assets in respect of remuneration or disbursements incurred in relation to certain activities and where the assets of the insolvent corporate trustee (or RE) are insufficient to meet those liabilities. In *13 Coromandel Place Pty Ltd v C L Custodians Pty Ltd* (1999) 30 ACSR 377 (*Coromandel*) Finkelstein J expressed the principle as follows (at 385):
- "...provided a liquidator is acting reasonably he is entitled to be indemnified out of trust assets for his costs and expenses in carrying out the following activities: identifying or attempting to identify trust assets; recovering or attempting to recover trust assets; realising or attempting to realise trust assets; protecting or attempting to protect trust assets; distributing trust assets to the persons beneficially entitled to them..."*
- 3.11 Notably, however, a liquidator of a corporate trustee or responsible entity is not entitled, as of right, to the payment of remuneration and expenses out of scheme property or to priority in relation to such remuneration and expenses. Rather, the authorities confirm that a liquidator of an insolvent responsible entity or trustee has no more than the ability to approach the Court to seek an exercise of its inherent discretion (derived from its inherent equitable jurisdiction in relation to trust funds) to allow those fees and expenses to be paid. See, for example: *Re Berkeley Applegate (Investment Consultants) Ltd (in liq)*; *Harris v Conway & Ors* [1989] 1 Ch 32; *Shirlaw v Taylor, Re Application of Sutherland* (2004) 50 ACSR 297; *Re Sutherland; French Caledonia Travel Service Pty Ltd (in liq)* [2003] 59 NSWLR 361 (*French Caledonia*); *Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd* [2010] NSWSC 941 at [20] (*Trio*).

3.12 The principles regarding the payment of a liquidator's remuneration out of trust assets were summarised by Black J in *Re MF Global Ltd (in liq) (no 2)* [2012] NSWSC 1426 at [55] as follows:

"The Court has an inherent equitable jurisdiction to allow a trustee remuneration, costs and expenses out of trust assets, which extends to a person such as a liquidator which is for practical purposes controlling a trustee: Re Application of Sutherland [2004] NSWSC 798; (2004) 50 ACSR 297; Trio Capital Ltd (admin apptd) v ACT Superannuation Management Pty Ltd above. The Liquidators acknowledge authority that that jurisdiction may not be exercised where the Company does not solely act as trustee and has sufficient beneficial assets to meet the liquidators' remuneration, costs and expenses, and where the work done by the liquidator in relation to trust assets may properly be treated as done for the purposes of winding up the company's affairs. The principle that, where a company has assets which are not held on trust, the liquidator's costs should usually fall on its non-trust assets was recognised in Re GB Nathan & Co Pty Ltd (in liq) (1991) 24 NSWLR 674 at 685-689 and the authorities were considered by Young CJ in Eq in Re Greater West Insurance Brokers Pty Ltd [2001] NSWSC 825; (2001) 39 ACSR 301."

3.13 Whether the liquidator's application for reimbursement of remuneration and expenses out of scheme property will be granted is a matter for the exercise of the Court's discretion having regard to all circumstances of the case. See *Trio* at [20]. In this regard, we note that:

"Even though a liquidator needs to go to court to have it established that he has a right of remuneration from trust assets for work done in administering them, that right is one which is not accorded the liquidator in the exercise of some kind-hearted discretion of the court, but is accorded to him in accordance with equitable principle." *French Caledonia* at [211].

3.14 There are two further considerations in relation to such applications:

- + the distinction between work performed as liquidator (or administrator) of the insolvent (RE) company and work performed for the benefit of the scheme; and
- + the issues which arise where the insolvent RE is the RE of more than one scheme.

3.15 Where an activity of the liquidator can be seen to be solely concerned with the winding up of the company and not with the performance of duties as trustee or RE the cost of that activity is not ordinarily to be charged to trust assets (or scheme property). In *Bastion v Gideon Investments* (2000) 35 ACSR 466 (at 480) (citing *Re G B Nathan and Co Pty Ltd (in liq)* (1991) 24 NSWLR 674 (at 688)), Austin J held that:

"[t]here is a distinction between costs and expenses incurred by the liquidator in the course of administration of a trust which the company is trustee, and costs and expenses of the liquidation, though it is not always easy to draw."

3.16 Some activities of the liquidator may be properly referable both to the winding up and the performance of the company's duties as trustee. As noted above, in *Coromandel*, Finklestein J held at [385] that, provided a liquidator is acting reasonably, he is entitled to be indemnified out of trust assets for his costs and expenses in carrying out the following activities:

- + identifying or attempting to identify trust assets;
- + recovering or attempting to recover trust assets;
- + realising or attempting to realise trust assets;
- + protecting or attempting to protect trust assets; and

- + distributing trust assets to the persons beneficially entitled to them.

3.17 Other activities of a voluntary administrator or liquidator may be considered to be for the purposes of the voluntary administration or liquidation of the insolvent RE, rather than for the benefit of the scheme.

3.18 Absent:

- + a clear basis on which it could be said that the equitable lien identified in *Universal Distributing* has arisen; or
- + a direction from the Court as to the payment of the Category 1 invoices from FMIF assets, we do not have sufficient information or grounds to approve the payment of the Category 1 invoices from the FMIF assets.

Category 2 invoices

3.19 LM, in its capacity as RE of the FMIF, is entitled to the fees set out in clauses 18.3 and 18.4 of the FMIF constitution. The Category 2 invoices relate to tasks categorised as 'general responsible entity work... undertaken to administer, care for, and preserve LM FMIF assets.' The Category 2 invoices bear invoice reference numbers "8978inv1.2 - 8978inv7.2" (Category 2 invoices).

3.20 The Category 2 invoices give rise to two principal issues:

- + the RE's entitlement to remuneration; and
- + the proposed allocation of LM remuneration between the funds or schemes.

RE's entitlement to remuneration

3.21 In terms of LM's entitlement to fees, Ginette Muller's 27 June 2013 affidavit filed in the Qld Supreme Court proceedings deposed (at paragraphs 47-49) that the management fees of 5.5% p.a. had not been charged by LM since FTI Consulting's appointment and that LM would not charge the management fees of 5.5% p.a. to the FMIF. The RE must be taken (pursuant to clause 18.9 of the FMIF constitution) to have waived its entitlement to the management fees.

3.22 Accordingly, the only "fees" to which LM would therefore be entitled are those in relation to the performance of the duties identified in clause 18.4 of the FMIF constitution. Of those, having regard the suspension (in part) of LM's AFSL and the day-to-day activities of the RE, the relevant duties for which an entitlement to fees might arise would appear to be:

- + (notwithstanding the appointment of the Court Receiver) the winding up of the scheme (clause 18.4(k)); and/or
- + the performance of duties and obligations pursuant to the Corporations Act and the FMIF Constitution (clause 18.4(l)).

3.23 In other words, provided FTI Consulting can establish that fees were incurred by LM in discharge of one of the duties outlined in clause 18.4, LM as RE will be entitled to recover those fees from the FMIF assets. The only limitation on this entitlement is that the fees must be incurred in accordance with the FMIF constitution (clause 18.8), namely, that they were incurred in the performance of one of the duties identified in clause 18.4 and that they were not incurred negligently, fraudulently or in breach of trust (see FMIF constitution at clause 19.1(c)).

3.24 In this regard, it is noted that:

- + on 20 December 2013, the Qld Supreme Court ordered that LM is entitled to be indemnified from the FMIF only to the extent of 20% of its costs of the Supreme Court proceedings; and
- + LM gave an undertaking to the Court that it would not seek from the FMIF any costs of or incidental to the investor meeting convened by notice dated 26 April 2013.

3.25 If LM is entitled to reimbursement of RE fees from scheme property (because it has established the matters in paragraphs 3.22 and 3.23 above), the fee amounts to which is entitled will be reduced or limited by reason of the matters outlined in paragraphs 3.21 and 3.24.

3.26 As noted above a further issue arises in relation to the Category 2 invoices which suggests that the amount of RE remuneration charged by way of those invoices is not referable to the discharge of one of the clause 18.4 duties *in relation to the FMIF* but that the amount sought is an allocation of a percentage of RE remuneration performed in relation to a number of schemes.

Proposed allocation of RE remuneration between the funds and schemes

3.27 The Category 2 invoices are said to relate to 'general responsible entity work' which has been charged and allocated across the schemes of which LM is RE in accordance with the corresponding percentage of the schemes' funds under management.

3.28 In circumstances where a liquidator is administering, through the company of which he is liquidator, more than one trust or scheme, the following additional principles apply:

- + as regards work done and expenses incurred in what may be described as general liquidation matters:
 - "...the position is a little more involved... If that work is unrelated to the beneficiaries and their claims it is difficult to see how the costs may be charged against their assets. In the case of a company that has carried on the business of trustee it might be that much of the work involved in the liquidation is necessary for the proper administration of the trust. But it is unlikely that this will be so where the company did not act solely as trustee or at least did not act in that capacity to a significant extent. In that event, the liquidator will be required to estimate those of his costs that are attributable to the administration of trust property and only those costs will be charged against the trust assets".¹*
- + a liquidator is bound by the priority provisions of the Corporations Act with respect to payment of a company's debts and must endeavour to pay the debts in accordance with the order of priority set out in that section. To the extent that each priority debt has been incurred in the performance of a particular trust he should have recourse to the property of that trust for the purpose of paying it;²
- + where the company in liquidation has no assets of its own (that is, all assets are held in trust/are scheme property) and more than one trust is being administered, the liquidator must make an estimate of the work and expense involved in the liquidation so far as it relates to each trust. In that regard, in a statement cited with approval by Campbell J in *Re French Caledonia*, in *Coromandel* Finkelstein J stated, *obiter*, that

¹ *Coromandel* at 509 per Finkelstein J (cited by Campbell J in *French Caledonia* at 426.)

² *Re Suco Gold Pty Ltd (in liq)* (1983) 33 S.A.S.R. 99 (*Suco Gold*) at 109 (per King CJ), referring to what was then section 292 of the Companies Act.

- + "... The liquidator is not entitled to charge the beneficiaries of one trust with the costs and expenses incurred in relation to the other trust. Accordingly, it will be necessary for the liquidator to estimate the costs and expenses incurred insofar as they relate to each trust and only charge those costs to the trust on whose behalf the work is performed. If that estimate is not possible then a *pari passu* distribution of the costs and expenses will be in order as envisaged by King CJ in *Suco Gold*, *supra*..."³; and
- + the Courts recognise that "If the trustee cannot, with some accuracy, apportion the expenses of administration between the various trusts, 'the maxim that equality is equity should provide the solution to the problem of apportionment'". See *Suco Gold* at 109 (per King CJ), referring to what was then section 292 of the Companies Act and *Trio* at [34].

3.29 In particular, and as regards the Category 2 invoices, unless it can be shown that the 'general responsible entity work' performed was greater in respect of schemes with a higher quantum of funds under management and less in respect of schemes with a lower quantum of funds under management, the proposed allocation of category 2 remuneration across the schemes by reference to the quantum of funds under management will be inequitable.

3.30 In considering an allocation of remuneration weighted to schemes with greater assets, the NSW Supreme Court in *Trio* found that the allocation proposed by the administrators had the effect of preferring the interests of the administrators to the members of the schemes (in contravention of their duties as administrators and of *Trio's* duties as RE) and prejudiced the rights of members of the schemes *inter se*: *Trio* at [25] and [36]. In *Trio* the Court refused to make the orders sought by the administrators and directed that the administrators' remuneration and expenses for administering the RE and for general responsible entity activities (which could not be allocated to any single scheme) be pro-rated in equal proportions across all schemes: see *Trio* at [36], consistent with relevant authority: see *Suco Gold*; *Coromandel*.

3.31 **In order to be able to approve the payment of the Category 2 invoices we will need FTI Consulting to:**

- + identify the Category 2 fees/remuneration which is referred to as one of the duties enumerated in clause 18.4 of the FMIF constitution;
- + provide evidence that the proposed allocation of RE fees contemplated by the Category 2 invoices is directly referable to the (greater) degree of work incurred by the RE in relation to the FMIF.

3.32 To the extent it is not possible to do this, the appropriate course will be for FTI Consulting to seek an order or directions from the Court in relation to the Category 2 invoices and, in particular, in relation to the proposed allocation of RE fees contemplated by the Category 2 invoices.

³ *13 Coromandel Place Pty Ltd v CL Custodians Pty Ltd (in liq)* (1999) 30 ACSR 377; 17 ACLC 500 at 509 per Finkelstein J (cited in *Re Sutherland*; *French Caledonia Travel Service Pty Ltd (in liq)* [2003] 59 NSWLR 361 at 428.)

MCN+

McGRATHNICOL

CORPORATE RECOVERY

5 June 2014

in association with

Ms Ginette Muller
Liquidator
c/o FTI
Level 9, Corporate Centre One, 2 Corporate Court
Bundall QLD 4217



By email: ginette.muller@fticonsulting.com

By Email

Dear Madam

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM First Mortgage Income Fund ACN 077 208 461 ("FMIF")

RE: FTI Remuneration and expenses (memorandum attached)

I refer to my appointment as Joint and Several Receiver and Manager of the FMIF and to your letter dated 12 March 2014 ("Letter") requesting payment of your remuneration and expenses as Administrators and Liquidators of the LM Investment Management Limited ("LMIM").

As you are aware, the appointment of various insolvency practitioners over LMIM and its related funds is somewhat complex and given the quantum of your fees and your various appointments to date, we felt it was necessary to review your request in detail. In the interests of FMIF, we thought it would assist your understanding of our conclusions reached and facilitate a way forward by setting out in a memorandum the legal and practical issues which we see arising from your remuneration request. A copy is attached. For avoidance of any doubt, in sharing this memorandum with you we do not waive privilege in relation to any advice received by us in respect of your Letter.

In summary and using the categories set out in your letter, I note the following:

1 Category 1

While invoices submitted each contain a general description, it is not clear to us what work has been done to administer and preserve the fund noting that:

- Invoices are for the period 19 March to 31 December 2013 totalling \$1,706,912.32;
- From 11 July 2013, we have had custody and control of the Scheme Property in our capacity as Receivers of the FMIF; and
- David Whyte's Court Order confirming his role and responsibilities as Court Appointed Receiver on 8 August 2013 of the FMIF.

Notwithstanding, to the extent you are able identify the assets of the fund which have been realised or preserved by your efforts and can quantify the relevant remuneration specific to those activities, we may be able to permit the payment of at least part of the Category 1 invoices from FMIF, if that appears appropriate and justified. I have listed examples below that we consider lacks sufficient detail for us to conclude the work undertaken has created, preserved or realised assets of the FMIF or a fund against which an equitable lien in respect of your remuneration and expenses for that work might attach.

CLEAN A6-140626-LMINMAN01-FTI Fee letter-IMN (2)

Employee	Date	Amount (\$)	Comment
Ginette Muller	10 April 2013	1,725.00	Telephone Hookup with NZ advisers. Agree to provide additional information and circular. Note the issues and answers that Advisers are looked to be updated on. Agree to provide further information relating to the situation as soon as possible.
Ginette Muller	15 April 2013	1,150.00	Telephone call to Trust Company regarding the possible replacement of LMIM as RE; review of current position and discussion with KWM regarding same.
John Park	16 April 2013	2012.50	Meeting with Phillip Pan. Teleconference with Norton Rose and Castle Partners. Team update meeting.
Ginette Muller	17 April 2013	2,300.00	Meeting with Stephen Russell and discussion of application to replace LMIM as responsible entity

Accordingly, to the extent you wish to claim an equitable (*Universal Distributing*) lien for payment of your remuneration out of the FMIF scheme property, would you please

- + identify the steps undertaken by the administrators and/or liquidators to care for, preserve and realise assets of the FMIF;
- + describe the work performed in pursuance of those steps; and
- + quantify the work performed in pursuance of those steps.

By way of example only, David Whyte's application to the Queensland Supreme Court provides a good illustration of the level of information required to identify an equitable entitlement to payment of remuneration out of scheme property.

If you are unable to identify or quantify such an equitable lien over the assets of the FMIF, it would be appropriate for you to make an application to Court for directions.

2 Category 2

Category 2 invoices issued for "general responsible entity work" that are calculated as a percentage of funds under management scheme do not seem appropriate or equitable as between the schemes. The allocation of fees and expenses calculated in this manner can in effect prefer the interests of FTI in respect of recoupment of its remuneration to the interests of members of FMIF.

Additionally, we consider that the principal duty of the responsible entity which continues to be performed is to wind up the scheme provided for by clause 18.4(k) of the FMIF constitution. It is not clear from the descriptions set out in the invoices, how the tasks performed by your staff were

referable to winding up the FMIF. The tasks listed in the breakdown of the costs appear to be more consistent with tasks normally performed in the liquidation of a company rather than tasks performed in relation to winding up FMIF. In this regard, these costs would need to be paid from the assets of LMIM in its own right and not that of FMIF.

Given the above, we are not in a position to approve the payment of Category 2 invoices and recommend that you seek directions from Court.

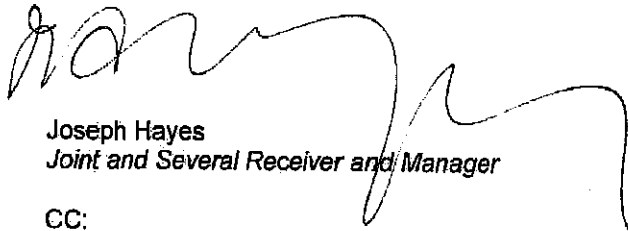
Category 3

I have approved \$159,521.45 (including GST) out of \$199,223.20 (including GST) invoices issued for Category 3 as these costs appeared reasonable and were specific to controlling the assets of FMIF. I note that the balance of fees withheld were not specific to your role as controllers, but as your duties as the administrators or liquidators of the responsible entity (Category 1). If you are able to do the same exercise in relation to the balance of Category 3 costs as we have requested in relation to the Category 1 costs, I will review these again and approve the payment of those invoices which you are able to quantify as specific to realising and or preserving the assets of FMIF.

Should you have any queries regarding the above, please contact either Ian Niccol or myself.

Yours faithfully

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM First Mortgage Income Fund



Joseph Hayes
Joint and Several Receiver and Manager

CC:

David Whyte

BDO

By email: David.Whyte@bdo.com.au



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via email: john.park@fticonsulting.com

John Park
Leader Australia - Corporate Finance/Restructuring
FTI Consulting
22 Market Street
BRISBANE QLD 4001

10 July 2014

Dear John

LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) ("LMIM") as Responsible Entity for the LM First Mortgage Income Fund (Receiver Appointed) ARSN 089 343 288 ("the Fund")

I refer to our recent meeting and previous correspondence in relation to FTI's claim for remuneration and outlays in relation to the period from 19 March 2013 to 31 December 2013, and including McGrathNicol's letter of 5 June 2014 setting out the requirements of the Receivers and Managers for this to be assessed further.

As discussed with you, in an effort to reduce the costs to investors of you having to make a court application for approval of your remuneration and the likely objections to such a claim (unless it is substantially reduced), McGrathNicol and I would like to propose the following in principle process be adopted.

There are two key matters to which the proposal is subject.

The first is that the proposal is not applicable to invoices or sums described in categories 2 and 3 of McGrathNicol's letter to you of 5 June 2014. It is applicable only to what McGrathNicol describe as category 1 invoices. (So far as concerns category 2 amounts, seeking court directions is the appropriate course.)

Second, before any of the steps mentioned below is commenced, the proposal requires your acceptance that your remuneration (in category 1) is founded upon an equitable lien of the type mentioned by McGrathNicol. It is not for the expert mentioned below to satisfy himself in that respect.

- An independent and suitably experienced registered and official liquidator be appointed to act as an expert, to review and determine the amount that should be paid out of the fund's assets. This should be someone with experience in complex matters and managed investment schemes and as agreed between FTI, McGrathNicol and BDO;
- FTI should provide further information to support its claim, and revise it as necessary, to meet the further information requests set out in McGrathNicol's letter and subject to addressing the further comments and information requested below;
- If the amount which the expert reports as the appropriate sum for FTI's remuneration and expenses for the period 19 March 2013 to 31 December 2013 ("the relevant period") is less, by 15%

Document1

- or more, than the sum claimed by FTI for such remuneration and expenses then the cost of the expert shall be borne by FTI. Otherwise it should be a cost of the fund;
- The expert should be provided with the following information:
 - A copy of FTI's original claim;
 - A copy of McGrathNicol's letter of 5 June 2014;
 - A copy of this letter;
 - A structure chart detailing the various insolvency appointments to the LM group and the inter-relationship between the entities;
 - Details of FTI's charging policy for the group and how costs have been allocated to each of the entities and the amount charged to each fund/entity to date broken down between direct costs and apportioned costs. Details of the apportionment should also be provided;
 - A copy of FTI's updated and amended claim for the period to 31 December 2013;
 - A copy of the correspondence between FTI and BDO in relation to the ongoing role of the responsible entity post the appointment of the court appointed Receiver on 8 August 2013.
 - FTI should provide details of its claim relating to the proceedings leading to my appointment and demonstrate that only 20% of its costs have been claimed pursuant to the court order and after excluding any activities relating to the calling of the meeting of investors. Given the lack of detail in many narrations, can you please confirm how you believe you have caught all the time in this regard? For example, with John Corbett having single line entries of up to 60.5 hours how have you allocated his time relating to the court proceedings?
 - A copy of the costs order dated 20 December 2013 in relation to the proceedings leading to the appointment of the Court Appointed Receiver.
 - For the purpose of the expert preparing his report about the amount to be paid to FTI for its remuneration and expenses in the relevant period:
 - A. FTI will promptly provide the expert with such further information or explanation as he may require for that purpose;
 - B. FTI will make available for interview by the expert such fee earners as he may nominate, and will ensure that the persons interviewed co-operate fully with the expert in responding to his questions.
 - The expert will review all of the information provided to him under the arrangements set out in this letter, and will produce a report setting out the amount which, in his opinion, is properly payable to FTI for remuneration and expenses for the relevant period. When the report is completed, the expert will provide each of McGrathNicol, FTI and me with a copy of it;
 - The expert's opinion will be final and binding on the parties;
 - On the basis you agree to this process an application for directions pursuant to the terms of my appointment will be made seeking:
 - The court's agreement to the process;
 - Directions on any matters you require in respect of the McGrathNicol letter of 5 June 2014 that goes beyond an entitlement for care, preservation and sale costs;
 - Agreement from the court that your remuneration may be determined by the independent expert and that this constitutes approval pursuant to section 473(3) of the Corporations Act in relation to the period post your appointment as Liquidators.

Further comments on current claim and additional information requested

Having reviewed the current claim further and in addition to the comments contained in McGrathNicol's letter of 5 June 2014, I have the following comments that should be addressed in your amended claim:

- In general terms why is the claim so high when compared to the remuneration of McGrathNicol and BDO? I attach a summary showing the remuneration for each firm to date (although only including FTI to 31 December 2013). Please explain the role of each fee earner and how the key tasks were allocated;
- The narrations attached to each of your invoices are very limited and do not properly explain what was done, however it is clear from a review of same that costs have not been allocated properly. For example, a number of narrations appear to relate to LM Administration rather than to the fund or the general responsible entity code. The amounts charged need to be fully reviewed by FTI and re-allocated accordingly;
- There are large blocks of time (numerous entries in excess of 7 hours) with very limited explanation as to what was done. A more complete description of the work done should be provided;
- John Corbett in particular has single entries for blocks of 60.5, 23.5, 35, 30.75, 35.5, 19.5, 15.5, 25.5, 37.5 and 43 hours for the period from 19 March to 30 June 2013. Full details of all of the work he carried out during these periods of time, and a statement of the time allocated by him to particular tasks, should be provided;
- There are a number of entries applied to the general code relating to the undertaking of audits for several funds whereas no audit is being undertaken for the FMIF;
- The remuneration claim should follow ARITA's code of professional practice;
- The amount of any amounts written off should be advised;
- The amounts claimed subsequent to the appointments of McGrathNicol and BDO seem far too high when FTI's role was limited, particularly following my appointment on 8 August 2013 and the discussions and correspondence that went on between us.

Could you please advise if you are agreeable to appointing an expert to review your claim and subject to the above comments/conditions.

Should you have any queries in this respect, please contact me on (07) 3237 5887.

Yours faithfully



David Whyte
Receiver and Manager

	FTI (category 1) \$	FTI (category 2) \$	McGrathNicol \$	BDO \$	Total \$
19 March to 30 June 2013	657,581.36	656,166.86	n/a	n/a	
July 2013	546,132.50	123,496.08		n/a	
August 2013	142,979.00	98,022.91	293,830.00	33,563.50	
September 2013	55,452.50	62,837.13		84,460.50	
October 2013	38,807.00	38,239.55		111,262.00	
November 2013	55,543.00	24,749.86		116,373.00	
December 2013	21,359.00	11,313.73	412,658.00	45,895.00	
January 2014	0.00	0.00		77,988.50	
February 2014	0.00	0.00	152,825.00	94,079.00	
March 2014	0.00	0.00		74,997.00	
April 2014	0.00	0.00	195,000.00	83,856.50	
May 2014	0.00	0.00		98,851.50	
June 2014	0.00	0.00	118,000.00	111,345.50	
	1,517,854.36	1,014,826.12	1,172,313.00	932,672.00	
Average per month from FTI appointment to 31 July 2013	273,261.01	176,995.12			450,256.14
Average per month from McGrathNicol's appointment to 30 June 2014			100,739.44	87,030.31	187,769.75

Figures are GST exclusive



14 August 2014

Our Ref: GOK_RFZ_89741116.doc

David Whyte
BDO
GPO Box 457
BRISBANE QLD 4001

Dear Sir

RE: LM Investment Management Limited (In Liquidation) (Receivers and Manager Appointed) ("the Company") ACN 077 208 461 as responsible entity for the LM First Mortgage Income Fund ("LM FMIF")

I refer to your letter dated 10 July 2014 in response to my claim for remuneration and expenses incurred for the period 19 March 2013 to 31 December 2013 in relation to the LM FMIF. I also refer to McGrathNicol's letter dated 5 June 2014 in response to my claim contained within my letter dated 12 March 2014.

Given that our negotiations with a view to a without prejudice resolution concerning these claims have broken down, I am now formally responding to your correspondence.

This is an open letter.

Threshold issues

Before commenting on your proposal, I consider it appropriate to address a number of threshold issues which arise from the correspondence received from you and McGrathNicol.

Firstly, it remains my view that the most expedient and cost effective means of resolving the claim for remuneration, in particular the Category 1 claims, is by way of negotiation between our firms without the intervention of Court or the additional expense of an expert review (unless Court approval is viewed as absolutely necessary). This would benefit members given the clear costs savings in legal costs should that be achieved. It behoves all of us to keep costs to a minimum.

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Secondly, the claims for remuneration arise following my and Ms Muller's appointment as, initially, Voluntary Administrators, and, subsequently, Liquidators of the Company. The claim for remuneration in the administration of the Company was approved by creditors for the period 19 March 2013 to 31 July 2013. I confirm that Ms Muller and I will seek further approval of our remuneration in the liquidation if necessary under the relevant provisions of the *Corporations Act (Cth) 2001* ("the Act").

Thirdly, your correspondence of 10 July 2014 is premised on the basis that the remuneration claims are solely to be founded upon an equitable lien as detailed in McGrathNicol's letter of 5 June 2014 (based upon the High Court of Australia decision in *Re: Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171). (The characterisation of that type of claim as an equitable lien is wrong but we need not debate that.)

This contention ignores the statutory indemnities available to the administrators (section 443D of the Act), and the liquidators (sections 556 and 601FH of the Act), as well as the ability to have recourse to the assets of the LM FMIF to meet claims for remuneration and expenses pursuant to the terms of the fund's constitution, and at law given the line of authority following the decision in *Re Suco Gold Pty Ltd (in liquidation)* (1983) 33 SASR 99.

The remuneration claims are not based on nor are they limited by the principles arising from the *Universal Distributing* decision. That lien attaches only to work done in connection with creating the pool of available funds, or to adopt your terminology, the costs and expenses of care, preservation and sale of assets. You will no doubt readily agree that the role of a Responsible Entity involves work beyond these tasks to include conducting the funds management business, reporting to members, enforcing the indemnity claim and recovering remuneration and addressing specific tasks and matters outlined in the fund's constitution.

No-one has challenged, and no-one could sensibly challenge, these fundamental statutory rights. No-one has suggested, and no-one could sensibly suggest, any defect in our appointment, or in the appointment of LMIM as Responsible Entity. Such a challenge would be a waste of unit holders' funds.

Further, these plain statutory rights were preserved by the order of Dalton J made on 21 August 2014. See paragraphs 1 and 8 thereof.

The Category 1 and Category 2 claims are those by the Company under the indemnity held as Responsible Entity of the FMIF. That being said, I am cognisant that claims may only be made for work referable to the FMIF; this is dealt with in further detail below.

There should be no controversy surrounding the ability to have recourse to trust assets to meet the outlays and expenses incurred in undertaking managerial duties in respect of trusts of which the Company is Trustee.

So much was made clear in the decision of His Honour Justice McMurdo in the Queensland Supreme Court decision in *Brisconnects Management Company Limited (as responsible entity for Brisconnections Holding Trust and Brisconnections Investment Trust) v Dalewon Pty Ltd (in liquidation) and Ors* [2010] QSC 311 and [2010] 79 ACSR 530.

Relevantly, at [7] of His Honour's reasons, Justice McMurdo states:

"A trustee which in the discharge of its trust enters into business transactions is liable to third parties for any debts that are incurred in the course of those transactions. However, it is entitled to be indemnified against those liabilities from the trust assets held by it and for the purpose of enforcing the indemnity the trustee possesses an equitable charge or lien over those assets."

At [8] His Honour said:

" ... Upon the liquidation of the trustee, its right of indemnity vests in the liquidator: Belar." [Being a reference to *Belar Pty Ltd (in Liquidation) v Mahaffey* [2000] 1 QdR 477].

Category 1 claims

The Category 1 claims (which also now include the balance of Category 3 claims that were not approved by McGrathNicol for the period 19 March 2013 to 31 December 2013), comprise tasks recorded against a time code created for work specifically undertaken in relation to the LM FMIF. These tasks do not relate to the general winding up of the corporate affairs of the Company, rather specifically connected to the management of the assets of, and the winding up of, the LM FMIF. It is imperative to note but for the Company's continuing role as Responsible Entity of the LM FMIF, the tasks recorded in our Category 1 and Category 3 claims would not have been undertaken by the Liquidators and accordingly, the Responsible Entity is entitled to be indemnified out of the scheme property for these liabilities and expenses incurred.

I consider the work undertaken was necessary and proper, and required to be undertaken in order for the Company to fulfil its role to properly administer the LM FMIF. No-one has articulated, and, again, no-one could sensibly articulate, any proposition to the contrary.

Please find ***attached** a detailed categorisation of the work undertaken by my office in relation to our Category 1 claims. To assist in the resolution and further discussion of this matter, I considered it most appropriate to break down our claims across the following periods:

- 19 March 2013 to 10 July 2013;
- 11 July 2013 to 8 August 2013;
- 9 August 2013 to 31 December 2013; and
- quarterly thereafter.

You will note that our claims have been updated to incorporate the period up to 30 June 2014, and total \$1,556,235.36 (excluding GST). Our claims as previously submitted to 31 December 2013 have been reviewed and certain entries have been removed if identified to not hold a sufficient connection to work undertaken for the benefit of the LM FMIF. Please note the numbers provided do not include our claim for disbursements for the period and are exclusive of GST. For your information, our disbursements for the period 19 March 2013 to 30 June 2014 total \$34,651.36 (excluding GST). These amounts will be included at the time of submitting our final invoices for our claims.

I am of the view the material now provided is sufficient to meet the queries as raised in McGrathNicol's correspondence of 5 June 2014. Notwithstanding, I reserve the right to provide additional information should we be required to prepare submissions to the Court or an expert reviewer in relation to this matter.

In relation to the additional queries raised in your correspondence dated 10 July 2014, I provide the following responses:

- Assessing our claim on a monthly basis for the initial four (4) month period (19 March 2013 to 31 July 2013) and comparing it to BDO's and McGrathNicol's monthly claims for their entire appointment period (covering 10-11 months) is an unfair comparison. As you are aware, the period following the initial appointment of an external administrator is the most time intensive period of any appointment. This matter is no different and most relevantly our team spent a considerable amount of time following our initial appointment restructuring, downsizing and altering the operations of the funds management strategy. High level observations of the funds management strategy in place prior to our involvement are:
 - i. it seemed to encompass a longer term hold and/or build-out strategy while awaiting overall market recovery;
 - ii. the strategy utilised internal valuations and decision making methodologies;
 - iii. the loan book appeared to have been managed in a piece-meal manner and without the collectiveness that I would have expected; and
 - iv. It appeared the loan book management strategies were often affected by needs or desires from member(s) of the board. The correction of this was a long-term strategy given the size of the fund.

Altering the above entrenched strategies took considerable time and effort involving many hours of professional work. At the time of McGrathNicol's appointment the strategies were largely in place and only required an oversight role. We liaised closely with their appointor, DeutscheBank, in this entire process and acted with its complete approval. In particular, prior to their appointment, my staff and I had been providing detailed reports to the Fund's secured creditor which included:

- i. a detailed Fund cash flow being pieced together from individual loan book cash flows that did not previously exist;
- ii. strategies for each of the twenty-seven loans; and
- iii. ensuring sufficient cash flow to meet the required reduction in the DeutscheBank facility to \$25 million by 30 June 2013.

BDO, McGrathNicol and the LM FMIF have received the benefit of this work performed by my office as it undoubtedly materially improved the efficiency of administrations by both BDO and McGrathNicol.

- The Company's role as responsible entity of the LM FMIF is intrinsically different to the roles to which McGrathNicol and BDO have been appointed.
- Following McGrathNicol's appointment as Receivers and Managers on 11 July 2013 and in light of the work we had performed and provided to their appointor previously, it was confirmed by McGrathNicol their role would be predominantly a monitoring role. This was reiterated by their staff on several occasions. The role of the Company as Responsible Entity of the LM FMIF and therefore its associated duties were not disturbed by the appointment of McGrathNicol. In fact, McGrathNicol confirmed the Company was to continue to manage the scheme property with their oversight.
- The Company's position as Responsible Entity was confirmed in the Orders by Justice Dalton of 21 August 2013. Duties associated with this role are not disturbed by your appointment on 8 August 2013.
- Our time entry narrations have been reviewed. As noted earlier, we have removed certain entries where we considered that there may not be sufficient nexus to work undertaken for the benefit of the LM FMIF. In this regard I confirm entries to the value of \$155,839.50 have been removed from our Category 1 claims previously submitted, reducing our total claims in this category accordingly. I note that these amounts have voluntarily been removed from our claims in the interest of encouraging a timely and efficient resolution in this matter.

- John Corbett's entries for the period 19 March 2013 to 31 May 2013 were weekly entries and consequently appear as large blocks of time. For this period, Mr Corbett was working as a consultant for our firm and provided a weekly time sheet detailing his work performed. These costs are therefore more accurately categorised as disbursements, and were included as part of our remuneration claim only in the interest of full disclosure. I note Mr Corbett was engaged at that time in this manner whilst his full-time employment with our firm was being finalised. You will note his time was on charged in the Administration at an hourly rate of \$190 for this period, far less than if Mr Corbett was at that time employed as an employee of our firm.
- In accordance with clause 27.1 of the LM FMIF constitution, auditors were previously appointed to regularly audit the fund. Preparatory work was performed in order to provide audited accounts for the financial year ended 30 June 2013. I understand that audit standards require audit work to be performed throughout the course of a fiscal year and not just at year end. Even though an auditor's report for the financial year ended 30 June 2013 has never been issued does not mean preparatory work had not been undertaken. Preparatory costs were properly incurred in order to satisfy the requirements of the LM FMIF constitution. The costs associated with the preparatory work have been properly incurred and are a liability of the LM FMIF regardless of your personal view on the commercial value of an external audit being undertaken.
- The categorisation of the work undertaken as attached provides a breakup of the work by relevant periods, by specific tasks undertaken, and by staff member. A summary of the work undertaken divided into the seven categories (A-G) as per the ARITA code of professional practice (COPP) is also provided. I note this provides a more detailed and relevant summary of our time incurred than required under the COPP.
- In accordance with the undertakings accepted by Justice Dalton on 20 December 2013, we have not included in our claims against the assets of the LM FMIF, any remuneration concerning or incidental to the meeting convened by notice dated 26 April 2013 (or any adjournment thereof). I confirm an amount of \$113,162.50 incurred in relation to this meeting has been abandoned, in compliance with this undertaking.
- Our time incurred in relation to the proceedings leading to your appointment have been included in full. The Orders made by Justice Dalton on 20 December 2013 in regard to the Company being indemnified to the extent of 20 per cent of its costs of the proceedings relate solely to the legal costs incurred in the proceedings. Her Honour's order is not applicable to the administrators'/liquidators' own claim for remuneration and expenses. In particular, an attack on this remuneration was foreshadowed by your solicitors, but expressly abandoned.

Category 2 claims

I note your comment that the Liquidators should seek directions from Court in relation our Category 2 claims. Notwithstanding your current view I provide the following commentary on this category of costs.

I confirm these claims do not include any tasks undertaken by the Liquidators relating to the general administration and winding up of the corporate affairs of the Company. Time spent on tasks relating to the administration of the Company in its own right has been recorded separately against a specific time code created for this purpose.

The work undertaken and recorded in our Category 2 claims primarily relate to one of the following areas:

- **The management and administration of the Company's funds management operations.** This includes certain work undertaken in the administration of LM Administration Pty Ltd ("LMA") during the period 19 March 2013 to 26 July 2013. This work undertaken in LMA is a cost that was incurred by the Company as Responsible Entity as it relates purely to the ongoing management and trading of LMA as service entity to the Company in order to continue to provide resources to enable the Company to administer the various funds; and
- **Work undertaken for the Company as Responsible Entity for the benefit of all funds where it would be impractical - and probably inequitable - to make multiple entries across the specific fund time codes.** For example, if one (1) unit of time was spent responding to the Australian Securities and Investment Commission in relation to the current status of the winding up of each of the various funds, it would be inequitable to make multiple entries across each fund.

Again, it is imperative to note the work undertaken in Category 2 would not have been undertaken but for the Company's role as Responsible Entity of the various funds. I consider that the work undertaken in this category was necessary and proper, and required to be undertaken in order for the Company to fulfil its role to properly administer the various funds (including the winding up of the LM FMIF and fulfilling other duties owed by the Company under the constitution).

