

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

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

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

AND

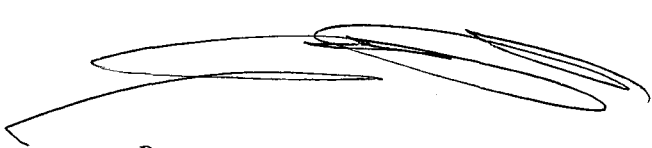
Second Applicant: LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)
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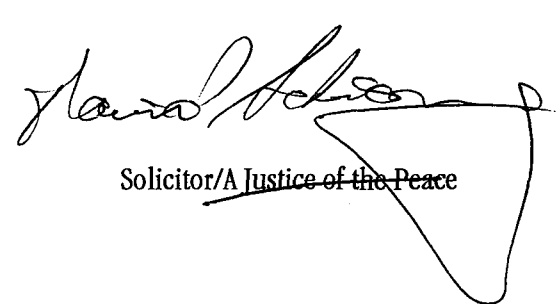
Respondent: DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE
WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089
343 288 PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT
2001

CERTIFICATE OF EXHIBIT
Volume 3 of 4

Bound and marked "DW-49" to "DW-62" is a bundle of exhibits to the Affidavit of DAVID WHYTE sworn
this 29th day of May 2017



Deponent



Solicitor/A Justice of the Peace

CERTIFICATE OF EXHIBIT:
Form 47, R.435

Filed on behalf of the Respondent,
Mr David Whyte

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INDEX OF EXHIBITS TO VOLUME 3 OF 4

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DW-49	FMIF financial statements for the year ended 30 June 2016	30.09.2016	422 – 444
DW-50	FMIF financial statements for the half year ended 31 December 2016	14.03.2017	445 – 468
DW-51	Report by David Whyte to FMIF members	31.03.2017	469 – 494
DW-52	Consolidated Particulars	09.05.2017	495 – 503
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DW-62	Claim and Statement of Claim Supreme Court proceeding no.: 12317/14	07.11.2016	637 – 655



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Level 10, 12 Creek St
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GPO Box 457 Brisbane QLD 4001
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30 September 2016

TO INVESTORS

Dear Member

**LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVERS AND MANAGERS APPOINTED)
(RECEIVER APPOINTED) ("THE FUND")**

I attach the unaudited accounts for the Fund for the year ending 30 June 2016.

The accounts have been prepared by collating the records maintained by the Fund and receipts and payments and other records of FTI and McGrathNicol.

The accounts have been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The accounts have been reviewed by the BDO audit team. However, their work does not constitute a full audit and therefore, the accounts are provided on an unaudited basis.

Should members require further information, please contact BDO on the details provided below.

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours sincerely

David Whyte
Court Appointed Receiver

Disclaimer:

The 30 June 2016 financial statements were compiled by BDO Business Restructuring Pty Ltd however we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**

ABN: 66 482 247 488

Report for the year ended 30 June 2016

Disclaimer

The 30 June 2016 financial statements were compiled by BDO Business Restructuring Pty Ltd but we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**

ABN: 66 482 247 488

Financial Statements for the year ended 30 June 2016

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The Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) is LM Investment Management Limited (ABN 68 077 208 461) (in Liquidation) (Receivers and Managers Appointed).

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF COMPREHENSIVE INCOME

For the year ended 30 June 2016

	Note	30 June 2016 \$	30 June 2015 \$
Income			
Fee revenue - mortgage loans		-	4,050
Interest revenue - cash assets		1,428,162	498,695
Other income		86,879	-
Realised gain on foreign exchange contracts		-	106,869
		<u>1,515,041</u>	<u>609,614</u>
Expenses			
Custodian fees	9	32,100	27,624
Custodian legal fees	9	383,984	-
Net impairment losses on mortgage loans	6	(1,355,411)	(26,633,748)
Unrealised foreign exchange losses on investor fund	2(r)	1,054,270	263,794
Realised loss on foreign exchange contracts		22,775	141,591
Other expenses	4	7,711,906	9,263,036
Total expenses excluding distributions to unitholders		<u>7,849,624</u>	<u>(16,937,703)</u>
Net profit (loss) before distributions to unitholders		(6,334,583)	17,547,317
Distributions paid/payable to unitholders	3	-	-
Net profit (loss) after distributions to unitholders		<u>(6,334,583)</u>	<u>17,547,317</u>
Other comprehensive income		-	-
Net profit (loss) after distributions to unitholders		(6,334,583)	17,547,317
Income tax expense		-	-
Changes in net assets attributable to unitholders after income tax expense		<u>(6,334,583)</u>	<u>17,547,317</u>

The Statement of Comprehensive Income is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF FINANCIAL POSITION

As at 30 June 2016

	Note	30 June 2016	30 June 2015
		\$	\$
ASSETS			
Cash and cash equivalents	11	75,226,396	41,863,342
Receivables	10	390,971	782,658
Loans & Receivables	6	5,475,536	43,333,916
TOTAL ASSETS		<u>81,092,903</u>	<u>85,979,916</u>
LIABILITIES			
Payables	7	7,822,479	7,429,179
Distributions payable		1,372,036	1,372,036
Total liabilities excluding net assets attributable to unitholders		<u>9,194,515</u>	<u>8,801,215</u>
NET ASSETS		<u>71,898,388</u>	<u>77,178,701</u>
Represented by:			
Net assets attributable to unitholders	5	<u>71,898,388</u>	<u>77,178,701</u>
(calculated in accordance with IFRS)			

The Statement of Financial Position is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

For the year ended 30 June 2016

		30 June 2016	30 June 2015
	Note	\$	\$
TOTAL			
Opening balance		77,178,701	59,366,610
Units issued during the year	5	-	980
Units redeemed during the year	5	-	-
Units issued on reinvestment of distributions		-	-
Changes in net assets attributable to unitholders		(6,334,583)	17,547,317
Foreign exchange (gain)/loss on investor funds	5	1,054,270	263,794
Closing Balance		<u>71,898,388</u>	<u>77,178,701</u>

The Statement of Changes in Net Assets Attributable to Unitholders is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF CASH FLOWS

For the year ended 30 June 2016

	Note	30 June 2016 \$	30 June 2015 \$
Cash flows from operating activities			
Interest received		1,235,691	529,469
Other operating expenses		(7,757,464)	(9,649,644)
Other income received		86,879	-
GST and withholding tax (paid)/received		584,157	(118,012)
Net cash inflow/(outflow) from operating activities	11(b)	(5,850,737)	(9,238,187)
Cash flows from investing activities			
Payments for secured mortgage loans	6(b)	(7,429,446)	(7,224,842)
Receipts from settled mortgage loans	6 (b)	46,643,237	50,585,291
Net cash inflow/(outflow) from investing activities		39,213,791	43,360,449
Cash flows from financing activities			
Repayment of facility		-	-
Cash paid on realisation of foreign exchange contracts		-	-
Receipts from the issue of units		-	980
Distributions paid		-	-
Payment for redemption of units		-	(1,090)
Net cash inflow/(outflow) from financing activities		-	(110)
Net increase/(decrease) in cash and cash equivalents		33,363,054	34,122,152
Cash and cash equivalents at beginning of year		41,863,342	7,741,190
Cash and cash equivalents at end of year	11 (a)	75,226,396	41,863,342

The Statement of Cashflows is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

1. CORPORATE INFORMATION

During the period March 2013 to August 2013, a series of insolvency events occurred in respect of both the Fund and the Responsible Entity for the Fund, these are detailed in the table below:

Date	Appointment
19 March 2013	John Park and Ginette Muller of FTI Consulting appointed as Administrators of LM Investment Management Ltd ("LMIM") being the Responsible Entity for the Fund.
11 July 2013	Joseph Hayes and Anthony Connelly of McGrathNicol appointed as Receivers and Managers of LMIM as the Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) ('LMFMIF', 'Scheme' or the 'Fund') by Deutsche Bank.
1 August 2013	John Park and Ginette Muller of FTI Consulting appointed as liquidators of LMIM.
8 August 2013	David Whyte of BDO appointed by the Court as Receiver of the assets of the Fund and as the person responsible for ensuring the Fund is wound up in accordance with its Constitution.

The Scheme is an Australian registered Scheme, constituted on 13 April 1999.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all periods presented, unless otherwise stated in the following text.

(a) Basis of accounting

This financial report has been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The financial report has also been prepared on a historical cost basis, except for financial assets and financial liabilities held at fair value through profit or loss, that have been measured at fair value.

The Statement of financial position is presented in decreasing order of liquidity and does not distinguish between current and non-current items. The amount expected to be recovered or settled within twelve months in relation to the balances cannot be reliably determined.

The financial report is presented in Australian Dollars (\$).

Statement of compliance

The financial statements have been prepared in accordance with the recognition and measurement requirements of the Australian Accounting Standards as issued by the Australian Accounting Standards Board and International Financial Reporting Standards as issued by the International Accounting Standards Board.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(a) Basis of accounting (Continued)

Status of investment in fund

During the 2009 year, the Responsible Entity closed the Scheme to new investors and suspended withdrawals subject to certain exceptions. Redemptions were suspended at this time, per the Constitution, as the Responsible Entity considered the suspension of the withdrawals to be in the best interest of the members of the Scheme.

The Scheme is now in the process of being formally wound up with redemptions and hardship provisions remaining suspended.

Liquidation Basis

Previous financial statements have been prepared on a going concern basis.

The financial statements for the periods ended 30 June 2013 onwards have not been prepared on a going concern basis due to the appointment of Administrators to the Responsible Entity for the Fund on 19 March 2013 and subsequently Liquidators on 1 August 2013 and the appointment of Receivers and Managers and Court Appointed Receiver and person responsible for ensuring it is wound up in accordance with its Constitution as detailed in Note 1. Accordingly, the financial statements for those periods have been prepared on a liquidation basis.

(b) New accounting standards and interpretations

Australian Accounting Standards and Interpretations that have recently been issued or amended but are not yet effective have not been adopted by the Scheme for the reporting period. The impact of these standards and interpretations that are not expected to have a material impact on the Scheme have not been included.

(c) Significant accounting judgements, estimates and assumptions

In the process of applying accounting policies, judgements and estimations have been made which have had an impact on the amounts recognised in the accounts. The key estimates and assumptions that have a significant risk of causing material adjustment to the carrying amounts of certain assets and liabilities within the next annual reporting period are:

Allowance for impairment loss on loans and receivables

The Scheme determines whether loans are impaired on an ongoing basis. Individually assessed provisions are raised where there is objective evidence of impairment, where the Scheme does not expect to receive all of the cash flows contractually due. Individually assessed provisions are made against individual facilities.

(d) Cash and cash equivalents

Cash and cash equivalents includes cash in hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts. For the purposes of the Statement of cash flows, cash and cash equivalents as defined above, net of outstanding bank overdrafts.

(e) Distribution income

Distribution income is recognised when the Scheme's right to receive income is established.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(f) Interest income

Interest income is recognised as the interest accrues using the effective interest rate method, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial instrument to the net carrying amount of the financial asset. Interest ceases to be recognised when a loan is in default and the principal is impaired.

(g) Default management fees

Income from default management fees is recognised in line with the executed agreement with the borrower when an event of default occurs.

(h) Changes in the fair value of investments

Gains or losses on investments held for trading are calculated as the difference between the fair value at sale, or at year end, and the fair value at the previous valuation point. This includes both realised and unrealised gains and losses.

(i) Fees, commissions and other expenses

Except where included in the effective interest calculation (for financial instruments carried at amortised cost), fees and commissions are recognised on an accrual basis. Audit and compliance fees are included with 'other expenses' and are recorded on an accrual basis.

(j) Financial instruments

Financial instruments in the scope of *AASB 139 Financial Instruments* are classified as either financial assets or financial liabilities at fair value through profit or loss, loans and receivables, held-to-maturity investments, available-for-sale investments or other financial liabilities as appropriate.

When financial assets are recognised initially, they are measured at fair value, plus, in the case of investments not at fair value through profit or loss, directly attributable transactions costs. The Scheme determines the classification of its financial assets at initial recognition.

All regular way purchases and sales of financial assets are recognised on the trade date i.e. the date that the Scheme commits to purchase the asset. Regular way purchases or sales are purchases or sales of financial assets under contracts that require delivery of the assets within the period established generally by regulation or convention in the marketplace.

i. Loans and receivables

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are initially measured at fair value including transaction costs directly attributable to the financial asset. After initial recognition, loans and receivables are carried at amortised cost using the effective interest method. Gains and losses are recognised in profit or loss when receivables are derecognised or impaired, as well as through the amortisation process.

Loans and receivables are assessed for impairment at each reporting period. An allowance is made for credit losses when there is objective evidence that the Scheme will not be able to collect the loans and receivables. Impairment losses are written off when identified. Losses expected as a result of future events are not recognised. If a provision

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(j) Financial instruments (Continued)

for impairment has been recognised in relation to the loan, write-offs for bad debts are made against the provision. If no provision for impairment has previously been recognised, write-offs for bad debts are recognised as an expense in the statement of comprehensive income.

A provision is made of loans in arrears where the collectability of the debts is considered doubtful by estimation of expected losses in relation to loan portfolios where specific identification is impracticable.

The components of impaired assets are as follows:

"Loans in arrears" are loans and advances for which there is reasonable doubt that the Scheme will be able to collect all amounts of principal and interest in accordance with the terms of the agreement.

"Assets acquired through the enforcement of security" are assets acquired in full or partial settlement of a loan or similar facility through the enforcement of security arrangements.

When it is determined that interest is not recoverable on certain impaired loans, the interest is suspended and not brought into income. Should the analysis of the collectability subsequently change the interest will be brought into income at the time it is determined to be collectable.

(k) Payables

Payables are carried at amortised costs and represent liabilities for goods and services provided to the Scheme prior to the end of the financial year and half year that are unpaid and arise when the Scheme becomes obliged to make future payments in respect of the purchases of these goods and services.

The distribution amount payable to investors as at the reporting date is a carried forward balance from a period prior to the appointment of the Court Appointed Receiver. This balance is recognised separately on the statement of financial position as unitholders are presently entitled, subject to confirmation, to the distributable income as at 30 June 2014 under the Scheme's constitution. Further investigation into the distributions payable is currently being undertaken.

(l) Increase/decrease in net assets attributable to unitholders

Non-distributable income is transferred directly to net assets attributable to unitholders and may consist of unrealised changes in the net fair value of investments, accrued income not yet assessable, expenses accrued for which are not yet deductible, net capital losses and tax free or tax deferred income. Net capital gains on the realisation of any investments (including any adjustments for tax deferred income previously taken directly to net assets attributable to unitholders) and accrued income not yet assessable will be included in the determination of distributable income in the same year in which it becomes assessable for tax. Excess and undistributed income is also transferred directly to net assets attributable to unitholders.

(m) Distributions

The Trustees for the LM Managed Performance Fund have put both the Receivers and Managers and the Court Appointed Receiver on notice of a potential claim against the Fund. In addition, the Receivers and Managers appointed to the Bellpac matter have put the Court Appointed Receiver on notice not to distribute funds until the proceedings are resolved.

The secured creditor is not in a position to release its security due to the potential claim against the Fund. Until the matters detailed above are resolved and funds released to the Court Appointed Receiver, distributions to investors cannot commence.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(n) Goods and services tax (GST)

The GST incurred on the costs of various services provided to the Responsible Entity by third parties such as audit fees, custodial services and investment management fees have been passed onto the Scheme. The Scheme qualifies for Reduced Input Tax Credits (RITC's) at a rate of 75%.

Investment management fees, custodial fees and other expenses have been recognised in the statement of comprehensive income net of the amount of GST recoverable from the Australian Taxation Office (ATO). Accounts payable are inclusive of GST. The net amount of GST recoverable from the ATO is included in the statement of cashflows on a gross basis.

The GST component of cash flows arising from investing and financing activities recoverable or payable to the ATO is classified as an operating cash flow.

(o) Applications and redemptions

Applications received for units in the Scheme are recorded when units are issued in the Scheme. Redemptions from the Scheme are recorded when the cancellation of units redeemed occurs. Unit redemption prices are determined by reference to the net assets of the Scheme divided by the number of units on issue.

Applications received in foreign currency denominations are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Foreign currency denominated unitholder funds are translated into the Schemes functional currency at balance date, using the spot rate prevailing at that date. Gains and losses arising from foreign exchange translation are recorded in the Statement of Comprehensive Income in the period in which they arise.

(p) Taxation

Under current legislation, the Scheme is not subject to income tax provided the distributable income of the Scheme is fully distributed either by way of cash or reinvestment (i.e. unitholders are presently entitled to the income of the Scheme).

(q) Interest-bearing loans and borrowings

All loans and borrowings are initially recognised at cost, being the fair value of the consideration received net of issue costs associated with the borrowing. After initial recognition, interest-bearing loans and borrowings are subsequently measured at amortised cost using the effective interest method. Amortised cost is calculated by taking into account any issue costs, and any discount or premium on settlement.

(r) Foreign currency translations

The Scheme's transactions in foreign currencies comprise applications and withdrawals of foreign currency unitholder funds and payment of distributions. Transactions in foreign currencies are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Monetary assets and liability denominated in foreign currencies and retranslated at the rate of exchange prevailing at the balance sheet date, and exchange rate gains and losses recognised in the statement of comprehensive income.

In relation to the total investor units, a discrepancy between the units recorded in the investor register and the units recorded in the audited and management accounts for the 2012 financial year has been identified. Investigations indicate that the discrepancy relates to the Fund's migration to a new financial database in 2010 whereby the units of investors who subscribed in a foreign currency were incorrectly recorded in the foreign currency equivalent amount, and not in the AUD equivalent amount in accordance with the PDS and Constitution. Legal advice has been sought in relation to addressing this issue and a further update will be provided in due course.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(s) Determination of fair value

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

The fair value for financial instruments not traded in an active market is determined using appropriate valuation techniques. Valuation techniques include: using recent arm's length market transactions; reference to the current market value of another instrument that is substantially the same; discounted cashflow analysis and option pricing models making as much use of available and supportable market data as possible.

(t) Estimated net asset amount per unit available to investors

The estimated amount of net assets available to investors are subject to the uncertainties indicated in this financial report.

