

**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**

**STATEMENT OF FACTS**

1. Pursuant to section 96 of the *Trusts Act 1973* (Qld) ("the Act"), a trustee may apply to the Court upon a written statement of facts for directions. This document sets out the facts relied upon by Mr John Park and Ms Ginette Muller in respect of one aspect of the further amended originating application in these proceedings filed on 16 December, 2015 ("**the Application**").

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**STATEMENT OF FACTS**

Filed on behalf of the Applicants

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2. Mr Park and Ms Muller are the liquidators and former voluntary administrators ("**Liquidators**") of LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**"). LMIM is, and remains, the responsible entity of the following managed investment schemes:-

- (a) the LM Australian Income Fund ARSN 133 497 917 ("**AIF**");
- (b) LM Australian Structured Products Fund ARSN 149 875 669 ("**ASPF**");
- (c) LM Cash Performance Fund ARSN 087 304 032 ("**CPF**");
- (d) LM First Mortgage Income Fund ARSN 089 343 288 ("**FMIF**");
- (e) LM Currency Protected Australian Income Fund ARSN 110 247 875 ("**CP-AIF**"); and
- (a) LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("**ICP-AIF**") (collectively, "**the Funds**").

3. The Liquidators have performed work which is for the benefit of or which is common to all of the Funds but is not particularly attributable to any one Fund.

4. The Liquidators propose to allocate their remuneration for that work across the Funds in proportion to the respective funds under management ("**FUM**") in each Fund.


5. FUM is calculated on the basis of book values of the underlying assets of each of the Funds. The data relating to those values has been taken from records maintained by LMIM for that purpose and updated by the Liquidators from time to time.

6. The only assets of the CP-AIF and the ICP-AIF ("**Feeder Funds**") are units in the FMIF. The Liquidators propose to exclude the Feeder Funds from the allocation of remuneration on the basis that including them would result in members of the Feeder Funds being charged twice.

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7. The Liquidators sought, and obtained, legal advice that FUM was a fair method of allocating their remuneration across the Funds.

8. The Liquidators seek directions to allocate such of their remuneration as may be approved in the proportions set out in the table which appears at page 592 to 593 of the Affidavit of John Park filed 28 January, 2016 and schedules 4 and 6 to the Application.



Signed: Russells  
Description: Solicitors for the First Defendant  
Dated: 22<sup>nd</sup> day of February, 2016