The costs of running a funds management business, and the administration of such, may ordinarily be funded by management fees as a revenue entitlement of the Company as Responsible Entity. As you are aware, whilst not formally waiving the Company's entitlement to management fees, the Liquidators determined that the management fee that was able to be claimed under the constitution of the LM FMIF may be inequitable (5.5% including GST of the Net Fund Value) and as liquidators of the Company, have drawn no management fees from the fund.

Since the date of our appointment, the Company has sought to be reimbursed only for direct costs incurred in the operation and management of the LM FMIM.

In regard to the comment on our method of allocation of the Category 2 claims by a percentage of funds under management ("FUM"), I am of the view that given the duties of the Responsible Entity in relation to acting in the best interests of the beneficiaries of the various funds, this method of allocation is an appropriate and equitable manner for apportioning the costs incurred on behalf of all funds. This practice is seen as an industry standard method for apportioning costs incurred. Further, I understand a time and motion study conducted by McGrathNicol on or around October 2013 provided a similar result in regard to the percentage of time being spent across the respective funds, with the LM FMIF being where the majority of work was being undertaken. It represents a genuine and honest estimate (based on accepted practice) of the work performed in respect of each trust. On advice, I do not accept the proposition detailed in McGrathNicol's correspondence regarding the applicability of the decision in *Trio Capital Ltd (Administrators Appointed)* to the facts at hand insofar as it is suggested that the allocation of the remuneration claim across the various LM funds on the FUM basis amounts to the liquidators preferring their interests to those of the members of the various funds. At the risk of repeating myself, that apportionment is appropriate in the circumstances of this matter.

For your records, I confirm our claims have been updated to incorporate the period up to 30 June 2014, and total \$1,107,910 (excluding GST). We are able to provide the additional supporting documents of these costs, including the proposed allocation across the relevant funds, upon request.

Next Steps

Our claims, in particular our Category 1 claims, are conventional and uncontroversial and the members would be best served if this matter was resolved between our firms without the intervention of Court or the additional expense of an expert review. At the very least, there large portions of our claims (in both categories but particularly in our Category 1 claims) that should be able to be approved immediately without the need for further assessment or review, thus reducing the size of the unresolved claims and in turn reducing the time and costs required in a formal assessment or Court approval process.

Please advise once you have considered this response and confirm when you are available to discuss to progression of the resolution of this matter.

Should you have any queries relating to the above matter, please contact myself on (07) 3225 4900, Kelly-Anne Trenfield on (07) 3225 4920, or Glenn O'Kearney on (07) 5630 5205.

Yours faithfully
FTI Consulting



John Park
Liquidator
*Encl.

CC:
Joseph Hayes
McGrathNicol
GPO Box 9986
SYDNEY NSW 2001

Summary by ARITA Code

Period 19 March 2013 to 10 July 2013

Name	Position	Monthly Rate	Units	Administrative	Hours	Capital	Subsidy	Investment	Trade	Units	Total
Gretche Muller	Senior Managing Director	580	3.0	590.00	3,720.00	390.00	1.0	18.5	18.5	10,915.00	23.5
Kelly-Anne Tronfield	Senior Managing Director	580	0.1	230.00	89.00	-	-	-	-	6,475.00	1.1
Gretche Muller	Senior Managing Director	575	3.0	1,225.00	5,175.00	-	12.7	12.7	12.7	7,002.50	13.8
Ian Francis	Senior Managing Director	575	1.0	10,925.00	297.50	-	-	-	-	525.00	30.8
Joanne Dunn	Senior Managing Director	575	1.0	747.50	2,100.00	-	0.5	0.5	0.5	2,877.50	33.7
John Park	Senior Managing Director	575	1.4	805.00	57.50	-	-	-	-	10,590.00	19.0
Kelly-Anne Tronfield	Senior Managing Director	575	4.5	2,587.50	4,140.00	1,322.50	0.7	0.7	0.7	7,860.00	27.5
Lachlan McIntosh	Senior Managing Director	575	4.0	2,300.00	-	-	-	-	-	-	4.0
Dominic Bender	Managing Director	550	7.4	4,070.00	2,475.00	-	0.7	0.7	0.7	3,815.00	20.0
James Tuppin	Managing Director	550	83.3	485.00	-	-	-	-	-	770.00	30.0
Sally Keayhde	Managing Director	550	28.7	16,335.00	124.3	68,965.00	1.3	1.3	1.3	2,915.00	38.8
Christina Albanator	Director 2	545	-	-	116.00	-	-	-	-	9,018.00	2.3
Damian Luk	Director 2	545	-	-	6,485.50	-	-	-	-	20,710.00	49.9
Glen O'Keary	Director 2	545	4.0	2,180.00	377.50	-	-	-	-	1,095.50	9.1
Oliver Schwab	Director 2	545	2.2	1,199.00	-	-	-	-	-	1,919.50	1.9
Ryan Zingstager	Director 2	545	11.2	6,104.00	11.6	-	1.0	1.0	1.0	25,778.50	56.5
Judith Clarke	Managing Director	500	-	-	6,867.00	-	-	-	-	3,052.00	0.8
Christine Altarator	Director 1	485	0.6	231.00	338.50	-	-	-	-	654.00	2.0
James Court	Director 1	485	24.5	11,882.50	-	-	-	-	-	1,000.00	1.6
Lauren Marcom	Director 1	485	-	-	7,420.50	-	-	-	-	7,663.00	15.8
Lise Cherry	Director 1	485	3.2	1,932.00	-	-	-	-	-	40,546.00	153.0
Renee Lobb	Director 1	485	56.4	27,354.00	35.3	145.50	0.3	0.3	0.3	72,750.00	32.9
Ryan Zingstager	Director 1	485	0.7	246.50	17,202.50	194.00	0.4	0.4	0.4	35,114.00	164.5
Allie Takatori	Manager 2	395	-	-	246.50	-	-	-	-	33,785.50	35.6
Renee Lobb	Manager 2	345	0.4	158.00	-	-	-	-	-	17,854.00	91.8
Allie Takatori	Manager 1	345	2.3	789.50	-	-	9.9	9.9	9.9	56,200.50	154.0
Stuart Clancy	Manager 1	345	-	-	3,070.50	-	-	-	-	1,414.50	4.1
Elisa Zuardi	Senior Accountant 2	325	0.1	32.50	-	-	-	-	-	227.50	0.7
Stuart Clancy	Senior Accountant	285	0.1	92.50	-	-	-	-	-	-	32.50
Hannah Altommeri	Senior Accountant 1	285	5.1	1,495.50	-	-	-	-	-	13,537.50	52.6
Benjamin Robson	Accountant	235	7.5	1,762.50	-	-	1.4	1.4	1.4	2,068.00	17.7
Carlos Yu	Associate	152.38	-	-	-	-	-	-	-	2,590.46	17.0
John Corbett	Senior External Consultant	145	296.8	96,392.50	-	-	-	-	-	6,465.00	338.3
David Tomney	Senior External Consultant	145	14.5	2,100.50	25.5	3,697.50	-	-	-	580.00	44.0
Various	Administration	130	8.4	1,052.00	0.1	14.00	-	-	-	4,251.00	42.6
Craig Williams	Administration/Director of IT	100	-	-	-	-	-	-	-	11,700.00	9.0
Pepe Robison	External Consultant	49	0.3	32.50	1,950.00	-	-	-	-	26,500.00	33.5
Total			78.4	377,220.00	1,664.5	17,759.00	34.4	34.4	34.4	441,000.00	1,144.4

Summary by ARITA Code

Period 1 January 2014 to 31 March 2014

Name	Position	Priority Rate	Administration	Assets	Expenses	Investment	Treasury	Total
		Units	\$	Units	\$	Units	\$	Units
Ghazette Muller	Senior Managing Director	590	-	-	-	1.1	560.00	2.1
Kelly-Anne Trenfield	Senior Managing Director	590	-	-	0.1	354.00	0.4	
Damian Bender	Senior Managing Director	590	-	-	0.2	118.00	1.3	
John Corbett	Managing Director	550	-	-	-	1,210.00	2.2	
Sally McWhirte	Managing Director	550	-	-	-	16,775.00	33.5	
Chris Baskerville	Senior Director	545	-	-	-	1,835.00	3.5	
Glen O'Keamey	Senior Director	545	0.6	-	2.8	1,055.50	0.3	
Ryan Zogshager	Senior Director	545	-	-	-	13,788.50	26.7	
Renee Lobb	Director	485	3.3	1,600.50	3.4	3,283.00	7.3	
Alina Tebajia	Director	395	3.2	1,564.00	1.6	776.00	0.9	
Elio Zund	Senior Consultant	395	8.6	2,867.00	-	21,973.50	36.7	
Mohamed Almulilla	Senior Consultant	395	-	-	-	551.50	1.1	
Benjamin Hudson	Associate II	295	13.8	3,243.00	-	1,665.00	1.7	
Various	Administration	130	1.9	247.00	-	2,353.00	23.1	
Total			32.4	10,358.50	8.3	63,352.00	85.3	405.6

Period 1 April 2014 to 30 June 2014

Name	Position	Priority Rate	Administration	Assets	Expenses	Investment	Treasury	Total
		Units	\$	Units	\$	Units	\$	Units
Damian Bender	Senior Managing Director	600	10.2	6,120.00	-	-	1,200.00	7.3
Ghazette Muller	Senior Managing Director	600	0.7	420.00	-	-	-	8.0
John Park	Senior Managing Director	600	0.7	420.00	0.1	60.00	-	2.5
Kelly-Anne Trenfield	Senior Managing Director	570	0.5	285.00	-	-	300.00	2.7
John Corbett	Managing Director	560	18.7	10,470.00	-	-	-	0.5
Glen O'Keamey	Senior Director	560	5.3	2,958.00	0.1	56.00	1.7	14.0
Ryan Zogshager	Senior Director	510	0.7	357.00	-	-	1,232.00	16.6
Alina Tebajia	Director	510	6.5	3,315.00	-	-	-	2.9
Renee Lobb	Director	360	0.4	204.00	-	-	1,020.00	6.2
Stuart Clancy	Manager 1	270	-	-	1.2	612.00	-	0.4
Benjamin Hudson	Associate II	135	5.8	1,566.00	-	-	138.00	18.3
Brittany Newman	Administration		3.2	432.00	-	-	-	0.4
Total			51.7	26,556.00	3.4	718.00	4,958.00	78.5

Tucker&CowenSolicitors.

Level 15, 15 Adelaide St. Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckerandcowen.com.au

Our reference: Mr Schwarz

11 September 2014

Your reference:

Mr Ashley Tiplady
Russells Lawyers
Brisbane

Email atiplady@russellslaw.com.au

Partners:
David Tucker.
Richard Cowen.
David Schwarz.
Justin Marschke.

Special Counsel.
Tyler Griffin.
Geoff Hancock.

Associates.
Dan Ryan.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Nicole Withers.
Dugald Hamilton.
Olivia Roberts.
Ashley Moore.

Dear Colleagues

LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("LMIM")
LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed) ("FMIF")
Claim for Remuneration and Expenses by LMIM and its Liquidators

I refer to our meeting last week regarding the claim by your clients, Mr Park and Ms Muller as liquidators of LMIM, for payment from the FMIF of certain amounts in respect of remuneration and expenses.

I confirm that you are agreeable for a copy of this letter to be sent directly to your clients, and accordingly you will note that this letter will be sent by email to Mr Park contemporaneously with its communication to you.

The meeting followed an exchange of correspondence between our respective clients, and between your clients and Messrs Hayes and Connelly of McGrathNicol (Receivers and Managers appointed by Deutsche Bank). The correspondence from McGrathNicol and our client to your clients identified certain aspects of your clients' claim for remuneration and expenses which, McGrathNicol considered, required further explanation. Some of those issues were the subject of discussion during our meeting.

During the meeting, we raised certain particular queries, and I indicated that I would reiterate those queries in correspondence, which I now do. Those particular issues were as follows:-

1. In the letter from FTI to Mr Whyte dated 14 August 2014, there is a reference on the third page (beneath the heading "Category 1 Claims") to the category 1 claims now including "the balance of category 3 claims that were not approved by McGrathNicol for the period 19 March 2013 to 31 December 2013".

Mr Park indicated that he would check and advise as to:-

- (a) whether the amounts now claimed in respect of category 1 costs and expenses include amounts "transferred" from the claim previously made in respect of category 3 costs; and
 - (b) if that is the case, an explanation as to the basis for doing that.
2. In relation to Mr Corbett's time that has been charged (and which is referred to as being a consultant expense):-
 - (a) Are detailed explanations of the work that was performed by Mr Corbett available (noting that the letter from FTI states that Mr Corbett provided weekly timesheets)?

- (b) Is it possible for that time to be broken down and allocated across the various tasks being performed by him (noting that Mr Corbett's time appears to have been claimed in category 1 in full – that is, relating entirely to tasks specific to the FMIF)?
3. In relation to the claim for category 2 costs, it is said on the seventh page of the letter from FTI to Mr Whyte of 14 August 2014 that the claims relating to the management and administration of LMIM's funds management operations include "*certain work undertaken in the administration of LM Administration Pty Ltd*" during the period 19 March to 26 July 2013. As to that:-
- (a) Does this mean that work performed by Mr Park and Ms Muller, and FTI staff in the voluntary administration of LMA (prior to Mr Clout's appointment as liquidator of LMA on 26 July 2013) is claimed as remuneration in connection with LMIM's role as responsible entity?
- (b) If so, what is the basis for mixing the work undertaken in the LMA voluntary administration with work undertaken in the administration and winding up of LMIM and the FMIF?
- (c) That time should be separately identified.

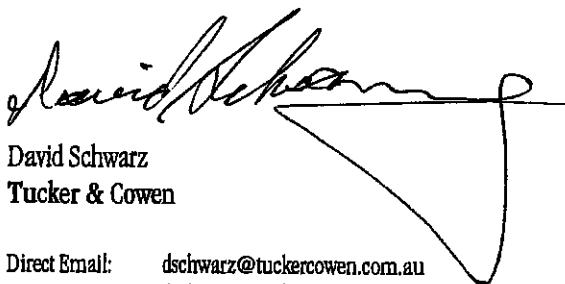
We discussed a number of other issues during our meeting, as well. I have outlined the issues above as the particular issues that I indicated I would write to you and Mr Park about in the short term. Your client will also, we understand, review the narrative of the work undertaken and for which remuneration is claimed, and where appropriate a more detailed explanation of the work performed and its relation to the FMIF will be provided. We need not address that issue in this correspondence.

We will revert to you shortly as to the other issues discussed, and I understand that you will write to us within the near future regarding the role of LMIM as the responsible entity of the FMIF.

Although it need hardly be said, our client naturally reserves his rights regarding your clients' claim.

We look forward to hearing from you.

Yours faithfully



David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

cc: Mr John Park, FTI Consulting Email: john.park@fticonsulting.com

Liability limited by a scheme approved under Professional Standards Legislation.

29 September 2014

Our Ref: GOK_89741130.doc

David Whyte
BDO
GPO Box 457
BRISBANE QLD 4001

Dear Sir

RE: LM Investment Management Limited (In Liquidation) (Receivers and Manager Appointed) ("the Company") ACN 077 208 461 as responsible entity for the LM First Mortgage Income Fund ("LM FMIF")

I refer to the letter dated 11 September 2014 from Tucker & Cowen Solicitors addressed to Russells.

Adopting the numbering from that correspondence I respond to the queries as follows:-

1. Controllership Costs

- (a) I confirm the Category 3 costs not approved by McGrathNicol in their correspondence dated 28 April 2014 (copy ***attached**) were reallocated to our Category 1 claims and were included as such in my correspondence dated 14 August 2014. The relevant claims total \$36,092.50 (excluding GST).
- (b) Whilst it was suggested by McGrathNicol these claims may not be directly recoverable from the underlying borrowers, the work undertaken is clearly connected to the management of the assets of, and the winding up of, the LM FMIF. Accordingly the Responsible Entity is entitled to be indemnified out of the scheme property for these expenses.

FTI Consulting (Australia) Pty Limited
ABN 49 160 397 811 | ACN 160 397 811
Level 9, Corporate Centre One | 2 Corporate Court | Bundall QLD 4217 | Australia
Postal Address | PO Box 8965 | GCMC QLD 9726 | Australia
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The invoices submitted relating to the borrower Carrington Management Pty Ltd maybe more accurately referred to as a claim relating to the controllership of Pinevale Villas Morayfield Pty Ltd (Pinevale). I suggest a further review of these invoices may be appropriate to establish whether these claims might be more appropriately charged to the Pinevale loan. If that is the position reached following our discussions, we will reduce our remuneration claim by this amount and resubmit the claim as remuneration payable under the controllership appointment over the Pinevale Loan.

2. Time charged by John Corbett

- (a) Please find ***attached** time entries for John Corbett's time recorded during the period 19 March 2013 to 31 May 2013. I understand these were the entries primarily identified by you in your correspondence dated 10 July 2014. Whilst Mr Corbett has provided additional narrations regarding the tasks undertaken during this period, I reiterate that for this period Mr Corbett was working as a consultant, and, as such, these costs may be more accurately categorised as disbursements. They were included as part of our remuneration claim only in the interest of full disclosure. Mr Corbett's hourly rate of \$190, was far less than what would have been charged if Mr Corbett had been an employee of FTI.
- (b) As noted, Mr Corbett has provided additional narrations in the attached time entries. However, any additional exercise seeking to further itemise the tasks and time allocations for this period would provide an approximate allocation only.

To assist in your evaluation of the work performed by Mr Corbett for the benefit of the LM FMIF, please find ***attached** a copy of Mr Corbett's affidavit filed in Proceedings 3383 of 2013. This affidavit outlines Mr Corbett's involvement and the voluminous tasks undertaken by him in respect of the LM FMIF.

3. Category 2 Costs

- (a) As noted in my previous correspondence, our Category 2 claims include work undertaken relating to the management and administration of the funds management business conducted by the Company. This includes claims for outlays incurred by the Company relating to work undertaken as part of the administration of LM Administration Pty Ltd ("LMA") across the period 19 March 2013 to 26 July 2013. Such work is in respect of the services LMA provided to the Company in support of and to facilitate the funds management business, and these costs were

billed to the Company by LMA (similar to where an external service provider provided the services to the Company). Our work undertaken in the Administration of LMA is claimed as remuneration in LMA, and has been approved by creditors in that Administration. However, where tasks undertaken by LMA related purely to the maintenance and ongoing trading of the service business conducted by LMA, those tasks has been invoiced by LMA to the Company as responsible entity who is in turn seeking to recover these costs from the various funds that accepted the benefit of the services provided (on the Funds Under Management (FUM) percentage basis). The Company incurred this expense by continuing to retain LMA as the service provider enabling the Company to fulfil its role as Responsible Entity to the various funds.

The work undertaken and invoiced to the Company does not relate to the corporate affairs of LMA, rather it relates to the management and ongoing trading of LMA as service provider to the Company. In this regard, I understand the current Liquidators of LMA have received a 10% service fee since appointment for their work in the ongoing trading and management of LMA's business in support of the Company's funds management operations.

- (b) There has been no mixing of work undertaken in the LMA voluntary administration with work undertaken in the administration and subsequent liquidation of the Company and the LM FMIF. What has occurred, as detailed above, is that work performed in the administration of LMA has been charged by LMA to the Company where such work related to the funds management business. Such invoices have been delivered by LMA, not the Company or FTI. The costs incurred by the Company, being for work undertaken in respect of the service entity to the whole funds management business, has been included in one category of costs for simplicity. The make-up of this category has been disclosed by my office at all times since the submission of our claims. My office previously provided McGrathNicol the opportunity to receive the additional breakdown of the time incurred in this category.
- (c) Please find ***attached** a summary of our category 2 claims to the period 30 June 2014. This summary identifies the portion of cost relating to the LMA service costs to the Company which was included as part of our total Category 2 claims for the period 19 March 2013 to 31 July 2013. I also ***attach** a summary of the LMA work presented in accordance with the ARITA code of professional practice. I confirm I am able to present a summary of all work undertaken and included in our Category 2 claims in this format upon request. This information will be made available to any party appointed to review the claims as an independent expert.

The total amount of our Category 2 claims in the LM FMIF that is attributable to the work undertaken in LMA and charged to the Company (by LMA) is \$330,731 (excluding GST). This has been calculated on a FUM basis. Please notify my office of your general position on this portion of our Category 2 claims and whether these costs are intended to be dealt with in same manner as the balance of our Category 2 costs. I note that the receivers of the LM FMIF are currently seeking reimbursement from the Company as Responsible Entity of the other funds for operational costs incurred by the Liquidators of LMA and funded by LM FMIF (including a LMA service fee payable to the Liquidators for their time incurred in the ongoing trading and management of LMA's business). The basis upon which such reimbursement is sought is consistent with, and commensurate with, the basis for the claims which have been made by us in this regard.

Should you have any queries relating to the above matter, please contact myself on (07) 3225 4900, Kelly-Anne Trenfield on (07) 3225 4920, or Glenn O'Kearney on (07) 5630 5205.

Yours faithfully
FTI Consulting



John Park
Liquidator

*Encl.

M^{CN+}

M^CGRATHNICOL

CORPORATE RECOVERY

114 St. John's Street



ALVAREZ & MARSAL

28 April 2014

Ms Ginette Muller
Liquidator
c/o FTI
Level 9, Corporate Centre One, 2 Corporate Court
Bundall QLD 4217

By email: ginette.muller@fticonsulting.com

By Email

Dear Madam

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM First Mortgage Income Fund ACN 077 208 481 ("FMIF")

RE: FTI fees in relation to specific borrowers of FMIF

I refer to my appointment as Joint and Several Receiver and Manager of FMIF on 11 July 2013. I also refer to your invoices received by my office on 7 April 2014.

Please be advised that the following invoices have not been approved for payment as part of FTI's Category 3 costs on the basis that these costs may be considered Category 1 or Category 2 as expenses of the RE:

Summary of FTI Expenses - Unapproved Borrower Fees

GST inclusive

Invoice number	Borrower	Description	Date	Amount (\$)
8978inv13C	Lot 111	Fees from 19 March to 31 October	31-Oct-13	4,217.40
8978inv10C	Green Square	Fees from 19 March to 31 October	31-Oct-13	3,002.45
8978inv6.2C	Carrington	Fees from 1 December to 31 December	31-Dec-13	621.50
8978inv6C	Carrington	Fees from 19 March to 31 October	31-Oct-13	7,131.85
8978inv2C	Bellpac	Fees from 19 March to 31 October	31-Oct-13	14,146.20
8978inv22C	Tall Trees Tanah Merah	Fees from 19 March to 31 October	31-Oct-13	10,515.45
8978inv22.2C	Tall Trees Tanah Merah	Fees from 1 November to 30 November	30-Nov-13	64.90
Total unapproved fees				39,701.75

All other category 3 costs have been reviewed and approved for payment.

A8-140417-LMINMAN01-FTI Borrower costs-MH

Should you have any queries regarding the above, please contact either Ian Niccol or myself.

Yours faithfully

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM First Mortgage Income Fund



Joseph Hayes
Joint and Several Receiver and Manager

CC:
David Whyte
BDO
By email: David.Whyte@bdo.com.au

Name	Position	Date	Hrs Adj	Charge Out Rate	Change	ARRTA	Narrative
John Corbett	Senior External Consultant	22/03/2013 to 28/03/2013	15.50	190.00	2945.00	Assets	In conjunction with the LM asset managers, undertake an initial review of all MIF Tail Tress assets, contracts, statutory requirements and inter-relationships to understand issues, impacts of the Refinement Villages A2 and summary of asset positions. Each asset was individually reviewed in turn through a workshop process over several days.
John Corbett	Senior External Consultant	2/04/2013 to 05/04/2013	19.50	190.00	3705.00	Assets	In conjunction with the LM asset managers, undertake a file by file review of MIF assets, contracts, counterparties, construction progress, titling and loan position for primarily Bridgewater, Sources, OVEST, Richard Bay and Calabroite) to understand issues and asset positions and start the process of formulating strategies on each of these files.
John Corbett	Senior External Consultant	08/04/2013 to 12/04/2013	23.50	190.00	4465.00	Assets	In conjunction with the LM asset managers, undertake a file by file review of assets, contracts, counterparties, construction progress, titling and loan position for Keppel Bay, Kungoyen, Aallo, Periglen Beach, Tail Tress model as well as working through follow up material for other assets previously discussed.
John Corbett	Senior External Consultant	15/04/2013 to 18/04/2013	30.75	190.00	5925.50	Assets	In conjunction with LM staff, undertake a file by file review of assets, contracts, counterparties, construction progress, titling and loan positions for St. Christoph, U-Oyn, Madras Property, Condar, Burnham, Ltd 111, Glenchanning and KFG, 13th Beach. Review asset plans under development and commence development of fund level strategy and fund reporting. Undertake a series of discussions with Deutsche Bank regarding the format and requirements around additional reporting to the bank. Commenced review of MIF loans with specific MIF involvement to understand positions and inter-relationships.
John Corbett	Senior External Consultant	22/04/2013 to 26/04/2013	25.50	190.00	4845.00	Assets	Continuation of development of individual asset plans across the MIF assets as further information is presented by the LM staff and commence development of a fund level strategy (including cash flow integration) Development of fund level investor report. Further review of loan positions, contractual positions, divestment options and funding requirements for files with MIF involvement. Begin process of sorting out new external payment gateway for investor payments with CEA.
John Corbett	Senior External Consultant	29/04/2013 to 30/05/2013	43.00	190.00	8170.00	Assets	Undertaking detailed reviews of individual MIF fund assets and developing asset specific strategies and plans and folding these into the evolving fund level strategy and cash flow. This undertaken through a series of formal discussions and workshops with the specific LM staff managing the files. Attended a number of discussions with Tail Tress around refinancing, asset capex, marketing over the space of the week. Continuation of writing up the investor communication document and detailed review of fund level day to day cashflow position.
John Corbett	Senior External Consultant	04/05/2013 to 10/05/2013	60.50	190.00	11485.00	Assets	Continuation of process of undertaking detailed reviews of individual MIF fund assets and developing asset specific strategies and plans and folding these into the evolving fund level strategy and cash flow. This undertaken through a series of formal discussions and workshops with the specific LM staff managing the files. Continuation of writing up the investor communication document and detailed review of fund level day to day cashflow position, developing asset plans and fund level strategy for use in court and in investor communications, manage and drive the drafting of strategies. Preparation of additional detailed fund materials for court. Dealing with compliance issues across the fund. Dealing with hedging / FX position and examining options on how to resolve positions.
John Corbett	Senior External Consultant	11/05/2013 to 17/05/2013	35.00	190.00	6650.00	Assets	Completed a series of meetings to review progress across MIF fund assets on an asset by asset basis with the individual LM staff responsible. Finalisation / writing up of specific asset plans and fund level strategy material for use in court and investor communications. From the progress meetings, conducted a workshop to update and refine the fund cash flow, Review of Gregsiana and Source files with the LM staff to consider implications of the additional information received. General fund administration around day to day cash flows and payments. Payment volumes now approaching 30+ per day each of which require review and sign-off.
John Corbett	Senior External Consultant	18/05/2013 to 24/05/2013	35.50	190.00	6745.00	Trade-On	Work through FX hedging alternatives for the fund investors to deal with unhedged exposures with implications for offshore investors. Also worked through options to resolve the outstanding hedge liabilities with Western Union. Detailed review of cashflow to determine future ability to meet forthcoming payments and identify cash flow stress points and funding issues, ability to raise DB debt per arrangements and meet future liabilities for drawdown on files. Detailed legal and commercial review of the complex Balboa file over a series of workshops over three days - the various legal issues, legal opinions, judgments handed down, position between MIF and MPF (company), conversion of bonds and inshore development of an action timeline and future milestones.
John Corbett	Senior External Consultant	25/05/2013 to 31/05/2013	37.50	190.00	7125.00	Assets	Review of MIF fund assets with individual asset manager on a file by file basis over several days - comparison with asset plans, progress achieved and assets as appropriate. Review of fund end of month cash flow prior to Deutsche Bank principal and interest payments. General fund administration (payments, etc). Dealing with additional Tail Tress issues across the properties and with the operator - involving several meetings and discussions with the operator. Dealing with review and authorisation of day to day payments across each of the asset files as well as general fund level payments (up to 50 payments with detailed supporting documentation reviewed and processed per day).

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

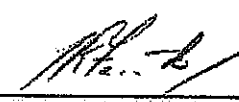
Applicants: RAYMOND EDWARD BRUCE AND
VICKI PATRICIA BRUCE
AND
First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED)
ACN 077 208 461 IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND
AND
Second Respondents: THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND
ARSN 089 343 288
Third Respondent: ROGER SHOTTON
Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

JOHN DAMIAN CORBETT, accountant and banking and finance consultant, care of
22 Market Street, Brisbane Queensland, states on oath:-

1. I am a managing director of FTI Consulting (Australia) Pty Ltd (FTI).
2. I am a qualified accountant, and have over 25 years' experience in
arranging and structuring large-scale financing solutions (up to \$3 billion) for project
financed assets, resource projects, social and economic infrastructure transactions and
complex business operations.

PAGE 1


Signed


Solicitor/Barrister/Justice of the Peace

AFFIDAVIT OF JOHN DAMIAN CORBETT

Filed on behalf of the First Respondent

Form 46 Rule 431

Russells
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

imc_20130471_247 (2).doc

3. Chief among my recent professional experience is structuring, financial analysis, asset valuation financial modelling, business case development, negotiation and evaluation of:

- (a) The Clem Jones Tunnel (\$2.5 billion);
- (b) Newcastle Coal Infrastructure Group Coal Terminal (\$3 billion); and
- (c) most recently, the development of an agricultural company (Hassad Australia) for the Qatar Investment Authority (over \$500 million).

4. My curriculum vitae is now produced and shown to me and marked "JDC1".

Administration of LMIM

5. I have been engaged on the affairs of the LM First Mortgage Income Fund (LM FMI Fund), and other funds of which LM Investment Management Limited (LMIM) is the responsible entity, since Mr Park and Ms Muller were appointed as administrators of LM Investment Management Limited on 19 March, 2013. In recent times, I have concentrated my work on the LMFMI Fund.

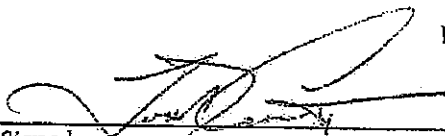
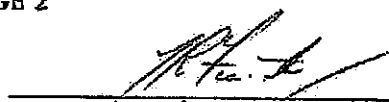
Asset Portfolio of LM FMI Fund

6. The LM FMI Fund has a portfolio of assets comprising 27 loans to companies that own or are developing properties in the following sectors:

- (a) Aged care;
- (b) Commercial;
- (c) Industrial;
- (d) Residential; and
- (e) Specialised residential.

PAGE 2

Signed

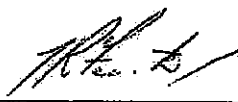


Solicitor/Barrister/Justice of the Peace

7. Under Ms Muller's direction, I have led a team of professional staff of FTI, and also staff of a service company, LM Administration Pty Ltd (administrators appointed) (LM Admin) in undertaking a comprehensive strategy review of each of the properties, including a detailed analysis of the financial and developmental positions for each. That review has involved:

- (a) seeking, obtaining, collating and reviewing information from the records of the LM FMI Fund, LMIM, and LM Admin regarding:
 - (i) the loan and mortgage arrangements (including the debt position), for each property;
 - (ii) LMIM's proposals for the development of each property, as at 19 March, 2013; and
 - (iii) the consequent likely value of each property.
- (b) me or FTI staff alongside LM Admin staff inspecting the properties to understand the physical characteristics, including any proposed development of the property;
- (c) identifying opportunities that are reasonably available to provide value to members of the LM FMI Fund in the short term;
- (d) considering whether the development proposals for the properties were appropriate, given development timeframes, market conditions and the need both to optimise returns to members of the LM FMI Fund, and to do so as soon as reasonably practicable;
- (e) reporting to Ms Muller and discussing with her and other senior staff of FTI as to the matters mentioned above; and
- (f) implementing action as a result of decisions made.

PAGE 3


Signed


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8. It emerged soon after FTI's appointment that, although LMIM and LM Admin were working from financial plans for the whole of the LM FMI Fund, there was, in my opinion, inadequate financial analysis of, and planning for, the development and performance of individual assets. I formed the view that, particularly because most of the 27 loans were in default on the appointment of the administrators, this individual, detailed analysis and planning was necessary. I discussed this with Ms Muller and she directed me to prepare a detailed analysis for each property underlying each of the 27 loans. This has been a very substantial task. It is not yet complete, especially in relation to the valuation of the underlying properties where additional specialist input is required into development and property zoning options.

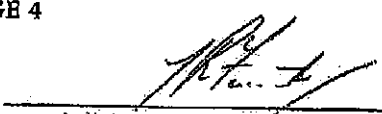
9. For the purposes of the administration of LMIM, in respect of the LM FMI Fund, Ms Muller and other senior FTI staff have also undertaken the following work:

- (a) analysing, considering and understanding financial arrangements and structures between LMIM, LM Administration Pty Ltd, the LM FMI Fund and the LM Managed Performance Fund;
- (b) meeting regularly with representatives of Deutsche Bank to discuss proposed strategies to ensure Deutsche Bank was aware of the administrators' plans and did not take any action which may be prejudicial to members' interests;
- (c) considering and calculating a plan of distributions of capital to members of the LM FMI Fund satisfactory to Deutsche Bank, and to see its loan repaid in full as soon as practicable.

10. In the course of this work, I and FTI staff have developed individual cash flow models for each of the assets, and these models also now feed into an over-

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arching cash flow model for the entire LM FMI Fund. This model plans the entire work-out of the LM FMI Fund, development of those underlying properties that can be profitably developed and repayment in full of the Deutsche Bank facility with a minimum of interest and associated cost. The plan involves return of all capital to members within three years.

11. I do not exhibit these models, because they are commercially very sensitive, and because they very large documents.

12. On the appointment of the administrators, I also ascertained that neither LMIM nor LM Admin had obtained valuations for most of the underlying properties for at least the two years the preceding appointment. The review that I have undertaken, in consultation with Ms Muller, has involved the need to obtain substantial financial planning and other valuation advice, and to commission valuations of key properties in a planned way. That is, to manage cash flow and to plan and execute this review carefully, we have been identifying what we have termed "easy wins", and also identified the more substantial commercial exposures -- and opportunities -- for the assets LM FMI Fund. In that process, the administrators have obtained fresh valuations for over half the 27 underlying properties.

13. Again, I do not exhibit these valuations, for the same reasons that apply to the individual and LM MIF Fund cash flow models.

14. As a result of that work, I have, in consultation with Ms Muller and other senior FTI staff, developed detailed strategies for each property. Those strategies have being prepared having regard to:

(a) current and forecast market conditions;

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-
- (b) the likely costs and risks associated with developing each property yet to be developed;
 - (c) the objective of undertaking an orderly asset sale program, in a commercially advantageous manner, to return members' investment capital in a timely way; and
 - (d) the need to realise and optimise capital returns for members of the LM FMI Fund.

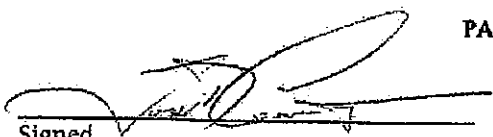
Report by Responsible Entity

15. In the course of undertaking the strategic analysis work for LM FMI Fund's assets, I, and I believe the administrators, have been very mindful of the need to keep members of the fund informed of the outcome of the work. I have been responsible for the preparation of a report entitled "Report by Responsible Entity", dated 7 June, 2013 (the RE Report). Now produced and shown to me and marked "JDC2" is a true copy of that report. (Whereas in this affidavit I have referred to "properties", in that report I refer to "assets".)

16. I believe the information contained in the RE Report is true and correct, based upon the information that was available for each of the assets of the LM FMI Fund and the analysis that has been undertaken.

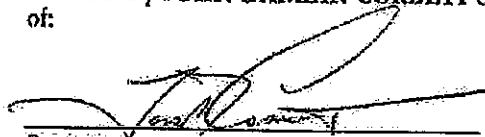
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17. All the facts and circumstances deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

SWORN by JOHN DAMIAN CORBETT on 26 June, 2013 at Brisbane in the presence of:



Deponent



Solicitor/Barrister/Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBHR: 3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND
VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED)
ACN 077 208 461 IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND

AND

Second Respondents: THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND
ARSN 089 343 288

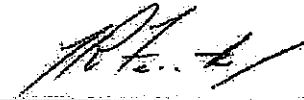
Third Respondent: ROGER SHOTTON

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

Exhibit "JDC1" to the Affidavit of JOHN DAMIAN CORBETT sworn 26 June, 2013.



Deponent



Solicitor/Barrister/Justice of the Peace

CERTIFICATE OF EXHIBIT

Filed on behalf of the First Respondent

Form 47 Rule 435

Russells
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

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John Corbett

Managing Director — Corporate Finance/Restructuring

John.corbett@fticonsulting.com

FTI Consulting

22 Market Street
Brisbane, QLD 4000
Australia
Tel: +61 (0)7 3225 4900
Fax: +61 (0)7 3225 4999

Education

B.Bus Capricornia Institute
of Advanced Education

M Bus (App Fin) University
of Technology Sydney

Certifications

MAICD

Professional Associations

Chair – Infrastructure
Association of Qld

Key Skills

- Evaluation and due diligence management of critical business case components of major projects across economic and social infrastructure
- Capital reviews and capital structuring of transactions and borrowing entities
- Strategic planning / business management
- Risk identification, assessment, allocation, mitigation and management
- Financial analysis, asset valuations and financial modelling
- Preparing and negotiating major project finance documentation

Professional Education and Industry Associations

2008-13	Infrastructure Association of Queensland	Board Member - Current Chairman
1992	University of Technology Sydney	Master of Business (Applied Finance)
1986	Capricornia Institute of Advanced Education	Bachelor of Business (Accountancy)

Relevant Experience

John has over 20 years experience in arranging and structuring large-scale financing solutions (\$50 million to \$3 billion) for large corporate and multinational clients, local government entities, state government enterprises, corporate agribusiness clients, project financed assets, social and economic infrastructure transactions and complex business operations.

John's experience extends across retail and wholesale trade, local government financing, cotton production and marketing, grain, cattle and sheep production, manufacturing, coal mining, waste services, airports, ports, toll roads, gas-fired power stations, renewable energy transactions (wind and hydro), coal seam methane gas production and regulated energy transmission.

Financing Expertise

- Undertaken financing, corporate and local government budgetary analysis and capital structuring, project structuring, asset valuation, sector risk analysis, financial risk analysis, risk mitigation strategies and financial modelling analysis for agricultural, local government, manufacturing, infrastructure, mining and retailing operations over the past 24 years.
- 8 years experience in reviewing, analysing, financing and critiquing business plans and physical operations across a variety of corporate (\$30m to \$500m) agricultural interests extending across irrigated cotton, dryland grain cropping, cattle breeding and finishing.