The net assets of the fund and number of units on issue at the end of each of the periods is detailed in the table below:

	30 June 2016	30 June 2015
Estimated net amount of assets available to investors as at the period end (\$)	71,898,388	77,178,701
Total investor units (# of units)	478,100,386	478,537,325
Estimated net asset amount per unit available to investors as at the period end (cents in the dollar)	15	16.1

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**Notes to the financial statements for the year ended 30 June 2016****3. INCOME AND DISTRIBUTIONS TO UNITHOLDERS**

Distributions to unitholders

	30 June 2016	30 June 2015
	\$	\$
Distributions paid/reinvested	-	-
Distributions payable	-	-
	<u>-</u>	<u>-</u>

Distributions payable relates to distributions that were required to be paid under the Scheme's Constitution. These distributions relate to the period prior to the suspension of the distributions in January 2011.

In addition to these interest distributions, capital distributions were also paid to investors in February and June 2013. Capital distributions are reflected through redemption of units and a decrease in the unit price.

(a) Distributions paid

	30 June 2016	30 June 2015
	\$	\$
Class A	-	-
Class B	-	-
Class C	-	-
	<u>-</u>	<u>-</u>

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

4. OTHER EXPENSES

	30 June 2016	30 June 2015
	\$	\$
LM Administration Pty Ltd (in Liquidation) ("LMA") operational costs*		1,255,982
Receivers and Managers' fees and outlays (McGrathNicol)	711,441	1,056,994
Receivers and Managers' legal fees and outlays (McGrath Nicol)	253,087	292,561
LMA Liquidator fees and outlays (David Clout & Associates)		12,566
Other expenses	382,146	464,022
Court Appointed Receiver's fees & outlays (BDO) **	2,651,552	3,288,898
Court Appointed Receiver's legal fees (BDO)	2,817,888	2,140,258
LMIM's legal fees (FTI)	678,187	99,144
LMIM's Administrators and Liquidators fees and outlays (FTI) ***	217,605	652,611
	<u>7,711,906</u>	<u>9,263,036</u>

*LMA operational costs relate to services provided by LMA pursuant to a services agreement. This includes wages and salaries, insurance, rent and utilities.

** Denotes expenses which are subject to approval by the court.

The Court Appointed Receiver's fees & outlays are represented by the following amounts:

	30 June 2016	30 June 2015
	\$	\$
Court Appointed Receiver's investigations and other non-operating costs	1,344,254	1,027,240
Operating Costs of the Fund	<u>1,307,298</u>	<u>2,261,658</u>
Total	<u>2,651,552</u>	<u>3,288,898</u>

The Court Appointed Receiver's investigations and other non-operating costs include time costs in relation to the claim against the former auditors of the Fund, litigation matters which include claims against the MPF, LMIM and its directions and dealing with LMIM's court application in respect of the Liquidators' residual powers.

*** Denotes expenses which are subject to approval by the Receivers and Managers or the court.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

Movements in the net assets attributable to unitholders during the year were as follows:

Net assets attributable to unitholders	30 June 2016	30 June 2015
	\$	\$
Class A		
Opening balance	245,679,110	245,678,130
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	980
Closing balance	245,679,110	245,679,110
Class B		
Opening balance	220,196,311	220,196,311
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Closing balance	220,196,311	220,196,311
Class C		
Opening balance	11,170,694	10,906,900
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Foreign exchange (gain)/loss on investor funds	1,054,270	263,794
Closing balance	12,224,964	11,170,694
 Cumulative movement in changes in net assets	 (406,201,997)	 (399,867,414)
 Net assets attributable to unitholders	 71,898,388	 77,178,701

Class A

Class A consists of unitholders who are entitled to receive the declared distribution rate. There are a number of subclasses attached to class A. These consist of the following products with varying terms:

- 1) Flexi Account investment option
- 2) Fixed Term investment option
- 3) LM Savings Plan investment option

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS (Continued)

Class B

Class B consists of related Scheme unitholders.

Class C

Class C consists of unitholders who have invested in foreign currencies and are entitled to receive the declared distribution rate.

Subject to the comments relating to the status of the Scheme in note 2, all unitholders are entitled to receive distributions as declared from time to time and are entitled to one vote per unit at unitholders' meetings. As the Scheme is being wound up, all unitholders rank after creditors and are equally entitled to the proceeds of the winding up procedure.

6. LOANS AND RECEIVABLES

	30 June 2016	30 June 2015
	\$	\$
Secured mortgage loans	74,341,624	159,557,989
Provision for impairment	(68,866,088)	(116,224,073)
	<u>5,475,536</u>	<u>43,333,916</u>

Loans and receivables are initially measured at the fair value including transaction costs and subsequently measured at amortised cost after initial recognition. Loans and Receivables are assessed for impairment at each reporting date. Where impairment indicators exist, the recoverable amount of the loan will be determined and compared to its carrying amount to determine whether any impairment losses exists. Impairment losses are recognised when the recoverable amount under the individual loan is less than the carrying amount of that loan.

Material uncertainty regarding recoverability of Loans and Receivables

For loans in default, an impairment indicator arises which requires the recoverable amount of that loan to be determined. The recoverable amount for each individual loan in default has been determined from independent valuations of the assets forming the security for the loans. The valuations are based on current market conditions and provide for appropriate exposure to the market and an orderly realisation of assets forming the security for the loans.

In determining the recoverable amounts, there are uncertainties involved in assessing the market values and the ability to realise those market values, particularly where the market is not active. Consequently, it is likely that there may be differences between the amounts at which the Loans and Receivables are recorded at in the financial statements for the period ended 30 June 2014, and the amounts that are actually realised. Such differences may be material. Accordingly, there is a material uncertainty regarding recoverability of Loans and Receivables.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

6. LOANS AND RECEIVABLES (Continued)

(a) Provisions for impairment

The impairment loss expense relating to loans and receivables comprises:

	30 June 2016	30 June 2015
	\$	\$
Opening balance	116,224,073	299,158,892
Impairment losses provided for (recoveries) during the period	(1,355,411)	(26,633,748)
Impairment losses realised during the period	(46,002,574)	(156,301,071)
Closing balance	68,866,088	116,224,073
Total provision for impairment	68,866,088	116,224,073

(b) Movement in default loans

	30 June 2016	30 June 2015
	\$	\$
Gross default loans opening balance	159,557,989	359,219,509
New and increased default loans	7,429,446	7,224,842
Balances written off	(46,002,574)	(156,301,071)
Repaid	(46,643,237)	(50,585,291)
Gross default loans closing balance	74,341,624	159,557,989
Specific provision	(68,866,088)	(116,224,073)
Net default loans	5,475,536	43,333,916

7. PAYABLES

Payables are carried at cost and represent liabilities for goods and services provided to the Fund prior to the period end but have not yet been paid.

	30 June 2016	30 June 2015
	\$	\$
Accounts payable	7,822,479	7,429,179
	7,822,479	7,429,179

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

8. INTEREST BEARING LOANS AND BORROWINGS

Interest bearing loans and borrowings relates to facilities with external providers. In July 2010, the RE entered into a new facility with an external financier, Deutsche Bank. Deutsche Bank holds a fixed and floating charge over the assets of the Fund.

As indicated in Note 1, McGrathNicol were appointed as Receivers and Managers of the Fund by Deutsche Bank as a result of a default of the finance facility by the Fund for this secured loan.

There has been a progressive sell down of the assets of the Fund which has enabled \$14.1M of the loan to be repaid during the 2013 financial year and \$21.5M between July and December 2013. The facility was repaid in full in January 2014.

As mentioned in the Court Appointed Receiver's reports to investors, whilst the secured creditor has been repaid in full, the Receivers and Managers appointed by the secured creditor have advised that they are not yet in a position to retire until the potential claim by KordaMentha as the new trustee of the LM Managed Performance Fund is resolved.

KordaMentha, acting as trustee of the MPF has put the Court Appointed Receiver and the Receivers and Managers appointed by the secured creditor on notice of a potential claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("LMIM") and/or the Fund in relation to potential breaches of trust.

9. RELATED PARTIES

Responsible Entity ('RE')

The RE for the Fund is LM Investment Management Ltd (in Liquidation) ('LMIM'). The transactions recorded relate to fees and expenses incurred during the period up to 31 December 2015 which are subject to the approval of the Court. The Liquidators of LMIM have advised that they are awaiting the decision of Jackson J on the matter heard before His Honour on 14 March 2016 before seeking to identify and prepare any further indemnity claim in relation to the Liquidators' remuneration and out of pocket expenses.

Custodian

The Custodian of the Fund is The Trust Company (PTAL) Ltd. The Custodian's fees include a claim for legal fees payable under the custodian agreement. The legal fees were incurred by the custodian defending an action brought by a mortgagor of the Scheme.

	30 June 2016	30 June 2015
	\$	\$
<u>Custodian</u>		
Custodian's fees paid by the Scheme	32,100	27,624
Custodian's legal fees	383,984	-
<u>LMIM (FTI Consulting)</u>		
LMIM's legal fees (FTI)	678,187	99,144
LMIM's Administrators and Liquidators fees and outlays (FTI) *	217,605	652,611

* Denotes expenses which are subject to approval by the court

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

10. RECEIVABLES

Prior to 1 January 2014, receivables consisted of the interest on the loans for the period from the 18th of the month, when the interest is run until the end of the month and GST which is due at 30 June 2013 and 31 December 2013. From 1 January 2014, interest was suspended and not brought to account as it is considered that the amounts are not ultimately recoverable from the sale proceeds of the property.

	30 June 2016	30 June 2015
	\$	\$
Term deposit interest receivable	192,470	-
GST receivable	198,501	782,658
	<u>390,971</u>	<u>782,658</u>

11. CASH AND CASH EQUIVALENTS

(a) Reconciliation of cash and cash equivalents

For the purposes of the Statement of Financial Position, the cash and cash equivalents comprise of cash at bank and in hand. The cash at bank earns interest at floating rates based on the daily bank deposit rates. The cash at bank figure includes monies held in foreign exchange margin accounts and not available for use.

	30 June 2016	30 June 2015
	\$	\$
Cash at bank	<u>75,226,396</u>	<u>41,863,342</u>

As at 30 June 2016, \$215,306.51 (30 June 2015: \$238,081) of cash at bank was held in foreign exchange margin accounts and was not available for use by the Scheme.

(b) Reconciliation of change in net assets attributable to unitholders to net cash flows from operating activities

	30 June 2016	30 June 2015
	\$	\$
Change in net assets attributable to unitholders	(6,334,583)	17,547,317
<i>Adjustments for:</i>		
Non-cash impairment expense	(1,355,411)	(26,633,748)
(Gains)/loss on foreign exchange contracts	22,775	34,721
(Gains)/loss on investor funds/foreign exchange adjustments	1,054,270	263,794
(increase)/decrease in other receivables	391,687	(118,012)
Increase/(decrease) in payables	370,526	(332,259)
Net cash flows from/(used in) operating activities	<u>(5,850,737)</u>	<u>(9,238,187)</u>

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

12. INTEREST REVENUE

Interest revenue relates to interest received on funds held in the bank accounts and interest charged on the loans.

Interest on loans is suspended and not brought to account when it is considered that the amounts are not ultimately recoverable from the sale proceeds of the property.

13. CONTINGENT LIABILITIES

Advisor Commissions

The Fund has historically recognised a liability for advisor commissions paid to advisors from the Fund. The agreements providing for these advisor commissions appear to have been entered into between the Responsible Entity in its own legal capacity rather than as trustee and Responsible Entity for the Fund. It also appears that conditions existed in the period from 1 July 2010 such that advisor commissions may not have been payable in accordance with the Fund Constitution from Fund property. The liability for advisor commissions as at 30 June 2012 of \$4,762,674 has therefore been derecognised as a liability of the Fund during the year ended 30 June 2013.

Accordingly, the Fund has disclosed a contingent liability of \$4,762,674 as at 30 June 2013 to the Responsible Entity for this amount.

The contingent liability relates to advisor commissions to brokers of the Fund that were referable to the period 1 July 2010 to 30 November 2013. The Responsible Entity has sought to disclaim the advisor commission arrangements.

Given this matter has not been resolved, we believe it is prudent to provide this note as a contingent liability.

Claim by KordaMentha as Trustee of the LM Performance Fund

In August 2014, KordaMentha Pty Ltd and Calibre Capital Pty Ltd as trustees of the MPF filed (but did not initially serve) two proceedings against LMIM relating to two loans that were allegedly assigned from the FMIF to the MPF on 28 August 2008, seeking relief including declarations of constructive trust against assets of the Fund. Calibre Capital Pty Ltd has since resigned as trustee of the MPF, and has been removed as a party to the proceedings.

The proceedings have now been served.

On the application of David Whyte, as Receiver of the property of FMIF, orders were made on 17 December 2015 adding him as second defendant in each proceeding and for the plaintiff, KordaMentha as trustee of the MPF to file second further amended statements of claim (2nd FASOC's). The 2nd FASOC's were filed on 29 February 2016 and varied the relief sought by, inter alia, deleting the constructive trust claim. The following relief is presently sought by the plaintiff, in each proceeding:

- Equitable compensation against LMIM, interest and costs
- Declarations that:
 - LMIM is entitled to be indemnified out of FMIF assets in respect of its liability to the plaintiff in the proceeding;
 - LMIM has a lien or charge over FMIF assets in respect of its liability to the plaintiff in the proceeding;
 - the plaintiff is entitled to be subrogated to the rights of LMIM in respect of the assets of FMIF.
- Further and in the alternative, Declarations that:
 - the plaintiff and FMIF unitholders rank equally in the Fund;
 - the plaintiff is entitled to a rateable distribution in the Fund in relation to the settlement sum and interest paid by LMIM as trustee of the MPF to LMIM as RE of the FMIF under the Deed of Assignment;
 - the plaintiff is entitled to an equitable charge or lien to the extent of its rateable distribution.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

13. CONTINGENT LIABILITIES (Continued)

On 19 April 2016 the plaintiff filed and served 3rd FASOC's in each proceeding in which certain paragraphs were raised issue with were deleted, an attempt was made to reformulate the allegations and the loss in which equitable relief is claimed has now been quantified at \$24.1M plus interest and costs. Changes were also made to the relief claimed such that the only proprietary claim that remains in each proceeding against the assets of the FMIF is that the first defendant (LMIM) is entitled to indemnity out of the assets of the FMIF and the plaintiffs are entitled to subrogate to the rights of the first defendant in relation the indemnity.

Mr Whyte applied on 27 May 2016 to strike out certain parts of the 3rd FASOCs which, if successful, would have resulted in the claims founded upon a claim to indemnity from the FMIF being largely struck out. The strike out applications were heard on 31 May 2016 with the decision reserved. On 19 August 2016 Justice Applegarth delivered judgement on the applications. A key issue that was subject to argument on the hearing of the applications was whether the indemnity claim should be struck out. His Honour declined to strike out the indemnity claim after concluding that the plaintiff's pleaded indemnity claim is "at least arguable". His Honour noted that the plaintiff in each proceeding has agreed to effect certain other amendments to the pleading and to provide certain further particulars.

The parties have been requested to attempt to agree a form of order, and an appropriate order as to costs of the application and, thereafter, to list the proceedings for further review.

14. LITIGATION MATTERS

Claim against the former auditors

A public examination (PE) of the former auditors and certain directors and former directors (Directors) of LM Investment Management Limited (In Liquidation) was conducted over a period of 9 days in June 2015 and a further 9 days in October 2015.

Following the PEs, a further amended statement of claim was filed by me in the Supreme Court of Queensland and served on the former auditors of the Fund on 14 April 2016.

The former auditors' solicitors lodged and served on me a strike-out application and supporting affidavit on 27 April 2016 seeking to strike-out certain parts of the statement of claim. The hearing of the strike out application was adjourned to a date to be fixed by consent to enable appropriate directions to be made for the parties to exchange and file any further affidavit material and written submissions in advance of the hearing of the strike out application

On 30 May 2016, I filed an application to place the proceedings on the Court's commercial list. This application was also adjourned to a date to be fixed.

On 2 August 2016, I filed a second further amended statement of claim. Pursuant to the timetable ordered by the Court, the defendants had until 27 September 2016 to file and serve any submissions and affidavits in support of their strike out application (this has now been received and is being considered) and I have until 8 November 2016 to file and serve any submissions and affidavits in response.

The hearing of the strike out application and the commercial list application is set down for 15 December 2016.

Wollongong Coal Ltd – Convertible Bonds

There are \$8 million in convertible bonds in Wollongong Coal Limited (WCL) which was the subject of a successful application to the Federal Court acknowledging that Bellpac (under the control of its liquidators) is the true owner.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2016

14. LITIGATION MATTERS (continued)

The defendants appealed the decision, which was unsuccessful, however, on 12 July 2016, the defendants made application for special leave to the High Court of Australia to appeal the decision of the Federal Court. The parties have made submissions and filed an appeal book with the Court. The decision on the application for special leave is pending and is expected to be decided in October 2016.

In January 2016, the Bellpac Liquidator applied for the conversion of the bonds to shares. Under the terms of the Bonds, WCL is required to issue the shares within 7 days after the end of January 2016 (Due Date) which it failed to do. Instead WCL issued part of the shares in early February 2016 and the balance of the shares after resolution of its members, in May 2016.

As WCL did not issue the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds by

- Redeeming all of the Bonds which were not converted by the Due Date; and
- Pay to the Liquidator \$8M or such other amount being the nominal principal value of the unconverted Bonds (those issued in May 2016), plus interest.

WCL has now made application for security for costs against the Liquidator. The proceedings are continuing.



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GPO Box 457 Brisbane QLD 4001
Australia

14 March 2017

TO INVESTORS

Dear Member

**LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVERS AND MANAGERS APPOINTED)
(RECEIVER APPOINTED) ("THE FUND")**

I attach the unaudited accounts for the Fund for the half year ending 31 December 2016.

The accounts have been prepared by collating the records maintained by the Fund and receipts and payments and other records of FTI and McGrathNicol.

The accounts have been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The accounts have been reviewed by the BDO audit team. However, their work does not constitute a full audit and therefore, the accounts are provided on an unaudited basis.

Should members require further information, please contact BDO on the details provided below.

BDO

GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours sincerely

David Whyte
Court Appointed Receiver

Disclaimer:

The 31 December 2016 financial statements were compiled by BDO Business Restructuring Pty Ltd however we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

Document11

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**

ABN: 66 482 247 488

Report for the half-year ended 31 December 2016

Disclaimer

The 31 December 2016 financial statements were compiled by BDO Business Restructuring Pty Ltd but we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)**

ABN: 66 482 247 488

Financial Statements for the half-year ended 31 December 2016

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The Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) is LM Investment Management Limited (ABN 68 077 208 461) (in Liquidation) (Receivers and Managers Appointed).

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF COMPREHENSIVE INCOME

For the half-year ended 31 December 2016

	Note	31 December 2016 \$	31 December 2015 \$
Income			
Fee revenue - mortgage loans		-	-
Interest revenue - cash assets		807,872	610,889
Other Income		-	1,704
		<u>807,872</u>	<u>612,593</u>
Expenses			
Custodian fees	9	30,750	84,052
Custodian legal fees	9	40,584	-
Net Impairment losses on mortgage loans	6	164,214	4,060,120
Unrealised foreign exchange losses on investor fund		(104,257)	1,275,678
Unrealised loss on foreign exchange contracts		3,175	26,252
Other expenses	4	2,219,260	4,609,912
Total expenses excluding distributions to unitholders		<u>2,353,726</u>	<u>10,056,014</u>
Net profit (loss) before distributions to unitholders		(1,545,854)	(9,443,421)
Distributions paid/payable to unitholders	3	-	-
Net profit (loss) after distributions to unitholders		<u>(1,545,854)</u>	<u>(9,443,421)</u>
Other comprehensive income		-	-
Net profit (loss) after distributions to unitholders		(1,545,854)	(9,443,421)
Income tax expense		-	-
Changes in net assets attributable to unitholders after income tax expense		<u>(1,545,854)</u>	<u>(9,443,421)</u>

The Statement of Comprehensive Income is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF FINANCIAL POSITION

As at 31 December 2016

	Note	31 December 2016 \$	30 June 2016 \$
ASSETS			
Cash and cash equivalents	11	71,788,873	75,226,396
Receivables	10	200,408	390,971
Loans & Receivables	6	5,448,657	5,475,536
TOTAL ASSETS		<u>77,437,938</u>	<u>81,092,903</u>
 LIABILITIES			
Payables	7	5,817,625	7,822,479
Distributions payable		1,372,036	1,372,036
Total liabilities excluding net assets attributable to unitholders		<u>7,189,661</u>	<u>9,194,515</u>
 NET ASSETS		<u>70,248,277</u>	<u>71,898,388</u>
 Represented by:			
Net assets attributable to unitholders	5	<u>70,248,277</u>	<u>71,898,388</u>
(calculated in accordance with IFRS)			

The Statement of Financial Position is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

For the half-year ended 31 December 2016

	Note	31 December 2016 \$	30 June 2016 \$
TOTAL			
Opening balance		71,898,388	77,178,701
Units issued during the year	5	-	-
Units redeemed during the year	5	-	-
Units issued on reinvestment of distributions		-	-
Changes in net assets attributable to unitholders		(1,545,854)	(6,334,583)
Foreign exchange (gain)/loss on investor funds	5	(104,257)	1,054,270
Closing Balance		<u>70,248,277</u>	<u>71,898,388</u>

The Statement of Changes in Net Assets Attributable to Unitholders is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
STATEMENT OF CASH FLOWS

For the half-year ended 31 December 2016

	Note	31 December 2016	31 December 2015
		\$	\$
Cash flows from operating activities			
Interest and distributions received		807,873	610,889
Other operating expenses		(4,298,624)	(3,191,177)
Other income received		-	1,704
GST and withholding tax (paid)/received		190,563	433,430
Net cash inflow/(outflow) from operating activities	11(b)	(3,300,188)	(2,145,154)
Cash flows from investing activities			
Payments for secured mortgage loans	6(b)	(146,432)	(7,093,059)
Receipts from settled mortgage loans	6 (b)	9,097	22,475,431
Net cash inflow/(outflow) from investing activities		(137,335)	15,382,372
 Net increase/(decrease) in cash and cash equivalents		 (3,437,523)	 13,237,218
 Cash and cash equivalents at beginning of year		 75,226,396	 41,863,342
 Cash and cash equivalents at end of year	11 (a)	 71,788,873	 55,100,560

The Statement of Cashflows is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

1. CORPORATE INFORMATION

During the period March 2013 to August 2013, a series of insolvency events occurred in respect of both the Fund and the Responsible Entity for the Fund, these are detailed in the table below:

Date	Appointment
19 March 2013	John Park and Ginette Muller of FTI Consulting appointed as Administrators of LM Investment Management Ltd ("LMIM") being the Responsible Entity for the Fund.
11 July 2013	Joseph Hayes and Anthony Connelly of McGrathNicol appointed as Receivers and Managers of LMIM as the Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) ('LMFMIF', 'Scheme' or the 'Fund') by Deutsche Bank.
1 August 2013	John Park and Ginette Muller of FTI Consulting appointed as liquidators of LMIM.
8 August 2013	David Whyte of BDO appointed by the Court as Receiver of the assets of the Fund and as the person responsible for ensuring the Fund is wound up in accordance with its Constitution.

The Scheme is an Australian registered Scheme, constituted on 13 April 1999.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all periods presented, unless otherwise stated in the following text.

(a) Basis of accounting

This financial report has been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The financial report has also been prepared on a historical cost basis, except for financial assets and financial liabilities held at fair value through profit or loss, that have been measured at fair value.

The Statement of financial position is presented in decreasing order of liquidity and does not distinguish between current and non-current items. The amount expected to be recovered or settled within twelve months in relation to the balances cannot be reliably determined.

The financial report is presented in Australian Dollars (\$).

Statement of compliance

The financial statements have been prepared in accordance with the recognition and measurement requirements of the Australian Accounting Standards as issued by the Australian Accounting Standards Board and International Financial Reporting Standards as issued by the International Accounting Standards Board.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(a) Basis of accounting (Continued)

Status of investment in fund

During the 2009 year, the Responsible Entity closed the Scheme to new investors and suspended withdrawals subject to certain exceptions. Redemptions were suspended at this time, per the Constitution, as the Responsible Entity considered the suspension of the withdrawals to be in the best interest of the members of the Scheme.

The Scheme is now in the process of being formally wound up with redemptions and hardship provisions remaining suspended.

Liquidation Basis

Previous financial statements have been prepared on a going concern basis.

The financial statements for the periods ended 30 June 2013 onwards have not been prepared on a going concern basis due to the appointment of Administrators to the Responsible Entity for the Fund on 19 March 2013 and subsequently Liquidators on 1 August 2013 and the appointment of Receivers and Managers and Court Appointed Receiver and person responsible for ensuring it is wound up in accordance with its Constitution as detailed in Note 1. Accordingly, the financial statements for those periods have been prepared on a liquidation basis.

(b) New accounting standards and interpretations

Australian Accounting Standards and Interpretations that have recently been issued or amended but are not yet effective have not been adopted by the Scheme for the reporting period. The impact of these standards and interpretations are not expected to have a material impact on the Scheme have not been included.

(c) Significant accounting judgements, estimates and assumptions

In the process of applying accounting policies, judgements and estimations have been made which have had an impact on the amounts recognised in the accounts. The key estimates and assumptions that have a significant risk of causing material adjustment to the carrying amounts of certain assets and liabilities within the next annual reporting period are:

Allowance for impairment loss on loans and receivables

The Scheme determines whether loans are impaired on an ongoing basis. Individually assessed provisions are raised where there is objective evidence of impairment, where the Scheme does not expect to receive all of the cash flows contractually due. Individually assessed provisions are made against individual facilities.

(d) Cash and cash equivalents

Cash and cash equivalents includes cash in hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts. For the purposes of the Statement of cash flows, cash and cash equivalents as defined above, net of outstanding bank overdrafts.

(e) Distribution income

Distribution income is recognised when the Scheme's right to receive income is established.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(f) Interest income

Interest income is recognised as the interest accrues using the effective interest rate method, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial instrument to the net carrying amount of the financial asset. Interest ceases to be recognised when a loan is in default and the principal is impaired.

(g) Default management fees

Income from default management fees is recognised in line with the executed agreement with the borrower when an event of default occurs.

(h) Changes in the fair value of investments

Gains or losses on investments held for trading are calculated as the difference between the fair value at sale, or at year end, and the fair value at the previous valuation point. This includes both realised and unrealised gains and losses.

(i) Fees, commissions and other expenses

Except where included in the effective interest calculation (for financial instruments carried at amortised cost), fees and commissions are recognised on an accrual basis. Audit and compliance fees are included with 'other expenses' and are recorded on an accrual basis.

(j) Financial instruments

Financial instruments in the scope of *AASB 139 Financial Instruments* are classified as either financial assets or financial liabilities at fair value through profit or loss, loans and receivables, held-to-maturity investments, available-for-sale investments or other financial liabilities as appropriate.

When financial assets are recognised initially, they are measured at fair value, plus, in the case of investments not at fair value through profit or loss, directly attributable transactions costs. The Scheme determines the classification of its financial assets at initial recognition.

All regular way purchases and sales of financial assets are recognised on the trade date i.e. the date that the Scheme commits to purchase the asset. Regular way purchases or sales are purchases or sales of financial assets under contracts that require delivery of the assets within the period established generally by regulation or convention in the marketplace.

i. Loans and receivables

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are initially measured at fair value including transaction costs directly attributable to the financial asset. After initial recognition, loans and receivables are carried at amortised cost using the effective interest method. Gains and losses are recognised in profit or loss when receivables are derecognised or impaired, as well as through the amortisation process.

Loans and receivables are assessed for impairment at each reporting period. An allowance is made for credit losses when there is objective evidence that the Scheme will not be able to collect the loans and receivables. Impairment losses are written off when identified. Losses expected as a result of future events are not recognised. If a provision

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(j) Financial instruments (Continued)

for impairment has been recognised in relation to the loan, write-offs for bad debts are made against the provision. If no provision for impairment has previously been recognised, write-offs for bad debts are recognised as an expense in the statement of comprehensive income.

A provision is made of loans in arrears where the collectability of the debts is considered doubtful by estimation of expected losses in relation to loan portfolios where specific identification is impracticable.

The components of impaired assets are as follows:

“Loans in arrears” are loans and advances for which there is reasonable doubt that the Scheme will be able to collect all amounts of principal and interest in accordance with the terms of the agreement.

“Assets acquired through the enforcement of security” are assets acquired in full or partial settlement of a loan or similar facility through the enforcement of security arrangements.

When it is determined that interest is not recoverable on certain impaired loans, the interest is suspended and not brought into income. Should the analysis of the collectability subsequently change the interest will be brought into income at the time it is determined to be collectable.

(k) Payables

Payables are carried at amortised costs and represent liabilities for goods and services provided to the Scheme prior to the end of the financial year and half year that are unpaid and arise when the Scheme becomes obliged to make future payments in respect of the purchases of these goods and services.

The distribution amount payable to investors as at the reporting date is a carried forward balance from a period prior to the appointment of the Court Appointed Receiver. This balance is recognised separately on the statement of financial position as unitholders are presently entitled, subject to confirmation, to the distributable income as at 30 June 2014 under the Scheme’s constitution. Further investigation into the distributions payable is currently being undertaken.

(l) Increase/decrease in net assets attributable to unitholders

Non-distributable income is transferred directly to net assets attributable to unitholders and may consist of unrealised changes in the net fair value of investments, accrued income not yet assessable, expenses accrued for which are not yet deductible, net capital losses and tax free or tax deferred income. Net capital gains on the realisation of any investments (including any adjustments for tax deferred income previously taken directly to net assets attributable to unitholders) and accrued income not yet assessable will be included in the determination of distributable income in the same year in which it becomes assessable for tax. Excess and undistributed income is also transferred directly to net assets attributable to unitholders.

(m) Distributions

The Trustees for the LM Managed Performance Fund have put both the Receivers and Managers and the Court Appointed Receiver on notice of a potential claim against the Fund.

The secured creditor is not in a position to release its security due to the potential claim against the Fund. Until the matter detailed above is resolved and funds released to the Court Appointed Receiver, distributions to investors cannot commence.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(n) Goods and services tax (GST)

The GST incurred on the costs of various services provided to the Responsible Entity by third parties such as audit fees, custodial services and investment management fees have been passed onto the Scheme. The Scheme qualifies for Reduced Input Tax Credits (RITC's) at a rate of 75%.

Investment management fees, custodial fees and other expenses have been recognised in the statement of comprehensive income net of the amount of GST recoverable from the Australian Taxation Office (ATO). Accounts payable are inclusive of GST. The net amount of GST recoverable from the ATO is included in the statement of cashflows on a gross basis.

The GST component of cash flows arising from investing and financing activities recoverable or payable to the ATO is classified as an operating cash flow.

(o) Applications and redemptions

Applications received for units in the Scheme are recorded when units are issued in the Scheme. Redemptions from the Scheme are recorded when the cancellation of units redeemed occurs. Unit redemption prices are determined by reference to the net assets of the Scheme divided by the number of units on issue.

Applications received in foreign currency denominations are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Foreign currency denominated unitholder funds are translated into the Schemes functional currency at balance date, using the spot rate prevailing at that date. Gains and losses arising from foreign exchange translation are recorded in the Statement of Comprehensive Income in the period in which they arise.

(p) Taxation

Under current legislation, the Scheme is not subject to income tax provided the distributable income of the Scheme is fully distributed either by way of cash or reinvestment (i.e. unitholders are presently entitled to the income of the Scheme).

(q) Interest-bearing loans and borrowings

All loans and borrowings are initially recognised at cost, being the fair value of the consideration received net of issue costs associated with the borrowing. After initial recognition, interest-bearing loans and borrowings are subsequently measured at amortised cost using the effective interest method. Amortised cost is calculated by taking into account any issue costs, and any discount or premium on settlement.

(r) Foreign currency translations

The Scheme's transactions in foreign currencies comprise applications and withdrawals of foreign currency unitholder funds and payment of distributions. Transactions in foreign currencies are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Monetary assets and liability denominated in foreign currencies and retranslated at the rate of exchange prevailing at the balance sheet date, and exchange rate gains and losses recognised in the statement of comprehensive income.

In relation to the total investor units, a discrepancy between the units recorded in the investor register and the units recorded in the audited and management accounts for the 2012 financial year has been identified. Investigations indicate that the discrepancy relates to the Fund's migration to a new financial database in 2010 whereby the units of investors who subscribed in a foreign currency were incorrectly recorded in the foreign currency equivalent amount, and not in the AUD equivalent amount in accordance with the PDS and Constitution. Legal advice has been sought in relation to addressing this issue and a further update will be provided in due course.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(s) Determination of fair value

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

The fair value for financial instruments not traded in an active market is determined using appropriate valuation techniques. Valuation techniques include: using recent arm's length market transactions; reference to the current market value of another instrument that is substantially the same; discounted cashflow analysis and option pricing models making as much use of available and supportable market data as possible.

(t) Estimated net asset amount per unit available to investors

The estimated amount of net assets available to investors are subject to the uncertainties indicated in this financial report.

The net assets of the fund and number of units on issue at the end of each of the periods is detailed in the table below:

	31 December 2016	30 June 2016
Estimated net amount of assets available to investors as at the period end (\$)	70,248,277	71,898,388
Total investor units (# of units)	477,996,128	478,100,386
Estimated net asset amount per unit available to investors as at the period end (cents in the dollar)	0.15	0.15

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

3. INCOME AND DISTRIBUTIONS TO UNITHOLDERS

Distributions to unitholders

	31 December 2016	31 December 2015
	\$	\$
Distributions paid/reinvested	-	-
Distributions payable	-	-
	<u>-</u>	<u>-</u>

Distributions payable relates to distributions that were required to be paid under the Scheme's Constitution. These distributions relate to the period prior to the suspension of the distributions in January 2011.

In addition to these interest distributions, capital distributions were also paid to investors in February and June 2013. Capital distributions are reflected through redemption of units and a decrease in the unit price.

(a) Distributions paid

	31 December 2016	31 December 2015
	\$	\$
Class A	-	-
Class B	-	-
Class C	-	-
	<u>-</u>	<u>-</u>

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

4. OTHER EXPENSES

	31 December 2016	31 December 2015
	\$	\$
Receivers and Managers' fees and outlays (McGrathNicol)	286,138	460,209
Receivers and Managers' legal fees and outlays (McGrath Nicol)**	8,156	149,674
Other expenses	108,811	150,031
Court Appointed Receiver's fees & outlays (BDO) **	1,027,130	1,245,128
Court Appointed Receiver's legal fees (BDO)	789,025	1,984,535
LMIM's legal fees (FTI)	-	402,730
LMIM's Administrators and Liquidators fees and outlays (FTI) ***	-	217,605
	<u>2,219,260</u>	<u>4,609,912</u>

** Denotes expenses which are subject to approval by the court.

*** Denotes expenses which are subject to approval by the Receivers and Managers or the court.

The Court Appointed Receiver's fees & outlays are represented by the following amounts:

	31 December 2016	31 December 2015
	\$	\$
Court Appointed Receiver's investigations and other non-operating costs	521,572	739,870
Operating Costs of the Fund	<u>505,558</u>	<u>505,258</u>
Total	1,027,130	1,245,128

The Court Appointed Receiver's investigations and other non-operating costs include time costs in relation to the claim against the former auditors of the Fund, and litigation matters which include claims against the MPF, LMIM and its directors.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

Movements in the net assets attributable to unitholders during the year were as follows:

	31 December 2016	30 June 2016
	\$	\$
Class A		
Opening balance	245,679,110	245,679,110
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Closing balance	245,679,110	245,679,110
Class B		
Opening balance	220,196,311	220,196,311
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Closing balance	220,196,311	220,196,311
Class C		
Opening balance	12,224,964	11,170,694
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Foreign exchange (gain)/loss on investor funds	(104,257)	1,054,270
Closing balance	12,120,707	12,224,964
 Cumulative movement in changes in net assets	 (407,747,851)	 (406,201,997)
 Net assets attributable to unitholders	 70,248,277	 71,898,388

Class A

Class A consists of unitholders who are entitled to receive the declared distribution rate. There are a number of subclasses attached to class A. These consist of the following products with varying terms:

- 1) Flexi Account investment option
- 2) Fixed Term investment option
- 3) LM Savings Plan investment option

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS (Continued)

Class B

Class B consists of related Scheme unitholders.

Class C

Class C consists of unitholders who have invested in foreign currencies and are entitled to receive the declared distribution rate.