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cattle feedlots, and sheep operations throughout New South Wales and Queensland.

- 12 years experience in reviewing and negotiating project, finance and construction documentation across greenfield developments in gas-fired power generation in NSW and Queensland, greenfield wind farm developments in South Australia, a community housing project in NSW, a port development in NSW and a toll road development in Queensland in order to mitigate transaction and construction risk and integrate these outcomes into the financing solutions for each project.
- Extensive experience in reviewing and analysing the technical aspects of transactions (alongside specialist independent consultants engaged to critically analyse individual transactions) to determine any technical or transactional weaknesses and address these issues in the financial structure to ensure the bankability of the transactions.

Broad Sector Experience

- Managed the due diligence, analysis, structuring, independent expert reviews, negotiation and documentation of Lead Arranger and Joint Lead Arranger financing roles across a wide variety of transactions including:
 - The acquisition of a portfolio of private hospitals for in excess of \$1 billion by one of the existing leading private hospital operators;
 - Specific purpose funding for 2 local government bodies totalling in excess of \$100m;
 - 3 separate acquisitions over 18 months for a domestic analgesics and therapeutics manufacturer prior to the sale of the consolidated business for >\$200m;
 - Between 1992 and 1996, the acquisition and development of over \$600m of irrigated farming properties across New South Wales and Queensland by 3 separate overseas investors and 6 separate domestic farming operations;
 - Over 4 consecutive years, arranged and managed the cotton merchant financing (including cotton and foreign exchange hedging) for around 60% of the annual Australian cotton crop;
 - The construction and operation of the 450MW Braemar Power gas fired peaking plant in Queensland;
 - The construction and operation of the 280MW Lake Bonney Wind Farm in South Australia;
 - Acquisition of Hobart Airport;
 - Bond University's acquisition of their campus from EIE Corporation;
 - The construction and operation of the 600MW Uranquinty gas fired peaking plant in New South Wales;
 - The construction and operation of the Braemar 2 gas fired peaking / intermediate plant in Queensland;
 - Fully analysed and structured bid for Curragh coal mine;
 - Fully analysed and structured bid for Tweed River Sand Bypass PPP.

Current Industry Roles and Transactional Recognition

- Board member (2007 – current) and Chair of the Infrastructure Association of



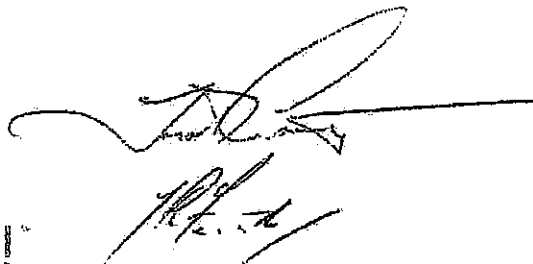
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Queensland (IAQ).

- Board Member and Chair of Audit & Risk Committee (2009 – current) for Hassad Australia Pty Ltd (a >\$500m agricultural company owned by the Qatar Investment Authority).
- Authored the IAQ's October 2008 PPP Guidelines submission to Infrastructure Australia.
- Co-winner, CFO Awards 2008 Project Finance Deal of the Year for the Newcastle Coal Infrastructure Group coal terminal at Newcastle.
- Co-winner, 2008 AsiaMoney Project Finance Deal of the Year for the Lake Bonney Wind Farm transaction.
- Runner-up for the 2005 ALB Law Awards Project Finance Deal of the Year for the Braemar Power Station transaction.

Agribusiness and Agriculture Experience

- Broad agriculture and agribusiness sector experience:
- Livestock (cattle, sheep)
- Intensive livestock (cattle feedlots, poultry)
- Processing (cattle, sheep and pig abattoirs, poultry processing, cotton ginning, dairy processing, food processing)
- Dryland cropping (coarse grains, cotton, sugar)
- Irrigated cropping (coarse grains, cotton, sugar)
- Commodity marketing (grains and cotton)
- 4 years running the ANZ corporate agriculture portfolio for NSW which covered sheep producers, cattle producers, grain cropping, cotton producers (dryland and irrigated), sheep abattoirs, cattle abattoirs, cotton ginning, cotton marketing, grain marketing, poultry processing & production and dairy processing;
- 4 years running the ANZ Qld Corporate portfolio which included its exposures as lead financier to North Australian Pastoral Company, Kilcoy Pastoral, Golden Circle, Bundaberg Sugar, KR Darling Downs, Norco, Wallace Logan and other major beef producers);
- Development of the business plan for and current Director of Hassad Australia Pty Ltd – a >\$500m agricultural company wholly owned by the Qatar Investment Authority operating sheep breeding and dryland cropping properties across all mainland states in Australia. In 2013, Hassad Australia is set to become the largest sheep producer and top 4 grain producer in Australia.



SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND
VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED)
ACN 077 208 461 IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND

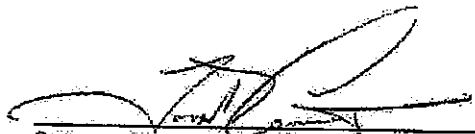
AND

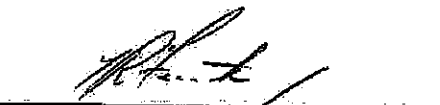
Second Respondents: THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND
ARSN 089 343 288

Third Respondent: ROGER SHOTTON

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

Exhibit "JDC2" to the Affidavit of JOHN DAMIAN CORBETT sworn 26 June, 2013:


Deponent


Solicitor/Barrister/Justice of the Peace

CERTIFICATE OF EXHIBIT

Filed on behalf of the First Respondent

Form 47 Rule 435

Russells
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

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7 June 2013
Our Ref: RCL_B974r17 (FMIF) Cover Ltr.docx

CIRCULAR TO INVESTORS IN THE LM FIRST MORTGAGE INCOME FUND AND FEEDER FUNDS

Dear Sir/Madam

RE: LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 ("LMIM")

I refer to the appointment of John Park and me as joint and several Administrators of LMIM on 19 March 2013 pursuant to resolution of LMIM board of directors.

Please find *enclosed a Circular to the Investors in the LM First Mortgage Income Fund ("FMIF") and the feeder funds to the FMIF, namely the Currency Protected Australian Income Fund and the Institutional Currency Protected Australian Income Fund.

Contact Details

Investors are able to obtain further information as follows:

1. Regular updates will be provided on the LMIM voluntary administration website (www.lminvestmentadministration.com); or
2. You can send an email to mail@imaustralia.com.

Yours faithfully
FTI Consulting

Ginette Muller
Voluntary Administrator

*Encl.

FTI Consulting (Australia) Pty Limited
ABN 45 160 397 811 | ACN 160 397 811
22 Market Street | Brisbane QLD 4000 | Australia
Postal Address | GPO Box 3127 | Brisbane QLD 4001 | Australia
+61(0)7 3225 4900 main | +61(0)7 3225 4999 fax | fticonsulting-asia.com

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CRITICAL THINKING AT THE CRITICAL TIME™

LM Investment Management Ltd

(Administrators Appointed)

ACN 077 208 461

As Responsible Entity of LM First Mortgage Income Fund and Feeder Funds

Report by Responsible Entity

7 June 2013

FTI Consulting

GPO Box 3127

BRISBANE QLD 4000

Telephone: (07) 3225 4900

Facsimile: (07) 3225 4999

www.fticonsulting-asia.com

Liability limited by a scheme approved under Professional Standards Legislation

Two handwritten signatures in black ink, one above the other, located at the bottom left of the page.

Purposes

This report has been prepared for the purpose of informing Investors of LM First Mortgage Income Fund (Fund or FMIF) and their Advisors only (collectively known as 'Recipients') of:

- (a) the work that has been undertaken as at the date of this report, in the administration of LM Investment Management Limited (Administrators Appointed) (LMIM), in relation to the FMIF; and
- (b) the financial position of the FMIF, particularly by reference to its assets.

This report may be used by Recipients in connection with their investment in the FMIF or for the purpose of advising of taking instructions from clients who are Investors in the FMIF.

However, it is not to be used for any other purpose nor disseminated to any other person.

No copy of all or any part of this report may be made without the prior written consent of Voluntary Administrators of LMIM.

By accepting a copy of this report, each Recipient agrees to use the report solely for the purposes, and in accordance with the conditions, set out above.

Please note, consistent with the obligations imposed by Principal 2 (Use and Disclosure) of the National Privacy Principles, confidential borrower information including borrower identities, loan values and realisable asset values have not been disclosed within this report.

A large, stylized handwritten signature in black ink, appearing to be 'D. J. ...'.

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1 Executive Summary

1.1 Administrators Appointed

LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 ('LMIM'), the Responsible Entity of the LM First Mortgage Income Fund (the 'Fund' or 'FMIF') appointed John Park and Ginette Muller as Voluntary Administrators of the Responsible Entity on 19 March, 2013.

LMIM is in voluntary administration. The FMIF is not in administration. The FMIF is legally segregated and a separate entity from the Responsible Entity. The FMIF remains closed to new investors and quarantined to ensure its assets are protected.

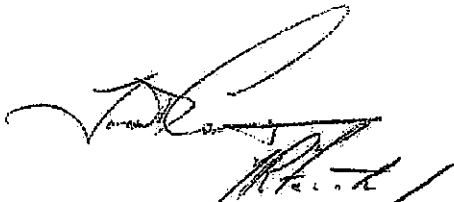
1.2 The Portfolio Management Team

The Administrators recognised at the outset the importance of quickly assembling a balanced and experienced team who have a sole focus on the assets in the Funds (including FMIF). The Administrators have assembled a small dedicated and experienced team to oversee the management of the Fund assets and provide additional expertise into the development and execution of asset strategies. Existing LMIM staff, with the requisite skills and knowledge, has also been retained by the Administrators to continue to manage the Fund's assets. The two teams have been working very closely together for the last two months to review all assets and to identify avenues to maximise the returns to investors.

The FTI personnel of the assembled asset team have no other responsibilities on the administration besides a focus on working through all the LMIM Fund's assets (inclusive of FMIF), to progress these assets and maximise the returns to investors in the shortest time that is commercially feasible.

The team is headed up by John Corbett, a former banking executive with extensive commercial experience across property financing, property development, mortgage and legal issues, strategic planning, business operations, financial analysis and project management. John has extensive banking and commercial experience which includes being a former board member of a government owned property development entity with a greater than \$500 million portfolio of residential development projects which required structuring, funding, development and sale of the completed projects in the open market to achieve a commercial rate of return.

John is supported by 3 personnel from FTI with a collective 40+ years experience in property, business planning & operations, financial modelling, financial analysis, project management, legal and security issues and dealing with real estate assets that are mortgagee in possession (noting that most of the FMIF assets are managed on a day-to-day basis by LMIM staff as mortgagee in possession with FTI oversight).



The Staff from LMIM consists of three highly experienced/qualified development managers, four experienced project managers and property development staff, LMIM's financial management/accounting team and LMIM in-house legal and paralegal staff.

The team overseeing the LMIM team forms the core resource group for managing the FMIF assets. This team is supported by outside expertise for specific technical, legal and commercial reviews in addition to the market assessments and valuations if and when required.

As was communicated in the Circular to Investors on 25 April, 2013, the overarching Fund strategy remains as follows: to "undertake an asset sales program with an orderly sale of all the remaining assets of the Fund in a commercial manner, with an objective to return investors' investment capital as quickly as commercially possible".

The Administrators continue to work with LMIM management to prioritise the following:

- progress the orderly sale of all the remaining assets of the Fund and provide a return of investors' investment capital as quickly as possible; and
- protecting asset value and ensuring the least possible disruption to investors.

LMIM and the Administrators (herein known as the 'Responsible Entity') continue to be fully committed to providing investors with a high level of transparency and meaningful information with regards to their investment in the Fund. The Responsible Entity fully appreciates the impact of the closure and decline in capital value of the Fund to individual investors over the past couple of years, together with the uncertainties created through the Voluntary Administration of LMIM.

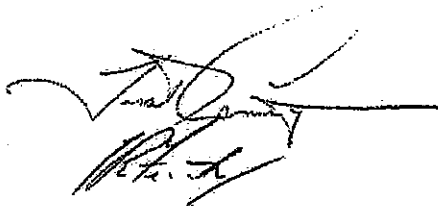
We would like to assure investors that the Responsible Entity is working to maximise the capital return of the fund in a timely manner and trust that this comprehensive fund update will provide further comfort in this regard.

2 Fund Level Administration Update

2.1 Fund Overview

The FMIF comprises a portfolio of 27 commercial loans with a historical book value of \$326,102,759 (per the last formal investor update dated 24 January, 2013). Two of these loans have had all security sold and mortgages released. However, there is residual debt on each one and these files now need to be closed - these have been disregarded when we discuss the various assets later in this report. In addition there are two borrowers each with two separate loans for the same asset. These have been treated as one facility in each case for the purposes of discussion later in this report. The majority of these mortgages have defaulted and where this is the case FMIF is acting as mortgagee in possession.

The Responsible Entity is currently conducting a review of the business and all of the LMIM funds and is now writing to provide a comprehensive update to investors as a matter of priority.

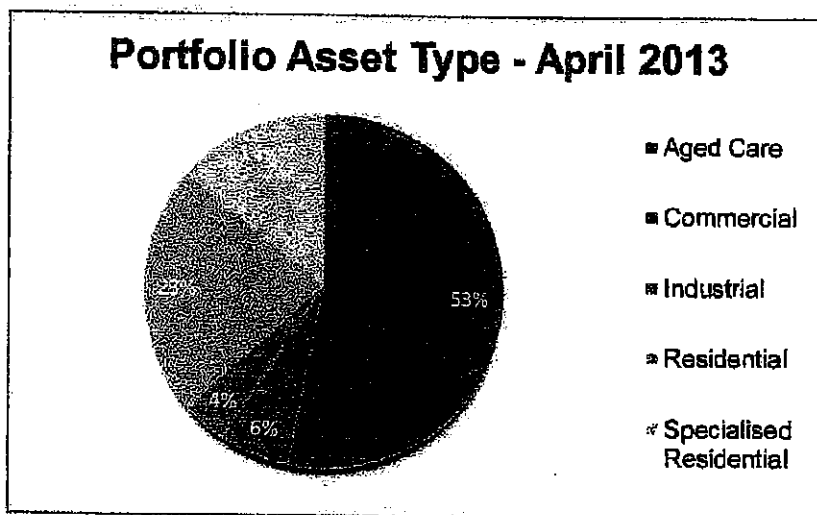


We will continue to assess options to further enhance values as we progress with the asset reviews and as additional information comes to hand. It is too early in the process to include into the portfolio assessment potential outcomes such as a successful rezoning of a land subdivision or the like and this may have future positive benefit to the valuation of the FMIF.

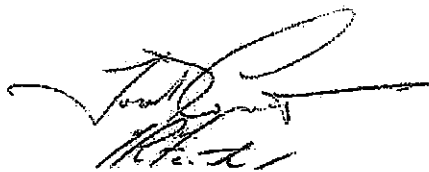
The following table presents an aggregate view of the assets types and potential strategies that the Responsible Entity would employ over a two year period for each asset type.

Asset Type	Potential Strategy Overview	
Aged Care/Retirement	Mainly development properties – rezoning opportunities are being pursued as well as continued development & sell down on selected sites.	53%
Commercial	Mainly completed or partially completed projects – focus is to resolve issues, develop marketing options and progress to sale.	6%
Industrial	Mainly completed or partially completed projects – focus is to resolve issues, develop marketing options, progress to sale – progress and resolve litigation issues which may provide additional value upside.	4%
Residential	Mix of completed, partially completed and development sites – complete projects where appropriate; marketing and sale of completed assets and assessment of options for development sites.	23%
Specialised Residential	Completed projects with localised market and quality issues. Focus is to resolve issues and develop sale options.	14%

*Percentages based on FMIF loan balance as at 31/12/2012



As can be seen, the portfolio has a very heavy exposure to the aged care asset sector with all of the related projects in various stages of planning or development.

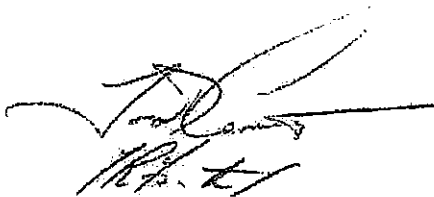


2.2 Comprehensive Asset Strategy Review

This review has been conducted to ensure that a thorough approach is being adopted across all assets to identify issues and impediments to maximising value in a timely manner. In addition, it also allows the Responsible Entity to confidently deliver to the twofold primary objectives of returning investors' investment capital as quickly as commercially feasible, and also to maximise the returns to investors.

As a part of the structured review process undertaken by the Administrators and LMIM asset management team, the following key tasks have been performed:

- Verified the current status of all assets to understand issues that may be impacting value or delaying the realisation process in order to directly and swiftly address all asset deterioration issues;
- Validated ownership and lending structures and identified stakeholders;
- Asset valuations were reviewed as part of each asset strategy. In many cases, the asset valuations were outdated (3 or 4 years old) and new valuations are being sought as part of our assessment process;
- Further independent expert input was sought for specific asset issues where required;
- Detailed asset and fund level cash flows were developed by determining future asset related rental income and operating expenses, development costs, sale revenues and selling costs. This information was essential to better understand the impacts of different strategies and allow fully informed decision making;
- Using the above analysis and recent market data, all existing assets were reviewed and analysed to develop refined individual asset strategies. A clear and considered focus was maintained on maximising value to investors and expediting capital return. The key elements are balancing risk and time with expected outcomes to ensure that the portfolio returns can be largely delivered in a progressive manner over the next two years. The following specific topics were addressed during the reviews:
 - Identify all options to maximise value;
 - Identify timely asset realisations whilst maintaining asset value (referred herein as "Quick Wins");
 - Develop individual strategic plans for each asset;
 - Identify and quantify risk issues;
 - Develop defined process steps for action and monitoring;
 - Based on the refined strategies, individual asset action plans have been established containing clear LMIM accountabilities and timelines;



- o A total Fund level strategic plan and financial plan was developed which consolidated individual asset strategies into a total fund strategy, including a repayment schedule for the Deutsche Bank facility and a schedule for the estimated timing of investor returns; and
- o The Responsible Entity's strategy supports the avoidance of a fire sale.

From this process, the Responsible Entity has clearly established the next steps in working through the FMIF asset portfolio, including:

- Constant ongoing refinement and monitoring of asset level strategic plans and financial assessments;
- Take action on the identified Quick Wins; and
- Take action to rezone identified assets in order to improve value.

The overall objectives that the Responsible Entity is working towards are:

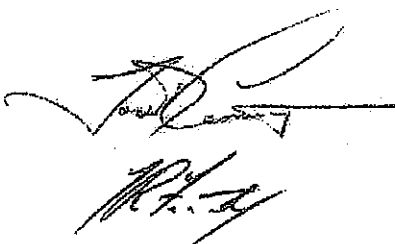
- Maximising the returns to investors from asset divestments;
- Identifying and securing opportunities to minimise costs;
- Providing for the full repayment of the Deutsche Bank facility in June, 2014 (facility maturity); and
- Provide distributions of capital to investors as the fund is wound down.

2.3 Maximising Asset Values

Throughout the portfolio update section of this report we have outlined the following:

- The Responsible Entity's current and very early stage assessment of whether there is likely to be a reduction in asset values as we work through the portfolio wind-down;
- The methodologies being adopted to stabilise assets where issues are apparent; and
- The review of the existing asset strategies to identify and progress alternate asset strategies that have the potential to further improve value without undue risk.

All of these efforts of the dedicated Responsible Entity asset team are directed towards seeking to enhance investor value through either improvements in asset values, faster return of capital to investors or reductions in FMIF costs. As such, we will continue to provide comprehensive updates of the portfolio and will be endeavouring to enhance the total portfolio return beyond that currently indicated through our early stage assessments.



2.4 The Asset Valuation Process

Whilst the asset valuations were considered and updated as a part of the review outlined above, limitations encountered have meant that there are still qualifications to a definitive valuation of the Fund at this stage. Those limitations are as follows:

- Additional independent data is needed to be gathered and assessed;
- Complexity of the assets and related project issues require more time for analysis; and
- Some issues, challenges and potential incremental value opportunities need to be further clarified before individual asset strategies can be finalised and agreed.

However, the Responsible Entity would like to highlight the following:

- Development loans are being assessed on both an "as is" basis and "as if complete" basis; and
- A number of these development loans are in default and a current independent review of asset values is required.

From a whole of fund valuation perspective, the Fund is vulnerable to any movements in the value of underlying property and with a large proportion of these loans classified as "development loans" and "in default" it is likely that there will be further downside movement in the valuation of the Fund. We are presently receiving and analysing independent verification data such that we can provide clear valuation guidance in the next update. We appreciate that investors are looking for this information as soon as possible. We are working to provide valuation information as quickly as is feasible, whilst being cognisant of the need to present realistic and verifiable data.

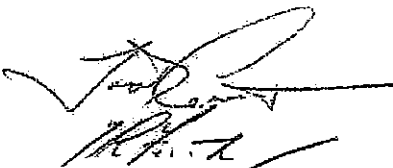
The assets therefore require well considered and efficient strategies to arrest declines in asset values. This is a high priority area for the Administrators' asset team and one where they are well experienced to direct and assist LMIM management.

2.5 BIS Shrapnel Report

BIS Shrapnel have prepared a report that comprises an evaluation of key variables used in feasibility studies undertaken by LMIM when developing an asset strategy for the FMIF. The purpose of the report was to determine if key variables adopted are, in BIS Shrapnel's opinion, fair and reasonable and to provide commentary around these assumptions and inputs. The Responsible Entity has reviewed this report and taken into consideration the outcomes of the report in light of the potential asset strategies being adopted (outlined above) by the Responsible Entity. In some instances the asset strategies that will be employed by the Responsible Entity differ from those recommended by BIS Shrapnel given that BIS Shrapnel were working to a much longer asset work out timeframe compared to the Responsible Entity who is working on winding down the fund in a progressive manner over the next two years.

2.6 Minimising FMIF Costs

The Administrators' have implemented a comprehensive operational system since the date of their appointment that addresses pre-existing gaps in financial controls, including cash flow



modelling at the individual asset / loan book level. With the introduction of controller level budgets and cash flow modelling, the Responsible Entity is now able to better control and identify avenues to reduce asset holding costs. This, together with comprehensive control systems to monitor expenses, will substantially assist the Responsible Entity in our objective to maintain tight cost controls and cost reductions across the FMIF portfolio.

2.7 Hardship Payments

Historically, hardship payments to investors approved by ASIC have been made by the Fund where redemption requests have been frozen and where capital distributions were on hold pending necessary asset realisations. The fund is being wound down and asset realisation strategies implemented to allow future periodic capital distributions. Capital distributions commenced in March, 2013. It is intended that the periodic capital distributions to investors continue in a planned and regular manner. This process in turn, materially decreases the need for separate hardship payments to continue. Should a circumstance arise and be approved by ASIC that would dictate the need for a separate hardship payment, the Fund will consider the request, however it is intended that regular periodic capital distributions are the most appropriate path forward for investors as it provides for equal (per unit basis) distribution at an equal time.

2.8 Distribution of Capital to Investors

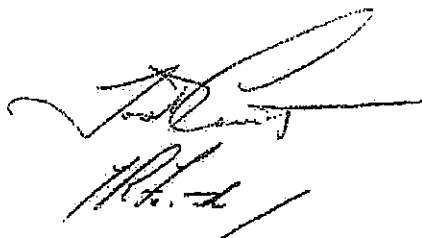
We are cognisant of the desire for investors to receive regular capital distributions as the FMIF is wound down. To this end, we are expecting that after the June capital distribution is processed there will be a further distribution in early August and thereafter, capital is expected to be distributed to investors on a quarterly basis, subject to cash flows, as the wind down progresses.

2.9 June, 2013 Capital Distributions to Investors

The FMIF is distributing a total of \$4,270,690.45 to ALL underlying investors, including each of the LM Currency Protected Australian Income Fund (CPAIF), LM Institutional Currency Protected Australian Income Fund (ICPAIF) and former LM Wholesale First Mortgage Income Fund (WFMIF). Payments will be received by investors in the next few weeks. You will be notified of the cents per unit represented by the payment when the payment is made. Following are the total payments:

- CPAIF - \$1,056,318.30
- ICPAIF - \$81,832.71
- WFMIF - \$844,695.05
- Other FMIF investors - \$2,287,844.39

Members should be aware that the consent of Deutsche Bank was necessary before this distribution was allowed. We were pleased to advise that we have gained that consent.



We remind WFMIF investors that Trilogy will be responsible for distributing the capital payment it receives to the underlying investors in that fund. We note that LMIM had previously paid a capital distribution of approximately \$1.7million from FMIF to the WFMIF at the beginning of March, 2013.

A distribution statement will be forwarded to you when the payment is made and this will set out the cents per unit returned to you.

2.10 Repayment of Deutsche Bank Facility

The Fund has a fully drawn line of credit with Deutsche Bank of \$26 million. This facility remains in place and continues to operate in the same manner as before the appointment of Voluntary Administrators to LMIM. Deutsche Bank has not required any amendment of the terms of the approved facility parameters.

The Responsible Entity believes that the Deutsche Bank facility is an expensive facility, therefore, we investigated a course of action which would prioritise repayment of this facility over any capital returns to investors. However, after careful review of the terms of the facility, it became apparent that early repayment would incur additional costs resulting in a conclusion that early repayment is not a financially viable or financially responsible option for FMIF. Accordingly the facility repayment is proposed to occur in full as originally planned at the maturity date of 30 June, 2014.

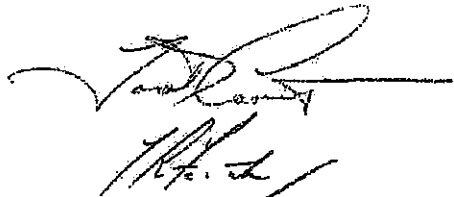
With the level of financial modelling and forecasting that the Responsible Entity has developed to manage and monitor FMIF, we will be ensuring that, in making future capital distributions to FMIF investors, sufficient funds will be reserved to allow full repayment of the Deutsche Bank facility at loan maturity.

We are pleased to report that since the Administrators' appointment the interest costs and principal repayments continue to be paid as scheduled from the cash flows of the Fund. We are working towards the previously agreed reduction in the facility to a required maximum of \$25 million by the end of June, 2013.

The Voluntary Administrators maintain a close dialogue with Deutsche Bank to ensure they remain fully informed and comfortable with the ongoing operations of this facility. The Deutsche Bank facility is in place to 30 June, 2014, with an option to further extend to 30 June, 2015, if required.

2.11 Foreign Currency and Hedging

The foreign currency hedges for investors into the ICPAIF and CPAIF were disrupted following the abrupt cancellation of facilities by existing providers. The Responsible Entity has worked to establish new facility arrangements with alternate providers which are now finalised and we are now progressively reinstating the hedging to protect the foreign exchange exposures of the ICPAIF and CPAIF investors as the Fund's assets are progressively divested and capital returned (which is expected to take around 2 years).



This abrupt cancellation by the previous foreign exchange providers has resulted in some losses to the CPAIF and ICPAIF funds which we are still quantifying – despite repeated requests of these former providers over the past 8 weeks, we only received the detailed transaction reporting on Thursday 23 May, 2013 for the transactions they unilaterally undertook during the week of the 22 to 25 March, 2013.

We should highlight that the quantum of losses from the cancellation and reinstatement of the foreign exchange hedges are not substantial – we estimate that the losses will be between 0% - 2% (depending upon the currency concerned).

2.12 Update Your Payment Details

If you have recently changed your bank details it is important that you please complete the form available on the FAQ page of the www.lminvestmentadministration.com website and email the completed form to investmentservices@LMAustralia.com as soon as practicable.

2.13 Income Catch-up for Relevant Investors

The Responsible Entity is aware of this issue and proposes to make a further payment to those FMIF investors with income distributions outstanding. The Responsible Entity will provide further communication around the timing of such payment as soon as possible.

3 Comprehensive Portfolio Status Update

3.1 FMIF Portfolio – Achievements to Date

In the nine weeks since the appointment of the Administrators', there has been substantial work undertaken across the asset portfolio of FMIF significantly advancing actions and strategies. The achievements to date include:

3.1.1 Addressing Asset Deterioration

There were a large number of assets that had started to display deterioration – either in a physical sense or in a strategic / commercial sense. Examples of these and actions already undertaken include:

A partially completed industrial development – this asset saw construction commence in 2009 which then halted in 2010 following cost, certification and contractual issues. Investigations by independent experts were undertaken through 2011 and into 2012 that highlighted FMIF had a valid legal claim. A review by senior counsel concluded FMIF had a strong case that could be brought against parties for professional negligence which is expected to return in excess of \$2m to FMIF. The claim was to have been progressed at the time of the Administrators' appointment and with only 2 months before the time limit for action expires, the Responsible Entity is now urgently progressing this.

A completed residential project with major defects – whilst the defects were recognised, little definitive action had been undertaken in determining how FMIF could either resolve the defects or identify an exit strategy. This asset has continued to physically deteriorate over the past

A handwritten signature in black ink, appearing to be 'Tommy' followed by a surname, with a horizontal line extending to the right.

couple of years. The asset is a cash-drain on FMIF as revenue does not cover the basic asset holding costs (rates, taxes, etc). The Responsible Entity is now quickly working to identify the most appropriate exit strategy for the asset and has received formal detailed submissions from external parties on this in the past week.

A new residential project – lack of funds saw the project marketing wind down last year following a solid initial pre-sale effort. This project is well located with the overall residential market data in that area demonstrating buoyancy over the past 18 months. There exists a risk of existing pre-sales falling away in the near term if the project is not progressed which would significantly impact the asset value. The Responsible Entity has initiated the development of a marketing plan and budget to strengthen the financial options for this project in the short term.

3.1.2 Maximising Value

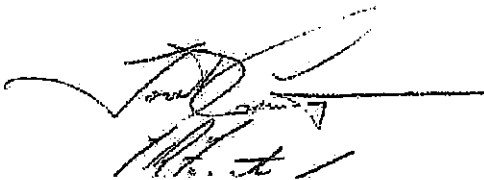
Beyond addressing issues around asset deterioration, we have also been actively reviewing the portfolio to identify actions that would maximise value – both recognising market conditions where future value appreciation is limited (due to long term structural or oversupply issues) and identifying assets where positive actions have the potential to provide a more marketable product. Examples include:

A completed residential project – Following an unsuccessful marketing campaign, this project was being held by FMIF until an improvement in market conditions on the basis of it generating a return for the fund (assumed approx 3.8% net return). In developing the asset level cash flows and probing on costs associated with this asset, the Responsible Entity has determined that the asset in fact is generating a return of less than 0.4% of its impaired loan balance. This asset has a current value of around \$9m to \$12m with limited near term upside (other than with optimistic market assumptions) to justify a longer term retention. The Administrators have since utilised their extensive network to identify interested and financially sound parties for its divestment and the Responsible Entity is presently exploring these opportunities.

Land rich projects being progressed with an aged care (loan/lease model) sales strategy – there are a number of aged care projects across the FMIF portfolio and these comprise a substantial portion of the portfolio's value. For some assets, these aged care strategies are likely to be the most appropriate strategies to maximise value (given their location, project size or current level of development), but there are other projects which are large sites and the risks and timeframes to develop out these projects as presently conceived are very substantial. A number of these have the potential to be restructured and progressed more efficiently with substantially reduced risk as predominantly traditional residential land projects (also consistent with their zoning). These are presently receiving high priority for assessment and analysis with independent expert reports already commissioned and now coming to hand. In at least one instance, there is also potential to progress higher density zoning approvals as part of the residential focus which affords significant opportunity to enhance values from where they presently stand.

3.1.3 Quick Wins

There are a number of instances where the Responsible Entity has identified opportunities for timely asset realisations whilst also maintaining asset value (referred herein as "Quick Wins").



The benefit of identifying Quick Wins is to increase the speed of returning capital to investors through the realisation of stagnant security where it is not of benefit to investors to delay their realisation. Some of these have already been covered above, but other relevant examples include:

An integrated development project - 7 x 3 bedroom dwellings were completed in 2012. These dwellings have not been marketed to date nor are there any impediments to being marketed. The dwellings are located in a well sought after capital city location and had delayed marketing and sales due to indecision on strategy (being considered as possible aged living assets on a loan/lease model). We have identified that they can easily be sold as freehold residential for which there is sound market demand. We are presently completing a market appraisal on these properties and expect to commence marketing these in the very near term. Estimated value of these is in the order of \$2.3m to \$2.6m.

A fully completed strata-titled commercial project in an east coast capital city - This project was completed in 2007. To date only 25% of the commercial units have been sold and the project has a stalled sales strategy. The market for this product is sound and the project required urgent strategic attention in order to revise and recommence the marketing campaign. This is presently receiving attention in order to unlock proceeds which could amount to between \$12m to \$15m.

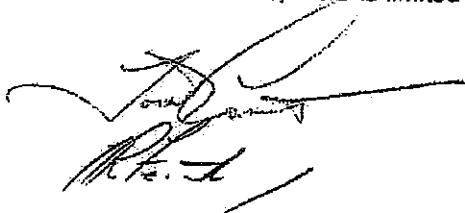
3.2 Asset Portfolio Overview as of 24 May, 2013

As highlighted earlier and discussed in more detail through this report, the Administrators' have been working with the LMIM asset management team to identify strategies and options to enhance portfolio value beyond an "as is" value. The key elements are balancing risk and time with expected outcomes to ensure that the portfolio returns can be largely delivered in a progressive manner over the next two years.

Based on the existing asset level strategies, about one third of the assets would require between 4 and 6 years to be fully realised. This is obviously too long a delivery timeframe as it introduces significant risks and additional costs in delivering these outcomes. Accordingly, the Responsible Entity is driving to ensure that the updated asset strategies developed are still capable of delivering sound value upside compared to a current "as is" value, but within acceptable timeframes.

The last reported valuation for FMIF was 59 cents per unit (June, 2012 audited accounts - disclosed in November, 2012 investor update). Given the gap in up to date asset valuations it is not possible to provide a considered assessment of value at this time. However based on our review to date, it is highly likely there will be downward revisions to previous FMIF loan book values when this is finalised in coming months.

Even as a heavily worked value accretive strategy, the Responsible Entity acknowledges that this is a poor outcome for investors and is reflective of the assets in the portfolio where most of these are failed borrowers / failed developments and are held by FMIF as mortgagee in possession. For a number of assets, there is limited substantial upside to their "as is" values and for those



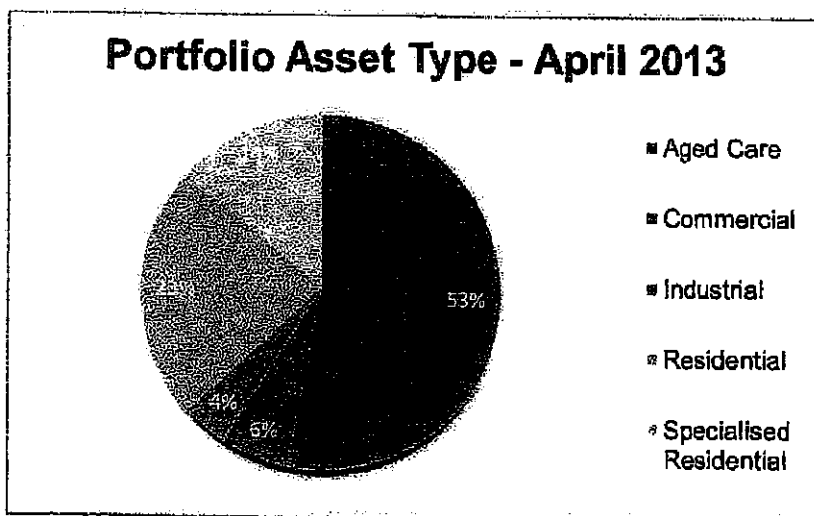
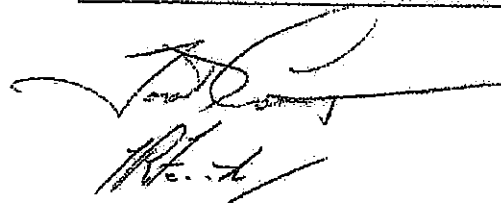
that the Responsible Entity has identified with value accretive options, these are limited by underlying asset issues or market issues.

We will continue to assess options to further enhance values as we progress with the asset reviews and as additional information comes to hand. It is too early in the process to include into the portfolio assessment potential outcomes such as a successful rezoning of a land subdivision or the like and this may have future positive benefit to the valuation of the FMIF.

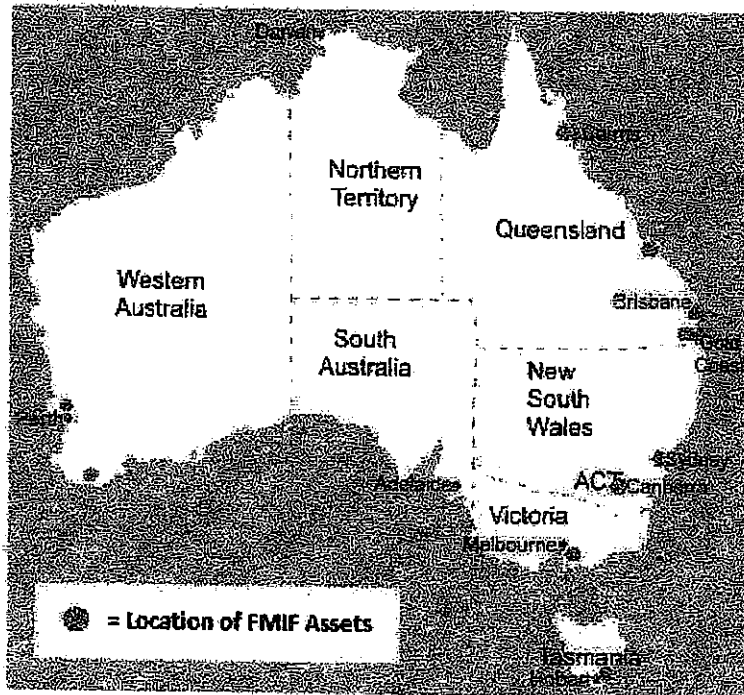
The following table presents an aggregate view of the assets types and potential strategies that the Responsible Entity would employ over a two year period for each asset type.