Subject to the comments relating to the status of the Scheme in note 2, all unitholders are entitled to receive distributions as declared from time to time and are entitled to one vote per unit at unitholders' meetings. As the Scheme is being wound up, all unitholders rank after creditors and are equally entitled to the proceeds of the winding up procedure.

6. LOANS AND RECEIVABLES

	31 December 2016	30 June 2016
	\$	\$
Secured mortgage loans	74,478,959	74,341,624
Provision for impairment	(69,030,302)	(68,866,088)
	<u>5,448,657</u>	<u>5,475,536</u>

Loans and receivables are initially measured at the fair value including transaction costs and subsequently measured at amortised cost after initial recognition. Loans and Receivables are assessed for impairment at each reporting date. Where impairment indicators exist, the recoverable amount of the loan will be determined and compared to its carrying amount to determine whether any impairment losses exists. Impairment losses are recognised when the recoverable amount under the individual loan is less than the carrying amount of that loan.

Material uncertainty regarding recoverability of Loans and Receivables

For loans in default, an impairment indicator arises which requires the recoverable amount of that loan to be determined. The recoverable amount for each individual loan in default has been determined from independent valuations of the assets forming the security for the loans. The valuations are based on current market conditions and provide for appropriate exposure to the market and an orderly realisation of assets forming the security for the loans.

In determining the recoverable amounts, there are uncertainties involved in assessing the market values and the ability to realise those market values, particularly where the market is not active. Consequently, it is likely that there may be differences between the amounts at which the Loans and Receivables are recorded at in the financial statements for the period ended 31 December 2016, and the amounts that are actually realised. Such differences may be material. Accordingly, there is a material uncertainty regarding recoverability of Loans and Receivables.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

6. LOANS AND RECEIVABLES (Continued)

(a) Provisions for impairment

The impairment loss expense relating to loans and receivables comprises:

	31 December 2016	30 June 2016
	\$	\$
Opening balance	68,866,088	116,224,073
Impairment losses provided for (recoveries) during the period	164,214	(1,355,411)
Impairment losses realised during the period	-	(46,002,574)
Closing balance	69,030,302	68,866,088
Total provision for impairment	69,030,302	68,866,088

(b) Movement in default loans

Movement in default loans

	31 December 2016	30 June 2016
	\$	\$
Gross default loans opening balance	74,341,624	159,557,989
New and increased default loans	146,432	7,429,446
Balances written off	-	(46,002,574)
Repaid	(9,097)	(46,643,237)
Gross default loans closing balance	74,478,959	74,341,624
Specific provision	(69,030,302)	(68,866,088)
Net default loans	5,448,657	5,475,536

7. PAYABLES

Payables are carried at cost and represent liabilities for goods and services provided to the Fund prior to the period end but have not yet been paid.

	31 December 2016	30 June 2016
	\$	\$
Accounts payable	5,817,625	7,822,479
	5,817,625	7,822,479

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

8. INTEREST BEARING LOANS AND BORROWINGS

Interest bearing loans and borrowings relates to facilities with external providers. In July 2010, the RE entered into a new facility with an external financier, Deutsche Bank. Deutsche Bank holds a fixed and floating charge over the assets of the Fund.

As indicated in Note 1, McGrathNicol were appointed as Receivers and Managers of the Fund by Deutsche Bank as a result of a default of the finance facility by the Fund for this secured loan.

There has been a progressive sell down of the assets of the Fund which has enabled \$14.1M of the loan to be repaid during the 2013 financial year and \$21.5M between July and December 2013. The facility was repaid in full in January 2014.

As mentioned in the Court Appointed Receiver's reports to investors, whilst the secured creditor has been repaid in full, the Receivers and Managers appointed by the secured creditor have advised that they are not yet in a position to retire until the potential claim by KordaMentha as the new trustee of the LM Managed Performance Fund is resolved.

KordaMentha, acting as trustee of the MPF has put the Court Appointed Receiver and the Receivers and Managers appointed by the secured creditor on notice of a potential claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("LMIM") and/or the Fund in relation to potential breaches of trust.

9. RELATED PARTIES

Custodian

The Custodian of the Fund is The Trust Company (PTAL) Ltd. The Custodian's fees include a claim for legal fees payable under the custodian agreement. The legal fees were incurred by the custodian defending an action brought by a mortgagor of the Scheme.

	31 December 2016	30 June 2016
	\$	\$
<u>Custodian</u>		
Custodian's fees paid by the Scheme	30,750	32,100
Custodian's legal fees	40,584	383,984
<u>FTI Consulting</u>		
LMIM's legal fees (FTI)	-	678,187
LMIM's Administrators and Liquidators fees and outlays (FTI) *	-	217,605

* Denotes expenses which are subject to approval by the court

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

10. RECEIVABLES

Prior to 1 January 2014, receivables consisted of the interest on the loans for the period from the 18th of the month, when the interest is run until the end of the month and GST which is due at 30 June 2013 and 31 December 2013. From 1 January 2014, interest was suspended and not brought to account as it is considered that the amounts are not ultimately recoverable from the sale proceeds of the property.

	31 December 2016	30 June 2016
	\$	\$
Term deposit interest receivable	100,703	192,470
GST receivable	99,705	198,501
	<u>200,408</u>	<u>390,971</u>

11. CASH AND CASH EQUIVALENTS

(a) Reconciliation of cash and cash equivalents

For the purposes of the Statement of Financial Position, the cash and cash equivalents comprise of cash at bank and in hand. The cash at bank earns interest at floating rates based on the daily bank deposit rates. The cash at bank figure includes monies held in foreign exchange margin accounts and not available for use.

	31 December 2016	30 June 2016
	\$	\$
Cash at bank	<u>71,788,873</u>	<u>75,226,396</u>

As at 31 December 2016, \$212,130 (30 June 2016: \$215,307) of cash at bank was held in foreign exchange margin accounts and was not available for use by the Scheme.

(b) Reconciliation of change in net assets attributable to unitholders to net cash flows from operating activities

	31 December 2016	31 December 2015
	\$	\$
Change in net assets attributable to unitholders	(1,545,854)	(9,443,421)
<i>Adjustments for:</i>		
Non-cash impairment expense	164,214	4,060,120
(Gains)/loss on foreign exchange contracts	3,175	26,252
(Gains)/loss on investor funds/foreign exchange adjustments	(104,257)	1,275,678
(increase)/decrease in other receivables	190,563	433,430
Increase/(decrease) in payables	(2,008,029)	1,502,787
Net cash flows from/(used in) operating activities	<u>(3,300,188)</u>	<u>(2,145,154)</u>

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

12. INTEREST REVENUE

Interest revenue relates to interest received on funds held in the bank accounts and interest charged on the loans.

Interest on loans is suspended and not brought to account when it is considered that the amounts are not ultimately recoverable from the sale proceeds of the property.

13. CONTINGENT LIABILITIES

Claims by KordaMentha as Trustee of the LM Performance Fund

Assigned Loans Claim

In August 2014, KordaMentha Pty Ltd and Calibre Capital Pty Ltd as trustees of the MPF commenced two proceedings against LMIM alleging that the entry into Deeds of Assignment by LMIM, pursuant to which PTAL, as custodian of the FMIF assigned its right, title and interest in the securities that it held for two FMIF loans, to LMIM as trustee of the MPF, in exchange for payment of a Settlement Sum, and the alleged payment of the Settlement Sum by LMIM as trustee of the MPF, breached duties owed by LMIM to members of the MPF. Calibre Capital Pty Ltd has since resigned as trustee of the MPF, and has been removed as a party to the proceedings.

On the application of David Whyte, as Receiver of the property of FMIF, orders were made on 17 December 2015 adding him as second defendant in each proceeding. The plaintiff (after various amendments to its case) presently seeks the following relief in each proceeding:

- Equitable compensation against LMIM, interest and costs
- Declarations that:
 - LMIM is entitled to be indemnified out of FMIF assets in respect of its liability to the plaintiff in the proceeding;
 - LMIM has a lien or charge over FMIF assets in respect of its liability to the plaintiff in the proceeding;
 - the plaintiff is entitled to be subrogated to the rights of LMIM in respect of the assets of FMIF.

The total amount of the claims made against assets of the FMIF is about \$24.1 million plus interest and costs.

Mr Whyte intends (subject to the outcome of the negotiations referred to below and any directions made by the Court) to defend the claims for relief made in the proceeding against assets of the FMIF.

At the review hearing on 16 December 2016, the proceedings were adjourned to a date to be fixed, to allow the parties further time to continue negotiations to settle this proceeding and other actions involving the MPF and the FMIF (see Note 14).

AIIS Loan Claim

On 16 December 2015, KordaMentha as trustee of the MPF (MPF Trustee), commenced a proceeding against LMIM. The MPF Trustee alleges in the proceeding that:

- PTAL, as custodian of the FMIF, and LMIM as trustee of the MPF, both made loans to a borrower by the name of Australian International Investment Services Pty Ltd (AIIS);
- PTAL as custodian of the FMIF was the first registered mortgagee, and LMIM as trustee of the MPF was the second registered mortgagee;

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

13. CONTINGENT LIABILITIES (CONT)

- LMIM as trustee of the MPF approved various increases to the amount of the facility, from time to time, in breach of duty; and
- LMIM as trustee of the MPF made various advances that were used to service interest on the loan made by PTAL as custodian of the FMIF to AIIS, in breach of duty, and LMIM as RE of the FMIF received such payments with knowledge that they were made in breach of duty.

The MPF Trustee presently claims the following relief in the proceeding:

- approximately \$16.82 million equitable compensation against LMIM;
- a declaration that LMIM as RE of the FMIF holds on constructive trust the amount of approximately \$3.9 million (being the amount of the payments allegedly made by LMIM as trustee of the MPF to service interest on the FMIF facility);
- a declaration that the MPF Trustee is entitled to be subrogated to the rights of LMIM, and indemnified out of assets of the FMIF in respect of, or has a lien or charge over the assets and undertakings of the FMIF to secure, the amount of approximately \$3.9 million;
- interest and costs.

The total amount claimed against assets of the FMIF in the proceeding is presently about \$3.9 million plus interest and costs.

In an affidavit filed with the application for leave to proceed referred to below, it is noted that the MPF Trustee's claims against assets of the FMIF will be increased to approximately \$4.138 million, plus interest and costs, as further amounts allegedly paid by the MPF to service interest on the FMIF facility have been ascertained since the proceeding was filed.

On 3 November 2016, the MPF Trustee filed an application for leave to proceed against LMIM. At the hearing of the MPF Trustee's application on 22 November 2016, orders were made granting the leave sought on the condition that any judgment against the defendant will not be enforced without further leave of the court, that the MPF Trustee serve the Statement of Claim by 15 December 2016 and the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to LMIM and David Whyte that a defence and any counterclaim is required to be filed.

The claim was served on LMIM on 28 November 2016. No written notice requiring a defence has been received by Mr Whyte.

14. LITIGATION MATTERS

Claim against the former auditors

A public examination (PE) of the former auditors, certain directors, former directors (Directors) and staff of LM Investment Management Limited (In Liquidation) was conducted over a period of 9 days in June 2015 and a further 9 days in October 2015.

Following the PEs, a further amended statement of claim was filed by David Whyte in the Supreme Court of Queensland and served on the former auditors of the Fund on 14 April 2016.

The former auditors' solicitors lodged and served on David Whyte an application and supporting affidavit on 27 April 2016 seeking to strike-out certain parts of the statement of claim. The hearing of the strike out application was adjourned to a date to be fixed by consent to enable appropriate directions to be made for the parties to exchange and file any further affidavit material and written submissions in advance of the hearing of the strike out application.

On 30 May 2016, David Whyte filed an application to place the proceedings on the Court's commercial list. This application was also adjourned to a date to be fixed.

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

14. LITIGATION MATTERS (CONT)

On 2 August 2016, David Whyte filed a second further amended statement of claim. The parties filed submissions and further affidavit evidence as required by the orders and at the hearing of the strike out application and the commercial list application on 15 December 2016, the Court granted the application to place the proceedings on the commercial list and reserved its decision on the strike out application.

That decision has not yet been handed down.

Wollongong Coal Ltd (WCL) – Convertible Bonds

There are \$8 million in convertible bonds in Wollongong Coal Limited (WCL) which was the subject of a successful application to the Federal Court acknowledging that Bellpac Pty Ltd (In Liquidation) (Bellpac) (under the control of its liquidators) is the true owner.

The defendants appealed the decision, which was unsuccessful, however, on 12 July 2016, the defendants made application for special leave to the High Court of Australia to appeal the decision of the Federal Court. On 10 November 2016, the High Court refused to grant special leave to the defendants, and dismissed their application with costs.

In January 2016, the Bellpac Liquidator applied for the conversion of the bonds to shares. Under the terms of the Bonds, WCL is required to issue the shares within 7 days after the end of January 2016 (Due Date) which it failed to do. Instead WCL issued part of the shares in early February 2016 and the balance of the shares after resolution of its members, in May 2016.

As WCL did not issue the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds by

- Redeeming all of the Bonds which were not converted by the Due Date; and
- Pay to the Liquidator \$8M or such other amount being the nominal principal value of the unconverted Bonds (those issued in May 2016), plus interest.

The proceedings have been adjourned pending negotiations to settle the litigation with WCL pursuant to which Bellpac will receive \$6.3 million in exchange for the transfer of the shares to WCL or alternatively cancellation of the shares.

Proceedings against the MPF, LMIM and the Directors of LMIM

On 17 December 2014, David Whyte filed a claim and statement of claim in the Supreme Court of Queensland, against a number of parties, including the MPF Trustee, alleging the FMIF suffered loss as a result of a decision to pay an amount to the MPF in 2011 on settlement of litigation between Bellpac and Gujarat NRE Minerals Ltd (now called Wollongong Coal Limited). The claim is for \$15.5M plus interest. The proceedings, which have progressed to completion of discovery stage, are continuing.

FTI litigation

The RE for the Fund is LM Investment Management Ltd (in Liquidation) ("LMIM"). On 8 April 2015, the Liquidators of LMIM ("FTI") filed an application (which was subsequently amended on 20 July 2015) in the Supreme Court of Queensland, for directions in relation to their ongoing role, and the extent of their powers and responsibilities to undertake certain duties, for, and on behalf of, the FMIF. The application was heard before the Court on 20 July 2015, and orders were made on 17 December 2015.

On 16 December 2015, FTI filed a Further Amended Originating Application ("FAOA") seeking a determination of their remuneration as administrators, and liquidators, of LMIM. The FAOA sought payment in the amount of \$3,098,251.83 plus GST (for the period from the date of their appointment as administrators on 19 March 2013 to 30 September 2015) from

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2016

the assets of the Fund. The matter was heard by the Court on 22 February and 14 March 2016. The decision was reserved, and the parties are awaiting judgment.

In accordance with the Orders made by the Court on 17 December 2015, FTI submitted two indemnity claims to David Whyte, seeking payment of the sums of \$241,453.54 and \$375,499.78 respectively, from the assets of the Fund.

The first claim (of \$241,453.54) is sought with respect to the legal costs incurred by LMIM in relation to the appeal of the decision of Dalton J appointing David Whyte as receiver of the assets of the Fund, and the person responsible for ensuring the Fund is wound up in accordance with its Constitution. This claim has been rejected by David Whyte, pending the outcome of the judgment to be handed down with respect to the FAOA.

As to the second claim, David Whyte accepted, and paid, \$84,954.41, rejected \$169,243.26 and deferred consideration of \$5,473.59 (pending the outcome of the judgment to be handed down in respect of the FAOA for FTI's remuneration). The balance of the second claim was withdrawn by FTI.

On 20 May 2016, FTI filed an application in the Supreme Court of Queensland, seeking declarations that the claims for indemnity rejected by David Whyte are properly payable from the Fund ("Indemnity Application"), and payment thereof. On 16 February 2017, Jackson J made directions as to the steps to progress the Indemnity Application. The Indemnity Application is listed for hearing on 8 and 9 May 2017.

FTI have informed David Whyte that they are awaiting judgment in the FAOA before making any further claim with respect to their own remuneration and out of pocket expenses. FTI's remuneration and expenses claimed from the Fund (and unpaid) for the period up to 31 December 2015, totals \$4,211,638 (excluding GST). FTI's claimed fees and expenses have been included in the Fund's Payables (as referred to in Note 7 above), though this amount is subject to change given the matters presently before the Court.

Copies of the court documents referred to above are available to be downloaded from lmfmif.com.

Claims filed (but not served) to preserve limitation periods expiring

Two statements of claim have been filed during the period against certain parties to preserve claims in relation to certain transactions and avoid possible statutory expiration as a consequence of the statute of limitations. These claims have not yet been formally served on the parties.



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TO THE INVESTOR AS ADDRESSED

31 March 2017

**LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
ARSN 089 343 288 ('the Fund' or 'FMIF')**

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I now provide my seventeenth update report to investors. This report is prepared in accordance with the Exemption granted by the Australian Securities and Investments Commission (ASIC Exemption) in relation to financial reporting obligations of the Fund. In this regard, the ASIC Exemption requires a report to be made available to investors for each period of six months starting on 1 January 2016, which includes the following information:

- (i) Information about the progress and status of the winding up of the Fund, including details of:
 - A. The actions taken during the period;
 - B. The actions required to complete the winding up;
 - C. The actions proposed to be taken in the next 12 months; and
 - D. The expected time to complete the winding up.
- (ii) The financial position of the Fund as at the last day of the relevant period (based on available information);
- (iii) Financial information about receipts (and payments) of the Fund during the period; and
- (iv) The following information at the end of the period:
 - A. The value of the Fund's property; and
 - B. The potential return to investors.

This report covers, inter alia, the period 1 July 2016 to 31 December 2016 (the period).

1. Progress and Status of the Winding Up

1.1 Position of the Secured Creditor, the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ('MPF') and claims filed against the Fund

1.1.1 Proceedings by the Trustee of the MPF against LMIM and the Fund

1.1.1.1 Assigned Loans Claims

I refer to my previous updates to investors in relation to these proceedings, in which the trustee of the MPF is the plaintiff, and the defendants are LMIM, and myself as receiver of the property of the FMIF. In these proceedings, the trustee of the MPF alleges that the entry into two Deeds of Assignment by LMIM in 2008, pursuant to which PTAL as custodian of the FMIF, assigned its right, title and interest in the securities that it held for two FMIF loans, to LMIM as trustee of the MPF, and the alleged payment of the Settlement Sum as consideration by LMIM as trustee of the MPF, breached duties owed by LMIM to members of the MPF. The relief claimed by the trustee of the MPF in these proceedings includes equitable compensation against LMIM and claims against assets of the FMIF in the total sum of about \$24.1 million plus interest.