Asset Type	Potential Strategy Overview	%
Aged Care	Mainly development properties - rezoning opportunities are being pursued as well as continued development & sell down on selected sites.	53%
Commercial	Mainly completed or partially completed projects - focus is to resolve issues, develop marketing options and progress to sale.	6%
Industrial	Mainly completed or partially completed projects - focus is to resolve issues, develop marketing options, progress to sale - progress and resolve litigation issues which may provide additional value upside.	4%
Residential	Mix of completed, partially completed and development sites - complete projects where appropriate; marketing and sale of completed assets and assessment of options for development sites.	23%
Specialised Residential	Completed projects with localised market and quality issues. Focus is to resolve issues and develop sale options.	14%

*Percentages based on FMIF loan balance as at 31/12/2012

As can be seen, the portfolio has a very heavy exposure to the aged care asset sector with all of the related projects in various stages of planning or development. The map below demonstrates that FMIF comprises a diverse portfolio of assets across Australia.

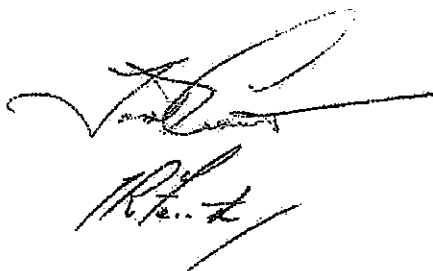


3.3 Portfolio by Property Segment

In reviewing the existing assets, a key focal point of analysis has been a review of the underlying values / valuations of the assets. Given present market conditions, a number of the valuations are out-dated and new valuations are being sought as part of our assessment process. However, following further analysis and review overseen by the Administrators, it was identified that there are a number of assets where the provisioned loan values (i.e. the current FMIF book values) are still higher than a reasonable assessment of current valuation would suggest and further asset write-downs can be expected.

3.3.1 Aged Care / Retirement

FMIF is mortgagee in possession for most of these assets as the original developers have defaulted and FMIF has exercised its rights as first mortgagee. As a result, FMIF is now acting as the developer and is seeking to maximise the returns through completion of the projects. The table overleaf presents a brief overview of the individual assets:



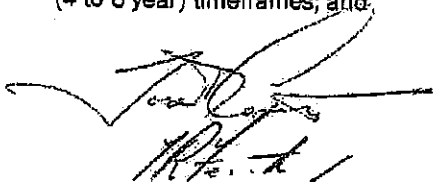
Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Aged Care / Retirement	Yes	Sell down the majority of the balance of subdivision as freehold residential - market and sell the aged care component to an existing operator.
Aged Care / Retirement	Yes	Revise / progress the marketing program for the vacant aged care residences and sell the ongoing business to an existing operator.
Aged Care / Retirement	Yes	Complete planned build program for the next stage of the facility, sell down dwellings and then sell the ongoing business to an existing operator.
Aged Care / Retirement	Yes	Restructure balance of project into residential development sites and sell down.
Aged Care / Retirement	Yes	Sell down completed aged care dwellings and aged care business.
Aged Care / Retirement	Yes	Rezone and subdivide balance of land as residential. Complete a portion of planned aged care build program and sell down residential lots, aged care dwellings & aged care business.
Aged Care / Retirement	No	Renegotiate loan terms with borrower to regularise and have the facility refinanced within an agreed timeframe.

The general business model for the Aged Care / Retirement assets involves developing the properties into dwellings (units or houses) together with the development of common facilities (community facility, pools, etc) and the provision of supported care in some business models. The sale of a dwelling involves a loan / lease structure - whereby a purchaser acquires a dwelling through provision of a loan (at an amount that matches the valuation of the dwelling) that entitles them to occupancy as long as they require. The tenant is also up for regular fees (much like a body corporate payment) which cover the contribution to the maintenance of the common facilities and partially pays for the care/ support they receive. When the tenant leaves the dwelling, the manager will then find a new party to acquire the dwelling at the then market value and a portion of the proceeds are returned to the original tenant and a portion retained by the manager.

The revenues from this model are derived from developing and "selling" the dwellings to aged tenants and once all dwellings are sold, from the proportionate income retained by the turnover of dwellings as tenants leave and new tenants are found. However, to operate this model requires heavy ongoing expenses, such that the business model does not mature and become operationally cash flow positive until most of the developed units are sold when there is a regular turnover of dwellings income to support the level of care and operational expenditure. The nature of these assets and the business model they operate under means that these assets take a considerable period of time to be fully developed and sold to reach a steady state of business operations - at which point the business is also sold to generate the final component of return on the development.

The Responsible Entity's review of these assets has indicated the potential for a negative variation to the current FMIF loan book value. This is due primarily to:

- Current strategies are generally to build out and sell these assets over extended (4 to 6 year) timeframes; and,



- Current significant monthly operating losses in these under-developed assets.

Together, these complex business model elements serve to make the assets relatively unattractive in the current market in their present form. Market testing on a couple of selected projects undertaken in 2012 indicated that longer term work-out strategies were required to maximise investor capital rather than to initiate an immediate asset realisation process.

The Responsible Entity has been undertaking substantial work to identify and develop options that will enhance the value of these assets for FMIF investors within a more appropriate (2 year) timeframe. The over-riding criterion the Responsible Entity has set is to identify strategies that both reduce the risk and reduce the timelines in progressing with selected value enhancement strategies.

3.3.2 Commercial

For the 3 commercial assets listed below, FMIF is mortgagee in possession or in the process of moving to mortgagee in possession. All three assets are in the process of selling down. Two assets are expected to be fully sold by end 2013. The third asset has substantial remaining stock to sell but has attracted little market interest for over a year at current prices and marketing approach. This is presently receiving attention by the Responsible Entity as described later in this report.

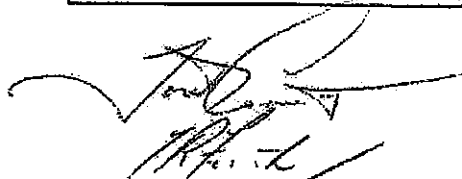
Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Commercial	Pending	Sell down remaining 3 commercial units.
Commercial	Pending	Restructure marketing approach and prices in line with market. Sell down progressively.
Commercial	Yes	Sell down the one remaining commercial unit.

Given the gap in up to date valuations it is not possible to provide a considered assessment of value at this time. However, it is likely there will be downward revisions to previous FMIF loan book values with limited avenues to enhance value for two of these assets. The third asset requires significant reworking of strategy and this is presently receiving attention.

3.3.3 Industrial

For the industrial assets listed below, FMIF is mortgagee in possession or in the process of moving to mortgagee in possession across all four assets. Of the two developed assets, one is expected to be fully sold by the third quarter of 2013 and the other has been recently unsuccessfully marketed as there are contractual structures in place that make the asset unattractive to third parties – this is receiving further attention by the Responsible Entity to identify possible resolutions.

Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Industrial	Yes	Resolve present legal issues and realise on supporting security.
Industrial	Yes	Sell down remaining industrial unit.
Industrial	Yes	Develop strategy to sell partially completed project and progress associated legal claims where warranted.
Industrial	Yes	Resolve contractual issues and market asset.



One asset has been fully sold leaving a shortfall on the loan but there may be some avenues for FMIF to recover further money through pursuit of supporting securities (guarantees). The loan is subject to legal disputes between FMIF and subsequent mortgagees and the Responsible Entity is presently investigating these matters to develop a strategy to finalise the legal issues and seek recovery of further amounts via the supporting securities.

The final asset is a stalled development project that requires a strategy to both resolve commercial / litigation issues that could be beneficial for FMIF investors and identify the best path forward to maximise the asset value for FMIF investors. This is receiving high priority by the Responsible Entity given time limitations around potential litigation.

Given the gap in up to date valuations it is not possible to provide a considered assessment of value at this time. However, it is likely there will be downward revisions to previous FMIF loan book values. For at least two of these assets there are avenues that could be undertaken over the next six months that could substantially enhance value. The remaining asset is expected to be sold by third quarter of 2013.

3.3.4 Residential

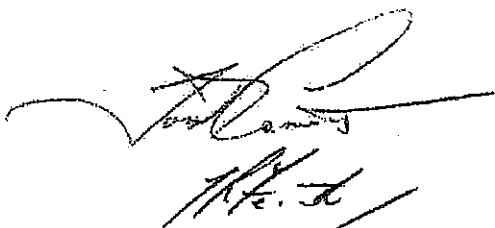
FMIF is mortgagee in possession or moving to this position for six of the 7 assets listed below.

Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Residential	Pending	Revise marketing to complete to a level of pre-sales and then on-sell project to recover most (if not all) of outstanding loan.
Residential	Yes	Sell down of remaining residential units.
Residential	Yes	Pursue guarantors.
Residential	Pending	Market in an appropriate timeline the potential residential land project to recoup to 80%+ of outstanding loan.
Residential	Yes	Continued sale of completed residential units over an appropriate timeline (not a fire sale).
Residential	Yes	Completion of project and sale of completed residential dwellings.
Residential	Yes	Sell down of remaining subdivided lots in a progressive manner and development of strategies for remaining englobe land.

The assets not in possession are not productive loans and we are progressing to assume the role as Mortgagee in Possession

Of the remaining six assets, there are three relatively significant assets in this component of the portfolio as follows;

1. A completed residential project that is in the process of selling down;
2. A stalled residential development project; and
3. A residential land development project.



The remaining three assets are small and all in the process of selling down, albeit with losses expected against their outstanding loan balances.

The stalled residential project is a quite significant project requiring remedial work to be undertaken and a marketing strategy to be re-scoped and progressed before we could contemplate either a sale or some other form of exit strategy. A sale "as is" is not considered appropriate and value should be significantly enhanced with the appropriate level of care and attention to strategy and execution. This is receiving high priority by the Responsible Entity with the view to be able to undertake a favourable exit by fourth quarter of 2013.

The final asset is a residential land development project in an area with weak demand. It is a difficult site with areas that will be expensive to sub-divide. This impedes the economics of elements of the project and the Responsible Entity has been undertaking preliminary assessments of alternate strategies. This is not an urgent priority as there is an existing stage that has been completed and is in the process of being marketed. Marketing will need to progress further before any future development stages could otherwise be contemplated. Rather, the initial focus for this project is an effective marketing / sales program to shift the existing lots in a timely manner, with strategies for the remaining balance of land to be worked up in parallel. Given the gap in up to date valuations it is not possible to provide a considered assessment of value at this time. However, there is likely to be downward revision on the loan book value of this asset.

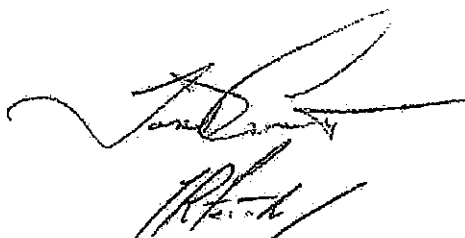
Overall, we expect a significant percentage (>60%) of these assets to be realised by first quarter of 2014, with the balance subject to the current strategic assessments being undertaken.

3.3.5 Specialised Residential

FMIF is mortgagee in possession for both assets and they have been held by the fund for some time. Both assets are in poorly performing local real estate markets which limits options for divestment. Each asset also has significant holding costs which are not covered by income streams. One asset also has construction quality issues which are impeding potential divestment.

Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Resort Units	Yes	Resolve commercial, body corporate and legal issues. Sale in one line with a targeted marketing campaign - very shallow market for individual sales.
Resort Units	Yes	Sale in one line with a targeted marketing campaign - very shallow market for individual sales.

The Responsible Entity has been reviewing these as priority items given the potential for further building deterioration in one case and the need to identify divestment options in both cases. The strategies are still formative; however there is reason to believe that both assets could be divested by first quarter of 2014.



Given the gap in up to date valuations it is not possible to provide a considered assessment of value at this time. There is likely to be downward revisions on the loan book value of both of these assets. However, the Responsible Entity has identified some avenues where we may be able to improve this outlook.

3.4 Portfolio Guidance

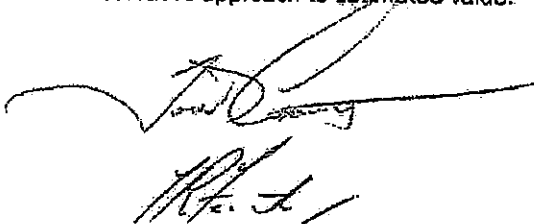
In our analysis of the assets, we have been reviewing the underlying values / valuations of these assets. Given present market conditions, a number of the valuations are out-dated and new valuations are being sought as part of our assessment process. However, following further analysis and review overseen by the Administrators, it was identified that there are a number of assets where the provisioned loan values (i.e. the current FMIF book values) are still higher than a reasonable assessment of current valuation would suggest and further asset write-downs can be expected. This is the case with the aged care component of the portfolio due to a number of factors including:

- Using an on-completion valuation to determine the provisioned loan value whereas in winding down the fund an "as is" approach may be adopted;
- Inclusion in the previous valuation assessment of a business value to the operating business when the asset reaches completion – this value is uncertain and would not be achieved for between 4 and 7 years (depending on the asset and its present state of development) as so would be discounted in an "as is" value; and
- In some cases, the assets are incurring substantial monthly operating losses which would be reflected in an 'as is' value. These operating losses cannot be significantly reduced due to legislative requirements around their operations as aged care facilities.

The other asset category where there may be a significant diminution in value when considered on an "as is" basis is the specialised residential portfolio. This is due to the nature of the assets (resort style assets), the state of the local real estate markets and also significant site specific issues around location, building defects and resort performance.

Other assets where there will be notable value diminution include:

- A land subdivision where localised market conditions have seen a reduction and slow down in new land sales. This property also has difficult ground conditions making some of the land uneconomic to sub-divide profitably at current contractor rates;
- A residential development which has been fully sold and where the balance will need to be written off as the guarantors now reside in an overseas jurisdiction there is limited prospect of any further recovery; and
- A completed capital city commercial development where there has been limited demand for the completed asset with only 25% sold in 6 years. There are issues with end valuation / prices sought in the market and hence a very low level of completed sales to date together with ongoing retention costs (maintenance, rates, land tax, etc) necessitating a more conservative approach to estimated value.



3.5 Process Enhancements

Since the appointment of the Voluntary Administrators, the specialist team has undertaken an extensive review of the FMIF portfolio and also the underlying processes and procedures in managing that portfolio. This review has introduced a range of control processes that were either non-existent or under-developed. In addition to this, the team has strengthened a number of other processes in the assessment of credit risks and management of the assets.

The Administrators' analysis of FMIF's Operational System since the date of our appointment demonstrated a few areas that required improvements and implementation of controls in relation to cash flow for Fund and individual loan levels.

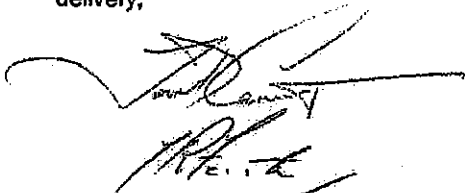
The Administrators' identified a significant gap in financial control which included cash flow modelling at the asset / loan book level. The Administrators' have since instigated the introduction of controller level budgets and cash flow modelling to build a fund level cash flow model. This model has also been an invaluable contribution in determining future asset strategies through the analysis of holding costs versus realization model to ensure that investor returns are maximized.

The processes now in place include:

3.5.1 Strategic Review of Assets

Strategic reviews have been completed for all assets and initial strategic plans documented. There are a number of assets where revisions to existing strategies are necessary as the existing strategies were either not appropriate in current market conditions, not financeable or otherwise carried significant risks in execution. These strategic review actions will be ongoing for each asset to ensure that there exists a process to capture and fully assess the impacts of new information as it is received. For each asset, the Responsible Entity has created a process to collate into one document all the key transaction description, loan / account information, loan status, risk assessment and current status. This is to provide one record point for all key loan / transaction information in the same manner as would be seen in a bank lending file. In the process of completing these documents, they are also being utilised as the key document that would then capture the key information from the strategic review of each asset. This strategic review utilises all key LM personnel (account / development manager, a senior LM executive, LM legal) and at least two FTI personnel and involves:

1. A comprehensive review of the key borrowing information (borrower, legal structure, legal issues, loan amount, security structure, security valuation, method of valuation, transaction status, commercial issues and current strategy);
2. Key issues and risks are discussed as well as a review of the current strategy, its progress and impediments;
3. Consideration is then given to the suitability of the current strategy, potential alternate strategies, key information gaps, timelines and key dates (such as expiry of DA, expiry of pre-sale contracts, etc) and action plans developed with assigned tasks and timelines for delivery;



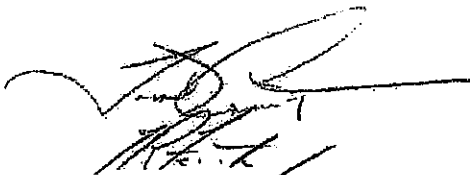
4. From the analysis and decisions taken above, a comprehensive cash flow is developed for each asset to provide the underlying basis for a discounted / risk adjusted cash flow analysis of the current strategy and any alternate strategies that may be considered.
 - **Credit Committee Meetings** - The Administrators' have re-formed the composition and processes of credit committee meetings.
 - **Key Risks / Issues** - The Administrators' introduced a process of clear identification and documentation of all significant risk issues for each asset and what mitigating actions (if any) can be employed to manage these risks. This process includes assignment of tasks, action plans and timelines to dealing with these issues.
 - **Cash flow Forecasting, Expense Monitoring and Controls** - Whilst LM prepared fund level cash flow forecasting the Administrators' have introduced full cash flow forecasting, detailed expense monitoring and controls in the approvals of expenses across each asset and across the FMIF portfolio. This ensures we are capturing all costs in FMIF, identifying opportunities to manage and reduce asset level costs and have full and continuous knowledge of the total carrying / holding costs of individual assets. This is supported by and managed through a detailed financial model developed by the Administrators'.
 - **Development of a "whole of fund" cash flow model for the FMIF** - This model has been developed by the Administrators' and provides for the consolidation of the cash flows of each asset (once its strategy is finalised) together with all other fund cash inflows and outflows to be consolidated. This model allows the ongoing management and assessment of performance as the team works towards maximising the returns on assets and returning of capital to FMIF investors.
 - **Independent Data Assessment** - In assessing asset strategies and asset values we noted that in the past there had been extensive use of in-house assessments which had limitations in terms of appropriateness and accuracy. Going forward, an independent assessment of asset values will be undertaken.

As part of our ongoing Operational Plan, the Responsible Entity aims to continue identifying and implementing the necessary procedures that will accurately support strategies in place making sure they are in line with the actual ongoing costs for each asset / loan. Our objective is to maintain the controls implemented in order to provide the best reporting outcome for stakeholders.

These processes allows for the combined the Responsible Entity to fully manage the portfolio with the over-riding aim of maximising the return of capital to FMIF investors in the most time efficient and cost efficient manner. In assessing strategy, these processes allows for effective risk adjusted discounted cash flow analysis of outcomes to ensure that all risk issues are appropriately considered and included into the decision making.

3.6 Risk Identification and Quantification

Risk identification and quantification is an area of particular focus that the Responsible Entity is in the process of assessing with regards to the implementation of asset strategies. This will be



an ongoing process and involves utilising a similar methodology to that of a credit risk assessment and monitoring department in a major Australian bank. Such a methodology considers:

- The asset strategy timelines / duration and risk elements this introduces to asset outcomes;
- Real estate market / value risk;
- Counterparty risks (e.g. construction contractors / project partners);
- Planning and zoning risks;
- Construction risks (time, cost, quality); and
- Environmental risks.

As we work through the FMIF assets, we are seeking to ensure that future decisions taken fully consider these risk issues, identify and progress mitigation strategies and where appropriate allow for quantification of risks in the financial assessment of alternate outcomes. This is to ensure there is a robust process to progressing strategies and that only those strategies that appropriately balance risk and return are pursued when contemplating future value accretive options (such as developing out a project).

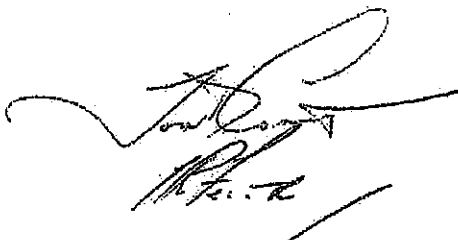
3.7 FMIF Portfolio – Next Steps

3.7.1 Completion of Strategic Plans and Financial Assessments

Whilst the Responsible Entity is well advanced on the strategic plans and financial assessments for the assets in the FMIF, there is still much to do to complete this process. In many cases, we are still to receive additional information sought from various external parties as well as refinements to the financial modelling and cash flow analysis. There is a separate financial model for each asset which then feeds into the total FMIF portfolio model as well as a sophisticated costs / budgeting / monitoring model.

We are seeking to minimise costs in this information gathering process – using our extensive external relationships wherever possible to provide initial, high level data from these external parties to assist our option analysis for particular assets before committing to any formal reports.

All of this work is required to be completed before we can formally lock in all of the strategic plans. After just 9 weeks, we are very well advanced on what is a large portfolio of assets, many of which have significant and complex issues to consider. We currently have finalised plans in place for a number of assets in the FMIF, but about half of the assets have significant issues and potentially divergent strategic options that we must carefully review and consider before finalising those plans.

A large, stylized handwritten signature in black ink, appearing to be 'A. R.' followed by a flourish.

3.7.2 Progress "Quick Wins"

We have earlier discussed some of the Quick Wins that we have identified and are now progressing. These will assume a priority over the next weeks and months to ensure these are delivered in a commercially effective manner in order to maximise the returns to investors and allow for early distributions of this capital to investors.

As we continue to work through the assets and refine strategies, we will continue to look for progressive Quick Wins to maintain the momentum we have established in capital returns to investors – as there are other assets in the portfolio that will take time to resolve issues and work through the defined strategies in order to maximise the returns to investors.

3.7.3 Progress Development of Identified Assets

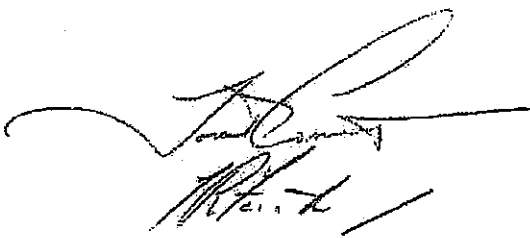
As mentioned, there are a number of assets where the best outcomes for investors will be to progress with development strategies (on a limited basis) in order to maximise asset values.

What we are seeking to achieve with the strategies being developed is to ensure that we consider the pathway to deliver the best outcomes for investors after considering all options and balancing risk and returns with also a strong focus on the time to deliver outcomes. In a number of instances, there are substantial "value gaps" between what an asset owes investors (original loan balance plus capitalised interest) and what the asset is presently valued at "as is". Where an option presents an appropriate balance between risk assessment and potential value uplift, we will look to progress that option in order to close as much as possible this value gap.

The initial focus is on the stalled development assets and how these can be best progressed, either through careful use of the resources of FMIF or through third party funding or JV arrangements. There are a number of these identified where options are in the process of being assessed and additional information sought. There are also a number of projects which are under development and these are being continued with close monitoring of development costs and progress utilising external third party reviews as is normal banking practice.

In potentially progressing with development options, we are also very conscious of time – we are not looking to engage in outcomes that will take many years to conclude as this introduces:

- Longer timeframes increases the potential for uncontrollable / unforeseen risk elements (e.g. potential for commodity prices, currency instability, overseas government debt issues or the like) impacting on the domestic economy;
- Delays the return of capital to investors; and
- Unnecessary increases in the costs incurred through continued charging of management fees to the fund as long term projects are worked through.



3.7.4 Progress with Rezoning of Identified Assets

The Responsible Entity has already identified a number of assets where rezoning may provide value uplift and lower risk outcomes for investors. We have received a report on one of these assets (the asset concerned is quite large in terms of the overall value of FMIF) and will be shortly meeting with Council to discuss alternate zoning solutions. In this particular case, the Responsible Entity has current knowledge through other work undertaken of Council plans and strategies to rezone and redevelop adjoining areas which will have a significant and potentially positive impact to what zoning outcomes may be achievable for the FMIF asset.

4 Conclusion

In moving forward on the FMIF assets, the Responsible Entity has assembled a team with substantial experience in the development of real estate assets, financing, negotiating commercial arrangements and working through legal and financial issues and is applying sound methodologies in working through the options to progress with asset development. The Responsible Entity has taken great care to ensure that the team they have assembled to manage these FMIF assets have the requisite skills to undertake this task and also have a sole focus to this task. This ensures that the combined Responsible Entity is committed to achieving the best outcome for investors in seeking commercially balanced opportunities to develop out or otherwise transform assets (through rezoning or the like). The Responsible Entity's objective is to wind down the fund in a commercially responsible manner, balancing risk and time with expected outcomes to ensure that the portfolio returns can be largely delivered in a progressive manner over the next two years. We will keep investors informed through detailed, quarterly updates and with other communications that may be warranted from time to time.

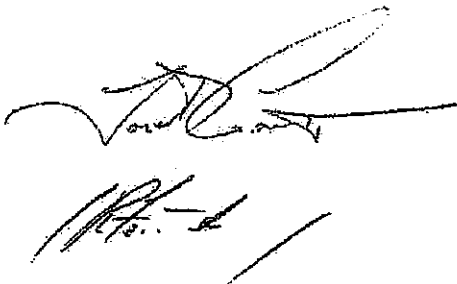
Dated: 7 June 2013

FTI Consulting



Ginette Muller

Voluntary Administrator



CATEGORY 2 CLAIMS - Recorded Cost excluding GST	19 March 2013 to 30 June 2013	31 July 2013	31 August 2013	30 September 2013	31 October 2013	30 November 2013	31 December 2013	Mar-14 Qtr	June 14 Qtr	TOTAL
LM Investment Management Ltd (LMIM)	\$66,544.49	\$86,132.74	\$118,171.00	\$75,629.50	n/a	\$29,936.30	\$16,310.00	\$69,391.50	\$64,854.00	\$1,175,934.23
LM Administration Pty Ltd (LMA) Involved to LMIM	\$409,873.50	\$69,839.00	n/a	n/a	n/a	n/a	n/a	n/a	n/a	\$473,712.50
	\$1,076,417.99	\$155,971.74	\$118,171.00	\$75,629.50	\$15,929.50	\$29,936.30	\$16,310.00	\$69,391.50	\$64,854.00	\$1,649,646.73

Summary of allocations across Funds

Fund Name	30 June 2013	31 July 2013	30 August 2013	30 September 2013	31 October 2013	30 November 2013	31 December 2013	March 14 Qtr	June 14 Qtr	TOTAL
LM Cash Performance Fund	\$1,429.77	\$23,78	\$177.60	\$113.88	\$69.31	\$50.20	\$76.21	\$325.06	\$304.09	\$2,769.89
LM First Mortgage Income Fund	\$656,166.86	\$125,148.82	\$98,022.91	\$62,837.13	\$36,239.55	\$24,749.86	\$11,313.73	\$48,096.69	\$44,397.41	\$1,113,562.95
LM Australian Structured Products Fund	\$26,926.31	\$4,947.43	\$2,682.20	\$1,714.67	\$984.23	\$675.54	\$863.46	\$4,274.78	\$4,014.98	\$42,151.60
LM Managed Performance Fund	\$78,522.49	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	\$78,522.49
LM Australian Income Fund	\$110,371.55	\$21,681.71	\$17,288.29	\$10,963.82	\$6,575.41	\$4,460.91	\$3,958.60	\$15,694.98	\$15,546.52	\$287,699.79
Grand Total	\$1,076,417.99	\$155,971.74	\$118,171.00	\$75,629.50	\$15,929.50	\$29,936.30	\$16,310.00	\$69,391.50	\$64,854.00	\$1,649,646.73

WORKINGS BELOW - Split based on % of FUM

19 March 2013 to 12 April 2013

Fund Name	FUM 31 March 13	FUM as percentage of Total	Allocation LMIM	Allocation LMA	Allocation WIP TOTAL
LM Cash Performance Fund	\$683,702.53	0.18%	\$308.77	\$108.49	\$418.26
LM First Mortgage Income Fund	\$279,428,966.81	37.89%	\$143,379.50	\$50,215.00	\$193,594.50
LM Australian Structured Products Fund	\$11,665,115.10	1.58%	\$5,985.57	\$2,096.29	\$8,081.86
LM Managed Performance Fund	\$402,011,070.81	54.52%	\$72,243.72	\$278,522.49	\$350,766.21
LM Australian Income Fund	\$43,680,869.31	5.92%	\$22,418.54	\$7,851.51	\$30,270.05
Grand Total	\$787,899,744.55	100%	\$372,372.46	\$312,915.00	\$685,287.46

13 April 2013 to 30 June 2013

Fund Name	FUM EOM June 2013	FUM as percentage of Total	Allocation LMIM	Allocation LMA	Allocation WIP TOTAL
LM Cash Performance Fund	\$683,702.53	0.18%	\$323.57	\$107.94	\$431.51
LM First Mortgage Income Fund	\$276,077,527.32	37.23%	\$139,432.42	\$323,135.64	\$462,568.06
LM Australian Structured Products Fund	\$11,246,960.84	1.52%	\$9,754.10	\$9,090.36	\$18,844.46
LM Managed Performance Fund	\$402,011,070.81	54.52%	\$72,243.72	\$278,522.49	\$350,766.21
LM Australian Income Fund	\$43,680,869.31	5.92%	\$22,418.54	\$7,851.51	\$30,270.05
Grand Total	\$955,799,877.75	100%	\$299,372.03	\$277,956.50	\$577,328.53

Jul-13

Fund Name	FUM EOM July 2013	FUM as percentage of Total	Allocation LMIM	Allocation LMA	Allocation WIP TOTAL
LM Cash Performance Fund	\$683,702.53	0.15%	\$119.81	\$105.97	\$225.78
LM First Mortgage Income Fund	\$277,979,504.81	40.16%	\$71,771.89	\$57,376.93	\$129,148.82
LM Australian Structured Products Fund	\$11,068,737.61	1.57%	\$2,632.77	\$2,284.67	\$4,917.43
LM Managed Performance Fund	\$402,011,070.81	54.52%	\$72,243.72	\$278,522.49	\$350,766.21
LM Australian Income Fund	\$43,680,869.31	5.92%	\$22,418.54	\$7,851.51	\$30,270.05
Grand Total	\$955,453,887.06	100%	\$299,372.03	\$277,956.50	\$577,328.53

Aug-13

Fund Name	FUM EOM Aug 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$683,702.53	0.15%	\$177.60
LM First Mortgage Income Fund	\$278,002,577.26	40.26%	\$98,022.91
LM Australian Structured Products Fund	\$7,606,980.21	1.07%	\$2,682.20
LM Managed Performance Fund	\$402,011,070.81	54.52%	\$17,288.29
LM Australian Income Fund	\$43,680,869.31	5.92%	\$10,963.82
Grand Total	\$955,404,599.60	100%	\$118,171.00

Sep-13

Fund Name	FUM EOM Sept 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$683,702.53	0.15%	\$113.88
LM First Mortgage Income Fund	\$277,928,057.64	39.89%	\$62,837.13
LM Australian Structured Products Fund	\$7,583,957.35	1.01%	\$1,714.67
LM Managed Performance Fund	\$402,011,070.81	54.52%	\$10,963.82
LM Australian Income Fund	\$43,680,869.31	5.92%	\$6,575.41
Grand Total	\$954,508,616.43	100%	\$75,629.50

Oct-13

Fund Name	FUM EDM Oct 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$503,702.53	0.15%	\$69.31
LM First Mortgage Income Fund	\$777,892,019.84	83.19%	\$38,239.55
LM Australian Structured Products Fund	\$7,152,513.28	2.14%	\$984.23
LM Australian Income Fund	\$48,511,076.02	14.52%	\$6,076.41
Grand Total	\$334,058,310.67	100%	\$45,968.50

Nov-13

Fund Name	FUM EDM Nov 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$564,036.23	0.17%	\$50.20
LM First Mortgage Income Fund	\$278,110,505.04	82.67%	\$24,749.86
LM Australian Structured Products Fund	\$7,590,941.43	2.16%	\$675.54
LM Australian Income Fund	\$50,126,580.33	14.80%	\$4,460.91
Grand Total	\$336,392,063.03	100%	\$29,936.50

Dec-13

Fund Name	FUM EDM Dec 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$564,036.23	0.47%	\$76.31
LM First Mortgage Income Fund	\$83,734,830.55	69.37%	\$11,313.73
LM Australian Structured Products Fund	\$7,115,945.32	5.89%	\$683.46
LM Australian Income Fund	\$29,290,324.86	24.27%	\$3,958.60
Grand Total	\$120,713,196.96	100%	\$16,310.00

Jan-Mar 14

Fund Name	FUM average EDM Jan-Mar 2014	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$555,912.76	0.47%	\$325.05
LM First Mortgage Income Fund	\$83,734,663.34	69.31%	\$48,096.69
LM Australian Structured Products Fund	\$7,442,423.36	6.16%	\$4,274.78
LM Australian Income Fund	\$29,066,081.24	24.06%	\$16,694.98
Grand Total	\$120,811,080.71	100%	\$69,391.50

June 14 Qtr

Fund Name	FUM average EDM Apr - June 2014	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$565,912.76	0.47%	\$304.09
LM First Mortgage Income Fund	\$83,731,881.42	69.37%	\$44,987.41
LM Australian Structured Products Fund	\$7,471,508.04	6.19%	\$4,014.98
LM Australian Income Fund	\$28,976,591.62	23.97%	\$15,543.52
Grand Total	\$120,886,293.83	100%	\$64,850.00

LM Administration Pty Ltd (Administrators Appointed): Calculation of Remuneration 19 March 2013 to 30 June 2013 billed to LM Investment Management Ltd by LMA as service entity

Employee	Position	Rate/hour		Total actual hours	Total		Task Area					
		incl GST	excl GST		(incl GST)	Assets	Creditors	Employees	Trade O/a	Administration		
Ginette Muller	Senior Managing Director	575.00	575.00	13.00	7,475.00	0.00	0.00	0.00	0.00	0.00	5,750.00	1,725.00
John Park	Senior Managing Director	575.00	575.00	0.20	115.00	0.00	0.00	0.00	0.00	0.00	115.00	0.00
Kelly-Anne Trenfield	Senior Managing Director	575.00	575.00	38.50	22,137.50	0.00	57.50	287.50	0.00	0.00	21,735.00	57.50
Damian Bender	Senior Managing Director	550.00	550.00	8.50	4,675.00	0.00	0.00	385.00	0.00	0.00	4,290.00	0.00
Sally McByrde	Managing Director	550.00	550.00	325.60	179,080.00	0.00	0.00	123,585.00	0.00	0.00	55,385.00	110.00
Andrew Weatherley	Director 2	545.00	545.00	2.80	1,526.00	0.00	0.00	272.50	0.00	0.00	1,253.50	0.00
Glenn O'Kearney	Director 2	545.00	545.00	85.60	46,652.00	0.00	0.00	109.00	0.00	0.00	46,543.00	0.00
Christine Alterator	Director 1	485.00	485.00	19.70	9,554.50	0.00	0.00	2,570.50	0.00	0.00	4,947.00	2,037.00
James Court	Director 1	485.00	485.00	0.20	97.00	0.00	0.00	0.00	0.00	0.00	97.00	0.00
Lisa Cherry	Director 1	485.00	485.00	1.90	921.50	0.00	0.00	0.00	0.00	0.00	921.50	0.00
Matthew Glennon	Director 1	485.00	485.00	0.80	388.00	0.00	0.00	242.50	0.00	0.00	145.50	0.00
Ryan Zorndrager	Director 1	485.00	485.00	1.30	630.50	0.00	0.00	630.50	0.00	0.00	0.00	0.00
Natasha Jonga	Manager 1	345.00	345.00	0.40	138.00	0.00	0.00	0.00	0.00	0.00	0.00	138.00
Eloa Zuardi	Senior Accountant 2	325.00	325.00	274.10	89,082.50	0.00	1,202.50	22,230.00	0.00	0.00	41,405.00	24,245.00
Benjamin Robson	Accountant	235.00	235.00	130.90	30,761.50	94.00	564.00	5,146.50	0.00	0.00	24,745.50	211.50
Lisa Ringuet	Accountant	235.00	235.00	0.30	70.50	0.00	0.00	0.00	0.00	0.00	70.50	0.00
Various	Administration	130.00	130.00	81.30	10,569.00	0.00	0.00	624.00	0.00	0.00	5,278.00	4,667.00
Total				995.10	409,873.60	94.00	1,894.00	158,083.00			212,465.50	39,407.00
GST					40,387.35							
Total (including GST)					444,260.95							

Allocation of Cost by % FUM

19 March 2013 to 12 April 2013

Fund Name	FUM 31 March 13	FUM as percentage of Total	Allocation W/P
LM Cash Performance Fund	603,702.53	0.08%	108.49
LM First Mortgage Income Fund	279,428,966.81	37.89%	50,215.00
LM Australian Structured Products Fund	11,665,115.10	1.58%	2,096.29
LM Managed Performance Fund	402,011,070.81	54.52%	72,243.72
LM Australian Income Fund	43,690,889.31	5.92%	7,851.51
Total	737,399,744.56	1.00	132,515.00

13 April 2013 to 30 June 2013

Fund Name	FUM EOM June 2013	FUM as percentage of Total	Allocation W/P
LM Cash Performance Fund	603,702.53	0.18%	487.94
LM First Mortgage Income Fund	276,077,527.32	82.23%	223,139.64
LM Australian Structured Products Fund	11,246,960.84	3.35%	9,090.36
LM Australian Income Fund	47,807,687.06	14.24%	38,640.56
Total	335,735,877.75	1.00	271,358.50

TOTAL

409,873.60

LM Administration Pty Ltd (Administrators Appointed): Calculation of Remuneration 1 July 2013 to 26 July 2013 billed to LM Investment Management Ltd by LMA as service entity

Employee	Position	Rate/hour		Total actual hours	Total		Employees	Trade Oa	Administration
		excl GST	\$		(excl GST)	\$			
Kelly-Anne Tranfield	Senior Managing Director	590.00		5.40	3,186.00	0.00	0.00	3,186.00	0.00
Sally McBryde	Managing Director	550.00		33.60	18,480.00	0.00	12,155.00	6,325.00	0.00
Andrew Weatherley	Director 2	545.00		0.50	272.50	0.00	0.00	272.50	0.00
Christine Alterator	Director 2	545.00		5.30	2,888.50	0.00	272.50	2,616.00	0.00
Glenn O'Keamey	Director 2	545.00		16.30	8,883.50	0.00	0.00	8,883.50	0.00
Renee Lobb	Director 1	485.00		0.30	145.50	0.00	0.00	97.00	0.00
Eloa Zuardi	Manager 1	345.00		74.30	25,633.50	0.00	5,313.00	11,971.50	8,349.00
Stuart Clancy	Manager 1	345.00		0.90	310.50	0.00	0.00	310.50	0.00
Benjamin Robson	Accountant	235.00		23.80	5,593.00	164.50	470.00	4,935.00	23.50
Various	Administration	130.00		34.20	4,446.00	0.00	0.00	1,859.00	2,587.00
Total				194.60	69,839.00	164.50	18,259.00	40,456.00	10,959.50
GST					6,983.90				
Total (including GST)					76,822.90				

Allocation of Cost by % FUM

Fund Name	FUM EOM July 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	503,702.53	0.15%	103.97
LM First Mortgage Income Fund	277,979,504.81	82.16%	57,376.93
LM Australian Structured Products Fund	11,068,737.61	3.27%	2,284.67
LM Australian Income Fund	48,803,742.67	14.42%	10,073.44
	737,399,744.56	1.00	69,839.00

29 September 2014

Our Ref: GOK_8974I130.doc

David Whyte
BDO
GPO Box 457
BRISBANE QLD 4001

Dear Sir

RE: LM Investment Management Limited (In Liquidation) (Receivers and Manager Appointed) ("the Company") ACN 077 208 461 as responsible entity for the LM First Mortgage Income Fund ("LM FMIF")

I refer to the letter dated 11 September 2014 from Tucker & Cowen Solicitors addressed to Russells.