I confirm that at the review hearing on 16 December 2016, the proceedings were adjourned to a date to be fixed as the parties wished to continue negotiations to settle the litigation in conjunction with the proceedings in both sections 1.1.1.2 and 1.1.3 below.

There have been no further steps taken in the proceedings since my previous update to investors.

1.1.1.2 AIIS Loan Claim

I refer to my previous updates to investors in relation to this proceeding in which the trustee of the MPF is the plaintiff, and LMIM is the defendant.

The MPF Trustee alleges in the proceeding that:

- PTAL, as custodian of the FMIF, and LMIM as trustee of the MPF, both made loans to a borrower by the name of Australian International Investment Services Pty Ltd (AIIS);
- PTAL as custodian of the FMIF was the first registered mortgagee, and LMIM as trustee of the MPF was the second registered mortgagee;
- LMIM as trustee of the MPF approved various increases to the amount of the facility, from time to time, in breach of duty; and
- LMIM as trustee of the MPF made various advances that were used to service interest on the loan made by PTAL as custodian of the FMIF to AIIS, in breach of duty, and LMIM as RE of the FMIF received such payments with knowledge that they were made in breach of duty.

The MPF Trustee claims approximately \$16.82 million equitable compensation against LMIM and relief against the assets of the FMIF for approximately \$3.9 million (although this may be increased to \$4.1 million) being alleged interest paid by the MPF to the FMIF in respect of the loan made by the FMIF to AIIS.

On 3 November 2016, the MPF Trustee filed an application for leave to proceed against LMIM. Leave to proceed with the claim was granted by the Court on certain conditions and the claim was served on LMIM on 28 November 2016.

There have been no further steps taken in the proceedings since my previous update to investors. Negotiations to settle these proceedings in conjunction with the proceedings above and those detailed at section 1.1.3 below are continuing.

1.1.2 Position of the Secured Creditor

I refer to my comments in my previous updates to investors. The matter precluding the retirement of the DB Receivers is that they have advised that, prior to retiring, they request the provision of a release by the MPF Trustee, with respect to various claims that the MPF Trustee has made or foreshadowed.

I continue to liaise with the DB Receivers about their ongoing role and the possibility of their retirement. In the event the proceedings mentioned at Sections 1.1.1.1; 1.1.1.2 and 1.1.3 are settled and a release is provided by the MPF, McGrathNicol will retire as Receivers and Managers.

1.1.3 Proceedings against the MPF, LMIM and the Directors of LMIM

I refer to my previous updates to investors and summarise the background as follows:

- I caused to be filed a statement of claim in the Supreme Court of Queensland, against a number of parties including the MPF, in respect of loss suffered by the FMIF as a result of an amount paid to MPF in 2011 in the Bellpac litigation matter. The claim is for \$15.5M plus interest;
- Discovery in the proceedings has been completed;
- A mediation took place on 12 July 2016. The proceedings were not settled at the mediation, however the parties continue to discuss a potential settlement of the litigation which includes discussions to resolve those matters referred to at sections 1.1.1.1 and 1.1.1.2 above.
- On 20 October 2016, I caused to be filed and served an application against the 2nd and 6th director defendants seeking to vary the previous orders made by the Court allowing them to claim privilege and accordingly not to plead a detailed defence to matters alleged against them. The 6th defendant consented to the orders sought in my application. The 2nd defendant opposed the application. The application was heard on 24 October 2016.
- At the hearing of the application on 24 October 2016 orders were made including an order that the dispensation granted to the 6th defendant on 30 April 2015 (in respect of a claim for privilege), as varied by the order of 30 June 2015, be revoked, the 6th defendant file and serve an amended defence on or before 5 December 2016, an amended reply be filed by me on or before 19 December 2016 and the 6th defendant make disclosure on or before 16 January 2017. The decision on the application in so far as it relates to the 2nd defendant was reserved by the Court.

I summarise developments since my update to investors dated 23 December 2016 as follows:

- Following extensions granted to the 6th defendant to file a defence, a defence was filed and served on me on 28 February 2017;
- The Court's decision on the 2nd defendant's privilege position was handed down on 13 March 2017 requiring the 2nd defendant to file and serve a defence within 28 days that complies with the

pleading requirements under the rules of court for a civil proceeding subject to any claim for privilege the second defendant wishes to make. If a claim for privilege is maintained to any parts of the defence, I will have 7 days to file notice of a challenge to that claim in which case the 2nd defendant must then file an affidavit setting out the ground, basis and circumstances in support of any challenged claim of privilege within 14 days of receiving notice of the challenge.

- A request for Further and Better Particulars (Request) was served on the 6th defendant by me on 15 March 2017. I have also now agreed orders with the 6th defendant whereby the 6th defendant now has 14 days to respond to the Request and I will then have 14 days to file an amended reply. The 6th defendant then has 28 days after my amended reply is served, to make disclosure.

The proceedings are ongoing and an update will be provided to investors in relation to this matter in my next report.

1.2 Realisation of Assets

There were no real property assets realised during the period.

A summary of the remaining real property assets is provided below:

- Two units in a strata titled unit resort situated in North Queensland are to be sold. Documents have been prepared to correct the title references for the units and the documents are awaiting signature by the owners affected by the required changes to the titles. Once received from the owners they will be lodged at the land titles office. The units will be marketed for sale once the correct titles have been reissued and this is expected to occur before the end of the year.
- 61 hectares of englobo land with various approvals for up to 257 residential lots plus retail space and a childcare centre remain to be sold within a residential land subdivision in Central Queensland. Various applications have been prepared for easements relating to the properties and will be submitted to council for approval shortly. Further updated legal notices are also required to be issued. Following the resolution of these matters, a fresh marketing campaign is expected to commence before the end of the year, but will be subject to the timely receipt of the council's approval.

1.3 Legal Actions/Potential Recoveries

1.3.1 Claim against the former auditors

I refer to my previous updates to investors and summarise the background as follows:

- A public examination (PE) of the former auditors and certain directors and former directors (Directors) of LM Investment Management Limited (In Liquidation) was conducted over a period of 9 days in June 2015 and a further 9 days in October 2015;
- Following the PEs, a further amended statement of claim was filed by me in the Supreme Court of Queensland and served on the former auditors of the Fund on 14 April 2016.
- The former auditors' solicitors lodged and served on me a strike-out application and supporting affidavit on 27 April 2016 seeking to strike-out certain parts of the statement of claim.
- On 30 May 2016, I filed an application to place the proceedings on the Court's commercial list. This application was also adjourned to a date to be fixed.

- On 2 August 2016, I filed a second further amended statement of claim.
- On 25 August 2016, orders were made setting out a timetable for documents to be filed by the parties and the hearing of the abovementioned applications were adjourned to 15 December 2016.
- At the hearing of the strike out application and the commercial list application on 15 December 2016, the Court granted my application and placed the proceedings on the commercial list and reserved its decision on the auditor's strike out application.

Since my update to investors dated 23 December 2016 no further steps have been taken in the proceedings and the decision of the Court on the strike out application has not yet been handed down.

As advised in previous reports to investors, considerable work has been undertaken in quantifying the loss suffered by the Fund as a result of the auditor's alleged failure to identify and report on the material deficiencies in the Fund's financial accounts and LMIM's compliance with the Compliance Plan. The calculation of the loss is substantially complete and as previously advised, will be in excess of \$100M.

1.3.2 Bellpac Proceedings

In addition to the claim filed and served against the MPF in relation to a loss suffered by the Fund from litigation pertaining to the Bellpac loan noted at 1.1.3 above, there are two further matters relating to Bellpac, as detailed below.

a. Wollongong Coal Ltd (WCL) - Convertible Bonds

I refer to my previous updates to investors and I summarise the background as follows:

- The liquidator of Bellpac has received the settlement amount of \$2 million from WCL in relation to the claim for redemption of the \$2 million Bonds held in WCL;
- The defendants' appeal of the decision of the Court which acknowledged that Bellpac (under the control of a liquidator) is the true owner of the \$8 million convertible bonds was unsuccessful;
- In January 2016, the Bellpac Liquidator applied for the conversion of the \$8 million Bonds to shares. As WCL did not issue all of the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds converted to shares outside of the required time;
- The Bellpac liquidator and WCL have entered into a binding heads of agreement which relates to the settlement of the litigation commenced against WCL. The terms of the heads of agreement include that WCL will pay to Bellpac a settlement sum of \$6.3 million in return for certain releases and Bellpac returning or cancelling the WCL shares issued to Bellpac.

Developments since my last update to investors are as follows:

- The conditions precedent to the settlement with WCL included obtaining necessary approvals to undertake the settlement transactions. In this regard:
- The Bellpac Liquidator has obtained creditor approval to enter into the settlement with WCL;
- The Court declined to exercise its discretion on WCL's application for approval to acquire and or cancel Bellpac's holding of WCL shares. WCL is now preparing to seek shareholder approval;

- The Trustees of the MPF (MPF) have demanded from the Liquidator circa \$680K plus interest out of the proceeds of the Bonds for repayment of funding the MPF allegedly made for the Bonds litigation from late 2010 to early 2013. The MPF has also reserved its rights in relation to claiming 35% of the funds realised from the successful Bonds proceedings;
- The Bellpac Liquidator has confirmed he is reviewing the matter and, for the period to 31 March 2017, he will not take any step adverse to either the MPF or FMIF without first giving the parties 7 days' notice.

b. Proceedings against Bellpac Receivers, LMIM, PTAL and others ("the Parties")

I refer to my previous updates to investors and summarise the background as follows:

- The proceedings against the Bellpac Receivers and LMIM had been discontinued in 2015. The remaining proceedings by the third mortgagee against PTAL alleging a sale of the former Bellpac property at Bellambi NSW (sold to Gujarat NRE Minerals Limited in 2011) at undervalue was discontinued in mid-2016. All defendants were awarded costs against the plaintiffs when the proceedings were discontinued.
- On 6 November 2016, I caused to be filed winding up applications against the plaintiffs based on the unpaid costs awarded in favour of LMIM as RE of the FMIF; and
- On 7 November 2016 David Clout and Patricia Talty of Clout and Associates were appointed Liquidators over the plaintiff companies, Austcorp No. 20 Pty Ltd and Compromise Creditors Management Pty Ltd (the Austcorp companies)

I am awaiting an update from the Liquidators in relation to the status of the winding up and the prospects for a return to creditors. I understand that the Liquidators have taken steps to require the directors of the Austcorp companies to provide the liquidators with the company's' books and records and other documents. Certain records have recently been received by the Liquidators from the directors.

I continue to liaise with PTAL to ensure that the bank guarantee for the security for costs of \$150,000 provided by the Austcorp companies for the benefit of PTAL will now be recovered for the benefit of FMIF, given FMIF has reimbursed PTAL (which was sued in its capacity as custodian of the FMIF) for its defence costs.

1.3.3 Redemptions and Distributions paid to Class B Unit Holders

I refer to my previous updates to investors and summarise the background as follows:

- Investigations have been undertaken via the PE conducted in 2015 and subsequent thereto in relation to redemptions and distributions paid to the Class B unit holders (the feeder funds) when the Fund had suspended redemptions and distributions to other classes of members.
- Investigations are ongoing in relation to these issues and, in particular, the apparent increase in the Class B members' interest in the Fund as a consequence of the distribution transactions

I summarise developments since my update to investors dated 23 December 2016 as follows:

- During the period, I caused to be filed a statement of claim against certain parties to preserve claims in relation to certain transactions and avoid possible expiration of claims as a consequence of the statute of limitations (to the extent these limitations apply to the claim). This claim has

not yet been formally served on the parties. Further investigations are being finalised and it is expected that shortly the claim will be amended to include additional transactions at which time the claim will be served on the parties.

- Once the claim has been amended and served on the parties, I propose to seek directions from the Court.

I will keep investors updated as to the progress of this claim.

1.3.4 External Valuations

During the period I progressed my investigations into whether the valuations relied on in advancing loans was too high and if there was negligence by the valuer which contributed to the losses. I have not at this stage identified any claims that would be commercial to pursue.

1.3.5 Claim by ASIC against the Directors

I refer to my previous updates to investors and summarise the background as follows:

- ASIC commenced civil penalty proceedings in the Federal Court of Australia in November 2014 against Peter Drake, Francene Mulder, Eghard Van Der Hoven, Simon Tickner and Lisa Darcy. ASIC alleged Mr Drake used his position to gain an advantage for himself and that the other former directors breached their duties for failing to act with the proper degree of care and diligence regarding transactions involving the MPF.
- ASIC discontinued its proceedings as against Mr Tickner and Ms Darcy, which related to their conduct as directors in respect of a loan to Maddison Estate Pty Ltd.
- ASIC's proceedings as it remains as against the other directors concerned a transaction that occurred in 2012 involving the loan to Maddison Estate Pty Ltd.

On 23 December 2016 the decision of the Court was handed down dismissing the proceedings against the other directors. Further details can be found on the ASIC website www.asic.gov.au under media releases. ASIC did not appeal the decision and are now out of time to do so.

1.3.6 Various claim against Guarantors

During the period I progressed a review of the loan book to ascertain if there are any further claims against guarantors capable of commercial recoveries. Two matters are currently the subject of court proceedings with one being the subject of a proposed deed of settlement.

1.3.7 Western Union

Western Union hold funds on account of the FMIF, which represented investor capital distributions returned due to incorrect account details held.

Western Union sought to set off funds held in the FMIF account against alleged liabilities of LMIM in its capacity as RE of other funds, however a confidential commercial settlement has been negotiated. The amount of the claim is approximately \$93,000 (subject to exchange rate fluctuations). While the terms of settlement have been agreed, Western Union requested that the terms be further recorded in a settlement deed. The terms of the draft settlement deed are still being finalised. I am hopeful that this matter can be finalised shortly.

1.3.8 Liquidators of LMIM (FTI Consulting)

a. Application for remuneration approval

I refer to my previous updates to investors and summarise the background as follows:

- FTI filed a Further Amended Originating Application on 16 December 2015 for the determination of their remuneration claimed as liquidators of LMIM in the amount of \$3,098,251.83 for the period from the date of their appointment to 30 September 2015 from assets of the Fund.
- The application was heard on 22 February 2016 and 14 March 2016.
- Judgement is reserved and is yet to be handed down by the Court

Please note that all material filed with the Court in relation to FTI's remuneration claim is available on the websites www.lmfimf.com and www.lminvestmentadministration.com. A copy of the judgement and court order will be uploaded to the websites when handed down.

FTI have not submitted further details of their additional remuneration and costs claimed up to 31 December 2016 and have advised that they are awaiting the outcome of the judgement noted above.

b. Indemnity claim against the Fund

I refer to my previous updates to investors and summarise the background as follows:

- FTI submitted two indemnity claims for \$241,453.54 and \$375,499.78 against the assets of the Fund.
- The first claim of \$241,453.54 relates to legal costs incurred in relation to the appeal of the decision appointing me as receiver to wind up the Fund. This claim has been rejected in full. I consider that the judgement to be handed down in relation to FTI's remuneration application deals with some similar issues.
- In respect of the second claim, I accepted and paid \$84,954.41 (\$93,449.85 less GST of \$8,495.44) (Accepted Claim), rejected \$169,243.26 and deferred \$5,473.59 pending the judgement to be handed down in relation to FTI's remuneration application. The balance of FTI's claim has been withdrawn.
- FTI have made an application to Court challenging my decision to reject their indemnity claim noted above (Indemnity Application).

The hearing of the Indemnity Application has now been set for 8 May 2017 and 9 May 2017. I have applied for judicial advice as to whether I am justified in raising the clear accounts rule in opposition to the Indemnity Application.

c. Claim filed against LMIM (not served)

During the period, I caused LMIM as RE of the FMIF to commence a proceeding against LMIM (Supreme Court of Queensland Proceedings 11560) in relation to certain transactions to avoid possible expiry of the statutory limitation periods for making the claims. This claim has not yet been formally served on LMIM.



In this proceeding, LMIM as RE of the FMIF alleges that, *inter alia*, LMIM breached its duties to members of the FMIF by:

- causing to be paid out of assets of the FMIF management fees in advance of it becoming entitled to payment of same;
- overpaying management fees to itself out of assets of the FMIF;
- causing to be paid to LMA additional fees purportedly for loan management and controllership services; and
- directing payments to be made by the MPF, purportedly in satisfaction of liabilities owed by the MPF to the FMIF, to be paid to itself as RE of the feeder funds.

The amount of these claims has not been finalised, but will likely exceed the amount claimed against assets of the FMIF in the Assigned Loans Claim referred to above.

2. Financial Position of the Fund

The management accounts for the year ending 31 December 2016 are available on the website www.lmfimif.com on the page titled 'Financial Statements & Other Key Documents'.

A summary of the financial position of the Fund as at 31 December 2016 is provided below.

	31 December 2016
ASSETS	\$
Cash and cash equivalents	71,788,873
Receivables	200,408
Loans & Receivables	5,448,657
TOTAL ASSETS	77,437,938
LIABILITIES	
Payables	5,817,625
Distributions payable	1,372,036
Total liabilities excluding net assets attributable to unitholders	7,189,661
NET ASSETS	70,248,277

Fund Assets

The total assets of the Fund as at 31 December 2016 were \$77,437,938.

The balance includes cash at bank of \$71,788,873, interest receivable on term deposits of \$200,408 and net default loans of \$5,448,657. The net default loans balance includes the two remaining real property assets noted at section 1.2 above and cash held in controllership bank accounts.



Fund Liabilities

The total liabilities of the Fund as at 31 December 2016 were \$7,189,661.

The Distributions Payable balance relates to distributions paid prior to the date of the receiver's appointment which have not cleared or were returned unclaimed.

The Payables balance primarily consists of trade creditors, custodian fees, legal fees, receiver's fees and fees and expenses claimed by FTI, which remain unpaid as at 31 December 2016.

Net Assets Attributable to Unit Holders

Net assets attributable to unit holders as at 31 December 2016 were \$70,248,277.

The net assets of the Fund and number of units on issue as at 31 December 2016 and 30 June 2016 is detailed in the table below.

	31 December 2016	30 June 2016
Estimated net amount of assets available to investors as at period end (\$)	70,248,277	71,898,388
Total investor units (# of units)	478,100,386	478,100,386
Estimated net asset amount per unit available to investors as at period end (cents in the dollar)	14.7	15

Investments made in Foreign Currencies

Investigations undertaken by BDO have identified that the number of units held by investors who invested in foreign currencies appears to be incorrectly recorded in the membership records of the FMIF. It appears that when LMIM transferred the member records of the FMIF to a new database in 2010 the number of units of investors who invested in a foreign currency were incorrectly recorded in the new database, by allocating to the investors concerned one unit in the FMIF for each unit of foreign currency invested, rather than one unit in the FMIF for each \$ 1AUD invested (after the foreign currency amount invested had been converted to AUD at the applicable exchange rate) in accordance with the PDS and Constitution. Further investigations are ongoing and appropriate steps, including an application to Court for directions approving the correction of the member records of the FMIF, will be taken to address the issue and to ensure that the member records of the FMIF are accurate.

3. Receipts and Payments of the Fund

The receipts and payments of the Fund, as maintained by the DB Receivers, for the period 1 July to 31 December 2016 is summarised in the table below.

	\$
Receipts	
Interest	899,639
GST received	226,596
Other income	35,331
TOTAL RECEIPTS	1,161,566
Payments	
Bank charges	32
Consultants' fees	26,936
Custodian fees	33,000
Custodian legal fees (Re Austcorp defence)	444,725
DB Receivers' fees	148,358
IT expenses	60,829
Legal fees	1,222,287
Loan draws	22,652
Printing and stationary	17,408
Receiver's fees and disbursements	2,614,280
Record management and storage	5,398
TOTAL PAYMENTS	4,595,905
NET RECEIPTS (PAYMENTS)	(3,434,339)

4. Investor Information

4.1 Estimated Return to Investors

Based on the professional valuations for the properties charged to the Fund, I provide an estimated return to Investors of between 13.6 cents and 14.9 cents per unit as at 28 February 2017, calculated as follows:

Cash at bank	73,237,299	73,237,299
Other assets	211,720	1,426,720
Estimated selling prices of properties to be sold	2,850,000	3,050,000
Estimated Assets Position	76,299,019	77,714,019
Selling costs (estimated 2.5% of sale price)	71,250	76,250
Other unsecured creditors	6,208,901	1,479,836
FTI Fees & legal expenses advised (subject to approval)- refer to Section 1.3.9 for further details - maximum amount shown	4,211,638	4,211,638
Receivers and Managers' fees (DB Receivers)	111,340	111,340
Receivers and Managers' accrued expenses (DB Receivers)	8,666	8,666
Receiver's fees & outlays (BDO) (including controllerships)	505,390	505,390
Receiver's legal fees (BDO)	151,665	151,665
Total Liabilities	11,268,850	6,544,785
Estimated net amount available to investors as at 28 February 2017	65,030,169	71,169,234
Total investor units (as at 31 December 2016)	478,100,386	478,100,386
Estimated return in the dollar	13.6 cents	14.9 cents



Please note that the estimate and prior estimates do not take into account future operating costs and future Receiver's fees or any legal recoveries against borrowers, valuers or other third parties.

In calculating the estimated return to investors, I have also not provided any allowance for the claims filed by the MPF Trustee as the prospects of a successful claim against the Fund is unknown.

4.2 Estimated Unit Price as at 31 December 2016

The estimated unit price as at 31 December is 14.7 cents, which is based on the mid-point of the high and low estimated selling prices of the secured assets as at 31 December 2016.

	\$
Total Value of Fund Assets as at 31 December 2016 (net of land tax and rates)	77,437,938
Less Creditors and Other Payables	7,189,661
Total Net Value of Fund Assets	70,248,277
Total Number of Units	478,100,386
Unit Price	14.7 cents

I attach a copy of a letter confirming the unit price as at 31 December 2016, which may be forwarded to Centrelink to assist with the review of investors' pensions.

4.3 Distributions to Investors

Once the DB Receivers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the auditor claim and Bellpac litigation.

I am also required to seek the directions of the Court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer, however, I am hopeful to be in a position to commence distributions during this calendar year, although it is subject to resolving matters before the court where I cannot necessarily control the timeframe to resolve the issues.

Please note that the distribution to Investors will take place after paying secured creditors, costs, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

4.4 Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor in the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if investors could nominate an email address as their preferred method to receive correspondence. Investors may update their details as outlined in Section 4.5 below. For those investors that do not have an email address, correspondence will continue to be sent to you via post.

My next report to investors will be issued by 30 June 2017.



4.5 Investors Queries

Arrangements are in place to ensure that any reasonable questions asked by members of the FMIF, about the winding up of the FMIF, will be answered within a reasonable period of time (generally seven days) and without charge to the investor.

For any changes to investors details, please review the Useful Forms/Procedures tab on the website www.lmfimif.com which includes information regarding the following procedures:

- Change of Contact Address/Bank Account Details
- Change of Contact Address/Bank Accounts Details of a Deceased Estate
- Change of Trustee of Self-Managed Super Fund
- Transfer of Unit Holding from a Super Fund/ Trustee Company to Personal Name(s)
- Transfer of Unit Holding from a Deceased Estate to a Sole Survivor
- Transfer from a Deceased Estate to a Beneficiary of an Estate

It is a requirement that advisors or other third parties acting on behalf of Unit Holders are doing so pursuant to a relevant Authority/Power of Attorney. Please ensure that a relevant Authority/Power of Attorney accompanies the abovementioned documents as necessary (if an Authority/Power of Attorney has not previously been provided).

It is preferable that all questions about the winding up, or communications are sent via email to enquiries@lmfmif.com with original documents to be mailed as required to:

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227

5. Receiver's Remuneration and Expenses

There have been six applications to Court to date to approve my remuneration from the date of my appointment on 8 August 2013 until 31 October 2016.

The application for the approval of my remuneration for the period 1 May 2016 to 31 October 2016 was heard on 2 December 2016. The Court ordered that my remuneration for this period be fixed in the amount of \$1,119,991.40 (inclusive of GST) in relation to my role as the person responsible for ensuring the FMIF is wound up in accordance with its constitution and \$13,385.35 in relation to the controllerships for the retirement village assets.

A copy of all documentation in relation to my applications can be found on the website www.lmfimif.com.

In addition to the remuneration previously approved by the Court, I calculate that, on a time basis, I have incurred further remuneration of \$498,479.50 plus outlays of \$3,673.25 plus GST from 1 November 2016 to 28 February 2017 plus work undertaken in respect of the controllerships for the retirement village assets of \$3,237.50 plus GST as detailed in the table below and attached summaries.

	Remuneration (GST exclusive) \$	Outlays (GST exclusive) \$
LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed)	498,479.50	3,673.25
OVST Pty Ltd (In Liquidation) (Controllers Appointed)	794.00	-
Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)	478.00	-
Bridgewater Lake Estate Ltd (In Liquidation) (Controllers Appointed)	804.50	-
Redland Bay Leisure Life Ltd (In Liquidation) (Controllers Appointed)	466.00	-
Redland Bay Leisure Life Development Ltd (In Liquidation) (Controllers Appointed)	334.50	-
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers & Managers Appointed) (Controllers Appointed)	360.50	-
Total	501,717.00	3,673.25

The fees for the four months from November 2016 to February 2017 average approximately \$125,000 per month compared to the four months from May to October 2016 of approximately \$183,000 per month.

I anticipate that my next application to Court for the approval of my remuneration will be made in May/June 2017 covering the period 1 November 2016 to 30 April 2017. A copy of my application in this respect will be posted to the website www.lmfimf.com and investors will be notified when this application has been lodged.

6. Actions taken during the period

I provide below a summary of actions taken during the period from 1 July to 31 December 2016:

- Work undertaken in relation to the litigation matters detailed at Section 1.1 and 1.3 of this report, which include, among other things:
 - Progressing the claim against the former auditors regarding the financial statements and compliance plan audits following public examinations held, responding to EY's strike out application of certain parts of our claim, amending the claim and substantial work quantifying the loss suffered by the Fund;

- Preparation of two statements of claim which have been filed against certain parties to preserve claims in relation to certain transactions and avoid possible statutory expiration possibly expiring as a consequence of the statute of limitations;
- Monitoring and providing assistance to the Liquidator of Bellpac regarding the \$8M bond claim and progressing this matter;
- Progressing the claim against the MPF and others;
- Responding to the amended claims filed by the MPF Trustee against the assets of the Fund and investigating counter claims against the MPF
- Pursuing the costs orders against the Austcorp companies and their subsequent winding up
- Review of potential claims against former valuers of property securities for negligence and breach of contract;
- Progressing claims against guarantors.
- Liaising with various parties in relation to the potential for the DB Receiver's retirement;
- Finalising settlement of Western Union's set off claim;
- Dealing with FTI in relation to their claims for indemnity against the assets of the Fund for expenses and costs incurred in their capacity as liquidators of the responsible entity;
- Maintaining the management accounts of the Fund and prepare management accounts for the half year ending 31 December 2016 and for the year ending 30 June 2016;
- Undertaking the investor management function for approximately 4,500 investors including answering queries on the winding up of the Fund and maintaining the investment database, including any change in details or transfer of units;
- Preparing of affidavit and supporting material for an application to Court for approval of the receiver's remuneration for the period 1 May to 31 October 2016;
- Finalising outstanding trading matters from the sale of five retirement villages, including tax compliance issues;
- Investigations into the migration of the Composer investor management database to the AX investor management database and liaising with an IT consultant in relation to proposed correction of membership records in relation to investors that acquired units in foreign currencies;
- Attending to compliance with ASIC's grant of relief from the requirements of a half year review and annual audit of the financial reports and compliance plan;
- Preparation of unit price calculations as at 30 June 2016 and 31 December 2016;
- Preparation of update reports to investors in July, September and December 2016.

7. Actions proposed to be taken in the next 12 months

I provide below a summary of the proposed actions to be taken in the next 12 months in relation to the winding up of the Fund:

- Take steps to finalise the various ongoing litigation matters outlined in this report;
- Sale and settlement of the remaining two real properties outlined at section 1.2 of this report;
- Assess the outcome of the EY strike out application on certain parts of the claim against the former auditors and progress the claim against EY outlined at section 1.3.1 of this report;

- Take steps to determine or resolve the claim regarding the Bellpac bonds and realise this asset as outlined at section 1.3.2 of this report;
- Resist the MPF claim against the proceeds of the Bonds;
- Liaise with the Liquidator of the Austcorp companies to determine the potential for a return in the windings up for the benefit of the Fund as set out in section 1.3.2b of this report;
- Resolve the position in relation to the distributions and redemptions paid to the Feeder Funds;
- Finalise investigations in relation to potential claims against external valuers;
- Finalise all claims against guarantors;
- Obtain a release of funds held by Western Union;
- Resolve or have determined FTI's indemnity claim against the Fund;
- Maintain the accounts of the Fund and prepare management accounts for the year ending 30 June 2017 and half year ending 31 December 2017;
- Resolve the issues relating to the investor units subscribed in foreign currencies in the investor management database, and obtain court approval to correct the member records of the FMIF;
- Maintain the investor management database;
- Obtain approval from the Court to process interim distributions to investors;
- Process interim distributions to investors;
- Report to investors on a quarterly basis;
- Make applications to Court for remuneration approval.

Please note that the timing to finalise some of the above matters will be subject to judgments being handed down by the Court.

8. Actions required to complete the winding up

I provide below a summary of the key actions required to complete the winding up:

- Realise the remaining two real properties;
- Finalise all litigation currently on foot and contemplated;
- Resolve FTI's indemnity claim against the Fund;
- Discharge all liabilities of the Fund;
- Obtain a discharge of the DB security and of the DB Receivers;
- Obtain approval from the Court to process interim distributions and a final distribution to investors;
- Prepare final accounts for the Fund;
- Arrange for an auditor to audit the final accounts of the Fund after the Fund is wound up; and
- Obtain court orders in relation to the finalisation of my role in relation to the Fund.

I anticipate that the winding up of the Fund will be finalised in approximately 18 months, however, this may vary subject to the progression of the outstanding legal matters detailed in this report.


9. Queries

Should unit holders wish to advise of any changes in details or require further information, please contact BDO as follows:



BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours faithfully



David Whyte
Receiver

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2016 to 28 February 2017
LW FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Employee	Position	Rate	Totals		Assets		Creditors		Task Area		Investigations		Administration	
			hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
David Whyte	Partner	580	114.7	66,526.00	54.9	31,842.00	17.3	10,034.00	26.8	15,544.00	0.9	522.00	14.8	8,584.00
Clark Jarrold	Partner	560	61.3	34,328.00	61.3	34,328.00								
Eric Leuenwerdel	Executive Director	495	393.0	194,535.00	264.2	130,779.00	39.0	19,305.00	12.3	6,088.50	51.1	25,294.50	26.4	13,068.00
Craig Jenkins	Partner	490	8.1	3,969.00					8.1	3,969.00				
John Somerville	Senior Manager	455	126.4	57,512.00	6.9	3,139.50	56.3	25,616.50	41.5	18,882.50	9.7	4,413.50	12.0	5,460.00
Julie Pagou	Senior Manager	385	3.9	1,501.50					3.9	1,501.50				
Julie Pagou	Senior Manager	375	7.8	2,925.00					7.8	2,925.00				
Aubrey Week	Senior Accountant II	290	116.4	33,756.00			104.4	30,276.00	5.2	1,508.00			6.8	1,972.00
Dermot O'Brien	Senior Accountant II	290	93.0	26,970.00			3.1	899.00	89.3	25,897.00	0.6	174.00	2.4	564.00
Dermot O'Brien	Senior Accountant II	235	106.1	24,933.50	2.8	658.00	35.4	8,319.00	33.0	7,755.00	32.5	7,637.50	14.5	2,900.00
Sarah Cunningham	Team Assistant	200	14.5	2,900.00									13.0	2,145.00
Ryan Whyte	Undergraduate	165	219.9	36,283.50			112.2	18,513.00	1.8	297.00	92.9	15,328.50	0.9	148.50
Andrew Lane	Undergraduate	165	41.0	6,765.00			40.1	6,616.50						
Antoinette Fielding	Undergraduate	165	16.0	2,640.00	0.5	82.50	15.5	2,557.50						
Nicole Jackson	Team Assistant	160	1.2	192.00									1.2	192.00
Brooke Strehl	Team Assistant	130	3.5	455.00	3.5	455.00								
Erna Sheehy	Junior Practice Assistant	115	4.3	494.50	4.3	494.50								
Maura Hattigh	Team Assistant	85	21.1	1,793.50									21.1	1,793.50
TOTALS			1,352.2	498,479.50	398.4	201,778.50	423.3	122,136.50	229.7	84,367.50	187.7	53,370.00	113.1	36,827.00
			GST	49,847.95										
			TOTAL INC GST	548,327.45										
AVERAGE HOURLY RATE				369		506		289		367		284		326

Note: All amounts exclude GST unless otherwise noted

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2016 to 28 February 2017

OVST PTY LTD

Employee	Position	Rate	Totals		Task Area			
			hrs	\$	Creditors	Employees	Administration	\$
David Whyte	Partner	580	0.1	58.00		0.1	58.00	
John Somerville	Senior Manager	455	1.0	455.00				455.00
Dermot O'Brien	Senior Accountant II	235	0.2	47.00	0.2	47.00		
Sarah Cunningham	Team Assistant	200	0.3	60.00			0.3	60.00
Ryan Whyte	Undergraduate	165	0.7	115.50			0.7	115.50
Andrew Lane	Undergraduate	165	0.2	33.00			0.2	33.00
Moira Hattingh	Team Assistant	85	0.3	25.50			0.3	25.50
TOTALS			2.8	794.00	0.2	47.00	0.1	58.00
							2.5	689.00
			GST	79.40				
			TOTAL INC GST	873.40				
			AVERAGE HOURLY RATE	284	235	580	276	

Note: All amounts exclude GST unless otherwise noted



**REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2016
to 28 February 2017**

CAMEO ESTATES LIFESTYLE VILLAGES (LAUNCESTON) PTY LTD

Employee	Position	Rate	Totals		Task Area			
			hrs	\$	Creditors hrs	\$	Administration hrs	\$
John Somerville	Senior Manager	455	0.3	136.50			0.3	136.50
Dermot O'Brien	Senior Accountant II	235	0.2	47.00	0.2	47.00		
Sarah Cunningham	Team Assistant	200	0.1	20.00			0.1	20.00
Ryan Whyte	Undergraduate	165	0.7	115.50			0.7	115.50
Andrew Lane	Undergraduate	165	0.2	33.00			0.2	33.00
Moirra Hattingh	Team Assistant	85	0.1	8.50			0.1	8.50
TOTALS			1.6	360.50	0.2	47.00	1.4	313.50
			GST	36.05				
			TOTAL INC GST	396.55				
			AVERAGE HOURLY RATE	225	235			
								224

Note: All amounts exclude GST unless otherwise noted



**REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2016
to 28 February 2017**

BRIDGEWATER LAKE ESTATE PTY LTD

Employee	Position	Rate	Totals		Task Area			
			hrs	\$	Assets hrs	\$	Administration hrs	\$
John Somerville	Senior Manager	455	0.7	318.50	0.2	91.00	0.5	227.50
Dermot O'Brien	Senior Accountant II	235	0.2	47.00			0.2	47.00
Sarah Cunningham	Team Assistant	200	0.5	100.00			0.5	100.00
Ryan Whyte	Undergraduate	165	0.8	132.00			0.8	132.00
Andrew Lane	Undergraduate	165	1.1	181.50			1.1	181.50
Moirra Hattingh	Team Assistant	85	0.3	25.50			0.3	25.50
TOTALS			3.6	804.50	0.2	91.00	3.4	713.50
			GST	80.45				
			TOTAL INC GST	884.95				
			AVERAGE HOURLY RATE	223	455	210		

Note: All amounts exclude GST unless otherwise noted



**REMUNERATION REPORT - Summary of professional fees by category of work for the
period 1 November 2016 to 28 February 2017**