Adopting the numbering from that correspondence I respond to the queries as follows:-

1. Controllership Costs

- (a) I confirm the Category 3 costs not approved by McGrathNicol in their correspondence dated 28 April 2014 (copy ***attached**) were reallocated to our Category 1 claims and were included as such in my correspondence dated 14 August 2014. The relevant claims total \$36,092.50 (excluding GST).
- (b) Whilst it was suggested by McGrathNicol these claims may not be directly recoverable from the underlying borrowers, the work undertaken is clearly connected to the management of the assets of, and the winding up of, the LM FMIF. Accordingly the Responsible Entity is entitled to be indemnified out of the scheme property for these expenses.

FTI Consulting (Australia) Pty Limited
ABN 49 160 397 811 | ACN 160 397 811
Level 9, Corporate Centre One | 2 Corporate Court | Bundall QLD 4217 | Australia
Postal Address | PO Box 8965 | GCMC QLD 9726 | Australia
+61.(0)7.5630.5222 main | +61.(0)7.5630.5299 fax | fticonsulting.com

Liability limited by a scheme approved under Professional Standards Legislation.

The invoices submitted relating to the borrower Carrington Management Pty Ltd maybe more accurately referred to as a claim relating to the controllership of Pinevale Villas Morayfield Pty Ltd (Pinevale). I suggest a further review of these invoices may be appropriate to establish whether these claims might be more appropriately charged to the Pinevale loan. If that is the position reached following our discussions, we will reduce our remuneration claim by this amount and resubmit the claim as remuneration payable under the controllership appointment over the Pinevale Loan.

2. Time charged by John Corbett

- (a) Please find ***attached** time entries for John Corbett's time recorded during the period 19 March 2013 to 31 May 2013. I understand these were the entries primarily identified by you in your correspondence dated 10 July 2014. Whilst Mr Corbett has provided additional narrations regarding the tasks undertaken during this period, I reiterate that for this period Mr Corbett was working as a consultant, and, as such, these costs may be more accurately categorised as disbursements. They were included as part of our remuneration claim only in the interest of full disclosure. Mr Corbett's hourly rate of \$190, was far less than what would have been charged if Mr Corbett had been an employee of FTI.
- (b) As noted, Mr Corbett has provided additional narrations in the attached time entries. However, any additional exercise seeking to further itemise the tasks and time allocations for this period would provide an approximate allocation only.

To assist in your evaluation of the work performed by Mr Corbett for the benefit of the LM FMIF, please find ***attached** a copy of Mr Corbett's affidavit filed in Proceedings 3383 of 2013. This affidavit outlines Mr Corbett's involvement and the voluminous tasks undertaken by him in respect of the LM FMIF.

3. Category 2 Costs

- (a) As noted in my previous correspondence, our Category 2 claims include work undertaken relating to the management and administration of the funds management business conducted by the Company. This includes claims for outlays incurred by the Company relating to work undertaken as part of the administration of LM Administration Pty Ltd ("LMA") across the period 19 March 2013 to 26 July 2013. Such work is in respect of the services LMA provided to the Company in support of and to facilitate the funds management business, and these costs were

billed to the Company by LMA (similar to where an external service provider provided the services to the Company). Our work undertaken in the Administration of LMA is claimed as remuneration in LMA, and has been approved by creditors in that Administration. However, where tasks undertaken by LMA related purely to the maintenance and ongoing trading of the service business conducted by LMA, those tasks has been invoiced by LMA to the Company as responsible entity who is in turn seeking to recover these costs from the various funds that accepted the benefit of the services provided (on the Funds Under Management (FUM) percentage basis). The Company incurred this expense by continuing to retain LMA as the service provider enabling the Company to fulfil its role as Responsible Entity to the various funds.

The work undertaken and invoiced to the Company does not relate to the corporate affairs of LMA, rather it relates to the management and ongoing trading of LMA as service provider to the Company. In this regard, I understand the current Liquidators of LMA have received a 10% service fee since appointment for their work in the ongoing trading and management of LMA's business in support of the Company's funds management operations.

- (b) There has been no mixing of work undertaken in the LMA voluntary administration with work undertaken in the administration and subsequent liquidation of the Company and the LM FMIF. What has occurred, as detailed above, is that work performed in the administration of LMA has been charged by LMA to the Company where such work related to the funds management business. Such invoices have been delivered by LMA, not the Company or FTI. The costs incurred by the Company, being for work undertaken in respect of the service entity to the whole funds management business, has been included in one category of costs for simplicity. The make-up of this category has been disclosed by my office at all times since the submission of our claims. My office previously provided McGrathNicol the opportunity to receive the additional breakdown of the time incurred in this category.
- (c) Please find ***attached** a summary of our category 2 claims to the period 30 June 2014. This summary identifies the portion of cost relating to the LMA service costs to the Company which was included as part of our total Category 2 claims for the period 19 March 2013 to 31 July 2013. I also ***attach** a summary of the LMA work presented in accordance with the ARITA code of professional practice. I confirm I am able to present a summary of all work undertaken and included in our Category 2 claims in this format upon request. This information will be made available to any party appointed to review the claims as an independent expert.

The total amount of our Category 2 claims in the LM FMIF that is attributable to the work undertaken in LMA and charged to the Company (by LMA) is \$330,731 (excluding GST). This has been calculated on a FUM basis. Please notify my office of your general position on this portion of our Category 2 claims and whether these costs are intended to be dealt with in same manner as the balance of our Category 2 costs. I note that the receivers of the LM FMIF are currently seeking reimbursement from the Company as Responsible Entity of the other funds for operational costs incurred by the Liquidators of LMA and funded by LM FMIF (including a LMA service fee payable to the Liquidators for their time incurred in the ongoing trading and management of LMA's business). The basis upon which such reimbursement is sought is consistent with, and commensurate with, the basis for the claims which have been made by us in this regard.

Should you have any queries relating to the above matter, please contact myself on (07) 3225 4900, Kelly-Anne Trenfield on (07) 3225 4920, or Glenn O'Kearney on (07) 5630 5205.

Yours faithfully
FTI Consulting



John Park
Liquidator

*Encl.

MCN+

McGRATHNICAL

CORPORATE RECOVERY

28 April 2014

11.4.14 (5:03 PM) (GMT+10:00)

Ms Ginette Muller
Liquidator
c/o FTI
Level 9, Corporate Centre One, 2 Corporate Court
Bundall QLD 4217



By email: ginette.muller@fticonsulting.com

By Email

Dear Madam

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM First Mortgage Income Fund ACN 077 208 461 ("FMIF")

RE: FTI fees in relation to specific borrowers of FMIF

I refer to my appointment as Joint and Several Receiver and Manager of FMIF on 11 July 2013. I also refer to your invoices received by my office on 7 April 2014.

Please be advised that the following invoices have not been approved for payment as part of FTIs Category 3 costs on the basis that these costs may be considered Category 1 or Category 2 as expenses of the RE:

Summary of FTI expenses - unapproved borrower level				
GST inclusive				
Invoice number	Borrower	Description	Date	Amount (\$)
8978inv13C	Lot 111	Fees from 19 March to 31 October	31-Oct-13	4,217.40
8978inv10C	Green Square	Fees from 19 March to 31 October	31-Oct-13	3,002.45
8978inv6.2C	Carrington	Fees from 1 December to 31 December	31-Dec-13	621.50
8978inv6C	Carrington	Fees from 19 March to 31 October	31-Oct-13	7,131.85
8978inv2C	Bellpac	Fees from 19 March to 31 October	31-Oct-13	14,148.20
8978inv22C	Tall Trees Tanah Merah	Fees from 19 March to 31 October	31-Oct-13	10,515.45
8978inv22.2C	Tall Trees Tanah Merah	Fees from 1 November to 30 November	30-Nov-13	64.90
Total unapproved fees				39,701.75

All other category 3 costs have been reviewed and approved for payment.

AB-140417-LMINMAN01-FTI Borrower costs-MH

M^{CN+}

M^CGRATHNICOL

Should you have any queries regarding the above, please contact either Ian Niccol or myself.

Yours faithfully

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM First Mortgage Income Fund



Joseph Hayes
Joint and Several Receiver and Manager

CC:
David Whyte
BDO
By email: David.Whyte@bdo.com.au

Name	Position	Date	Hrs Adj	Charge Out Rate	Charge	ARIT	Narrative
John Corbett	Senior External Consultant	22/03/2013 to 29/03/2013	15.50	190.00	2945.00	Assets	In conjunction with the LM asset managers, undertake on initial review of all MIF Tail Trees assets, contracts, statutory requirements and inter-relationships to understand issues, impacts of the Retirement Villages Act and summary of asset positions. Each asset was individually reviewed in turn through a workshop process over several days.
John Corbett	Senior External Consultant	20/04/2013 to 03/04/2013	19.00	190.00	3705.00	Assets	In conjunction with the LM asset managers, undertake a file by file review of MIF assets, contracts, counterparties, construction progress, filing and loans position (for primarily Bridgewater, Sources, OYST, Redland Bay and Caboolture) to understand issues and asset positions and start the process of formulating strategies on each of these files.
John Corbett	Senior External Consultant	08/04/2013 to 12/04/2013	23.50	190.00	4455.00	Assets	In conjunction with the LM asset managers, undertake a file by file review of assets, contracts counterparties, construction progress, filing and loans position for Keppel Bay, Kogarah, Aulou, Farquhar Beach, Tall Trees model as well as working through follow up material for other assets previously discussed.
John Corbett	Senior External Consultant	15/04/2013 to 19/04/2013	30.75	190.00	5842.50	Assets	In conjunction with LM staff, undertake a file by file review of assets, contracts, counterparties, construction progress, filing and loans positions for St Christophers, U-Own, Medias Property, Coulter, Brambleton, Lot 111, Glendinning and KPG 13th Beach. Review asset plans under development and commence development of fund level strategy and fund reporting. Undertake a series of discussions with Deutsche Bank regarding the format and requirements around additional reporting to the bank. Commenced review of MIF loans with specific MIF involvement to understand positions and inter-relationships.
John Corbett	Senior External Consultant	22/04/2013 to 28/04/2013	25.60	190.00	4845.00	Assets	Continuation of development of individual asset plans across the MIF assets as further information is presented by the LM staff and commence development of a fund level strategy (including cash flow integration of strategies, likely realisations where possible or determining when information would be required to determine same and timing of potential payouts to investors). Development of fund level investor report. Further review of loan positions, contractual positions, divestment options and funding requirements for files with MIF involvement. Begin process of setting out new external payment gateway for investor payments with CBA.
John Corbett	Senior External Consultant	29/04/2013 to 30/05/2013	43.00	190.00	8170.00	Assets	Undertaking detailed reviews of individual MIF fund assets and developing asset specific strategies and plans and folding these into the evolving fund level strategy and cash flow. This undertaken through a series of formal discussions and workshops with the specific LM staff managing the files. Attended a number of discussions with Tail Trees around refinances, asset caps, naming over the space of the week. Continuation of writing up the investor communication document and detailed review of fund level day to day cashflow position.
John Corbett	Senior External Consultant	04/05/2013 to 10/05/2013	60.50	190.00	11495.00	Assets	Continuation of process of undertaking detailed reviews of individual MIF fund assets and developing asset specific strategies and plans and folding these into the evolving fund level strategy and cash flow. This undertaken through a series of formal discussions and workshops with the specific LM staff managing the files. Continuation of writing up the investor communication document and detailed review of fund level day to day cashflow position, developing asset plans and fund level strategy for use in court and in investor communications, manage and drive the ongoing of strategies. Preparation of additional detailed fund materials for court. Dealing with compliance issues across the fund. Dealing with hedging / FX position and examining options on how to re-hedge positions.
John Corbett	Senior External Consultant	11/05/2013 to 17/05/2013	36.00	190.00	6660.00	Assets	Conducted a series of meetings to review progress across MIF fund assets on an asset by asset basis with the individual LM staff responsible. Finalisation / writing up of specific asset plans and fund level strategy material for use in court and investor communications. From the progress meetings, conducted a workshop to update and refine the fund cash flow. Review of Cypriotes and source files with the LM staff to consider implications of the additional information received. General fund administration around day to day cash flows and payments. Payment volumes now approaching 30% per day each of which require review and sign-off.
John Corbett	Senior External Consultant	18/05/2013 to 24/05/2013	35.50	190.00	6745.00	Trade-On	Work through FX hedging alternatives for the fund investors to deal with unhedged exposures with implications for offshore investors. Also worked through options to resolve the outstanding hedge liabilities with Westell Union. Detailed review of cashflow to determine future ability to meet forthcoming payments and identify cash flow stress points and funding issues, ability to raise DB debt per arrangements and meet future liabilities for drawdown on files. Detailed legal and commercial review of the complex Bailjee file over a series of workshops over three days - the various legal issues, legal options, judgments handed down, position between MIF and MIF (complex), conversion of bonds and initial development of an action timeline and future milestones.
John Corbett	Senior External Consultant	28/05/2013 to 31/05/2013	37.50	190.00	7125.00	Assets	Review of MIF fund assets with individual asset manager on a file by file basis over several days - comparison with asset plans, progress achieved and assets as appropriate. Review of fund end of month cash flow prior to Deutsche Bank principal and interest payments. General fund administration (payments, etc). Dealing with end/initial Tail Trees issues across the properties and with the operator - involving several meetings and discussions with the operator. Dealing with review and authorisation of day to day payments across each of the asset files as well as general fund level payments (up to 30 payments with detailed supporting documentation reviewed and processed per day).

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

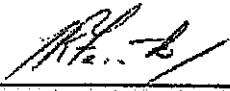
Applicants: RAYMOND EDWARD BRUCE AND
VICKI PATRICIA BRUCE
AND
First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED)
ACN 077 208 461 IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND
AND
Second Respondents: THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND
ARSN 089 343 288
Third Respondent: ROGER SHOTTON
Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

JOHN DAMIAN CORBETT, accountant and banking and finance consultant, care of
22 Market Street, Brisbane Queensland, states on oath:-

1. I am a managing director of FTI Consulting (Australia) Pty Ltd (FTI).
2. I am a qualified accountant, and have over 25 years' experience in
arranging and structuring large-scale financing solutions (up to \$3 billion) for project
financed assets, resource projects, social and economic infrastructure transactions and
complex business operations.

PAGE 1


Signed


Solicitor/Barrister/Justice of the Peace

AFFIDAVIT OF JOHN DAMIAN CORBETT

Filed on behalf of the First Respondent

Form 46 Rule 431

Russells
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

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3. Chief among my recent professional experience is structuring, financial analysis, asset valuation financial modelling, business case development, negotiation and evaluation of:

- (a) The Clem Jones Tunnel (\$2.5 billion);
- (b) Newcastle Coal Infrastructure Group Coal Terminal (\$3 billion); and
- (c) most recently, the development of an agricultural company (Hassad Australia) for the Qatar Investment Authority (over \$500 million).

4. My curriculum vitae is now produced and shown to me and marked "JDCI".

Administration of LMIM

5. I have been engaged on the affairs of the LM First Mortgage Income Fund (LM FMI Fund), and other funds of which LM Investment Management Limited (LMIM) is the responsible entity, since Mr Park and Ms Muller were appointed as administrators of LM Investment Management Limited on 19 March, 2013. In recent times, I have concentrated my work on the LMFMI Fund.

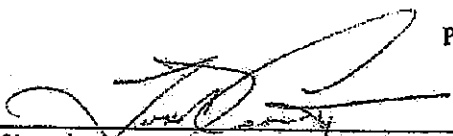
Asset Portfolio of LM FMI Fund

6. The LM FMI Fund has a portfolio of assets comprising 27 loans to companies that own or are developing properties in the following sectors:

- (a) Aged care;
- (b) Commercial;
- (c) Industrial;
- (d) Residential; and
- (e) Specialised residential.

PAGE 2

Signed

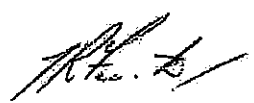

Solicitor/Barrister/Justice of the Peace

7. Under Ms Muller's direction, I have led a team of professional staff of FTI, and also staff of a service company, LM Administration Pty Ltd (administrators appointed) (LM Admin) in undertaking a comprehensive strategy review of each of the properties, including a detailed analysis of the financial and developmental positions for each. That review has involved:

- (a) seeking, obtaining, collating and reviewing information from the records of the LM FMI Fund, LMIM, and LM Admin regarding:
 - (i) the loan and mortgage arrangements (including the debt position), for each property;
 - (ii) LMIM's proposals for the development of each property, as at 19 March, 2013; and
 - (iii) the consequent likely value of each property.
- (b) me or FTI staff alongside LM Admin staff inspecting the properties to understand the physical characteristics, including any proposed development of the property;
- (c) identifying opportunities that are reasonably available to provide value to members of the LM FMI Fund in the short term;
- (d) considering whether the development proposals for the properties were appropriate, given development timeframes, market conditions and the need both to optimise returns to members of the LM FMI Fund, and to do so as soon as reasonably practicable;
- (e) reporting to Ms Muller and discussing with her and other senior staff of FTI as to the matters mentioned above; and
- (f) implementing action as a result of decisions made.

PAGE 3


Signed


Solicitor/Barrister/Justice of the Peace

8. It emerged soon after FTI's appointment that, although LMIM and LM Admin were working from financial plans for the whole of the LM FMI Fund, there was, in my opinion, inadequate financial analysis of, and planning for, the development and performance of individual assets. I formed the view that, particularly because most of the 27 loans were in default on the appointment of the administrators, this individual, detailed analysis and planning was necessary. I discussed this with Ms Muller and she directed me to prepare a detailed analysis for each property underlying each of the 27 loans. This has been a very substantial task. It is not yet complete, especially in relation to the valuation of the underlying properties where additional specialist input is required into development and property zoning options.

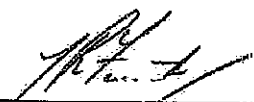
9. For the purposes of the administration of LMIM, in respect of the LM FMI Fund, Ms Muller and other senior FTI staff have also undertaken the following work:

- (a) analysing, considering and understanding financial arrangements and structures between LMIM, LM Administration Pty Ltd, the LM FMI Fund and the LM Managed Performance Fund;
- (b) meeting regularly with representatives of Deutsche Bank to discuss proposed strategies to ensure Deutsche Bank was aware of the administrators' plans and did not take any action which may be prejudicial to members' interests;
- (c) considering and calculating a plan of distributions of capital to members of the LM FMI Fund satisfactory to Deutsche Bank, and to see its loan repaid in full as soon as practicable.

10. In the course of this work, I and FTI staff have developed individual cash flow models for each of the assets, and these models also now feed into an over-

PAGE 4


Signed


Solicitor/Barrister/Justice of the Peace

arching cash flow model for the entire LM FMI Fund. This model plans the entire work-out of the LM FMI Fund, development of those underlying properties that can be profitably developed and repayment in full of the Deutsche Bank facility with a minimum of interest and associated cost. The plan involves return of all capital to members within three years.

11. I do not exhibit these models, because they are commercially very sensitive, and because they very large documents.

12. On the appointment of the administrators, I also ascertained that neither MLM nor LM Admin had obtained valuations for most of the underlying properties for at least the two years the preceding appointment. The review that I have undertaken, in consultation with Ms Muller, has involved the need to obtain substantial financial planning and other valuation advice, and to commission valuations of key properties in a planned way. That is, to manage cash flow and to plan and execute this review carefully, we have been identifying what we have termed "easy wins", and also identified the more substantial commercial exposures – and opportunities – for the assets LM FMI Fund. In that process, the administrators have obtained fresh valuations for over half the 27 underlying properties.

13. Again, I do not exhibit these valuations, for the same reasons that apply to the individual and LM MIF Fund cash flow models.

14. As a result of that work, I have, in consultation with Ms Muller and other senior FTI staff, developed detailed strategies for each property. Those strategies have being prepared having regard to:

(a) current and forecast market conditions;

PAGE 5


Signed


Solicitor/Barrister/Justice of the Peace

-
- (b) the likely costs and risks associated with developing each property yet to be developed;
 - (c) the objective of undertaking an orderly asset sale program, in a commercially advantageous manner, to return members' investment capital in a timely way; and
 - (d) the need to realise and optimise capital returns for members of the LM FMI Fund.

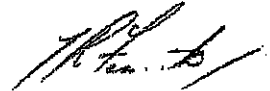
Report by Responsible Entity

15. In the course of undertaking the strategic analysis work for LM FMI Fund's assets, I, and I believe the administrators, have been very mindful of the need to keep members of the fund informed of the outcome of the work. I have been responsible for the preparation of a report entitled "Report by Responsible Entity", dated 7 June, 2013 (the RE Report). Now produced and shown to me and marked "JDC2" is a true copy of that report. (Whereas in this affidavit I have referred to "properties", in that report I refer to "assets".)

16. I believe the information contained in the RE Report is true and correct, based upon the information that was available for each of the assets of the LM FMI Fund and the analysis that has been undertaken.

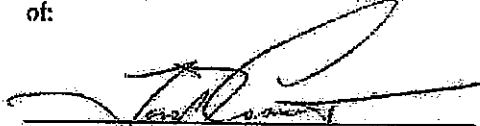
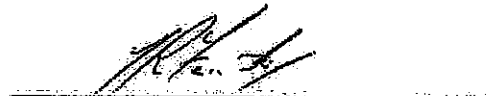
PAGE 6

Signed 


Solicitor/Barrister/Justice of the Peace

17. All the facts and circumstances deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

SWORN by JOHN DAMIAN CORBETT on 26 June, 2013 at Brisbane in the presence of:


Deponent
Solicitor/Barrister/Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND
VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED)
ACN 077 208 461 IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND

AND

Second Respondents: THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND
ARSN 089 343 288

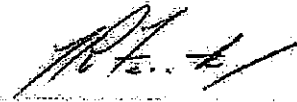
Third Respondent: ROGER SHOTTON

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

Exhibit "JDC1" to the Affidavit of JOHN DAMIAN CORBETT sworn 26 June, 2013.



Deponent



Solicitor/Barrister/Justice of the Peace

CERTIFICATE OF EXHIBIT

Filed on behalf of the First Respondent

Form 47 Rule 435

Russells
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

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John Corbett

Managing Director — Corporate Finance/Restructuring

John.corbett@fticonsulting.com

FTI Consulting

22 Market Street

Brisbane, QLD 4000

Australia

Tel: +61 (0)7 3225 4900

Fax: +61 (0)7 3225 4999

Education

B.Bus Capricornia Institute
of Advanced Education

M Bus (App Fin) University
of Technology Sydney

Certifications

MAICD

Professional Associations

Chair – Infrastructure
Association of Qld

Key Skills

- Evaluation and due diligence management of critical business case components of major projects across economic and social infrastructure
- Capital reviews and capital structuring of transactions and borrowing entities
- Strategic planning / business management
- Risk identification, assessment, allocation, mitigation and management
- Financial analysis, asset valuations and financial modelling
- Preparing and negotiating major project finance documentation

Professional Education and Industry Associations

2008-13	Infrastructure Association of Queensland	Board Member - Current Chairman
1992	University of Technology Sydney	Master of Business (Applied Finance)
1986	Capricornia Institute of Advanced Education	Bachelor of Business (Accountancy)

Relevant Experience

John has over 20 years experience in arranging and structuring large-scale financing solutions (\$50 million to \$3 billion) for large corporate and multinational clients, local government entities, state government enterprises, corporate agribusiness clients, project financed assets, social and economic infrastructure transactions and complex business operations.

John's experience extends across retail and wholesale trade, local government financing, cotton production and marketing, grain, cattle and sheep production, manufacturing, coal mining, waste services, airports, ports, toll roads, gas-fired power stations, renewable energy transactions (wind and hydro), coal seam methane gas production and regulated energy transmission.

Financing Expertise

- Undertaken financing, corporate and local government budgetary analysis and capital structuring, project structuring, asset valuation, sector risk analysis, financial risk analysis, risk mitigation strategies and financial modelling analysis for agricultural, local government, manufacturing, infrastructure, mining and retailing operations over the past 24 years.
- 8 years experience in reviewing, analysing, financing and critiquing business plans and physical operations across a variety of corporate (\$30m to \$500m) agricultural interests extending across irrigated cotton, dryland grain cropping, cattle breeding and finishing.



FTI
CONSULTING

CRITICAL THINKING
AT THE CRITICAL TIME™

cattle feedlots, and sheep operations throughout New South Wales and Queensland.

- 12 years experience in reviewing and negotiating project, finance and construction documentation across greenfield developments in gas-fired power generation in NSW and Queensland, greenfield wind farm developments in South Australia, a community housing project in NSW, a port development in NSW and a toll road development in Queensland in order to mitigate transaction and construction risk and integrate these outcomes into the financing solutions for each project.
- Extensive experience in reviewing and analysing the technical aspects of transactions (alongside specialist independent consultants engaged to critically analyse individual transactions) to determine any technical or transactional weaknesses and address these issues in the financial structure to ensure the bankability of the transactions.

Broad Sector Experience

- Managed the due diligence, analysis, structuring, independent expert reviews, negotiation and documentation of Lead Arranger and Joint Lead Arranger financing roles across a wide variety of transactions including:
 - The acquisition of a portfolio of private hospitals for in excess of \$1 billion by one of the existing leading private hospital operators;
 - Specific purpose funding for 2 local government bodies totalling in excess of \$100m;
 - 3 separate acquisitions over 18 months for a domestic analgesics and therapeutics manufacturer prior to the sale of the consolidated business for >\$200m;
 - Between 1992 and 1996, the acquisition and development of over \$600m of irrigated farming properties across New South Wales and Queensland by 3 separate overseas investors and 6 separate domestic farming operations;
 - Over 4 consecutive years, arranged and managed the cotton merchant financing (including cotton and foreign exchange hedging) for around 60% of the annual Australian cotton crop;
 - The construction and operation of the 450MW Braemar Power gas fired peaking plant in Queensland;
 - The construction and operation of the 280MW Lake Bonney Wind Farm in South Australia;
 - Acquisition of Hobart Airport;
 - Bond University's acquisition of their campus from EIE Corporation;
 - The construction and operation of the 600MW Uranquinty gas fired peaking plant in New South Wales;
 - The construction and operation of the Braemar 2 gas fired peaking / intermediate plant in Queensland;
 - Fully analysed and structured bid for Curragh coal mine;
 - Fully analysed and structured bid for Tweed River Sand Bypass PPP.

Current Industry Roles and Transactional Recognition

- Board member (2007 – current) and Chair of the Infrastructure Association of



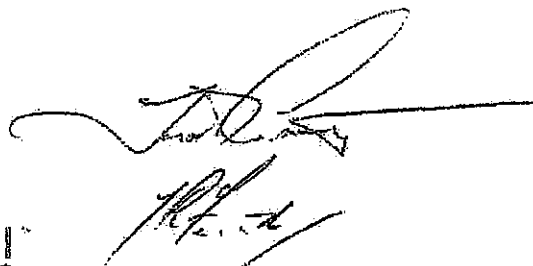
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Queensland (IAQ).

- Board Member and Chair of Audit & Risk Committee (2009 – current) for Hassad Australia Pty Ltd (a >\$500m agricultural company owned by the Qatar Investment Authority).
- Authored the IAQ's October 2008 PPP Guidelines submission to Infrastructure Australia.
- Co-winner, CFO Awards 2008 Project Finance Deal of the Year for the Newcastle Coal Infrastructure Group coal terminal at Newcastle.
- Co-winner, 2006 AsiaMoney Project Finance Deal of the Year for the Lake Bonney Wind Farm transaction.
- Runner-up for the 2005 ALB Law Awards Project Finance Deal of the Year for the Braemar Power Station transaction.

Agribusiness and Agriculture Experience

- Broad agriculture and agribusiness sector experience:
- Livestock (cattle, sheep)
- Intensive livestock (cattle feedlots, poultry)
- Processing (cattle, sheep and pig abattoirs, poultry processing, cotton ginning, dairy processing, food processing)
- Dryland cropping (coarse grains, cotton, sugar)
- Irrigated cropping (coarse grains, cotton, sugar)
- Commodity marketing (grains and cotton)
- 4 years running the ANZ corporate agriculture portfolio for NSW which covered sheep producers, cattle producers, grain cropping, cotton producers (dryland and irrigated), sheep abattoirs, cattle abattoirs, cotton ginning, cotton marketing, grain marketing, poultry processing & production and dairy processing;
- 4 years running the ANZ Qld Corporate portfolio which included its exposures as lead financier to North Australian Pastoral Company, Kilcoy Pastoral, Golden Circle, Bundaberg Sugar, KR Darling Downs, Norco, Wallace Logan and other major beef producers);
- Development of the business plan for and current Director of Hassad Australia Pty Ltd – a >\$500m agricultural company wholly owned by the Qatar Investment Authority operating sheep breeding and dryland cropping properties across all mainland states in Australia. In 2013, Hassad Australia is set to become the largest sheep producer and top 4 grain producer in Australia.



SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND
VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED)
ACN 077 208 461 IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND

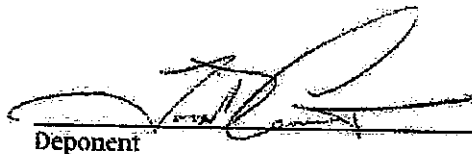
AND

Second Respondents: THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND
ARSN 089 343 288

Third Respondent: ROGER SHOTTON

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

Exhibit "JDC2" to the Affidavit of JOHN DAMIAN CORBETT sworn 26 June, 2013:


Deponent


Solicitor/Barrister/Judge of the Peace

CERTIFICATE OF EXHIBIT

Filed on behalf of the First Respondent

Form 47 Rule 435

Russells
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

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7 June 2013

Our Ref: RCL_8974r17 (FMIF) Cover Ltr.docx

CIRCULAR TO INVESTORS IN THE LM FIRST MORTGAGE INCOME FUND AND FEEDER FUNDS

Dear Sir/Madam

RE: LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 ("LMIM")

I refer to the appointment of John Park and me as joint and several Administrators of LMIM on 19 March 2013 pursuant to resolution of LMIM board of directors.

Please find *enclosed a Circular to the Investors in the LM First Mortgage Income Fund ("FMIF") and the feeder funds to the FMIF, namely the Currency Protected Australian Income Fund and the Institutional Currency Protected Australian Income Fund.

Contact Details

Investors are able to obtain further information as follows:

1. Regular updates will be provided on the LMIM voluntary administration website

(www.lminvestmentadministration.com); or

2. You can send an email to mail@lmaustralia.com.

Yours faithfully

FTI Consulting

Ginette Muller
Voluntary Administrator

*Encl.

FTI Consulting (Australia) Pty Limited
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22 Market Street | Brisbane QLD 4000 | Australia
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Liability limited by a scheme approved under Professional Standards Legislation

LM Investment Management Ltd

(Administrators Appointed)

ACN 077 208 461

As Responsible Entity of LM First Mortgage Income Fund and Feeder Funds

Report by Responsible Entity

7 June 2013

FTI Consulting

GPO Box 3127

BRISBANE QLD 4000

Telephone: (07) 3225 4900

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Liability limited by a scheme approved under Professional Standards Legislation



Purposes

This report has been prepared for the purpose of informing Investors of LM First Mortgage Income Fund (Fund or FMIF) and their Advisors only (collectively known as 'Recipients') of:

- (a) the work that has been undertaken as at the date of this report, in the administration of LM Investment Management Limited (Administrators Appointed) (LMIM), in relation to the FMIF; and
- (b) the financial position of the FMIF, particularly by reference to its assets.

This report may be used by Recipients in connection with their investment in the FMIF or for the purpose of advising of taking instructions from clients who are Investors in the FMIF.

However, it is not to be used for any other purpose nor disseminated to any other person.

No copy of all or any part of this report may be made without the prior written consent of Voluntary Administrators of LMIM.

By accepting a copy of this report, each Recipient agrees to use the report solely for the purposes, and in accordance with the conditions, set out above.

Please note, consistent with the obligations imposed by Principal 2 (Use and Disclosure) of the National Privacy Principles, confidential borrower information including borrower identities, loan values and realisable asset values have not been disclosed within this report.

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1 Executive Summary

1.1 Administrators Appointed

LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 ('LMIM'), the Responsible Entity of the LM First Mortgage Income Fund (the 'Fund' or 'FMIF') appointed John Park and Ginette Muller as Voluntary Administrators of the Responsible Entity on 19 March, 2013.

LMIM is in voluntary administration. The FMIF is not in administration. The FMIF is legally segregated and a separate entity from the Responsible Entity. The FMIF remains closed to new investors and quarantined to ensure its assets are protected.

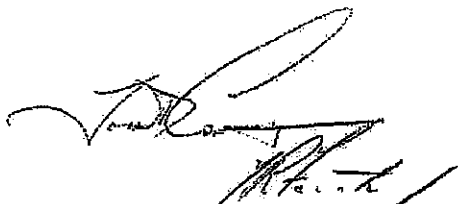
1.2 The Portfolio Management Team

The Administrators recognised at the outset the importance of quickly assembling a balanced and experienced team who have a sole focus on the assets in the Funds (including FMIF). The Administrators have assembled a small dedicated and experienced team to oversee the management of the Fund assets and provide additional expertise into the development and execution of asset strategies. Existing LMIM staff, with the requisite skills and knowledge, has also been retained by the Administrators to continue to manage the Fund's assets. The two teams have been working very closely together for the last two months to review all assets and to identify avenues to maximise the returns to investors.

The FTI personnel of the assembled asset team have no other responsibilities on the administration besides a focus on working through all the LMIM Fund's assets (inclusive of FMIF), to progress these assets and maximise the returns to investors in the shortest time that is commercially feasible.

The team is headed up by John Corbett, a former banking executive with extensive commercial experience across property financing, property development, mortgage and legal issues, strategic planning, business operations, financial analysis and project management. John has extensive banking and commercial experience which includes being a former board member of a government owned property development entity with a greater than \$500 million portfolio of residential development projects which required structuring, funding, development and sale of the completed projects in the open market to achieve a commercial rate of return.

John is supported by 3 personnel from FTI with a collective 40+ years experience in property, business planning & operations, financial modelling, financial analysis, project management, legal and security issues and dealing with real estate assets that are mortgagee in possession (noting that most of the FMIF assets are managed on a day-to-day basis by LMIM staff as mortgagee in possession with FTI oversight).



The Staff from LMIM consists of three highly experienced/qualified development managers, four experienced project managers and property development staff, LMIM's financial management/accounting team and LMIM in-house legal and paralegal staff.

The team overseeing the LMIM team forms the core resource group for managing the FMIF assets. This team is supported by outside expertise for specific technical, legal and commercial reviews in addition to the market assessments and valuations if and when required.

As was communicated in the Circular to Investors on 25 April, 2013, the overarching Fund strategy remains as follows: to "undertake an asset sales program with an orderly sale of all the remaining assets of the Fund in a commercial manner, with an objective to return investors' investment capital as quickly as commercially possible".

The Administrators continue to work with LMIM management to prioritise the following:

- progress the orderly sale of all the remaining assets of the Fund and provide a return of investors' investment capital as quickly as possible; and
- protecting asset value and ensuring the least possible disruption to investors.

LMIM and the Administrators (herein known as the 'Responsible Entity') continue to be fully committed to providing investors with a high level of transparency and meaningful information with regards to their investment in the Fund. The Responsible Entity fully appreciates the impact of the closure and decline in capital value of the Fund to individual investors over the past couple of years, together with the uncertainties created through the Voluntary Administration of LMIM.

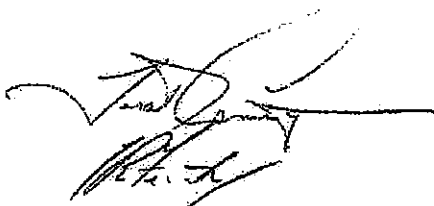
We would like to assure investors that the Responsible Entity is working to maximise the capital return of the fund in a timely manner and trust that this comprehensive fund update will provide further comfort in this regard.

2 Fund Level Administration Update

2.1 Fund Overview

The FMIF comprises a portfolio of 27 commercial loans with a historical book value of \$326,102,759 (per the last formal investor update dated 24 January, 2013). Two of these loans have had all security sold and mortgages released. However, there is residual debt on each one and these files now need to be closed – these have been disregarded when we discuss the various assets later in this report. In addition there are two borrowers each with two separate loans for the same asset. These have been treated as one facility in each case for the purposes of discussion later in this report. The majority of these mortgages have defaulted and where this is the case FMIF is acting as mortgagee in possession.

The Responsible Entity is currently conducting a review of the business and all of the LMIM funds and is now writing to provide a comprehensive update to investors as a matter of priority.

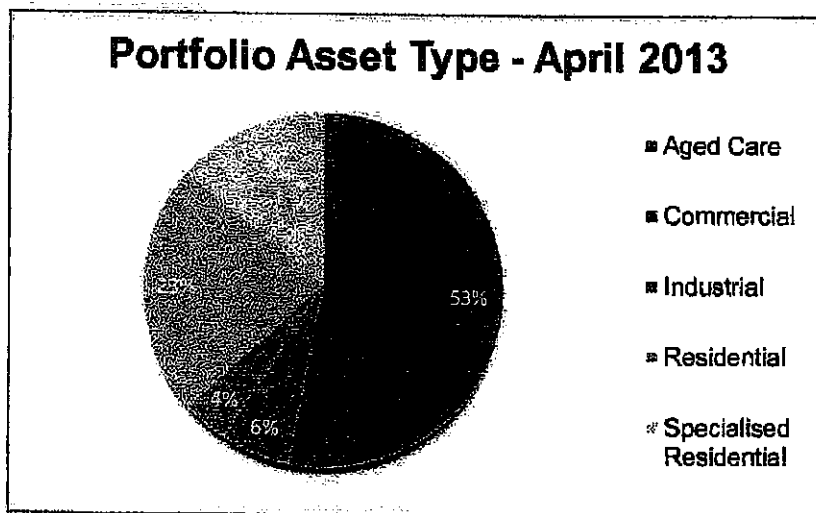
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We will continue to assess options to further enhance values as we progress with the asset reviews and as additional information comes to hand. It is too early in the process to include into the portfolio assessment potential outcomes such as a successful rezoning of a land subdivision or the like and this may have future positive benefit to the valuation of the FMIF.