REDLAND BAY LEISURE LIFE DEVELOPMENT PTY LTD

Employee	Position	Rate	Totals		Task Area	
			hrs	\$	Administration	hrs
John Somerville	Senior Manager	455	0.1	45.50		0.1
Dermot O'Brien	Senior Accountant II	235	0.2	47.00		0.2
Sarah Cunningham	Team Assistant	200	0.3	60.00		0.3
Ryan Whyte	Undergraduate	165	0.8	132.00		0.8
Andrew Lane	Undergraduate	165	0.2	33.00		0.2
Moirra Hattingh	Team Assistant	85	0.2	17.00		0.2
TOTALS			1.8	334.50		1.8
			GST	33.45		
			TOTAL INC GST	367.95		
AVERAGE HOURLY RATE				186		186

Note: All amounts exclude GST unless otherwise noted

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2016 to 28 February 2017 REDLAND BAY LEISURE LIFE PTY LTD

Employee	Position	Rate	Totals		Task Area	
			hrs	\$	hrs	\$
John Somerville	Senior Manager	455	0.3	136.50	0.3	136.50
Dermot O'Brien	Senior Accountant II	235	0.2	47.00	0.2	47.00
Sarah Cunningham	Team Assistant	200	0.5	100.00	0.5	100.00
Ryan Whyte	Undergraduate	165	0.7	115.50	0.7	115.50
Andrew Lane	Undergraduate	165	0.2	33.00	0.2	33.00
Moira Hattingh	Team Assistant	85	0.4	34.00	0.4	34.00
TOTALS			2.3	466.00	2.3	466.00
			GST	46.60		
			TOTAL INC GST	512.60		
			AVERAGE HOURLY RATE	203		
						203

Note: All amounts exclude GST unless otherwise noted

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2016 to 28 February 2017

PINEVALE VILLAS MORAYFIELD PTY LTD

Employee	Position	Rate	Totals		Task Area			
			hrs	\$	Creditors	Trade On	Administration	\$
David Whyte	Partner	580	0.1	58.00		0.1		
John Somerville	Senior Manager	455	0.2	91.00			0.2	91.00
Dermot O'Brien	Senior Accountant II	235	0.2	47.00	0.2	47.00		
Sarah Cunningham	Team Assistant	200	0.5	100.00			0.5	100.00
Ryan Whyte	Undergraduate	165	0.8	132.00			0.8	132.00
Andrew Lane	Undergraduate	165	0.2	33.00			0.2	33.00
TOTALS			2.2	478.00	0.2	47.00	0.1	58.00
							1.9	373.00
			GST	47.80				
			TOTAL INC GST	525.80				
			AVERAGE HOURLY RATE	217	235	580		196

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 November 2016 to 28 February 2017

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)

Expense Type	Amount (\$ ex GST)
Postage	3,203.22
Write Offs (BRI Only)	146.15
Accommodation	323.88
TOTAL	3,673.25
GST	367.33
TOTAL INC GST	4,040.58

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 11560/16

Plaintiff: LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVER APPOINTED)

AND

Defendant: LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461

Filed in the Brisbane registry on: May 2017

PLAINTIFF'S CONSOLIDATED PARTICULARS

The Amended Statement of Claim filed May 2017 ("Statement of Claim") with this document is further particularised as follows:-

63. As to paragraphs 63 and 66 of the Statement of Claim, Agent Appointments and Agents' Indemnities as referred to in those paragraphs were executed by the following Borrowers on the following dates:

CONSOLIDATED PARTICULARS

Filed on behalf of the Plaintiff
01344060-007

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000.
Tele: (07) 300 300 00
Fax: (07) 300 300 33

No.	Borrower	Date of Agent Appointment	Date of Agent's Indemnity
1.	Apotel Pty Limited ACN 108 263 903	Undated	Undated
2.	Australian International Investment Services Pty Ltd ACN 102 261 898	30 May 2013	30 May 2013
3.	Brambleton Pty Ltd (Controller Appointed) ACN 118 835 742	30 May 2013	30 May 2013
4.	Bridgewater Lake Estate Pty Limited (in liq.) ACN 086 203 787	1 April 2010	1 April 2010
5.	Cameo Estates Lifestyle Villages (Launceston) Pty Ltd ACN 098 955 296	9 February 2011	9 February 2011
6.	Coulter Developments Pty Ltd ACN 114 459 111	Undated	Undated
7.	Glee Investments Pty Ltd ACN 059 861 326	Undated	Undated
8.	Glendenning Developments Pty Ltd ACN 119 218 174	6 August 2012	6 August 2012
9.	Green Square Property Development Corporation Pty Ltd ACN 104 248 053	30 May 2013	30 May 2013
10.	Greystanes Projects Pty Ltd ACN 119 783 470	8 September 2011	8 September 2011
11.	Hidden Valley Pty Ltd ACN 124 458 975	1 February 2011	1 February 2011
12.	Inter Mail International Pty Ltd ACN 070 702 340	13 May 2011	13 May 2011
13.	Keppel Bay Holdings Pty Ltd ACN 107 192 843	1 February 2011	1 February 2011
14.	Keppel Views Pty Ltd ACN 111 200 036	1 February 2011	1 February 2011
15.	Kingopen Pty Ltd ACN 009 225 576	9 February 2011	9 February 2011
16.	LM Capalaba Pty Ltd ACN 132 298 353 & Balmoral Commodities Pty Ltd ACN 134 607 006	3 June 2013	3 June 2013
17.	Lot 111 Pty Ltd ACN 106 102 005	30 May 2013	30 May 2013
18.	Northshore Bayview ST. Pty Ltd ACN 111 109 418 IOR The Northshore Bayview No. 1 Unit Trust	18 May 2011	13 May 2011
19.	OVST Pty Ltd (in liq.) ACN 103 216 771	29 October 2010	29 October 2010
20.	Peregian Beach Pty Ltd ACN 127 412 864	9 July 2013	9 July 2013
21.	Pinevale Villas Morayfield Pty Ltd (in liq.) ACN 116 192 780	21 January 2014	21 January 2014
22.	Redland Bay Leisure Life Development Pty Ltd ACN	8 February 2011	8 February 2011

	112 002 383		
23.	Redland Bay Leisure Life Pty Ltd ACN 109 932 916	9 February 2011	9 February 2011
24.	Rocola Pty Ltd ACN 104 964 061	Undated	Undated
25.	St Crispin's Property Proprietary Limited ACN 104 769 244	Undated	Undated
26.	Source Developments No. 1 Pty Ltd ACN 126 999 871	Undated	Undated
27.	Townsville Commercial Pty Ltd ACN 108 680 986	29 November 2011	28 November 2011
28.	Young Land Corporation Pty Ltd ACN 102 989 686	20 November 2012	20 November 2012
29.	Young Project Marketing Pty Ltd (formerly known at "Tanby Rd Pty Ltd") ACN 107 193 813	Undated	1 February 2011

70. As to paragraph 70 of the Statement of Claim, the Management Services Agreements referred to in that paragraph were executed in respect of the loans to each of the following Borrowers: Bellpac Pty Ltd; DBTM Pty Ltd (formerly Bezzina Developers Pty Ltd) atf the Jindabyne Unit Trust; Brambleton Pty Ltd; Bridgewater Lake Estate Ltd; Carneio Estates Lifestyle Villages (Launceston) Pty Ltd; Carrington Management Pty Ltd atf the Carrington Discretionary Trust; Coulter Developments Pty Ltd and Rocola Pty Ltd; Eden Apartments Pty Ltd; Glendenning Developments Pty Ltd; Green Square Property Development Corporation Pty Ltd; Greystanes Projects Pty Ltd; Kingopen Pty Ltd; Lot 111 Pty Ltd; Magnolia Grove Investments Pty Ltd; Northshore Bayview St Pty Ltd atf the Northshore Bayview No 1 Unit Trust; OVST Pty Ltd; Redland Bay Leisure Life Pty Ltd; Redland Bay Leisure Life Development Pty Ltd atf the Redland Bay Leisure Life Development Partnership; Maders Properties Pty Ltd atf the Maders 32-34 Marine Parade, Kingscliff Trust, Lea Developments Pty Ltd atf the JAL Trust and PWB Properties Pty Ltd atf the Brinsmead 32-34 Marine Parade, Kingscliff Trust; Source Developments No 1 Pty Ltd; Source Student Lodge Pty Ltd; St Crispin's Property Pty Ltd atf The St Crispin's Property Trust; Townsville Commercial Pty Ltd; U-Own Storage (Southbank) Pty Ltd; Young Land Corporation Pty Ltd atf Cavill Park Unit Trust; and Young Land Corporation Pty Ltd.

73. As to paragraph 73 of the Statement of Claim, the Plaintiff provides the following further particulars:

- (a) If the position is as alleged in paragraph 36(a) of the Statement of Claim, the aggregate amount paid from the property of the FMIF for loan management services or services relating to the sale of real estate assets in relation to the financial year, of \$6,056,831.25, comprised:
 - (i) on account of fees, the amount of \$5,324,536.70 plus adjustments relating to tax, totalling the amount of \$5,714,136.95 particularised in paragraph 73(a) of the Statement of Claim;
 - (ii) on account of expenses (in respect of which no claim is made), the amount of \$56,979.28, plus adjustments relating to tax; and
 - (iii) a further miscellaneous amount (in respect of which no claim is made) of \$262,349.50, plus adjustments relating to tax.
- (b) Further to sub-paragraph (a) hereof, the said amounts were paid by reducing the balance of the LMA Account, as follows:
 - (i) on 31 December 2010, in the amount of \$1,593,200.00;
 - (ii) on 31 December 2010, in the amount of \$7,510,000.00, of which \$657,790.80 was referable to the said amounts;
 - (iii) on 30 June 2011, in separate amounts of \$3,499,434.66 and \$256,056.81; and
 - (iv) on 30 June 2011, in the further amount of \$1,000,000, of which \$50,348.98 was referable to the said amounts.
- (c) Further to sub-paragraphs (a) and (b) hereof:
 - (i) the said adjusted amounts are the unadjusted amounts multiplied by 11 and divided by 10.25 ("RITC (75%) Adjusted Amount"); and
 - (ii) the difference between the RITC (75%) Adjusted Amount, and the un-adjusted amount, is the amount of the 75% reduced input tax credit available to LMIM for responsible entity services until 30 June 2012, if the un-adjusted amounts are taken to include the remaining 25% of GST.
- (d) LMA issued two invoices to LMIM for "Loan Management and Controllershship Services", particulars of which are as follows:
 - (i) Invoice dated 31 December 2010 for the "half year ended 31.12.2010", for:
 - (A) the sum of \$2,097,514.16;
 - (B) plus "Tax" of \$209,751.41;

- (C) adding to a "Total" \$2,307,265.57;
 - (ii) Invoice dated 30 June 2011 for the "half year ended 30.06.2011", for:
 - (A) the sum of \$3,284,001.82;
 - (B) plus "Tax" of \$328,400.18;
 - (C) adding to a "Total" of \$3,612,402.00.
 - (e) Further to sub-paragraph (c) hereof, LMIM issued two invoices to PTAL for "Recovery of Loan Management and Controllership Services", particulars of which are as follows:-
 - (i) Invoice dated 31 December 2010, for the "half year ended 31.12.2010", for:
 - (A) the sum of \$2,097,514.16
 - (B) plus "Tax" of \$153,447.09;
 - (C) adding to a "Total" of \$2,250,991.25.
 - (ii) Invoice dated 30 June 2011, for the "half year ended 30.06.2011", for:
 - (A) the sum of \$3,284,001.82;
 - (B) plus "Tax" of \$240,293.50;
 - (C) adding to a "Total" of \$3,524,295.32.
74. As to paragraph 74 of the Statement of Claim, , the Plaintiff provides the following further particulars:
- (a) If the position is as alleged in paragraph 36(a) of the Statement of Claim, the aggregate amount paid from the property of the FMIF for loan management services or services relating to the sale of real estate assets in relation to the financial year, of \$5,169,907.19, comprised:
 - (i) on account of fees, the amount of \$4,537,600.83, plus adjustments relating to tax, totalling the RITC (75%) Adjusted Amount of \$4,869,620.40 particularised in paragraph 74(a) of the Statement of Claim;
 - (ii) on account of expenses (in respect of which no claim is made), the amount of \$212,469.17, plus adjustments relating to tax; and
 - (iii) a further miscellaneous amount (in respect of which no claim is made) of \$67,343.52, plus adjustments relating to tax.

- (b) Further to sub-paragraph (a) hereof, the said amounts were paid by:
 - (i) reducing the balance of the LMA Account in the aggregate amount of \$3,088,487.38, as follows:
 - (A) on 31 December 2011, in the amount of \$2,590,490.29; and
 - (B) on 30 April 2012, in the amount of \$497,997.09;
 - (ii) reapplying a miscellaneous re-imbursement from LMA in the amount of \$8,214.00, on 21 June 2012; and
 - (iii) making cash payments in the aggregate amount of \$2,073,205.81, as follows:
 - (A) on about 9 July 2012, the sum of \$625,000;
 - (B) on about 20 July 2012, the sum of \$376,523.47;
 - (C) on about 3 August 2012, the sum of \$625,000; and
 - (D) on about 10 August 2012, the sum of \$625,000, of which \$446,682.34 was referable to the said amounts.

75. As to paragraph 75 of the Statement of Claim, the Plaintiff provides the following further particulars:

- (a) If the position is as alleged in paragraph 36(a) of the Statement of Claim, the aggregate amount paid from the property of the FMIF for loan management services or services relating to the sale of real estate assets in relation to the period 1 July 2012 to 28 February 2013, of \$2,304,635.68, comprised:
 - (i) on account of fees, the amount of \$2,033,633.21, plus adjustments relating to tax, totalling the adjusted amount of \$2,153,050.02 particularised in paragraph 75(a) of the Statement of Claim; and
 - (ii) on account of expenses (in respect of which no claim is made), the amount of \$142,548.81, plus adjustments relating to tax.
- (b) Further to sub-paragraph (a) hereof, the said amounts were paid by:
 - (i) reducing the balance of the LMA Account in the aggregate amount of \$724,006.65, as follows:
 - (A) on 31 December 2012, in the amount of \$220,167.19;
 - (B) on 31 January 2013, in the amount of \$228,852.04; and
 - (C) on 28 February 2013, in the amount of \$274,987.42; and

- (ii) making cash payments in the aggregate amount of \$1,580,629.03, as follows:
 - (A) on about 10 August 2012, the sum of \$625,000, of which \$178,317.66 was referable to the said amounts;
 - (B) on about 28 August 2012, the sum of \$165,065.71;
 - (C) on about 21 September 2012, the sum of \$383,819.87;
 - (D) on about 11 October 2012, the sum of \$252,633.47;
 - (E) on about 16 November 2012, the sum of \$281,652.31; and
 - (F) on about 11 December 2012, the sum of \$319,140.01.
 - (c) Further to sub-paragraphs (a) and (b) hereof, the said adjusted amounts are:
 - (i) in relation to fees and expenses for July and August 2012, the RITC (75%) Adjusted Amount; and
 - (ii) thereafter, the un-adjusted amount multiplied by 11 and divided by 10.45 ("RITC (55%) Adjusted Amount"), such that the characteristic described in particular 73(c)(ii) above (substituting 45% for 25%) remains true in the context of the reduction in the available reduced income tax credit from 75% to 55%.
76. As to paragraph 76 of the Statement of Claim, the Plaintiff provides the following further particulars:
- (a) If the position is as alleged in paragraph 36(a) of the Statement of Claim, the aggregate amount paid from the property of the FMIF for loan management services or services relating to the sale of real estate assets in relation to the period 1 March 2013 to 30 June 2013, of \$999,889.10, comprised:
 - (i) on account of fees, the amount of \$934,191.65 plus adjustments relating to tax, totalling the RITC (55%) Adjusted Amount of \$983,359.63 particularised in paragraph 76(a) of the Statement of Claim;
 - (ii) on account of expenses (in respect of which no claim is made), the amount of \$15,703.00, plus adjustments relating to tax.
 - (b) LMA issued invoices to LMIM for "Loan Management Fees", particulars of which are as follows:
 - (i) Invoice numbered 1106 dated 31 March 2013 for "the month of March 2013" for an amount inclusive of GST of \$230,949.04;
 - (ii) Invoice numbered 1108 dated 19 April 2013 for "the period 1 April 2013 to 19 April 2013" for an amount inclusive of GST of \$149,829.65;

- (iii) Invoice numbered 1109 dated 30 April 2013 for "the period 20 April 2013 to 30 April 2013" for an amount inclusive of GST of \$128,242.79; and
- (iv) Invoice numbered 1118 dated 31 May 2013 for "the period 1 May 2013 to 31 May 2013" for an amount inclusive of GST of \$276,441.22.
- (c) LMA issued invoice 8973Inv003 to PTAL dated 31 May 2013 for "Loan Management Fees March 2013 to May 2013" for the aggregate of the amounts of the invoices referred to in sub-paragraph (b) above:
 - (i) which stated "This invoice replaces previously issued invoices by LM Investment Management Ltd (Administrators Appointed) 1106, 1108, 1109, 1118"; and
 - (ii) which, contrary to the facts as further particularised in sub-paragraph (e) hereof, identified a credit of \$509,747.84 (excluding GST) for "income received in advance by LMA from LM FMIF prior to appointment of Voluntary Administrators on 19 March 2013", and an amount outstanding of \$224,740.07 (including GST).
- (d) LMIM issued invoice 8973Inv004 to PTAL dated 30 June 2013 for "Loan Management Fees June 2013" for an amount inclusive of GST of \$214,426.40.
- (e) Further to sub-paragraphs (a) to (d) hereof, the amounts referred to in sub-paragraph (a) were paid by:
 - (i) reducing the balance of the LMA Account in the aggregate amount of \$380,778.69, as follows:
 - (A) on 31 March 2013, in the amount of \$230,949.04, in payment of the said invoice 1106; and
 - (B) on 19 April 2013, in the amount of \$149,829.65, in payment of the said invoice 1108; and
 - (ii) making cash payments in the aggregate amount of \$619,110.41, as follows:
 - (A) on about 9 May 2013, the sum of \$128,242.79, in payment of the said invoice 1109;
 - (B) on about 14 June 2013, the sum of \$276,441.22, in payment of the said invoice 1118, or alternatively the balance of the said invoice 8973Inv003; and
 - (C) on about 8 July 2013, the sum of \$214,426.40, in payment of the said invoice 8973Inv004.