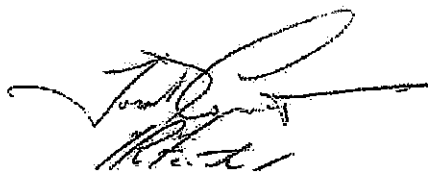
The following table presents an aggregate view of the assets types and potential strategies that the Responsible Entity would employ over a two year period for each asset type.

Asset Type	Potential Strategy Overview	%
Aged Care / Retirement	Mainly development properties – rezoning opportunities are being pursued as well as continued development & sell down on selected sites.	53%
Commercial	Mainly completed or partially completed projects – focus is to resolve issues, develop marketing options and progress to sale.	6%
Industrial	Mainly completed or partially completed projects – focus is to resolve issues, develop marketing options, progress to sale – progress and resolve litigation issues which may provide additional value upside.	4%
Residential	Mix of completed, partially completed and development sites – complete projects where appropriate; marketing and sale of completed assets and assessment of options for development sites.	23%
Specialised Residential	Completed projects with localised market and quality issues. Focus is to resolve issues and develop sale options.	14%

*Percentages based on FMIF loan balance as at 31/12/2012



As can be seen, the portfolio has a very heavy exposure to the aged care asset sector with all of the related projects in various stages of planning or development.

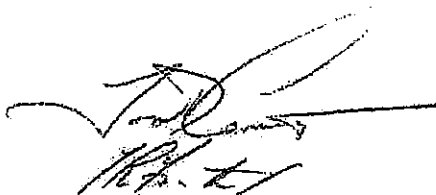


2.2 Comprehensive Asset Strategy Review

This review has been conducted to ensure that a thorough approach is being adopted across all assets to identify issues and impediments to maximising value in a timely manner. In addition, it also allows the Responsible Entity to confidently deliver to the twofold primary objectives of returning investors' investment capital as quickly as commercially feasible, and also to maximise the returns to investors.

As a part of the structured review process undertaken by the Administrators and LMIM asset management team, the following key tasks have been performed:

- Verified the current status of all assets to understand issues that may be impacting value or delaying the realisation process in order to directly and swiftly address all asset deterioration issues;
- Validated ownership and lending structures and identified stakeholders;
- Asset valuations were reviewed as part of each asset strategy. In many cases, the asset valuations were outdated (3 or 4 years old) and new valuations are being sought as part of our assessment process;
- Further independent expert input was sought for specific asset issues where required;
- Detailed asset and fund level cash flows were developed by determining future asset related rental income and operating expenses, development costs, sale revenues and selling costs. This information was essential to better understand the impacts of different strategies and allow fully informed decision making;
- Using the above analysis and recent market data, all existing assets were reviewed and analysed to develop refined individual asset strategies. A clear and considered focus was maintained on maximising value to investors and expediting capital return. The key elements are balancing risk and time with expected outcomes to ensure that the portfolio returns can be largely delivered in a progressive manner over the next two years. The following specific topics were addressed during the reviews:
 - Identify all options to maximise value;
 - Identify timely asset realisations whilst maintaining asset value (referred herein as "Quick Wins");
 - Develop individual strategic plans for each asset;
 - Identify and quantify risk issues;
 - Develop defined process steps for action and monitoring;
 - Based on the refined strategies, individual asset action plans have been established containing clear LMIM accountabilities and timelines;



- o A total Fund level strategic plan and financial plan was developed which consolidated individual asset strategies into a total fund strategy, including a repayment schedule for the Deutsche Bank facility and a schedule for the estimated timing of investor returns; and
- o The Responsible Entity's strategy supports the avoidance of a fire sale.

From this process, the Responsible Entity has clearly established the next steps in working through the FMIF asset portfolio, including:

- Constant ongoing refinement and monitoring of asset level strategic plans and financial assessments;
- Take action on the identified Quick Wins; and
- Take action to rezone identified assets in order to improve value.

The overall objectives that the Responsible Entity is working towards are:

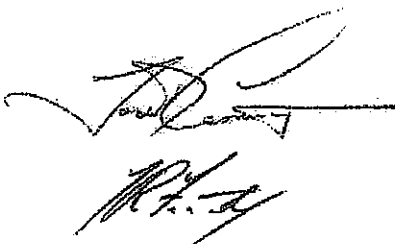
- Maximising the returns to investors from asset divestments;
- Identifying and securing opportunities to minimise costs;
- Providing for the full repayment of the Deutsche Bank facility in June, 2014 (facility maturity); and
- Provide distributions of capital to investors as the fund is wound down.

2.3 Maximising Asset Values

Throughout the portfolio update section of this report we have outlined the following:

- The Responsible Entity's current and very early stage assessment of whether there is likely to be a reduction in asset values as we work through the portfolio wind-down;
- The methodologies being adopted to stabilise assets where issues are apparent; and
- The review of the existing asset strategies to identify and progress alternate asset strategies that have the potential to further improve value without undue risk.

All of these efforts of the dedicated Responsible Entity asset team are directed towards seeking to enhance investor value through either improvements in asset values, faster return of capital to investors or reductions in FMIF costs. As such, we will continue to provide comprehensive updates of the portfolio and will be endeavouring to enhance the total portfolio return beyond that currently indicated through our early stage assessments.



2.4 The Asset Valuation Process

Whilst the asset valuations were considered and updated as a part of the review outlined above, limitations encountered have meant that there are still qualifications to a definitive valuation of the Fund at this stage. Those limitations are as follows:

- Additional independent data is needed to be gathered and assessed;
- Complexity of the assets and related project issues require more time for analysis; and
- Some issues, challenges and potential incremental value opportunities need to be further clarified before individual asset strategies can be finalised and agreed.

However, the Responsible Entity would like to highlight the following:

- Development loans are being assessed on both an "as is" basis and "as if complete" basis; and
- A number of these development loans are in default and a current independent review of asset values is required.

From a whole of fund valuation perspective, the Fund is vulnerable to any movements in the value of underlying property and with a large proportion of these loans classified as "development loans" and "in default" it is likely that there will be further downside movement in the valuation of the Fund. We are presently receiving and analysing independent verification data such that we can provide clear valuation guidance in the next update. We appreciate that investors are looking for this information as soon as possible. We are working to provide valuation information as quickly as is feasible, whilst being cognisant of the need to present realistic and verifiable data.

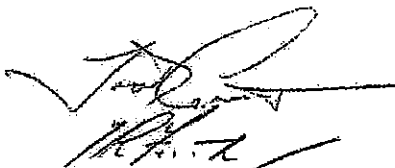
The assets therefore require well considered and efficient strategies to arrest declines in asset values. This is a high priority area for the Administrators' asset team and one where they are well experienced to direct and assist LMIM management.

2.5 BIS Shrapnel Report

BIS Shrapnel have prepared a report that comprises an evaluation of key variables used in feasibility studies undertaken by LMIM when developing an asset strategy for the FMIF. The purpose of the report was to determine if key variables adopted are, in BIS Shrapnel's opinion, fair and reasonable and to provide commentary around these assumptions and inputs. The Responsible Entity has reviewed this report and taken into consideration the outcomes of the report in light of the potential asset strategies being adopted (outlined above) by the Responsible Entity. In some instances the asset strategies that will be employed by the Responsible Entity differ from those recommended by BIS Shrapnel given that BIS Shrapnel were working to a much longer asset work out timeframe compared to the Responsible Entity who is working on winding down the fund in a progressive manner over the next two years.

2.6 Minimising FMIF Costs

The Administrators' have implemented a comprehensive operational system since the date of their appointment that addresses pre-existing gaps in financial controls, including cash flow



modelling at the individual asset / loan book level. With the introduction of controller level budgets and cash flow modelling, the Responsible Entity is now able to better control and identify avenues to reduce asset holding costs. This, together with comprehensive control systems to monitor expenses, will substantially assist the Responsible Entity in our objective to maintain tight cost controls and cost reductions across the FMIF portfolio.

2.7 Hardship Payments

Historically, hardship payments to investors approved by ASIC have been made by the Fund where redemption requests have been frozen and where capital distributions were on hold pending necessary asset realisations. The fund is being wound down and asset realisation strategies implemented to allow future periodic capital distributions. Capital distributions commenced in March, 2013. It is intended that the periodic capital distributions to investors continue in a planned and regular manner. This process in turn, materially decreases the need for separate hardship payments to continue. Should a circumstance arise and be approved by ASIC that would dictate the need for a separate hardship payment, the Fund will consider the request, however it is intended that regular periodic capital distributions are the most appropriate path forward for investors as it provides for equal (per unit basis) distribution at an equal time.

2.8 Distribution of Capital to Investors

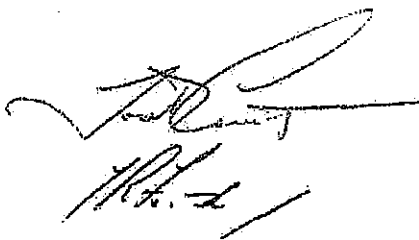
We are cognisant of the desire for investors to receive regular capital distributions as the FMIF is wound down. To this end, we are expecting that after the June capital distribution is processed there will be a further distribution in early August and thereafter, capital is expected to be distributed to investors on a quarterly basis, subject to cash flows, as the wind down progresses.

2.9 June, 2013 Capital Distributions to Investors

The FMIF is distributing a total of \$4,270,690.45 to ALL underlying investors, including each of the LM Currency Protected Australian Income Fund (CPAIF), LM Institutional Currency Protected Australian Income Fund (ICPAIF) and former LM Wholesale First Mortgage Income Fund (WFMIF). Payments will be received by investors in the next few weeks. You will be notified of the cents per unit represented by the payment when the payment is made. Following are the total payments:

- CPAIF - \$1,056,318.30
- ICPAIF - \$81,832.71
- WFMIF - \$844,695.05
- Other FMIF investors - \$2,287,844.39

Members should be aware that the consent of Deutsche Bank was necessary before this distribution was allowed. We were pleased to advise that we have gained that consent.



We remind WFMIF investors that Trilogy will be responsible for distributing the capital payment it receives to the underlying investors in that fund. We note that LMIM had previously paid a capital distribution of approximately \$1.7million from FMIF to the WFMIF at the beginning of March, 2013.

A distribution statement will be forwarded to you when the payment is made and this will set out the cents per unit returned to you.

2.10 Repayment of Deutsche Bank Facility

The Fund has a fully drawn line of credit with Deutsche Bank of \$26 million. This facility remains in place and continues to operate in the same manner as before the appointment of Voluntary Administrators to LMIM. Deutsche Bank has not required any amendment of the terms of the approved facility parameters.

The Responsible Entity believes that the Deutsche Bank facility is an expensive facility, therefore, we investigated a course of action which would prioritise repayment of this facility over any capital returns to investors. However, after careful review of the terms of the facility, it became apparent that early repayment would incur additional costs resulting in a conclusion that early repayment is not a financially viable or financially responsible option for FMIF. Accordingly the facility repayment is proposed to occur in full as originally planned at the maturity date of 30 June, 2014.

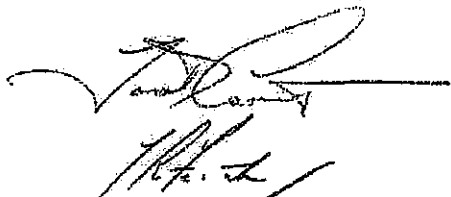
With the level of financial modelling and forecasting that the Responsible Entity has developed to manage and monitor FMIF, we will be ensuring that, in making future capital distributions to FMIF investors, sufficient funds will be reserved to allow full repayment of the Deutsche Bank facility at loan maturity.

We are pleased to report that since the Administrators' appointment the interest costs and principal repayments continue to be paid as scheduled from the cash flows of the Fund. We are working towards the previously agreed reduction in the facility to a required maximum of \$25 million by the end of June, 2013.

The Voluntary Administrators maintain a close dialogue with Deutsche Bank to ensure they remain fully informed and comfortable with the ongoing operations of this facility. The Deutsche Bank facility is in place to 30 June, 2014, with an option to further extend to 30 June, 2015, if required.

2.11 Foreign Currency and Hedging

The foreign currency hedges for investors into the ICPAIF and CPAIF were disrupted following the abrupt cancellation of facilities by existing providers. The Responsible Entity has worked to establish new facility arrangements with alternate providers which are now finalised and we are now progressively reinstating the hedging to protect the foreign exchange exposures of the ICPAIF and CPAIF investors as the Fund's assets are progressively divested and capital returned (which is expected to take around 2 years).



This abrupt cancellation by the previous foreign exchange providers has resulted in some losses to the CPAIF and ICPAIF funds which we are still quantifying - despite repeated requests of these former providers over the past 8 weeks, we only received the detailed transaction reporting on Thursday 23 May, 2013 for the transactions they unilaterally undertook during the week of the 22 to 25 March, 2013.

We should highlight that the quantum of losses from the cancellation and reinstatement of the foreign exchange hedges are not substantial - we estimate that the losses will be between 0% - 2% (depending upon the currency concerned).

2.12 Update Your Payment Details

If you have recently changed your bank details it is important that you please complete the form available on the FAQ page of the www.iminvestmentadministration.com website and email the completed form to investmentservices@LMaustralia.com as soon as practicable.

2.13 Income Catch-up for Relevant Investors

The Responsible Entity is aware of this issue and proposes to make a further payment to those FMIF investors with income distributions outstanding. The Responsible Entity will provide further communication around the timing of such payment as soon as possible.

3 Comprehensive Portfolio Status Update

3.1 FMIF Portfolio - Achievements to Date

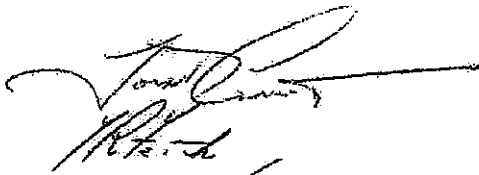
In the nine weeks since the appointment of the Administrators', there has been substantial work undertaken across the asset portfolio of FMIF significantly advancing actions and strategies. The achievements to date include:

3.1.1 Addressing Asset Deterioration

There were a large number of assets that had started to display deterioration - either in a physical sense or in a strategic / commercial sense. Examples of these and actions already undertaken include:

A partially completed industrial development - this asset saw construction commence in 2009 which then halted in 2010 following cost, certification and contractual issues. Investigations by independent experts were undertaken through 2011 and into 2012 that highlighted FMIF had a valid legal claim. A review by senior counsel concluded FMIF had a strong case that could be brought against parties for professional negligence which is expected to return in excess of \$2m to FMIF. The claim was to have been progressed at the time of the Administrators' appointment and with only 2 months before the time limit for action expires, the Responsible Entity is now urgently progressing this.

A completed residential project with major defects - whilst the defects were recognised, little definitive action had been undertaken in determining how FMIF could either resolve the defects or identify an exit strategy. This asset has continued to physically deteriorate over the past



couple of years. The asset is a cash-drain on FMIF as revenue does not cover the basic asset holding costs (rates, taxes, etc). The Responsible Entity is now quickly working to identify the most appropriate exit strategy for the asset and has received formal detailed submissions from external parties on this in the past week.

A new residential project - lack of funds saw the project marketing wind down last year following a solid initial pre-sale effort. This project is well located with the overall residential market data in that area demonstrating buoyancy over the past 18 months. There exists a risk of existing pre-sales falling away in the near term if the project is not progressed which would significantly impact the asset value. The Responsible Entity has initiated the development of a marketing plan and budget to strengthen the financial options for this project in the short term.

3.1.2 Maximising Value

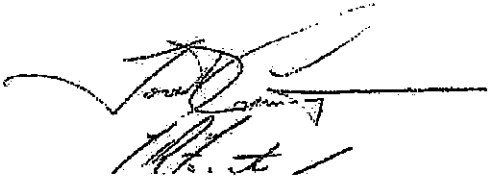
Beyond addressing issues around asset deterioration, we have also been actively reviewing the portfolio to identify actions that would maximise value - both recognising market conditions where future value appreciation is limited (due to long term structural or oversupply issues) and identifying assets where positive actions have the potential to provide a more marketable product. Examples include:

A completed residential project - Following an unsuccessful marketing campaign, this project was being held by FMIF until an improvement in market conditions on the basis of it generating a return for the fund (assumed approx 3.8% net return). In developing the asset level cash flows and probing on costs associated with this asset, the Responsible Entity has determined that the asset in fact is generating a return of less than 0.4% of its impaired loan balance. This asset has a current value of around \$9m to \$12m with limited near term upside (other than with optimistic market assumptions) to justify a longer term retention. The Administrators have since utilised their extensive network to identify interested and financially sound parties for its divestment and the Responsible Entity is presently exploring these opportunities.

Land rich projects being progressed with an aged care (loan/lease model) sales strategy - there are a number of aged care projects across the FMIF portfolio and these comprise a substantial portion of the portfolio's value. For some assets, these aged care strategies are likely to be the most appropriate strategies to maximise value (given their location, project size or current level of development), but there are other projects which are large sites and the risks and timeframes to develop out these projects as presently conceived are very substantial. A number of these have the potential to be restructured and progressed more efficiently with substantially reduced risk as predominantly traditional residential land projects (also consistent with their zoning). These are presently receiving high priority for assessment and analysis with independent expert reports already commissioned and now coming to hand. In at least one instance, there is also potential to progress higher density zoning approvals as part of the residential focus which affords significant opportunity to enhance values from where they presently stand.

3.1.3 Quick Wins

There are a number of instances where the Responsible Entity has identified opportunities for timely asset realisations whilst also maintaining asset value (referred herein as "Quick Wins").



The benefit of identifying Quick Wins is to increase the speed of returning capital to investors through the realisation of stagnant security where it is not of benefit to investors to delay their realisation. Some of these have already been covered above, but other relevant examples include:

An Integrated development project - 7 x 3 bedroom dwellings were completed in 2012. These dwellings have not been marketed to date nor are there any impediments to being marketed. The dwellings are located in a well sought after capital city location and had delayed marketing and sales due to indecision on strategy (being considered as possible aged living assets on a loan/lease model). We have identified that they can easily be sold as freehold residential for which there is sound market demand. We are presently completing a market appraisal on these properties and expect to commence marketing these in the very near term. Estimated value of these is in the order of \$2.3m to \$2.6m.

A fully completed strata-titled commercial project in an east coast capital city - This project was completed in 2007. To date only 25% of the commercial units have been sold and the project has a stalled sales strategy. The market for this product is sound and the project required urgent strategic attention in order to revise and recommence the marketing campaign. This is presently receiving attention in order to unlock proceeds which could amount to between \$12m to \$15m.

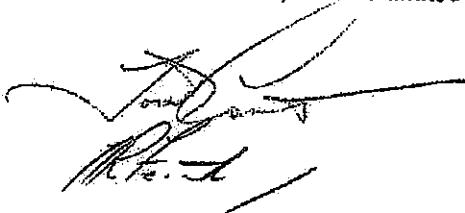
3.2 Asset Portfolio Overview as of 24 May, 2013

As highlighted earlier and discussed in more detail through this report, the Administrators' have been working with the LMIM asset management team to identify strategies and options to enhance portfolio value beyond an "as is" value. The key elements are balancing risk and time with expected outcomes to ensure that the portfolio returns can be largely delivered in a progressive manner over the next two years.

Based on the existing asset level strategies, about one third of the assets would require between 4 and 6 years to be fully realised. This is obviously too long a delivery timeframe as it introduces significant risks and additional costs in delivering these outcomes. Accordingly, the Responsible Entity is driving to ensure that the updated asset strategies developed are still capable of delivering sound value upside compared to a current "as is" value, but within acceptable timeframes.

The last reported valuation for FMIF was 59 cents per unit (June, 2012 audited accounts - disclosed in November, 2012 Investor update). Given the gap in up to date asset valuations it is not possible to provide a considered assessment of value at this time. However based on our review to date, it is highly likely there will be downward revisions to previous FMIF loan book values when this is finalised in coming months.

Even as a heavily worked value accretive strategy, the Responsible Entity acknowledges that this is a poor outcome for investors and is reflective of the assets in the portfolio where most of these are failed borrowers / failed developments and are held by FMIF as mortgagee in possession. For a number of assets, there is limited substantial upside to their "as is" values and for those



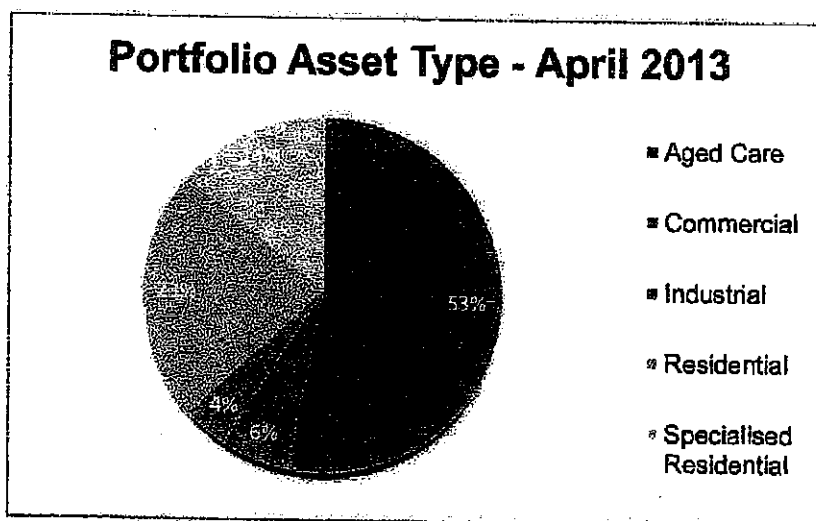
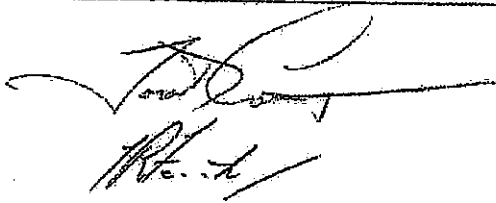
that the Responsible Entity has identified with value accretive options, these are limited by underlying asset issues or market issues.

We will continue to assess options to further enhance values as we progress with the asset reviews and as additional information comes to hand. It is too early in the process to include into the portfolio assessment potential outcomes such as a successful rezoning of a land subdivision or the like and this may have future positive benefit to the valuation of the FMIF.

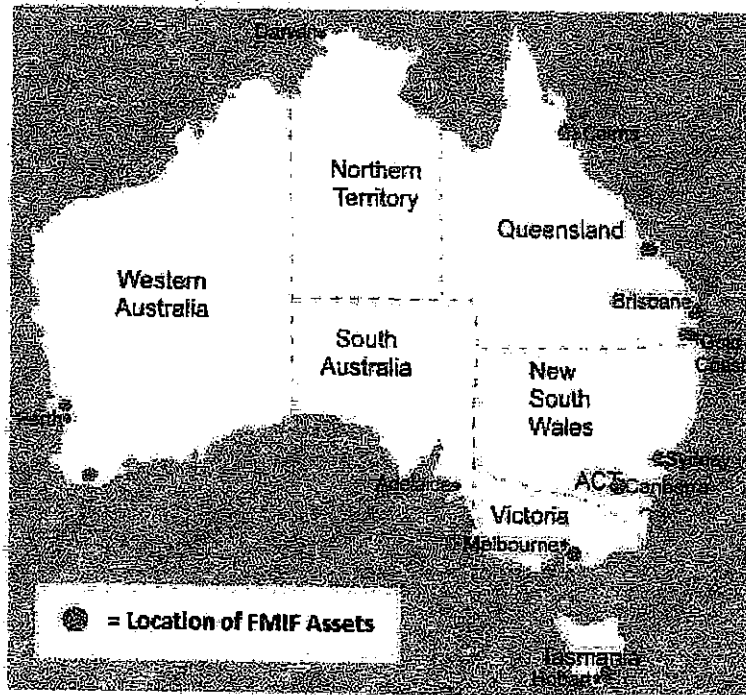
The following table presents an aggregate view of the assets types and potential strategies that the Responsible Entity would employ over a two year period for each asset type.

Asset Type	Potential Strategy Overview	
Aged Care	Mainly development properties - rezoning opportunities are being pursued as well as continued development & sell down on selected sites.	53%
Commercial	Mainly completed or partially completed projects - focus is to resolve issues, develop marketing options and progress to sale.	6%
Industrial	Mainly completed or partially completed projects - focus is to resolve issues, develop marketing options, progress to sale - progress and resolve litigation issues which may provide additional value upside.	4%
Residential	Mix of completed, partially completed and development sites - complete projects where appropriate; marketing and sale of completed assets and assessment of options for development sites.	23%
Specialised Residential	Completed projects with localised market and quality issues. Focus is to resolve issues and develop sale options.	14%

*Percentages based on FMIF loan balance as at 31/12/2012

As can be seen, the portfolio has a very heavy exposure to the aged care asset sector with all of the related projects in various stages of planning or development. The map below demonstrates that FMIF comprises a diverse portfolio of assets across Australia.

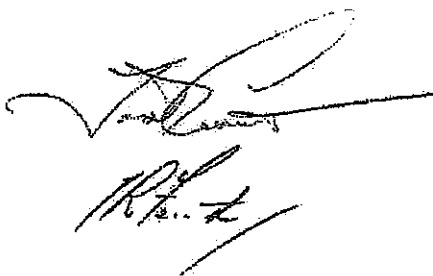


3.3 Portfolio by Property Segment

In reviewing the existing assets, a key focal point of analysis has been a review of the underlying values / valuations of the assets. Given present market conditions, a number of the valuations are out-dated and new valuations are being sought as part of our assessment process. However, following further analysis and review overseen by the Administrators, it was identified that there are a number of assets where the provisioned loan values (i.e. the current FMIF book values) are still higher than a reasonable assessment of current valuation would suggest and further asset write-downs can be expected.

3.3.1 Aged Care / Retirement

FMIF is mortgagee in possession for most of these assets as the original developers have defaulted and FMIF has exercised its rights as first mortgagee. As a result, FMIF is now acting as the developer and is seeking to maximise the returns through completion of the projects. The table overleaf presents a brief overview of the individual assets:



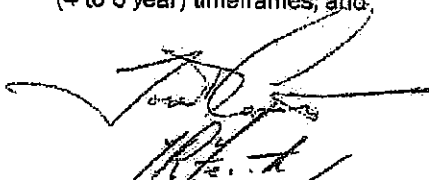
Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Aged Care / Retirement	Yes	Sell down the majority of the balance of subdivision as freehold residential - market and sell the aged care component to an existing operator.
Aged Care / Retirement	Yes	Revise / progress the marketing program for the vacant aged care residences and sell the ongoing business to an existing operator.
Aged Care / Retirement	Yes	Complete planned build program for the next stage of the facility, sell down dwellings and then sell the ongoing business to an existing operator.
Aged Care / Retirement	Yes	Restructure balance of project into residential development sites and sell down.
Aged Care / Retirement	Yes	Sell down completed aged care dwellings and aged care business.
Aged Care / Retirement	Yes	Rezone and subdivide balance of land as residential. Complete a portion of planned aged care build program and sell down residential lots, aged care dwellings & aged care business.
Aged Care / Retirement	No	Renegotiate loan terms with borrower to regularise and have the facility refinanced within an agreed timeframe.

The general business model for the Aged Care / Retirement assets involves developing the properties into dwellings (units or houses) together with the development of common facilities (community facility, pools, etc) and the provision of supported care in some business models. The sale of a dwelling involves a loan / lease structure - whereby a purchaser acquires a dwelling through provision of a loan (at an amount that matches the valuation of the dwelling) that entitles them to occupancy as long as they require. The tenant is also up for regular fees (much like a body corporate payment) which cover the contribution to the maintenance of the common facilities and partially pays for the care/ support they receive. When the tenant leaves the dwelling, the manager will then find a new party to acquire the dwelling at the then market value and a portion of the proceeds are returned to the original tenant and a portion retained by the manager.

The revenues from this model are derived from developing and "selling" the dwellings to aged tenants and once all dwellings are sold, from the proportionate income retained by the turnover of dwellings as tenants leave and new tenants are found. However, to operate this model requires heavy ongoing expenses, such that the business model does not mature and become operationally cash flow positive until most of the developed units are sold when there is a regular turnover of dwellings income to support the level of care and operational expenditure. The nature of these assets and the business model they operate under means that these assets take a considerable period of time to be fully developed and sold to reach a steady state of business operations - at which point the business is also sold to generate the final component of return on the development.

The Responsible Entity's review of these assets has indicated the potential for a negative variation to the current FMIF loan book value. This is due primarily to:

- Current strategies are generally to build out and sell these assets over extended (4 to 6 year) timeframes; and



- Current significant monthly operating losses in these under-developed assets.

Together, these complex business model elements serve to make the assets relatively unattractive in the current market in their present form. Market testing on a couple of selected projects undertaken in 2012 indicated that longer term work-out strategies were required to maximise investor capital rather than to initiate an immediate asset realisation process.

The Responsible Entity has been undertaking substantial work to identify and develop options that will enhance the value of these assets for FMIF investors within a more appropriate (2 year) timeframe. The over-riding criterion the Responsible Entity has set is to identify strategies that both reduce the risk and reduce the timelines in progressing with selected value enhancement strategies.

3.3.2 Commercial

For the 3 commercial assets listed below, FMIF is mortgagee in possession or in the process of moving to mortgagee in possession. All three assets are in the process of selling down. Two assets are expected to be fully sold by end 2013. The third asset has substantial remaining stock to sell but has attracted little market interest for over a year at current prices and marketing approach. This is presently receiving attention by the Responsible Entity as described later in this report.

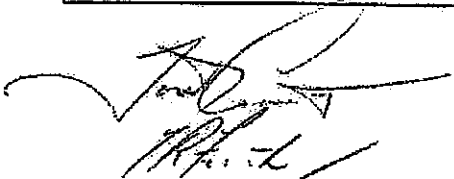
Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Commercial	Pending	Sell down remaining 3 commercial units.
Commercial	Pending	Restructure marketing approach and prices in line with market. Sell down progressively.
Commercial	Yes	Sell down the one remaining commercial unit.

Given the gap in up to date valuations it is not possible to provide a considered assessment of value at this time. However, it is likely there will be downward revisions to previous FMIF loan book values with limited avenues to enhance value for two of these assets. The third asset requires significant reworking of strategy and this is presently receiving attention.

3.3.3 Industrial

For the industrial assets listed below, FMIF is mortgagee in possession or in the process of moving to mortgagee in possession across all four assets. Of the two developed assets, one is expected to be fully sold by the third quarter of 2013 and the other has been recently unsuccessfully marketed as there are contractual structures in place that make the asset unattractive to third parties - this is receiving further attention by the Responsible Entity to identify possible resolutions.

Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Industrial	Yes	Resolve present legal issues and realise on supporting security.
Industrial	Yes	Sell down remaining industrial unit.
Industrial	Yes	Develop strategy to sell partially completed project and progress associated legal claims where warranted.
Industrial	Yes	Resolve contractual issues and market asset.



One asset has been fully sold leaving a shortfall on the loan but there may be some avenues for FMIF to recover further money through pursuit of supporting securities (guarantees). The loan is subject to legal disputes between FMIF and subsequent mortgagees and the Responsible Entity is presently investigating these matters to develop a strategy to finalise the legal issues and seek recovery of further amounts via the supporting securities.

The final asset is a stalled development project that requires a strategy to both resolve commercial / litigation issues that could be beneficial for FMIF investors and identify the best path forward to maximise the asset value for FMIF investors. This is receiving high priority by the Responsible Entity given time limitations around potential litigation.

Given the gap in up to date valuations it is not possible to provide a considered assessment of value at this time. However, it is likely there will be downward revisions to previous FMIF loan book values. For at least two of these assets there are avenues that could be undertaken over the next six months that could substantially enhance value. The remaining asset is expected to be sold by third quarter of 2013.

3.3.4 Residential

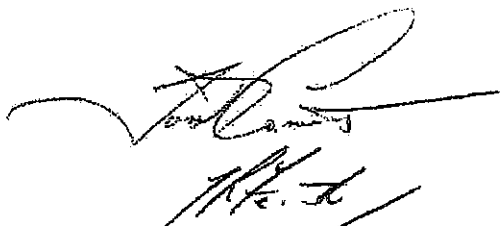
FMIF is mortgagee in possession or moving to this position for six of the 7 assets listed below.

Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Residential	Pending	Revise marketing to complete to a level of pre-sales and then on sell project to recover most (if not all) of outstanding loan.
Residential	Yes	Sell down of remaining residential units.
Residential	Yes	Pursue guarantors.
Residential	Pending	Market in an appropriate timeline the potential residential land project to recoup to 80%+ of outstanding loan.
Residential	Yes	Continued sale of completed residential units over an appropriate timeline (not a fire sale).
Residential	Yes	Completion of project and sale of completed residential dwellings.
Residential	Yes	Sell down of remaining subdivided lots in a progressive manner and development of strategies for remaining englobed land.

The assets not in possession are not productive loans and we are progressing to assume the role as Mortgagee in Possession

Of the remaining six assets, there are three relatively significant assets in this component of the portfolio as follows;

1. A completed residential project that is in the process of selling down;
2. A stalled residential development project; and
3. A residential land development project.



The remaining three assets are small and all in the process of selling down, albeit with losses expected against their outstanding loan balances.

The stalled residential project is a quite significant project requiring remedial work to be undertaken and a marketing strategy to be re-scoped and progressed before we could contemplate either a sale or some other form of exit strategy. A sale "as is" is not considered appropriate and value should be significantly enhanced with the appropriate level of care and attention to strategy and execution. This is receiving high priority by the Responsible Entity with the view to be able to undertake a favourable exit by fourth quarter of 2013.

The final asset is a residential land development project in an area with weak demand. It is a difficult site with areas that will be expensive to sub-divide. This impedes the economics of elements of the project and the Responsible Entity has been undertaking preliminary assessments of alternate strategies. This is not an urgent priority as there is an existing stage that has been completed and is in the process of being marketed. Marketing will need to progress further before any future development stages could otherwise be contemplated. Rather, the initial focus for this project is an effective marketing / sales program to shift the existing lots in a timely manner, with strategies for the remaining balance of land to be worked up in parallel. Given the gap in up to date valuations it is not possible to provide a considered assessment of value at this time. However, there is likely to be downward revision on the loan book value of this asset.

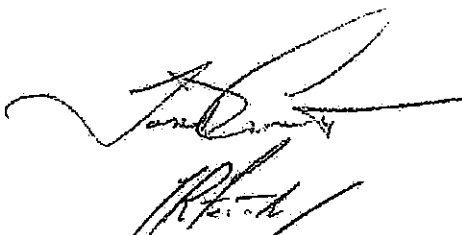
Overall, we expect a significant percentage (>60%) of these assets to be realised by first quarter of 2014, with the balance subject to the current strategic assessments being undertaken.

3.3.5 Specialised Residential

FMIF is mortgagee in possession for both assets and they have been held by the fund for some time. Both assets are in poorly performing local real estate markets which limits options for divestment. Each asset also has significant holding costs which are not covered by income streams. One asset also has construction quality issues which are impeding potential divestment.

Asset Type	Mortgagee In Possession	Potential Strategy - Overview
Resort Units	Yes	Resolve commercial, body corporate and legal issues. Sale in one line with a targeted marketing campaign - very shallow market for individual sales.
Resort Units	Yes	Sale in one line with a targeted marketing campaign - very shallow market for individual sales.

The Responsible Entity has been reviewing these as priority items given the potential for further building deterioration in one case and the need to identify divestment options in both cases. The strategies are still formative; however there is reason to believe that both assets could be divested by first quarter of 2014.



Given the gap in up to date valuations it is not possible to provide a considered assessment of value at this time. There is likely to be downward revisions on the loan book value of both of these assets. However, the Responsible Entity has identified some avenues where we may be able to improve this outlook.

3.4 Portfolio Guidance

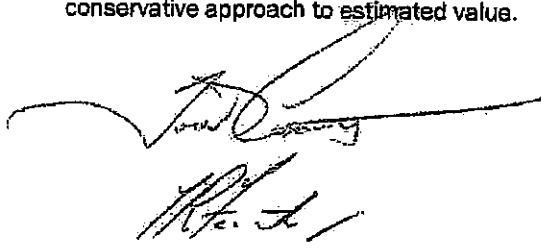
In our analysis of the assets, we have been reviewing the underlying values / valuations of these assets. Given present market conditions, a number of the valuations are out-dated and new valuations are being sought as part of our assessment process. However, following further analysis and review overseen by the Administrators, it was identified that there are a number of assets where the provisioned loan values (i.e. the current FMIF book values) are still higher than a reasonable assessment of current valuation would suggest and further asset write-downs can be expected. This is the case with the aged care component of the portfolio due to a number of factors including:

- Using an on-completion valuation to determine the provisioned loan value whereas in winding down the fund an "as is" approach may be adopted;
- Inclusion in the previous valuation assessment of a business value to the operating business when the asset reaches completion – this value is uncertain and would not be achieved for between 4 and 7 years (depending on the asset and its present state of development) as so would be discounted in an "as is" value; and
- In some cases, the assets are incurring substantial monthly operating losses which would be reflected in an 'as is' value. These operating losses cannot be significantly reduced due to legislative requirements around their operations as aged care facilities.

The other asset category where there may be a significant diminution in value when considered on an "as is" basis is the specialised residential portfolio. This is due to the nature of the assets (resort style assets), the state of the local real estate markets and also significant site specific issues around location, building defects and resort performance.

Other assets where there will be notable value diminution include:

- A land subdivision where localised market conditions have seen a reduction and slow down in new land sales. This property also has difficult ground conditions making some of the land uneconomic to sub-divide profitably at current contractor rates;
- A residential development which has been fully sold and where the balance will need to be written off as the guarantors now reside in an overseas jurisdiction there is limited prospect of any further recovery; and
- A completed capital city commercial development where there has been limited demand for the completed asset with only 25% sold in 6 years. There are issues with end valuation / prices sought in the market and hence a very low level of completed sales to date together with ongoing retention costs (maintenance, rates, land tax, etc) necessitating a more conservative approach to estimated value.



3.5 Process Enhancements

Since the appointment of the Voluntary Administrators, the specialist team has undertaken an extensive review of the FMIF portfolio and also the underlying processes and procedures in managing that portfolio. This review has introduced a range of control processes that were either non-existent or under-developed. In addition to this, the team has strengthened a number of other processes in the assessment of credit risks and management of the assets.

The Administrators' analysis of FMIF's Operational System since the date of our appointment demonstrated a few areas that required improvements and implementation of controls in relation to cash flow for Fund and individual loan levels.

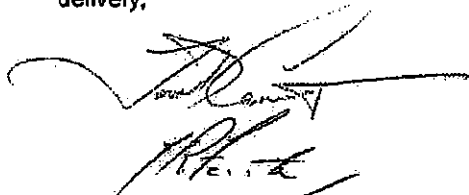
The Administrators' identified a significant gap in financial control which included cash flow modelling at the asset / loan book level. The Administrators' have since instigated the introduction of controller level budgets and cash flow modelling to build a fund level cash flow model. This model has also been an invaluable contribution in determining future asset strategies through the analysis of holding costs versus realization model to ensure that investor returns are maximized.

The processes now in place include:

3.5.1 Strategic Review of Assets

Strategic reviews have been completed for all assets and initial strategic plans documented. There are a number of assets where revisions to existing strategies are necessary as the existing strategies were either not appropriate in current market conditions, not financeable or otherwise carried significant risks in execution. These strategic review actions will be ongoing for each asset to ensure that there exists a process to capture and fully assess the impacts of new information as it is received. For each asset, the Responsible Entity has created a process to collate into one document all the key transaction description, loan / account information, loan status, risk assessment and current status. This is to provide one record point for all key loan / transaction information in the same manner as would be seen in a bank lending file. In the process of completing these documents, they are also being utilised as the key document that would then capture the key information from the strategic review of each asset. This strategic review utilises all key LM personnel (account / development manager, a senior LM executive, LM legal) and at least two FTI personnel and involves:

1. A comprehensive review of the key borrowing information (borrower, legal structure, legal issues, loan amount, security structure, security valuation, method of valuation, transaction status, commercial issues and current strategy);
2. Key issues and risks are discussed as well as a review of the current strategy, its progress and impediments;
3. Consideration is then given to the suitability of the current strategy, potential alternate strategies, key information gaps, timelines and key dates (such as expiry of DA, expiry of pre-sale contracts, etc) and action plans developed with assigned tasks and timelines for delivery;



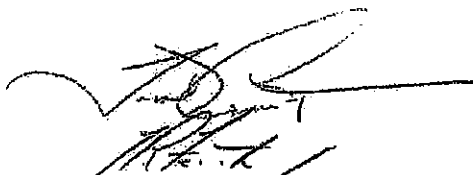
4. From the analysis and decisions taken above, a comprehensive cash flow is developed for each asset to provide the underlying basis for a discounted / risk adjusted cash flow analysis of the current strategy and any alternate strategies that may be considered.
- **Credit Committee Meetings** - The Administrators' have re-formed the composition and processes of credit committee meetings.
 - **Key Risks / issues** - The Administrators' introduced a process of clear identification and documentation of all significant risk issues for each asset and what mitigating actions (if any) can be employed to manage these risks. This process includes assignment of tasks, action plans and timelines to dealing with these issues.
 - **Cash flow Forecasting, Expense Monitoring and Controls** - Whilst LM prepared fund level cash flow forecasting the Administrators' have introduced full cash flow forecasting, detailed expense monitoring and controls in the approvals of expenses across each asset and across the FMIF portfolio. This ensures we are capturing all costs in FMIF, identifying opportunities to manage and reduce asset level costs and have full and continuous knowledge of the total carrying / holding costs of individual assets. This is supported by and managed through a detailed financial model developed by the Administrators'.
 - **Development of a "whole of fund" cash flow model for the FMIF** - This model has been developed by the Administrators' and provides for the consolidation of the cash flows of each asset (once its strategy is finalised) together with all other fund cash inflows and outflows to be consolidated. This model allows the ongoing management and assessment of performance as the team works towards maximising the returns on assets and returning of capital to FMIF investors.
 - **Independent Data Assessment** - In assessing asset strategies and asset values we noted that in the past there had been extensive use of in-house assessments which had limitations in terms of appropriateness and accuracy. Going forward, an independent assessment of asset values will be undertaken.

As part of our ongoing Operational Plan, the Responsible Entity aims to continue identifying and implementing the necessary procedures that will accurately support strategies in place making sure they are in line with the actual ongoing costs for each asset / loan. Our objective is to maintain the controls implemented in order to provide the best reporting outcome for stakeholders.

These processes allows for the combined the Responsible Entity to fully manage the portfolio with the over-riding aim of maximising the return of capital to FMIF investors in the most time efficient and cost efficient manner. In assessing strategy, these processes allows for effective risk adjusted discounted cash flow analysis of outcomes to ensure that all risk issues are appropriately considered and included into the decision making.

3.6 Risk Identification and Quantification

Risk identification and quantification is an area of particular focus that the Responsible Entity is in the process of assessing with regards to the implementation of asset strategies. This will be



an ongoing process and involves utilising a similar methodology to that of a credit risk assessment and monitoring department in a major Australian bank. Such a methodology considers:

- The asset strategy timelines / duration and risk elements this introduces to asset outcomes;
- Real estate market / value risk;
- Counterparty risks (e.g. construction contractors / project partners);
- Planning and zoning risks;
- Construction risks (time, cost, quality); and
- Environmental risks.

As we work through the FMIF assets, we are seeking to ensure that future decisions taken fully consider these risk issues, identify and progress mitigation strategies and where appropriate allow for quantification of risks in the financial assessment of alternate outcomes. This is to ensure there is a robust process to progressing strategies and that only those strategies that appropriately balance risk and return are pursued when contemplating future value accretive options (such as developing out a project).

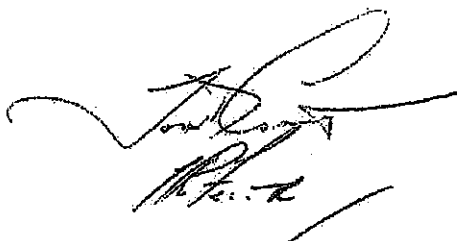
3.7 FMIF Portfolio – Next Steps

3.7.1 Completion of Strategic Plans and Financial Assessments

Whilst the Responsible Entity is well advanced on the strategic plans and financial assessments for the assets in the FMIF, there is still much to do to complete this process. In many cases, we are still to receive additional information sought from various external parties as well as refinements to the financial modelling and cash flow analysis. There is a separate financial model for each asset which then feeds into the total FMIF portfolio model as well as a sophisticated costs / budgeting / monitoring model.

We are seeking to minimise costs in this information gathering process – using our extensive external relationships wherever possible to provide initial, high level data from these external parties to assist our option analysis for particular assets before committing to any formal reports.

All of this work is required to be completed before we can formally lock in all of the strategic plans. After just 9 weeks, we are very well advanced on what is a large portfolio of assets, many of which have significant and complex issues to consider. We currently have finalised plans in place for a number of assets in the FMIF, but about half of the assets have significant issues and potentially divergent strategic options that we must carefully review and consider before finalising those plans.



3.7.2 Progress "Quick Wins"

We have earlier discussed some of the Quick Wins that we have identified and are now progressing. These will assume a priority over the next weeks and months to ensure these are delivered in a commercially effective manner in order to maximise the returns to investors and allow for early distributions of this capital to investors.

As we continue to work through the assets and refine strategies, we will continue to look for progressive Quick Wins to maintain the momentum we have established in capital returns to investors - as there are other assets in the portfolio that will take time to resolve issues and work through the defined strategies in order to maximise the returns to investors.

3.7.3 Progress Development of Identified Assets

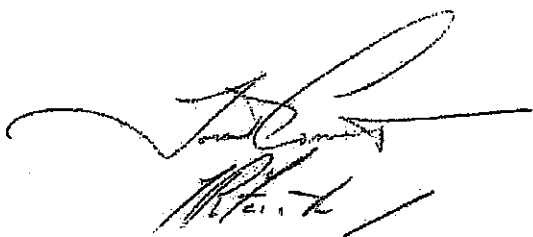
As mentioned, there are a number of assets where the best outcomes for investors will be to progress with development strategies (on a limited basis) in order to maximise asset values.

What we are seeking to achieve with the strategies being developed is to ensure that we consider the pathway to deliver the best outcomes for investors after considering all options and balancing risk and returns with also a strong focus on the time to deliver outcomes. In a number of instances, there are substantial "value gaps" between what an asset owes investors (original loan balance plus capitalised interest) and what the asset is presently valued at "as is". Where an option presents an appropriate balance between risk assessment and potential value uplift, we will look to progress that option in order to close as much as possible this value gap.

The initial focus is on the stalled development assets and how these can be best progressed, either through careful use of the resources of FMIF or through third party funding or JV arrangements. There are a number of these identified where options are in the process of being assessed and additional information sought. There are also a number of projects which are under development and these are being continued with close monitoring of development costs and progress utilising external third party reviews as is normal banking practice.

In potentially progressing with development options, we are also very conscious of time - we are not looking to engage in outcomes that will take many years to conclude as this introduces:

- Longer timeframes increases the potential for uncontrollable / unforeseen risk elements (e.g. potential for commodity prices, currency instability, overseas government debt issues or the like) impacting on the domestic economy;
- Delays the return of capital to investors; and
- Unnecessary increases in the costs incurred through continued charging of management fees to the fund as long term projects are worked through.

A large, stylized handwritten signature in black ink, appearing to be 'A. R. ...'.

3.7.4 Progress with Rezoning of Identified Assets

The Responsible Entity has already identified a number of assets where rezoning may provide value uplift and lower risk outcomes for investors. We have received a report on one of these assets (the asset concerned is quite large in terms of the overall value of FMIF) and will be shortly meeting with Council to discuss alternate zoning solutions. In this particular case, the Responsible Entity has current knowledge through other work undertaken of Council plans and strategies to rezone and redevelop adjoining areas which will have a significant and potentially positive impact to what zoning outcomes may be achievable for the FMIF asset.

4 Conclusion

In moving forward on the FMIF assets, the Responsible Entity has assembled a team with substantial experience in the development of real estate assets, financing, negotiating commercial arrangements and working through legal and financial issues and is applying sound methodologies in working through the options to progress with asset development. The Responsible Entity has taken great care to ensure that the team they have assembled to manage these FMIF assets have the requisite skills to undertake this task and also have a sole focus to this task. This ensures that the combined Responsible Entity is committed to achieving the best outcome for investors in seeking commercially balanced opportunities to develop out or otherwise transform assets (through rezoning or the like). The Responsible Entity's objective is to wind down the fund in a commercially responsible manner, balancing risk and time with expected outcomes to ensure that the portfolio returns can be largely delivered in a progressive manner over the next two years. We will keep investors informed through detailed, quarterly updates and with other communications that may be warranted from time to time.

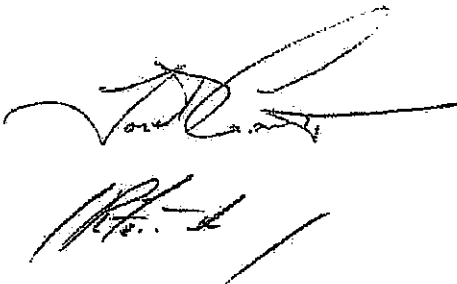
Dated: 7 June 2013

FTI Consulting



Ginette Muller

Voluntary Administrator



CATEGORY 2 CLAIMS - Reconciled Cost excluding GST	19 March 2013 to 30 June 2013	31 July 2013	31 August 2013	30 September 2013	31 October 2013	30 November 2013	31 December 2013	Mar-14 Qtr	June 14 Qtr	TOTAL
LM Investment Management Ltd (LMIM)	\$669,544.49	\$86,132.74	\$118,171.00	\$75,628.50	\$45,968.50	\$29,936.50	\$16,310.00	\$69,891.50	\$64,850.00	\$1,178,594.23
LM Administration Pty Ltd (LMA) Invoiced to LMIM	\$403,873.50	\$69,839.00	n/a	n/a	n/a	n/a	n/a	n/a	n/a	\$473,712.50
	\$1,073,417.99	\$155,971.74	\$118,171.00	\$75,628.50	\$45,968.50	\$29,936.50	\$16,310.00	\$69,891.50	\$64,850.00	\$1,649,648.73

Summary of allocations across Funds

Fund Name	30 June 2013	31 July 2013	30 September 2013	31 October 2013	30 November 2013	31 December 2013	March 14 Qtr	June 14 Qtr	TOTAL
LM Cash Performance Fund	\$1,493.77	\$23.78	\$17.60	\$113.88	\$69.31	\$76.21	\$325.05	\$304.09	\$2,768.89
LM First Mortgage Income Fund	\$656,166.86	\$129,148.82	\$98,022.91	\$62,897.13	\$30,239.55	\$11,313.73	\$46,096.69	\$44,987.41	\$1,113,562.95
LM Australian Structured Products Fund	\$26,926.31	\$4,917.43	\$2,682.20	\$1,754.67	\$984.23	\$961.46	\$4,274.78	\$4,034.98	\$47,151.00
LM Managed Performance Fund	\$78,522.49	n/a	n/a	n/a	n/a	n/a	n/a	n/a	\$78,522.49
LM Australian Income Fund	\$140,372.55	\$21,681.71	\$37,288.29	\$10,968.82	\$8,675.41	\$3,958.60	\$16,694.96	\$15,548.52	\$207,639.79
Grand Total	\$1,073,417.99	\$155,971.74	\$118,171.00	\$75,628.50	\$29,936.50	\$16,310.00	\$69,891.50	\$64,850.00	\$1,649,648.73

WORKINGS BELOW - Split based on % of FUM

19 March 2013 to 12 April 2013

Fund Name	FUM 31 March 13	FUM as percentage of Total	Allocation LMIM	Allocation LMA	Allocation WIP TOTAL
LM Cash Performance Fund	\$603,702.53	0.18%	\$308.77	\$108.49	\$418.26
LM First Mortgage Income Fund	\$275,428,966.81	37.89%	\$143,379.80	\$40,215.00	\$183,594.80
LM Australian Structured Products Fund	\$11,665,115.10	1.58%	\$5,985.57	\$2,096.29	\$8,081.86
LM Managed Performance Fund	\$402,011,070.81	54.52%	\$206,278.78	\$72,443.72	\$278,722.49
LM Australian Income Fund	\$49,680,889.31	5.92%	\$22,418.54	\$7,851.51	\$30,270.05
Grand Total	\$737,859,744.56	100%	\$378,372.46	\$132,611.00	\$510,983.46

13 April 2013 to 30 June 2013

Fund Name	FUM EDM June 2013	FUM as percentage of Total	Allocation LMIM	Allocation LMA	Allocation WIP TOTAL
LM Cash Performance Fund	\$603,702.53	0.18%	\$323.57	\$87.84	\$411.51
LM First Mortgage Income Fund	\$275,077,527.82	82.23%	\$239,432.42	\$223,138.64	\$462,571.06
LM Australian Structured Products Fund	\$11,246,960.84	3.35%	\$9,754.10	\$9,080.36	\$18,834.45
LM Australian Income Fund	\$47,807,682.06	14.24%	\$41,461.94	\$38,640.56	\$80,102.50
Grand Total	\$938,735,877.25	100%	\$491,372.09	\$271,359.90	\$762,732.00

Jul-13

Fund Name	FUM EDM July 2013	FUM as percentage of Total	Allocation LMIM	Allocation LMA	Allocation WIP TOTAL
LM Cash Performance Fund	\$503,702.53	0.15%	\$119.81	\$109.97	\$229.78
LM First Mortgage Income Fund	\$277,979,504.81	82.16%	\$71,771.89	\$97,976.99	\$169,748.82
LM Australian Structured Products Fund	\$11,068,737.81	3.27%	\$2,632.77	\$2,284.67	\$4,917.43
LM Australian Income Fund	\$48,805,742.67	14.42%	\$11,608.27	\$10,073.44	\$21,681.71
Grand Total	\$935,356,687.82	100%	\$86,132.74	\$69,839.00	\$155,971.74

Aug-13

Fund Name	FUM EDM Aug 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$503,702.53	0.15%	\$177.60
LM First Mortgage Income Fund	\$278,002,572.26	82.95%	\$98,022.91
LM Australian Structured Products Fund	\$7,606,980.21	2.27%	\$2,682.20
LM Australian Income Fund	\$49,181,278.60	14.63%	\$17,288.29
Grand Total	\$935,344,533.60	100%	\$118,171.00

Sep-13

Fund Name	FUM EDM Sept 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$503,702.53	0.15%	\$113.88
LM First Mortgage Income Fund	\$277,928,057.64	83.09%	\$62,897.13
LM Australian Structured Products Fund	\$7,583,967.35	2.27%	\$1,714.67
LM Australian Income Fund	\$48,492,898.91	14.50%	\$10,968.82
Grand Total	\$934,508,636.43	100%	\$78,629.50

Oct-13

Fund Name	FUM EOM Oct 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$503,702.53	0.15%	\$69.31
LM First Mortgage Income Fund	\$277,892,019.84	83.15%	\$38,239.55
LM Australian Structured Products Fund	\$7,152,513.28	2.14%	\$984.29
LM Australian Income Fund	\$48,511,025.02	14.52%	\$6,675.41
Grand Total	\$538,059,310.67	100%	\$45,968.56

Nov-13

Fund Name	FUM EOM Nov 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$564,036.23	0.17%	\$50.20
LM First Mortgage Income Fund	\$278,110,505.04	82.67%	\$24,749.86
LM Australian Structured Products Fund	\$7,590,941.43	2.26%	\$675.84
LM Australian Income Fund	\$50,126,580.33	14.90%	\$4,480.91
Grand Total	\$599,863,063.03	100%	\$29,956.81

Dec-13

Fund Name	FUM EOM Dec 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$564,036.23	0.47%	\$76.31
LM First Mortgage Income Fund	\$43,734,890.55	69.37%	\$11,313.73
LM Australian Structured Products Fund	\$7,115,895.32	5.88%	\$961.46
LM Australian Income Fund	\$29,298,324.86	24.27%	\$3,958.60
Grand Total	\$120,713,156.96	100%	\$16,310.10

Jan-Mar 14

Fund Name	FUM average EOM Jan-Mar 2014	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$565,912.76	0.47%	\$325.05
LM First Mortgage Income Fund	\$43,734,890.55	69.31%	\$48,096.69
LM Australian Structured Products Fund	\$7,442,423.36	6.16%	\$4,274.78
LM Australian Income Fund	\$29,066,081.24	24.06%	\$16,694.98
Grand Total	\$120,811,081.71	100%	\$69,391.50

June 14 Qtr

Fund Name	FUM average EOM Apr - June 2014	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	\$565,912.76	0.47%	\$304.03
LM First Mortgage Income Fund	\$43,731,881.42	69.37%	\$44,987.41
LM Australian Structured Products Fund	\$7,471,908.04	6.15%	\$4,014.38
LM Australian Income Fund	\$28,926,591.62	23.97%	\$15,543.52
Grand Total	\$120,696,293.83	100%	\$64,850.34

LM Administration Pty Ltd (Administrators Appointed): Calculation of Remuneration 19 March 2013 to 30 June 2013 billed to LM Investment Management Ltd by LMA as service entity

Employee	Position	Rate/hour excl GST	Total actual hours	Total					
				(incl GST)	Assets	Creditors	Employees	Trade On	Administration
Ginette Muller	Senior Managing Director	575.00	13.00	7,475.00	0.00	0.00	0.00	5,750.00	1,725.00
John Park	Senior Managing Director	575.00	0.20	115.00	0.00	0.00	0.00	115.00	0.00
Kelly-Anne Trenfield	Senior Managing Director	575.00	38.50	22,137.50	0.00	57.50	287.50	21,735.00	57.50
Damian Bender	Senior Managing Director	550.00	8.50	4,675.00	0.00	0.00	385.00	4,290.00	0.00
Sally McElyde	Managing Director	550.00	325.60	179,080.00	0.00	0.00	123,585.00	55,385.00	110.00
Andrew Weatherley	Director 2	545.00	2.80	1,526.00	0.00	0.00	272.50	1,253.50	0.00
Glenn O'Kearney	Director 2	545.00	85.60	46,652.00	0.00	0.00	109.00	46,543.00	0.00
Christine Alterator	Director 1	485.00	19.70	9,554.50	0.00	0.00	2,570.50	4,947.00	2,037.00
James Court	Director 1	485.00	0.20	97.00	0.00	0.00	0.00	97.00	0.00
Lisa Cherry	Director 1	485.00	1.90	921.50	0.00	0.00	0.00	921.50	0.00
Matthew Glennon	Director 1	485.00	0.80	388.00	0.00	0.00	242.50	0.00	145.50
Ryan Zorgrager	Director 1	485.00	1.30	630.50	0.00	0.00	630.50	0.00	0.00
Natasha Jonga	Manager 1	345.00	0.40	138.00	0.00	0.00	0.00	0.00	138.00
Eloa Zuardi	Senior Accountant 2	325.00	274.10	89,082.50	0.00	1,202.50	22,230.00	41,405.00	24,245.00
Benjamin Robson	Accountant	235.00	130.90	30,761.50	94.00	564.00	5,146.50	24,745.50	211.50
Lisa Ringuet	Accountant	235.00	0.30	70.50	0.00	0.00	0.00	0.00	70.50
Various	Administration	130.00	81.30	10,569.00	0.00	0.00	624.00	5,278.00	4,667.00
Total			985.30	403,873.60	94.00	1,824.00	156,083.00	212,486.50	33,407.00
GST				40,387.35					
Total (including GST)				444,260.95					

Allocation of Cost by % FUM

19 March 2013 to 12 April 2013

Fund Name	FUM 31 March 13	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	603,702.53	0.08%	108.49
LM First Mortgage Income Fund	279,428,966.81	37.89%	50,215.00
LM Australian Structured Products Fun	11,665,115.10	1.58%	2,096.29
LM Managed Performance Fund	402,011,070.81	54.52%	72,243.72
LM Australian Income Fund	43,690,889.31	5.92%	7,851.51
Total	737,399,744.56	1.00	132,916.00

13 April 2013 to 30 June 2013

Fund Name	FUM EOM June 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	603,702.53	0.18%	487.94
LM First Mortgage Income Fund	276,077,527.32	82.23%	223,139.64
LM Australian Structured Products Fun	11,246,960.84	3.35%	9,090.56
LM Australian Income Fund	47,807,687.06	14.24%	38,640.56
Total	335,735,877.75	1.00	271,358.50

TOTAL

403,873.50

LM Administration Pty Ltd (Administrators Appointed): Calculation of Remuneration 1 July 2013 to 26 July 2013 billed to LM Investment Management Ltd by LMA as service entity

Employee	Position	Rate/hour		Total actual hours	Total		Employees	Trade On	Administration
		incl GST	excl GST		(excl GST)	\$			
Kelly-Anne Trenfield	Senior Managing Director	590.00	5.40	3,186.00	0.00	0.00	0.00	3,186.00	0.00
Sally McByde	Managing Director	550.00	33.60	18,480.00	0.00	0.00	12,155.00	6,325.00	0.00
Andrew Weatherley	Director 2	545.00	0.50	272.50	0.00	0.00	0.00	272.50	0.00
Christine Alterator	Director 2	545.00	5.30	2,888.50	0.00	0.00	272.50	2,616.00	0.00
Glenn O'Kearney	Director 2	545.00	16.30	8,883.50	0.00	0.00	0.00	8,883.50	0.00
Renee Lobb	Director 1	485.00	0.30	145.50	0.00	0.00	48.50	97.00	0.00
Eloa Zuardi	Manager 1	345.00	74.30	25,633.50	0.00	0.00	5,313.00	11,971.50	8,349.00
Stuart Clancy	Manager 1	345.00	0.90	310.50	0.00	0.00	0.00	310.50	0.00
Benjamin Robson	Accountant	235.00	23.80	5,593.00	164.50	0.00	470.00	4,935.00	23.50
Various	Administration	130.00	34.20	4,446.00	0.00	0.00	0.00	1,859.00	2,587.00
Total			194.60	69,839.00	164.50		19,259.00	40,466.00	10,959.50
GST				6,983.90					
Total (including GST)				76,822.90					

Allocation of Cost by FUM

Fund Name	FUM EOM July 2013	FUM as percentage of Total	Allocation WIP
LM Cash Performance Fund	503,702.53	0.15%	103.97
LM First Mortgage Income Fund	277,979,504.81	82.16%	57,376.93
LM Australian Structured Products Fund	11,068,737.61	3.27%	2,284.67
LM Australian Income Fund	48,803,742.87	14.42%	10,073.44
	737,995,744.56	1.00	69,839.00

12 March 2014
Our Ref: GOK_89741103.doc

Receivers and Managers of the assets of LM First Mortgage Income Fund (LM FMIF)
C/- McGrathNicol
GPO Box 9986
SYDNEY NSW 2001

Dear Sirs

RE: LM Investment Management Limited (In Liquidation) (Receivers and Manager Appointed) (the Company) ACN 077 208 461

As Liquidators (formerly Administrators) of the Company, where work has been undertaken in relation to the LM FMIF assets, the costs and expenses of the Administration, including the remuneration of the Administrators, the Liquidators and their staff, are payable from those assets. Such fees and expenses will be caught by the Responsible Entity's right of indemnity out of the underlying scheme assets.

In this regard, I take this opportunity to submit for payment our remuneration and expenses incurred for the period 19 March 2013 to 31 December 2013 in relation to work undertaken by the Administrators, the Liquidators and their staff to administer, care for, and preserve LM FMIF assets. Please find ***attached** schedule of remuneration charged and copies of all invoices submitted for payment to the LM FMIF.

To clarify, our costs have been divided into three (3) categories as follows:

- **Category 1** - Remuneration and expenses incurred for tasks specific to the LM FMIF (not including tasks relating to the LM FMIF controllerships which have been included as separate category 3);
- **Category 2** - Remuneration incurred for tasks categorised as 'general responsible entity work'. This work would not have been undertaken but for the Company's role as Responsible Entity of the respective funds. We have received advice that such work may be charged and be allocated across the following funds in accordance with the corresponding percentage of Funds Under Management (reviewed periodically):
 - LM FMIF;
 - LM Australian Income Fund;
 - LM Cash Performance Fund;

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Liability limited by a scheme approved under Professional Standards Legislation.

- LM Australian Structured Products Fund; and
 - LM Managed Performance Fund (for period to 12 April 2013).
- Category 3 - Remuneration incurred for tasks specific to the LM FMIF controllerships. In our view both the controllership appointment documents and the security documents themselves provide the contractual pathway for the Company to charge remuneration associated with its appointment as controllers of specific assets. I note that the invoices covering the controllership remuneration from 19 March 2013 to 31 October 2013 have previously been issued but have not been paid.

In accordance with the Orders made by Justice Dalton on 20 December 2013, we have not included in our claims against the assets of the LM FMIF, any remuneration concerning or incidental to the meeting convened by notice dated 26 April 2013 (or any adjournment thereof).

Please review the invoices as submitted and arrange payment within twenty-one (21) days. Should you require these invoices to be reviewed by an additional party, please forward accordingly ensuring that the additional party is aware of the timeframe for response to this matter.

Should you have any queries relating to the above matter, please contact myself on (07) 3225 4900, Kelly-Anne Trenfield on (07) 3225 4920, or Glenn O'Kearney on (07) 5630 5205.

Yours faithfully
FTI Consulting



John Park
Liquidator

*Encl.

FTI Consulting Standard Rates effective 1 January 2016
 (excluding GST)

Typical classification	\$/hour	General guide to classifications
Senior Managing Director	625	Registered/Official Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administrations. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to the administration.
Managing Director	575	Specialist skills brought to the administration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered/Official Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.
Senior Director	565	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered/Official Liquidator and/or Trustee or have experience sufficient to support an application to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Director	510	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary conduct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administration. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Senior Consultant 2	425	Typically an ARITA professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planning and control of medium to large administrations.
Senior Consultant 1	370	Assists with the planning and control of small to medium administrations. May have the conduct of minor administrations. Can supervise staff. Has experience performing more difficult tasks on larger administrations.
Consultant 2	350	Typically ICAA qualified (or similar). Required to control the tasks on small administrations and is responsible for assisting with tasks on medium to large administrations.
Consultant 1	305	Qualified accountant with several years experience. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 2	275	Typically a qualified accountant. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 1	255	Typically a university undergraduate or graduate. Required to assist with day-to-day tasks under the supervision of senior staff.
Junior Associate	180	Undergraduate in the latter stage of their university degree.
Administration 2	180	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/or office management. May also have appropriate bookkeeping or similar skills.
Junior Accountant	145	Undergraduate in the early stage of their university degree.
Administration 1	145	Has appropriate skills and experience to support professional staff in an administrative capacity.

The FTI Consulting Standard Rates above apply to the Corporate Finance/Restructuring practice and are subject to review at 1 January each year.

FTI Consulting Standard Rates effective 1 April 2014
 (excluding GST)

Typical classification	Sydney \$/hour	Perth Melbourne Brisbane Gold Coast \$/hour	General guide to classifications
Senior Managing Director	625	600	Registered/Official Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administrations. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to the administration.
Managing Director	580	570	Specialist skills brought to the administration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered/Official Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.
Senior Director	570	560	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered/Official Liquidator and/or Trustee or have experience sufficient to support an application to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Director	510	510	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary conduct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administration. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Senior Consultant 2	440	415	Typically an ARITA professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planning and control of medium to larger administrations.
Senior Consultant 1	380	360	Assists with the planning and control of small to medium administrations. May have the conduct of minor administrations. Can supervise staff. Has experience performing more difficult tasks on larger administrations.
Consultant 2	360	340	Typically ICAA qualified (or similar). Required to control the tasks on small administrations and is responsible for assisting with tasks on medium to large administrations.
Consultant 1	315	300	Qualified accountant with several years experience. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 2	280	270	Typically a qualified accountant. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 1	260	250	Typically a university undergraduate or graduate. Required to assist with day-to-day tasks under the supervision of senior staff.
Junior Associate	185	175	Undergraduate in the latter stage of their university degree.
Administration 2	185	175	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/or office management. May also have appropriate bookkeeping or similar skills.
Junior Accountant	155	135	Undergraduate in the early stage of their university degree.
Administration 1	155	135	Has appropriate skills and experience to support professional staff in an administrative capacity.

The FTI Consulting Standard Rates above apply to the Corporate Finance/Restructuring practice and are subject to review at 1 January each year.

FTI Consulting Standard Rates effective 1 October 2012
Excluding GST

Classification	\$/hour	Guide to Level of Experience
Senior Managing Director	575	Registered/Official Liquidator and/or Trustee. Specialist skills brought to the administration. Generally in excess of 10 years experience.
Managing Director	550	Specialist skills brought to the administration. Generally in excess of 10 years experience. Answerable to the appointee, but otherwise responsible for all aspects of a small to large administration.
Director 2	545	More than 8 years insolvency experience or equivalent. Answerable to the appointee, but otherwise responsible for all aspects of a small to large administration. May also be Registered/Official Liquidator and/or Trustee or have experience sufficient to support an application to become a Registered/Official Liquidator or Trustee.
Director 1	485	5-8 years insolvency experience or equivalent. Well developed technical and commercial skills. Will have conduct of small to large administrations and experience in control of a medium to large team of staff.
Manager 2	395	4-6 years insolvency experience or equivalent. Will have conduct of minor administrations and experience in control of a small to medium team of staff. Assists planning and control of medium to larger administrations.
Manager 1	345	3-4 years insolvency experience or equivalent. Assists planning and control of small to medium administrations as well as performing some of the more difficult tasks on larger administrations.
Senior Accountant 2	325	2-3 years insolvency experience or equivalent. Required to control the tasks on small administrations and is responsible for assisting tasks on medium to large administrations.
Senior Accountant 1	285	Graduate with 1-2 year insolvency experience or equivalent. Required to assist in day-to-day tasks under supervision of more senior staff.
Accountant	235	Undergraduate or graduate with 0-1 year insolvency experience or equivalent. Required to assist in day-to-day tasks under supervision of more senior staff.
Administration	130	Administrative work including superior knowledge of software packages, personal assistance work, high speed and accurate data entry. Appropriate skills, including books and records management and accounts processing particular to the administration including filing. Appropriate software and data processing skills necessary to record banking and accounting information.

The FTI Consulting Standard Rates are subject to review and adjustment at 1 July each year to reflect changes in the cost base of the firm and changes in market conditions and rates for comparable insolvency firms. Subject to market conditions, the FTI Consulting Standard Rates will be adjusted upward at 1 July each year to reflect the change in the cost of living index as determined by reference to a broad based cost of living index. The increase will not be less than the increase in the Consumer Price Index and not greater than the annual increase in the latest available published Mercer Human Resource Consulting Cost of Living Survey Index (or equivalent index).

14 Necessary and Proper Remuneration

Principle 10: A Practitioner is entitled to claim Remuneration and Disbursements, in respect of necessary work, properly performed in an Administration.

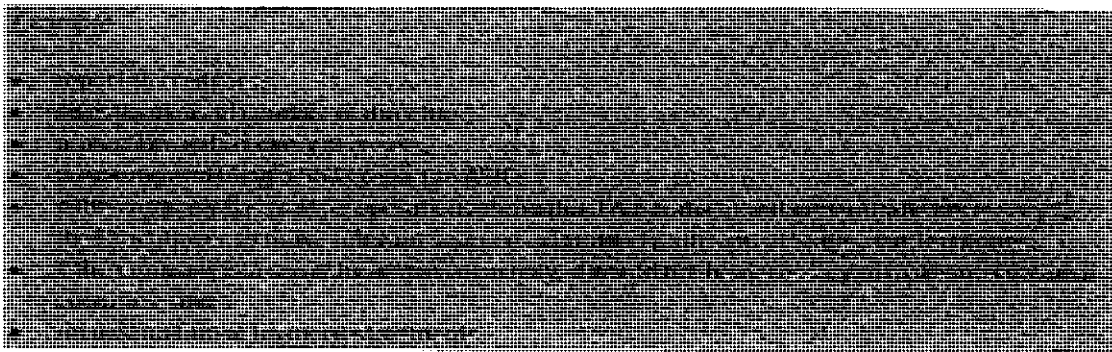
A Practitioner's right to be paid is recognised under the legislation and at general law and is given a high priority of payment from the Insolvent's funds.

The entitlement to Remuneration exists only in respect of work done that was necessary and was properly performed.

14.1 Necessary Work

A Practitioner is entitled to Remuneration only in respect of work done that was necessary for the Administration. The term '*necessary*' means work that was:

- connected with the Administration; and
- done in furtherance of the exercise of the powers and performance of the duties of a Practitioner as required by the Legislation, Code and applicable professional standards.

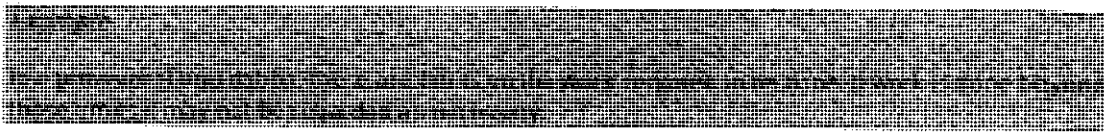


The examination of claims for Remuneration will necessarily be made with the benefit of hindsight. However a Practitioner may claim for work that may not have produced a positive outcome provided there was a proper exercise of professional judgment in the Practitioner deciding to do the work at the time the work was undertaken. Refer to section 18.2 for guidance on work papers and maintenance of Administration files.

Once that is established, the work will remain '*necessary*' for the purposes of a Remuneration claim, even if subsequent events show that the work was not necessary.



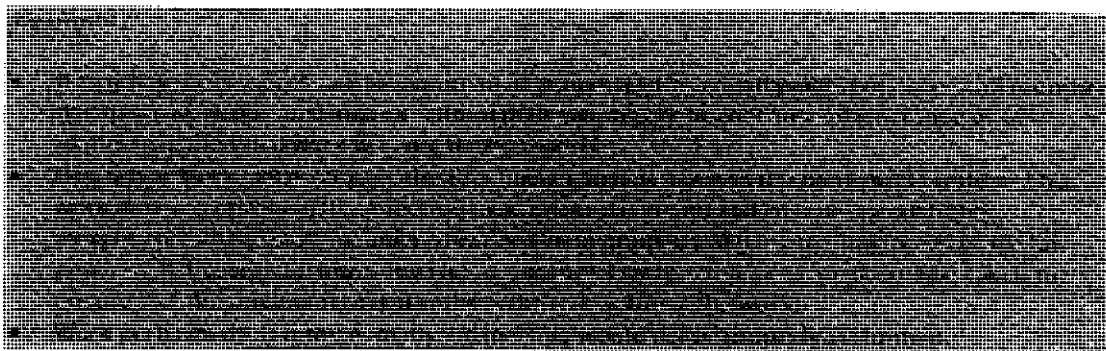
Before a decision is made to claim for Remuneration, the Practitioner must ensure that work that was done, by him or herself, or by staff members, was necessary.



14.2 Properly performed

In order to claim Remuneration for necessary work, the Practitioner will need to establish that the work was properly performed.

Work done poorly, or, at worst, improperly and needing to be reworked should not be charged.



Creditors are entitled to expect that Administration funds are not expended on work that was not properly performed.

All time spent for necessary work properly performed should be recorded against the Appointment using an appropriate system.

Before claiming Remuneration, the Practitioner must identify any work and time that should not be claimed.

The Remuneration requirements of the Code for work that is necessary and properly performed are consistent with, or impose a higher standard than, the Legislation.

Prior approval of fees does not remove the obligation to establish that the work was necessary and properly performed. The mere approval does not give the right to draw Remuneration if the work was not necessary or was not properly done.

14.3 Deciding what work to undertake

The Practitioner should exercise professional and commercial judgment in considering whether work is to be performed. Clearly, work that improves the return for creditors should be undertaken.



Not all work is associated with directly seeking a return for creditors. Many of the general statutory tasks of a Practitioner – for example in reporting to creditors, lodging documents with ASIC, and maintaining accounts – are properly performed and charged even though the Remuneration charged will not produce a financial return and will reduce the funds available for distribution.

In a liquidation, a Practitioner is not obliged to do work unless there are funds available for their Remuneration, except for certain statutory tasks that must be undertaken regardless of available funds. Practitioners should have regard to any assistance that may be available from the Regulators.

14.4 Outsourcing

A Practitioner may outsource work subject to the restrictions on delegation (e.g. decision making and exercise of judgment remain the Practitioner's responsibility and cannot be delegated or outsourced).

The decision to outsource is a matter of commercial judgment for the Practitioner, based on such considerations as:

- geography and location (the business may have its operations spread throughout the country and it may be commercially necessary to appoint local agents to deal with particular tasks);
- time constraints; or
- costs considerations (the external source may be able to attend to an urgent task quickly, or more cheaply).

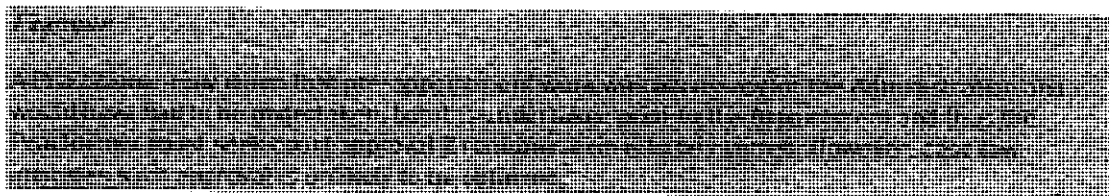
If work is outsourced, the Practitioner's obligations under this Code remain the same as if the Practitioner or members of staff had performed the work.

For guidance on whether outsourced work is Remuneration or a Disbursement refer to 14.10.2.

Practitioners should have regard to APES GN 30 – Outsourced Services. A copy of GN 30 can be accessed from the Accounting and Ethical Standards Board website (www.apesb.org.au).

14.5 Work that cannot be remunerated

If a Practitioner, other than a bankruptcy trustee, seeks to be remunerated for work that is outside the scope of the powers of the Practitioner or undertaken prior to the Appointment, approval can only be sought from the court.



An exception is if it relates to a transitioning Appointment and the Legislation allows Remuneration relating to the prior Administration.

It is not sufficient in itself to obtain approval from a committee or from the creditors. These restrictions are a threshold test before applying the '*necessary and properly performed*' test.

A Practitioner appointed as a bankruptcy trustee may draw Remuneration for pre-appointment work where that work is approved in accordance with the Bankruptcy Act.

Remuneration must not be claimed for work that results in, or is the result of, a breach of the Practitioner's duties.

14.6 Staff levels and numbers

In time-based charging, the Practitioner must ensure that the number and qualifications of staff allocated to an Administration is appropriate for the nature of the work being performed so that the Administration is completed in the most efficient and effective manner.



This will require commercial and professional judgment. While a particular task may be appropriate to a particular level of employee, the Practitioner may consider that, even though charging at a higher hourly rate than the employee, he or she may be able to do the work in one quarter of the time.



Care should be taken in allocating the appropriate number and level of staff to an Administration or task, particularly when travel is required. This is a balance between having sufficient staff available to undertake the required tasks and over servicing the Administration.

14.7 Setting hourly rates

In time based charging, the Practitioner should ensure that appropriate hourly rates are set for the Administration.

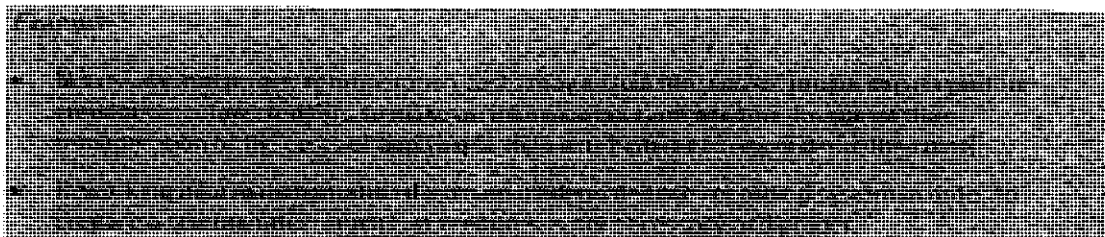
Generally, market forces will ensure that a Practitioner sets appropriate standard hourly rates which are generally applied to Administrations. However, a Practitioner should ensure the appropriateness of these standard hourly rates is specifically considered for each Administration. Factors that may result in a variation of the standard hourly rates include:

- complexity of the Administration;
- location of the business operations of the Insolvent and the scale of the rates that would normally be applied in that location;
- risk associated with the Administration; and/or
- the specialised nature of the Administration (if any).

14.8 Costs of claiming Remuneration

Practitioners may claim the necessary and proper costs of record keeping and seeking approval or determination of their claim for Remuneration.

If additional costs are incurred because of inadequacies of the Practitioner or Firm's time recording systems, or due to staff not properly recording their time, these costs would not be necessary and proper. It is not appropriate to charge this additional cost to the Administration and it should not form part of the claim for Remuneration.



14.9 Costs of communicating with Regulators or professional bodies

A Practitioner must not claim Remuneration for time spent:

- communicating with Regulators or professional bodies regarding complaints about the Practitioner or the conduct of a particular Administration;
- on Regulator surveillance, professional audits or inspection of files, or on peer reviews; or
- unsuccessfully defending a breach of the law or this Code, subject to any order of the court.

14.10 Disbursements

Disbursements may only be claimed if they were necessary and properly incurred.

In incurring Disbursements, a Practitioner must use their commercial judgment, adopting the perspective of, and acting with the same care as, a reasonable person exercising care and skill would act in incurring expenses on their own behalf.

While Practitioners must account to creditors for Disbursements, the reimbursement for the payment of Disbursements does not require creditor approval before being drawn. Thus, the categorisation of activity as Remuneration or Disbursement is significant.

14.10.1 What is a Disbursement?

The Practitioner needs to determine whether the claim for payment is in the nature of a Disbursement, or whether it represents Remuneration. Disbursements are:

- costs paid from the Administration's bank account directly to third parties; or
- costs paid to third parties by the Practitioner and later claimed back from the Administration; or
- costs claimed by the Practitioner for non-professional services provided by the Firm and/or outlays incurred by their staff in the proper conduct of the Administration.

A Practitioner should separate Disbursements from the expenses of running their practice which may only be recovered through Remuneration (for example, in the case of time based remuneration by factoring overheads into the hourly charge-out rate and in fixed fees, by factoring overheads into the fixed fee calculation).

Table 2: Disbursement types

Disbursement type	Criteria	Examples	Rationale
Professional			
External advice, non-insolvency	<p>These are fees that satisfy both the following criteria. They are:</p> <p>(a) for professional services (non-insolvency services) relating to specific tasks required to be done during the Administration; and</p> <p>(b) are properly incurred by independent outside consultants engaged by, and not associated with, the Practitioner and their Firm.</p>	<ul style="list-style-type: none"> • independent lawyers, • auctioneers, valuers, real estate agents, • independent tax advisors or accountants. 	<p>This is a Disbursement because it involves the Practitioner retaining an external advisor for work to be done in the Administration, at an agreed fee or rate. These expenses are claimed from the Administration at cost.</p>
Non-professional			
External	<p>These are costs that satisfy all the following criteria. They are:</p> <p>(a) not for professional services; and</p> <p>(b) incurred with a third party in relation to work required to be done during the Administration.</p>	<ul style="list-style-type: none"> • administration advertising, • travel and accommodation for staff, • room hire, • document storage, • photocopying and printing, • external word processing and secretarial services. 	<p>These are typical Disbursements because they involve an outlay in relation to the Administration. These expenses are claimed from the Administration at cost.</p>
Internal	<p>These are costs that satisfy all the following criteria:</p> <p>(a) they are not for professional services;</p> <p>(b) they are for goods or services properly provided by the Practitioner or their staff in the Administration; and</p> <p>(c) they are not overheads covered in the Remuneration claim.</p>	<p>Reasonable costs of:</p> <ul style="list-style-type: none"> • telephone calls, • postage, • stationery, • photocopying and printing, • data room hosting. 	<p>These are also typical Disbursements, except they are incurred internally by the Firm. These expenses, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs.</p>

14.10.2 What are not Disbursements?

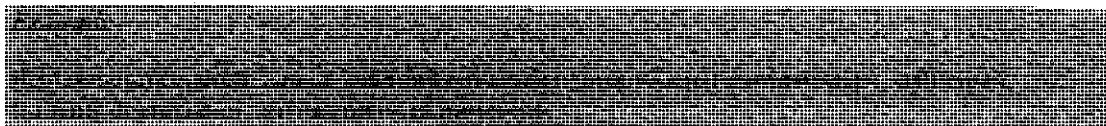
Given the significance of a claim for payment by a Practitioner being classified as a Disbursement, it is useful to list what are not Disbursements:

A. Overheads

An overhead is not a Disbursement. It is a cost that can only be charged for and recovered across all the administrations handled by the Practitioner's Firm.

In contrast, an out of pocket expense is an expense actually incurred in respect of that Administration. It can be claimed as a Disbursement. The Practitioner must be able to show how the expense:

- is uniquely and directly attributable to the Administration; and
- was calculated and allocated to the Administration.



B. Internal non-insolvency professional costs

A Practitioner may engage internal non-insolvency related professional services only after proper commercial consideration to that decision has been given that such an engagement is in the interests of creditors and the efficient conduct of the Administration. This includes non-insolvency professional services provided by another practice within a federated practice structure or associated practice.

The point to consider is whether the benefit of the engagement fee will be received by the Practitioner, the Practitioner's Firm or an entity related to the Practitioner or perceived to be related to the Practitioner.

These items are Remuneration and must be disclosed and approved in the same manner as insolvency services (refer to Remuneration Report template for further guidance).



C. External insolvency professional costs

If a Practitioner outsources insolvency tasks, the fees charged to the Practitioner may only be claimed as Remuneration, notwithstanding that the fees may be payable before the claim for Remuneration can be made. The necessary and properly performed test applies.

It is not always clear whether the out-sourced work is better categorised as insolvency work (which is claimed as Remuneration), or general non-insolvency work (which is classified as a Disbursement).

Factors to be taken into account when making this assessment include:

- was the contractor an insolvency firm?
- was there a regular resource sharing/provision arrangement?
- would the Practitioner have done the work if there had been sufficient resources?

Where the task involves standard expertise and skills of an insolvency practitioner, the outsourced costs will be a Remuneration claim of the Practitioner. Where the task involves more general or particular skills that are not insolvency specific, then the outsourcing costs will be a Disbursement.



When a Practitioner makes a decision that an expense of this nature is a Disbursement rather than Remuneration, the invoices received for the services should detail the work performed and it should be clear from the description that the services were not insolvency services.

D. Late lodgement fees

Any late fee or penalty imposed by a court, Regulator or agency for late lodgement or other default should be borne by the Practitioner.

Late lodgement fees imposed by ASIC or AFSA must not be charged to the Administration.

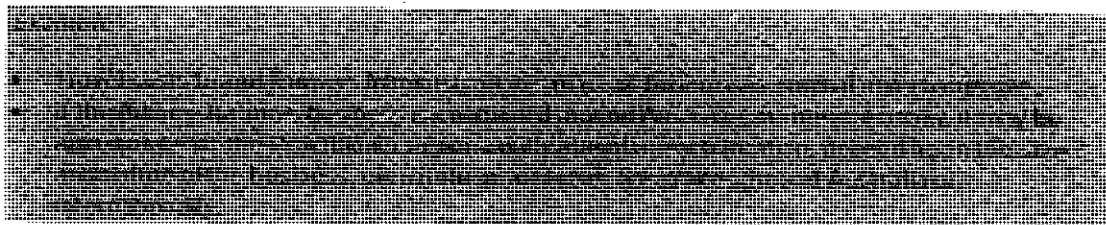
E. Unreasonable Travel Costs

Travel should be bought on the best commercial terms and the style of travel and accommodation should be appropriate for the trip being undertaken.

Care should be taken in claiming the costs of travel by the Practitioner between offices of his or her firm for the purposes of a particular Administration.

Where there are geographically spread locations for a particular Administration, consideration should be given to the retention of local staff or agents to carry out tasks which are appropriate and capable of delegation, in order to minimise the costs to the Administration. However, it may well be appropriate for the Practitioner and/or his or her staff to attend at these locations and incur the relevant travel costs.

Every Firm should have a policy on travel (including time charged and Disbursements), which should be made available to creditors on request. This policy can be Administration specific or a general policy.



F. Pre-appointment expenses

Any expenses incurred prior to the Appointment must not be claimed from the Administration as a Disbursement. Practitioners are only entitled to claim Disbursements incurred after their Appointment.

14.10.3 Necessarily and properly incurred

A. Professional Disbursements

A Practitioner may engage external professional services (refer to the table at section 14.10.1) as Disbursements without creditor approval, but only after exercising proper commercial consideration.

The Practitioner should consider issues of:

- expertise;
- quality;
- timeliness; and
- reasonable and appropriate cost.

Practitioners must assess each engagement of a professional service provider in terms of the interests of creditors and their fiduciary responsibilities.

Unless the Disbursement is insignificant, the Practitioner should document the decision making process identifying why the work was necessary and why the particular firm or professional was engaged. While the approval of creditors is not required, creditors are entitled to be informed of and to understand the decision process if the issue is raised.

Before authorising payment of Disbursements, the Practitioner must ensure that:

- the task has been properly performed; and
- the quantum of the professional service fee is as agreed or is reasonable.



B. Non-professional Disbursements

A Practitioner may incur non-professional Disbursements, both internal and external, (refer to the table at section 14.10.1) without creditor approval, but only after exercising proper commercial consideration. While the approval of creditors is not required, creditors are entitled to be informed of and to understand the decision process if the issue is raised.

For internal Disbursements:

- the recovery basis must be set on commercial terms;
- creditors must be advised as part of the initial advice to creditors on Remuneration (refer 15.3.2 and 23.2.1), details of the basis of charging for these types of Disbursements; and
- details of actual internal Disbursements paid (eg. quantity and total cost) must be reported to creditors in each Remuneration report (refer 15.3.2 and 23.2.2).

The Practitioner should consider the reasonableness and appropriateness of the cost of the non-professional Disbursement before authorising the Disbursement. This is equally applicable to internally provided and externally provided non-professional Disbursements.

Practitioners must assess each Disbursement for an Administration in terms of the interests of creditors and their fiduciary responsibilities.

Before authorising payment of Disbursements, the Practitioner must ensure that:

- the benefit has been provided to the Administration; and
- the quantum of the fee is as agreed or is reasonable.

15 Meaningful disclosure in Remuneration claims

Principle 11: A claim by a Practitioner for Remuneration must provide sufficient, meaningful, open and clear disclosure to the Approving body so as to allow that body to make an informed decision as to whether the proposed Remuneration is reasonable.

A Remuneration claim requires information to be conveyed to the Approving body (creditors, committee of creditors, committee of inspection, or the court). That information encompasses a number of elements:

- a system of recording that information (refer section 15.1);
- a basis for calculating Remuneration (refer section 15.2);
- sufficient detail to justify the amount of Remuneration (refer section 15.3); and
- relevant timing of the information being provided (refer section 15.3).

15.1 Recording of Work Done

Regardless of the Remuneration method to be applied, the Practitioner must maintain a proper record of work that was done on an Administration in order to:

- claim Remuneration; and
- report to creditors on the progress of the Administration.

The Practitioner should maintain a system that requires staff to record:

- the period of time spent;
- the categories of the work performed (see Remuneration Report Template);
- details of the work being performed; and
- contemporaneously at the time the work is done in order to maximise accuracy.

Time recording provides good practice management information, even though time data will not be required for reporting to creditors in claims for fixed fee or percentage based Remuneration.

ARITA's Remuneration Report Template provides a description of some common work categories that should be used (refer section 23.2.2).

15.2 Bases of calculation

There are several bases by which Remuneration can be calculated (refer sections 15.2.1, 15.2.2, 15.2.3, 15.2.4 and 15.2.5). ARITA has no preference as to the method of calculating fees. Practitioners must be transparent and fully explain to creditors the main bases by which Remuneration can be calculated, the method proposed to be used in the Administration and the reasons for selecting that particular basis (refer to section 15.3.2).

The terms of that Remuneration are a matter for the Approving Body, upon full disclosure of the arrangement being explained to them by the Practitioner.

15.2.1 Time based charging

Time based is a common form of charging. Practitioners calculate Remuneration by reference to the hourly or time unit rate which is applied to the time spent on necessary work properly performed.

A Practitioner should ensure that regular reviews of the WIP on an Administration are performed to ensure that only time spent on necessary work, properly performed is retained on the WIP. Such a review must be performed prior to issuing any Remuneration requests for approval.

15.2.2 Prospective Fee Approval

A Practitioner may seek approval from creditors for time based Remuneration to be determined in advance of the work to be performed. The approved amount must have a Cap to a nominated limit.

The claim for Remuneration will subsequently be calculated on a time basis for necessary work properly performed and can be drawn without further approval of creditors up to the Cap.

The hourly rates to be applied may be increased by an agreed formula where the escalation factors are objectively and independently determinable. If a Practitioner wants to be able to increase hourly rates that are charged on an Administration in the future without having to obtain creditor approval, a specific formula must be included in the resolution for the approval of the prospective Remuneration (for example, rates are increased annually by the CPI amount). A reference to changes in rates from time to time (or similar) must not be included in resolutions to approve prospective fees.

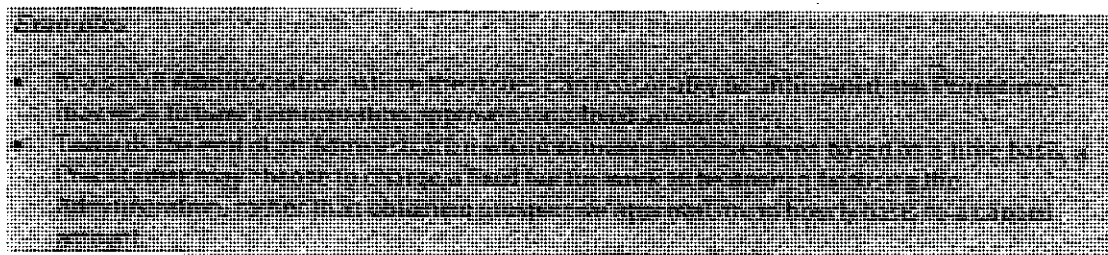
Any increase approved does not apply to the capped total, only to the hourly charge rate.

If a Practitioner wishes to change the capped amount, or the hourly rate scale other than as agreed, a Practitioner will need to seek Approving body approval (refer section 15.3.2 for reporting obligations).

15.2.3 Fixed fee

A Practitioner may claim Remuneration based on a quoted fixed amount with creditor approval. A fixed fee arrangement provides certainty to creditors about how much the Remuneration claim will be. The risk of excessive time spent is transferred to the Practitioner.

Once a fee is fixed for an agreed task, set of tasks or the conduct of the Administration, it remains fixed and a Practitioner must not seek further approval if the original estimate is wrong.



15.2.4 Percentage

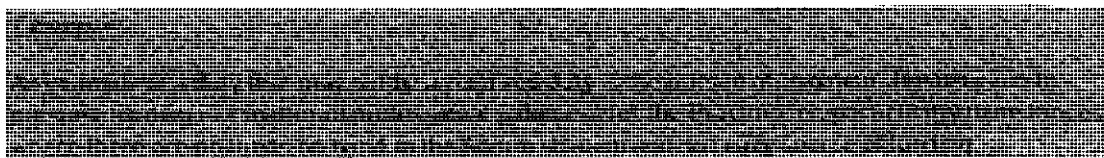
A Practitioner may claim Remuneration based on a percentage of a particular factor, usually assets disclosed, or assets realised.

15.2.5 Success or Contingency Fees

A Practitioner must not seek Remuneration on the basis that they will receive a specified bonus, success fee, super-profit or additional percentage as Remuneration, in the event that a specified contingent future event occurs or particular circumstances arise, if that arrangement would place the Practitioner in a position of conflict, or generate a perception of a lack of independence.

This is based on the principles that:

- no additional incentive should be required or offered in order to have the Practitioner perform duties that are required;
- the independence and objectivity of the Practitioner, even if only as perceived, may be compromised by such an arrangement; and
- the arrangement must not be inconsistent with the fiduciary obligations of a Practitioner.



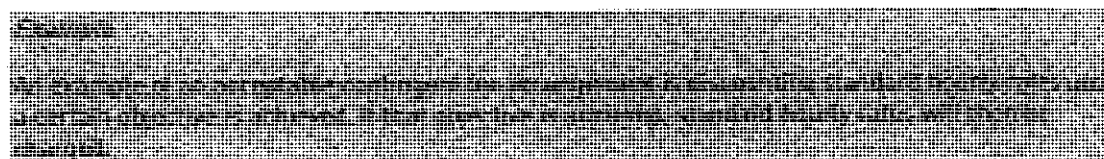
When considering whether a proposed fee arrangement is acceptable, the Practitioner must consider whether the arrangement could be perceived as the Practitioner acting in his or her own interests rather than the interests of the creditors.

If a Practitioner is intending to use this type of fee arrangement, full disclosure of the terms of the proposed arrangement must be made to creditors and the consent of the creditors obtained prior to work commencing under a proposed contingent fee arrangement.

If an arrangement is in breach of this Code, the arrangement will still constitute a breach even if creditors have approved the arrangement.

When considering whether a contingent fee arrangement might be a suitable fee arrangement in a particular Administration, the Practitioner should consider:

- any restrictions that may apply under the relevant legislation;
- funds available in the Administration;
- funding from alternate sources such as creditors or a litigation funder;
- costs of the alternate source of funds compared to a contingent fee arrangement;
- risk associated with the tasks to be undertaken for the contingent fee; and
- the appropriateness of the possible contingent fee amount considering the nature of the Administration and the risk associated with the task to be undertaken.



15.3 Information to be disclosed and when

Information on the particular basis of Remuneration claimed should be provided to creditors at two main points of time in an Administration.

- First, soon after the appointment, in order to advise creditors of the available bases by which Remuneration can be calculated and the proposed basis upon which Remuneration will be claimed for the Administration. This will generally be with the notice of first meeting of creditors in a voluntary administration or a creditors' voluntary liquidation, or a Part X agreement; or by including it in the first circular sent to creditors in other Administrations.

This is the equivalent of an Initial Remuneration Notice (IRN) in relation to a personal Administration.

- Second, before any meeting is held at which approval for the Remuneration is to be sought. The information should be sent to creditors in the normal course with any reports and other documents required for the conduct of that meeting in the time frames required by the legislation.

This is the equivalent of an Remuneration Approval Notice (RAN) in relation to a personal Administration.

The table below summarises the timing of the provision of information for each Remuneration basis.

Basis	First communication after appointment	During the Administration
Time based	Advice on the basis chosen. Estimate of fees and comparison to pre-appointment estimate, if one provided.	Report on work undertaken and request approval of quantum. Comparison to initial estimate of fees provided to creditors.
Prospective Fee (time based)	Advice on the basis chosen. Request for approval for time based charging to a capped amount.	Report on work undertaken and request further approvals.
Fixed fee	Advice on the basis chosen. Request for approval of the quantum.	Report on achievement of milestones for the drawing of Remuneration.
Percentage	Advice on the basis chosen. Request for approval of the percentage	Report on the factors underlying the entitlement to claim the Remuneration.
Contingency	Advice on the basis chosen. Request for approval of the arrangement.	Report on the achievement of the contingency event or otherwise.
<p>Note: Mixed Fee Arrangements: There will be circumstances where a Practitioner will seek approval for a different basis of Remuneration for a particular aspect of an appointment or finalisation of the appointment; the appropriate information (refer section 15.3.2) will need to be provided at the time of seeking the creditors' approval of that arrangement.</p>		

The Remuneration reporting requirements do not apply to Controllers. A Controller should report to their appointor in the manner requested by their appointor. The guidance in this section of the Code may still be of assistance to Controllers when preparing their Remuneration reports.

15.3.1 Court requirements

In addition, where an application is made to a court for an order that a company be wound up or for an official liquidator to be appointed as a provisional liquidator of a company, regard must be had to any additional requirements of the courts. For example, with the Consent to Act, Practitioners may be required to disclose their hourly rates. The same applies in relation to Part X agreements under the Bankruptcy Act.

Basis of Fee Approval				
Time – Retrospective	Time – Prospective	Fixed	Percentage	Contingent
	<p>basis of recovering internal disbursements.</p> <p>The Practitioner is intending to use time based Remuneration (either retrospectively or prospectively), they must also provide:</p> <ul style="list-style-type: none"> the scaled rates that will be used (including qualifications and experience generally of staff at each level) and a best estimate of the costs of the Administration to completion on a specific milestone. <p>If there's change or the estimate is no longer reliable, the Practitioner must notify creditors and advise new rates or a new estimate and provide an explanation to creditors as to why previous estimates have changed.</p>			
Remuneration Approval Request	Details of the Remuneration claimed	<p>ARITA's Recommended Remuneration Report template (refer section 23.2.2), as adapted for the facts and circumstances of the particular Administration, should be used as the means of giving creditors the information they need to make an informed decision at the meeting as to the reasonableness of the Remuneration. It is a guide for time based Remuneration claims and may assist with other bases of Remuneration claims. If broadly followed, the proposed format constitutes good practice.</p>		
Where a time based Remuneration claim for retrospective fees is being	Where a time based Remuneration claim for prospective fees is	Where a fixed fee is claimed, the Practitioner will need to	Where a percentage based claim is made, information must be	If a contingency arrangement within the scope of this Code is

Basis of Fee Approval				
Time - Retrospective	Time - Prospective	Fixed	Percentage	Contingent
<p>made, the Practitioner will need to report to the relevant Approving body on:</p> <ul style="list-style-type: none"> the amount of time spent; a description of work performed on an Administration, broken down into the broad categories of work performed; the classification of staff engaged on the Administration for each broad category of work; and the Remuneration incurred for each broad category of work. <p>The Practitioner will also need to compare the estimated Remuneration provided in the initial advice with the actual Remuneration approval</p>	<p>being made, the Practitioner will need to report to the relevant Approving body on:</p> <ul style="list-style-type: none"> a summary description of the major tasks still remaining to be done on the Administration for the period that the Remuneration is sought (e.g. to completion or other relevant milestone); an explanation of the estimated fees remaining to complete the Administration (or to the next major milestone) including the estimated fees for each major task; a monetary 'cap' on the Remuneration; an explanation as to 	<p>report to the relevant Approving body on:</p> <ul style="list-style-type: none"> the amount of the fixed fee proposed; the basis upon which the fee has been calculated (work to be undertaken and the costs for each category of work and scope of work) in the same manner as for prospective fees; the services to be provided for the fixed fee amount in sufficient detail for the Approving body to make an informed decision about why the fee is reasonable; what services will not be included in the fixed fee and 	<p>provided to the relevant Approving body to enable it to make an informed assessment of whether the percentage is reasonable. The following information must be provided:</p> <ul style="list-style-type: none"> the percentage proposed; the nature and estimated value of the individual assets realised or to be realised (or if the percentage is to be applied to another factor, the value of that factor); the formula to be applied for calculation of the Remuneration; what services are to be provided for this percentage amount and the tasks that will comprise this 	<p>proposed, there must be full disclosure of the proposed arrangement to the relevant Approving body, including:</p> <ul style="list-style-type: none"> exactly what the arrangement is contingent upon; how achievement of the contingency will be assessed; what the Practitioner's Remuneration will be in the event that the contingency is or is not achieved; why a contingency arrangement is in the best interests of creditors; and when the Remuneration will be drawn.

Basis of Fee Approval					
	Time – Retrospective	Time – Prospective	Fixed	Percentage	Contingent
	sought and provide an explanation for any variance.	<ul style="list-style-type: none"> what the monetary capped amount represents; and when it is proposed that the fees be drawn (for example, monthly). 	<p>the basis of charging for these excluded services; and</p> <ul style="list-style-type: none"> the milestones as to when Remuneration will be drawn from the Administration. <p>Note: a Practitioner must not draw fixed fee Remuneration up-front.</p> <p>A Practitioner seeking a fixed fee basis for Remuneration must include in the quote for the fixed fee the:</p> <ul style="list-style-type: none"> costs of all statutory investigations; costs of reporting to the creditors and Regulators; cost of issuing letters of demand for preferences; 	<ul style="list-style-type: none"> work; what work has been, or is intended to be outsourced that would normally be carried out by the Practitioner or their staff and whether this outsourced work will be billed separately or included in the percentage based Remuneration claim; the milestones for when the Remuneration will be drawn from the Administration; and the expected range of possible Remuneration outcomes. <p>Full disclosure of the terms of the arrangement, and the</p>	

Basis of Fee Approval					
	Time – Retrospective	Time – Prospective	Fixed	Percentage	Contingent
			and <ul style="list-style-type: none"> costs of meeting all statutory obligations. <p>Example</p> <p>Acceptable exclusions</p> <ul style="list-style-type: none"> litigation for recovery of preference payments. litigation for insolvent trading. <p>If a Practitioner is intending to make a claim for Remuneration on a fixed fee basis, this must be done at the first opportunity after the Practitioner is appointed. The only exceptions to this are where a Practitioner chooses to make a claim for a fixed fee to enable finalisation of</p>	expected Remuneration outcome, or range of possible outcomes must be made clear to creditors to minimise any perception of conflict of interest.	

Basis of Fee Approval				
Time – Retrospective	Time – Prospective	Fixed	Percentage	Contingent
		the Administration, or for a specific aspect of the Administration.		
<p>Statement of Remuneration claim – The practitioner should clearly:</p> <ul style="list-style-type: none"> state the precise terms of the agreement(s) sought from the committee or the resolution(s) sought from creditors including the amount to be approved and when the Remuneration will be drawn. Separate statements of Remuneration claim are required for each distinct remuneration period (e.g. retrospective and prospective); set out the total Remuneration previously determined; and indicate whether they will be seeking the determination of further Remuneration at some time in the future. <p>A summary of receipts and payments to and from the Administration bank account must be provided. The receipts and payments summary should be prepared up to a date that is as close as possible to the date on which the notice and report is given to creditors. The summary should be clearly labelled as being prepared 'as at' a particular date or for a specified period. If large or exceptional receipts and payments are received or made after the report is prepared but before the meeting at which the Remuneration claim is to be considered, the Practitioner should provide additional information to committee members or creditors at the meeting.</p> <p>Details of Disbursements paid from the Administration, including:</p> <ul style="list-style-type: none"> general information on the different classes of Disbursements; a declaration that the Disbursements were necessary and proper; in relation to Disbursements paid to the Firm, whether directly or in reimbursement of a payment to a third party: <ul style="list-style-type: none"> who the Disbursement was paid to (only for externally provided professional services); what the Disbursement was for; the quantity and rate (only for internal Disbursements); and the amount paid; and 				

Basis of Fee Approval			
Time – Retrospective	Time – Prospective	Fixed	Percentage
<p>Contingent</p> <ul style="list-style-type: none"> • details of the basis of any internal Disbursements that will be charged to the Administration in the future (eg. Page rate for photocopying done internally). <p>Note that payments direct to third parties from the Administration bank account only need to be clearly included in the receipts and payments.</p> <p>Practitioners should always support their Remuneration report with a general report providing the creditors with information about the progress of the Administration, detailing matters resolved and those matters still outstanding.</p> <p>The general report should assist creditors with understanding:</p> <ul style="list-style-type: none"> • matters that may have contributed to the Remuneration claim; • complexities or difficulties that have been faced by the Practitioner; • goals that have been achieved since the last report; • outcomes including explanations as to why that outcome was better or worse than originally predicted; and • future tasks to be undertaken and why they need to be done. <p>for corporate Administrations, information on how to access the Creditor Information Sheet on approving Remuneration in external administrations (if not previously provided).</p> <p>The Creditor Information Sheet is designed to fully inform creditors about:</p> <ul style="list-style-type: none"> • the process of determining Remuneration; and • the rights and responsibilities of Practitioners, committee members and creditors. <p>The Information Sheet (or advice as to how creditors can access this information sheet online) must be provided to creditors before approval of Remuneration is sought. It may be provided to creditors at the time of advising them of the basis on which Remuneration will be charged.</p>			

15.4 Sources of Funding

15.4.1 Department of Employment payments

A. Corporate Administrations

Funding received from the Department of Employment (DE) to facilitate a FEG or GEERS distribution by Appointees may be a limited or partial funding agreement. As such, where higher fees are incurred than the amount agreed with DE there is no restriction in the administration being charged for the shortfall on the basis that all Remuneration claimed is necessary and properly incurred in accordance with ARITA's Code.

While the money received from DE is not subject to creditor approval and can be paid directly to the practitioner, any shortfall must be appropriately approved in accordance with the relevant legislation prior to drawing. In seeking creditor approval for any shortfall, Practitioners must provide separate disclosure of the total time charged, DE receipt(s) and any shortfall amount in the Remuneration report.

Practitioners must ensure that they do not "double dip" in relation to FEG or GEERS Remuneration and that the amount received from DE is allocated to the Administration. To facilitate this, Practitioners must ensure that any work undertaken in relation FEG or GEERS distributions is appropriately identified in their time recording system, including an adjustment for any direct payments from DE.

B. Personal insolvency Administrations

Practitioners must have regard to guidance issued by AFSA in respect of the requirements for approval of funding received from DE or any shortfall.

15.4.2 Assetless Administration funding

Funding received from ASIC under the Assetless Administration Fund may be a limited or partial funding agreement. As such, if higher fees are incurred than the amount agreed with ASIC there is no restriction in the administration being charged for the shortfall on the basis that all Remuneration claimed is necessary and properly incurred in accordance with ARITA's Code.

Some funding received from ASIC from the assetless administration fund requires creditor approval prior to drawing and some types of funding can be paid directly to the practitioner without creditor approval. Practitioners should refer to RG 109 for ASIC guidance on when approval is required for assetless administration funding.

If approval is not required, any shortfall must be appropriately approved in accordance with the Corporations Act prior to drawing. In seeking creditor approval for any shortfall, Practitioners must provide separate disclosure of the total time charged, ASIC receipt(s) and any shortfall amount in the Remuneration report.

Practitioners must ensure that they do not "double dip" in relation to this Remuneration and that the amount received from ASIC is allocated to the Administration. To facilitate this Practitioners must ensure that any work undertaken for ASIC in relation the Assetless Administration Fund is appropriately identified in their time recording system, including an adjustment for any direct payments from ASIC.

15.4.3 Litigation funding

Remuneration from litigation funding from any source, must be:

- paid into and drawn from the Administration bank account; and
- disclosed and approved in accordance with the requirements detailed at chapters 14 and 15.

15.4.4 Creditor funding

Remuneration from funding by creditors provided for any purpose, must be:

- paid into and drawn from the Administration bank account; and
- disclosed and approved in accordance with the requirements detailed at chapters 14 and 15.

15.4.5 Secured creditor funding

Where secured assets are realised in the course of an Administration, except for Appointments as a Controller, any Remuneration in relation to the realisations, including funds withheld from realisations or payments made directly by the Secured creditor, must be:

- paid into and drawn from the Administration bank account; and
- disclosed and approved in accordance with the requirements detailed at chapters 14 and 15.

15.4.6 Indemnities and up-front payments

Remuneration drawn from an indemnity or an up-front payment provided for any purpose, must be disclosed and approved in accordance with the requirements detailed at chapters 14 and 15.

15.5 General guidance on reporting

The provision to creditors of voluminous detailed information is not a substitute for a clear and concise report. It is the *relevance, quality and focus* of the information rather than the quantity and detail that is important. Creditors and even committees are not necessarily conversant with insolvency issues and processes, nor do they have the capacity or time to understand WIP records. Creditors have the right to ask questions and have them answered and to inspect supporting documentation if requested.

The information provided to creditors must be:

- Sufficient – be in enough detail for the purposes for which it is prepared and in the context of the work done in the Administration;
- Meaningful – be presented in a way that allows creditors to understand what was done and why it was done;
- Clear – use non-technical terms so that what is being claimed is readily understandable;
- Relevant – limited to what is needed; and
- Concise.

A Practitioner should:

- provide information that is specific to the Administration, rather than generic;

- try and ensure that the level of information is proportionate to the size and complexity of the Administration;
- try to assist committee members or creditors by highlighting the key components of the Remuneration claim and any areas that committee members or creditors are likely to view as contentious; and
- provide a summary of relevant information.

Questions from creditors should be anticipated and not discouraged.

Additional information should be provided if requested.

15.6 At the meeting

At a meeting at which a request for approval of Remuneration is being considered, a Practitioner must:

- table the information provided to creditors/the committee in support of the Remuneration request; and
- ask creditors whether there are any questions before putting the resolutions for approval of Remuneration to the meeting.

It is not acceptable to wait until the meeting to provide the required information to creditors. Additional information provided at the meeting should be limited to:

- responding to creditors' questions; or
- clarifying information that has already been provided.

Introducing new information at the meeting disadvantages creditors who did not attend the meeting, or who provided proxies for the meeting based on the information provided prior to the meeting.

Refer to Chapter 24 for further information about meeting requirements.

15.7 Changing basis of Remuneration

The basis for claiming Remuneration may be changed with creditor consent, however changing the basis to time based is only possible if proper records have been kept of time and activity. Note the restriction on fixed fees in section 15.2.3.



16 Approval before drawing Remuneration

Principle 12: A Practitioner is only entitled to draw Remuneration once it is approved and according to the terms of the approval.

16.1 Drawing of Remuneration

A Practitioner is only entitled to draw Remuneration once it is approved, subject to the terms of the approval.

Evidence of the approval must be recorded and maintained on the file. In the case of a resolution of a meeting of creditors, or of the committee, the minutes must be prepared and lodged where required (for example, with ASIC for corporate Administrations). In the case of court-approved Remuneration, the court order must be obtained.

If a Practitioner draws Remuneration in accordance with the default provisions under the Corporations Act or Bankruptcy Act, this must be clearly documented on the Administration file.

If fees have been approved prospectively, in terms that allow them to be drawn at nominated hourly rates, the Practitioner must only draw the Remuneration progressively, on completion of the work, unless it is the final Remuneration account for the finalisation of the Administration.

In respect of percentage-based Remuneration, it is acceptable for the Practitioner to draw his or her Remuneration from each nominated realisation, provided that there are sufficient funds available to meet higher-ranking priority debts.

In respect of a contingency arrangement, fees may be drawn on the basis approved by creditors. Any conditions imposed by creditors when approving a contingency arrangement, (for example, independent assessment of the achievement of a result) must be satisfied before Remuneration is drawn.

In respect of fixed fees, the terms approved by creditors should be that the fixed amount may be drawn only at the conclusion of the Administration; or in specified amounts at nominated milestones in the Administration. Practitioners must not draw fixed fee Remuneration 'up-front'.

16.2 Monies received in advance

If a Practitioner is provided with money in advance for the costs of conducting a formal insolvency Administration, the Practitioner is not entitled to apply those monies against their Remuneration until their Remuneration is approved by the Approving body. For details of when it is acceptable to receive monies in advance refer to section 6.14.

16.3 Remuneration drawn inappropriately

If a Practitioner becomes aware that fees have been improperly taken, because, for example, the correct process has not been followed, the Practitioner must immediately repay the amount in question into the Administration account.



Remuneration may then only be redrawn on approval being obtained and an explanation as to why the fees were improperly taken must be provided to creditors at that time.

Fees and expenses incurred in rectifying inappropriately drawn fees must be borne by the Practitioner.