Signed:


Tucker & Cowen

Description: Solicitors for the Plaintiff

These particulars were settled by Mr Ananian-Cooper of Counsel.

Tucker & Cowen Solicitors.

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Our reference: Mr Schwarz / Mr Hancock

11 May 2016

Your reference: Mr Tiplady / Mr Sean Russell

Mr Ashley Tiplady and Mr Sean Russell
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Dear Colleagues

Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("LMIM");
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") – Indemnity claim

We refer to your recent correspondence about the payment of the sum of \$84,954.41, the amount of indemnity claims accepted by our client.

There are, as our client has said in recent affidavits and in submissions made on his behalf during the March, 2016 hearing before Justice Jackson, serious questions about the propriety and reasonableness of a number of payments which LMIM caused the FMIF to make to LMA for "loan management fees" in the March-July 2013 period.

The payments in question amount to just under \$1 million and are:

1. \$560,722.62 (inc GST) paid prior to 19 March, 2013 – and apparently credited, after the event, as a part payment of LMA's invoice 8973Inv003 of 31 May, 2013 for \$785,462.68 (inc GST) said to be for "loan management fees";
2. \$224,740.07 (inc GST) on 17 June, 2013 – evidently in satisfaction of the balance supposedly owing then in respect of LMA invoice 8973Inv003 of 31 May, 2013; and
3. \$214,426.40 (inc GST) on 8 July, 2013 – evidently in satisfaction of LMA invoice 8973Inv004 of 30 June, 2013 for the same amount, again for "loan management fees".

These payments are mentioned in Table C of the Summary of Fees which formed part of our client's written outline of submissions at the hearing in March, 2016.

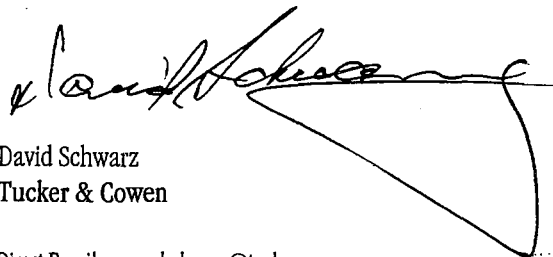
We expect that His Honour's reasons for judgment, when delivered, will clarify whether the making of these payments calls for the application of the "clear accounts" rule, and, consequently, our client suggests that any payment from the FMIF in respect of the indemnity claim be deferred until after due consideration of those reasons for judgment, *vis a vis* the loan management fees.

There also falls for consideration an amount of \$779,266 which LMIM has owed to FMIF since 2014. The details are set out in BDO's letter to FTI of 11 May, 2016, a copy of which is enclosed.

That debt arose in connection with arrangements in place in 2014 pursuant to which Mr Clout, as liquidator of LMA, kept LMA's office open and kept some LMA staff in employment for the purpose of dealing with requests for information and copies of documents relating to the affairs of LMIM and the various funds in the LM Group.

The debt represents LMIM's unpaid share of sums paid to Mr Clout by the FMIF. It would appear to raise a reasonably clear claim available for set-off against the amount of the accepted indemnity claims, to the extent necessary to extinguish them, and it furnishes at least a further reason for the deferral suggested above.

Yours faithfully



David Schwarz
Tucker & Cowen

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RUSSELLS

11 May, 2016

Our Ref: Mr Tiplady/Mr Sean Russell
Your Ref: Mr Schwarz/Mr Hancock

URGENT

Tucker & Cowen
Solicitors
BRISBANE

email: dschwarz@tuckercowen.com.au

Dear Colleagues

**Re: LM Investment Management Limited (In Liquidation)(Receivers Appointed ("LMIM")
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") – Indemnity Claim**

We refer to your letter dated 11 May, 2016.

Whilst we have not yet, given the passage of time, obtained full instructions on the issues which your correspondence raises, we believe a high level response this evening to be appropriate given the course which your client has adopted (as outlined in your letter), the inevitable steps which our clients must take and what will therefore likely follow in terms of potentially wasted court time and members' funds, not to mention the impact on all concerned in the eyes of the public, the Court and the insolvency and legal professions generally.

We would hope, given the seriousness of what has been alleged and what must have been anticipated would be the steps our clients would be forced to take (not of choice but by necessity to obtain payment of monies due), that with the benefit of mature reflection and following invitation, your client might reassess the course he has chosen to adopt.

The contents of that correspondence are unfortunate and, in our view, raise serious allegations of personal misconduct against our clients. Your client has made a conscious choice, no doubt based on your advice, to promulgate the position advanced in your letter.

Such allegations ought not be made lightly or without a proper foundation.

The purpose of this letter is to set out why our clients consider the allegations to be so serious and to give your client an opportunity to reconsider the course upon which he apparently intends to embark. It is the only such opportunity which our clients intend to provide your client.

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The Relevant Principles

Clause 19.1(c) of the constitution of the FMIF provides as follows:-

"In addition to any indemnity under any Law, the RE has a right of indemnity out of Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust." [Emphasis added]

The matters in respect of which your client now belatedly complains (and, we might say, following numerous invitations over many months to inform our client of any circumstances which may impact upon the payment of their remuneration and expenses) are not the same matters in respect of which our clients claim a right to be indemnified. It follows that our clients have a *prima facie* right under the trust instrument to a full indemnity and your client must therefore contend that equity's conscience prohibits our clients from exercising their right of indemnity.

Your client accepts that the claimed expenses themselves were properly incurred for the purposes of the FMIF.

By seeking to invoke the clear accounts rule, your client must be contending that because of the 'loan management fees' (the factual circumstances of which we shall shortly address), our clients have breached their duties as trustee and caused loss or damage to the FMIF. However, clause 19.1(a) of the constitution of the FMIF provides:-

"The RE is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:-

- i. otherwise than in accordance with this Constitution and its duties; and*
- ii. without a belief held in good faith that it was acting in accordance with this Constitution or its duties..."*

It follows that your client must be alleging bad faith on our clients' part. Mr Park has deposed to the fact that he and Ms Muller took legal advice in respect of the transactions of which Mr Whyte complains and that he and Ms Muller caused the transactions to occur.

Moreover, it is well established that not every breach of trust amounts to conduct for which the trustee will have to reimburse the trust or which has the effect of delaying or defeating the trustee's right of indemnity. That is particularly so in this case, where the trust instrument contains such strong protection for the trustee. This leaves to the side for present purposes whether Mr Park and Ms Muller personally possess a right of indemnity against the trust assets of the FMIF for their remuneration and expenses.

In short, the allegations raised by your client are of a most serious kind. Our clients have no choice but to treat them as allegations of *mala fides* against them personally.

Given the nature of the allegations, they ought to be put with appropriate precision. If your client will not resile from the position, he ought to let our clients know each and every particular of the allegations raised against them (which your letter does not do nor did any submissions made in Court, nor any earlier correspondence) and why that conduct disentitles them from exercising

their right of indemnity for expenses which your client accepts were properly incurred. We will insist on those matters, including the basis for our clients' alleged bad faith, being positively proven in Court to the requisite degree; your client's usual affidavits raising concerns and uncertainties will not suffice.

The Factual Circumstances

Your correspondence contends that your client has raised "...serious questions about the propriety ... of a number of payments..." We assume such an assertion must refer to earlier pieces of correspondence or submissions made in Court.

However, your client has never raised the propriety of the transactions in the sense which that issue is now pressed. Your client's submissions before Jackson J were to the effect that, in deciding the question of the reasonableness of our clients' remuneration, these transactions were a potentially relevant consideration. We are unaware of any correspondence either between solicitors or directly between our respective clients which addresses those matters raised in your correspondence of this afternoon. If you suggest otherwise please point us to the precise piece of correspondence or submission (by transcript reference or paragraph of an outline of submissions).

In affidavits upon which he was not cross-examined, Mr Park swore that:-

1. he took legal advice about the transactions (paragraphs 63 and 64(a) of Mr Park's affidavit sworn 8 March, 2016);
2. in the period immediately following his and Ms Muller's appointment, it was not clear to him what the actual operational costs of LMIM and LMA were (paragraph 35 of Mr Park's affidavit sworn 22 February, 2016); and
3. his intention in causing those transactions to occur (and in his belief, the effect of those transactions) was to provide an independent income stream to LMA, under pre-existing contractual arrangements, during the period of the administration (paragraph 63 of Mr Park's affidavit sworn 8 March, 2016).

In light of that unchallenged evidence, we do not see how your client (or your firm) has a proper basis for the serious allegations which you have raised in your correspondence.

The fact that:-

- (a) the issues which your client now wishes to raise were not before Justice Jackson in our clients' remuneration approval application (let alone fully argued); and
- (b) Justice Jackson's decision in that matter could not amount to a definitive determination of the underlying issues,

should be sufficient to deal with your suggestion that his Honour's reasons in the reserved judgment will impact upon the asserted basis for your client's position and hence our clients should agree to delay receipt of funds due to them to permit your client to reconsider his decision following the delivery of his Honour's reasons.

Perhaps your client's 'newly' articulated position was the reasoning behind his opposition to a payment order in favour of our clients being made in the regime

fashioned by the orders of 17 December, 2015. It is worth casting your Mr Schwarz's mind back to discussions then held with our Mr Tiplady, that when Mr Tiplady directly questioned whether the resistance to a payment order being made was so that some disentitling conduct may be subsequently raised to defeat payment being made to our clients, Mr Tiplady was assured that was not the case. One might now view that assurance in a different light given that Mr Whyte's attitude to payment being made to our clients can hardly be something that has only just now been formulated.

Application

We have a number of serious concerns about the manner and timing by which your client has raised the issues contained in your letter, given:-

1. the fact that your client is only just now, and despite having ample opportunity over the course of several years to raise his concerns (and invitations to do so), contending that these transactions amount to a serious breach of trust;
2. that your client did not raise these concerns when considering whether LMIM ought to be indemnified from the assets of the FMIF in paying your firm's own costs in respect of Mr Shotton's appearance in the Court of Appeal proceedings.

That said, we will take instructions about the matters raised in your letter. We anticipate our instructions will be to press the application which was sent to you today and fully ventilate those issues. We intend to include this correspondence and your client's reply in the material to be put before the Court.

There should be no misunderstanding about how our clients view your client's contentions and their consequences.

The allegations are that our clients have personally engaged in conduct characterised as a serious breach of trust or involving bad faith. That conclusion is unavoidable on the basis of the matters raised in your letter.

The allegations should be immediately withdrawn and the sum which your client accepts was properly incurred in the course of our clients acting for the benefit of the FMIF should be paid immediately.

So that your client is on fair notice at the earliest possible opportunity, if he presses the claims in your letter and is unsuccessful, our clients will seek an order that he personally pay the costs of the necessary application on a full indemnity basis and potentially also that your firm be jointly liable for those costs (as it must be on your advice that these positions are being advanced).

A reply to the effect that we have misunderstood the matters raised in your correspondence and the allegations are not serious or personal will not suffice. They clearly have that character. Your client, for reasons of his own, seems determined to take every possible step to ensure that our clients are not paid a cent of what they are owed. In light of the millions of dollars he has paid as expenses to other third parties and the vigorous resistance to paying our clients any sum at all, even those he admits are proper, no alternative conclusion can be drawn.

Our clients will not offer your client another opportunity to resile from the course he now seeks to adopt and the steps which must surely follow given the position in which our clients have been placed.

The allegations ought properly be withdrawn immediately and we invite Mr Whyte to do so by return.

Yours faithfully



Ashley Tiplady
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Dugald Hamilton.
Olivia Roberts.
James Morgan.

Our reference: Mr Schwarz / Mr Hancock
Your reference: Mr Tiplady / Mr Sean Russell

13 May 2016

Mr Ashley Tiplady and Mr Sean Russell
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atiplady@russellslaw.com.au

Dear Colleagues

Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("LMIM");
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") – Indemnity claim

We refer to your letter of 11 May 2016, received at approximately 9pm.

There is much in your letter with which we, and our client, take issue. We intend to respond further to your correspondence, but given your request for a prompt response, and your clients' threatened application, we are instructed to provide the following response for the time being.

First, it should be noted that, by our correspondence of 11 May 2016, our client:-

1. observed that there is a substantial amount outstanding by LMIM (both in its own capacity and as trustee or responsible entity of other funds) to the FMIF¹ in relation to the arrangement struck with LMA during the period in which Mr Clout was liquidator of the company and in which LMA was providing resources for the benefit of the funds and various insolvency practitioners appointed to them; and
2. noted that the concerns raised by our client in connection with the LMA loan management fees that had been paid by LMIM from FMIF property to LMA during the period from March to July 2013, had been raised before Justice Jackson on the hearing of your clients' application for remuneration to be paid out of the assets of the FMIF, and that the "clear accounts" rule might operate – again, a matter that was raised before Justice Jackson.

Accordingly, our client proposed the deferral of further consideration of payment to your clients until after delivery of the decision by His Honour in respect of your clients' application, given the likelihood His Honour would give some consideration to the matters mentioned in paragraph 2 and any reasons for His Honour's decision may provide some guidance in relation to these issues.

To the extent to which your correspondence seeks to characterise our letter as doing more than that, we (and our client) reject the suggestion.

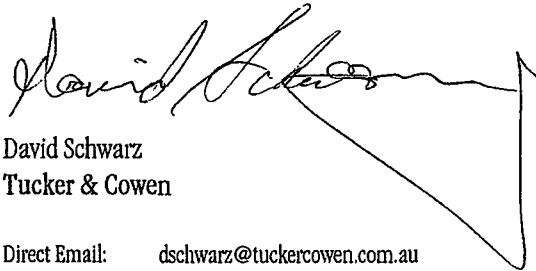
¹ We use this short-hand term for convenience; LMIM is liable to restore this amount to the property of the FMIF

Your clients have threatened an application to the Court for Orders requiring our client to pay immediately the amount of the indemnity claims that have been accepted by our client, and notified by our client's letter to Mr Park dated 22 April, 2016. The costs of such an Application (for both parties) would no doubt be significant. The amount in question is less than \$100,000. Given that the amount relates to expenses incurred in 2014 and in the period up to about June 2015 (for the most part) it is difficult to understand why your clients consider that a deferral until after delivery of the decision of Justice Jackson would constitute an excessive delay, such that the cost of such an Application would be warranted.

Nonetheless, we are instructed that our client takes the view that it would not be in the interests of the members of the FMIF to expend substantial sums in engaging in a dispute about an amount of less than \$100,000. Accordingly, without any admission or concession by our client, we are instructed that our client intends to procure payment of the amount accepted by our client and notified by his letter of 22 April, 2016 addressed to Mr Park; this amount is \$84,954.41 as was identified in your emails of 27 April and 4 May, 2016, since we understand that your clients have already claimed an input tax credit for the amount of the GST, and it is for that reason that the amount of GST was deducted in our client's schedule which was enclosed with his letter to Mr Park.

Please note that, while our client intends to cause the abovementioned amount to be paid, your clients should not take that payment as any indication whatsoever as to the view that our client may take in the future as to claims made by your clients, or as to whether it is appropriate that payments be made in respect of indemnity claims at a particular time. Our client's rights in that regard are reserved.

Yours faithfully



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Our reference: Mr Schwarz / Mr Ziebell

23 November 2016

Your reference: Mr Tiplady / Mr Sean Russell

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Dear Colleagues

Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("LMIM");
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") v David Whyte
Supreme Court of Queensland Proceeding No. 3508/2015
Indemnity Claims by LMIM - Application filed 20 May 2016

We refer to your letter of 22 November 2016, received by email at approximately 4.07pm.

The substance of your letter appears to go to the following two points:-

1. First, to inquire as to whether Mr Whyte intends to raise the "clear accounts rule" in relation to indemnity claims by LMIM; and
2. To foreshadow that you intend to write to Justice Jackson's Associate tomorrow "*requesting that the matter be listed for directions at the earliest possible date this week or early next week*" and to note an asserted objection on our part, to that course.

The balance of your letter consists of disparaging remarks concerning our client that we consider are unjustified, and are probably best left to one side for the time being.

As regards the two substantive points:-

1. As to the first point, our client's position as to the "clear accounts rule" and its application to LMIM's indemnity from the FMIF has been made plain, repeatedly. It has been raised by Mr Whyte or his representatives:-
 - (a) in correspondence from this firm dating back to December 2015;
 - (b) in correspondence from Gadens (who, as you know, act for Mr Whyte in respect of certain aspects of the winding up and receivership of the FMIF);
 - (c) in affidavit material filed by Mr Whyte in connection with your client's application for remuneration from the FMIF;
 - (d) in written submissions to the Court; and

(e) in oral submissions to the Court by Queen's Counsel for Mr Whyte.

With respect, we fail to see how there can be any mystery about Mr Whyte's position. If there is, please let us know in what respect the position may yet be further clarified.

2. As to the second point, you appear to have misconstrued or misread what was said in our earlier correspondence. In our letter of 17 November 2016 we invited you to propose directions, and to provide us with your draft correspondence to Justice Jackson's Associate requesting that the matter be listed for directions on 9 December 2016, being the date when our client's Counsel is available in the week suggested in your correspondence of 8 November 2016.

We have received neither proposed directions, nor a draft email to His Honour's Associate, from you.

Our client remains of the view (as do we) that there is a significant overlap of issues raised by this application and those raised by your clients' remuneration application, in which His Honour has reserved judgment. That said, if your clients wish to bring the application before the Court, then we expect that the same point can be made in submissions to His Honour.

You have said that you intend to seek to have the application listed for directions. As to that, there is no objection from our client. Our client does, however, seek the usual courtesy of requesting a date for review that is convenient to both parties, particularly when you invited us to nominate convenient dates and we did so.

If that date is no longer convenient to your client's Counsel, then please provide us with a range of suggested dates so that we may ascertain whether any of them also suit our Counsel. You might also kindly let us know the directions your client proposes so that we may consider them and, potentially, save both the Court's time and unnecessary expense to the parties.

We also again request that you send us a draft of your proposed email to His Honour's Associate so that, once convenient dates have been ascertained, there might possibly be a joint approach to His Honour's Associate.

We look forward to receiving your reply.

Yours faithfully



David Schwarz
Tucker & Cowen

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RUSSELLS

13 December, 2016

Our Ref: Mr Tiplady
Your Ref: Mr Schwarz

Mr David Schwarz
Tucker & Cowen Solicitors
BRISBANE QLD 4000

email: dschwarz@tuckercowen.com.au

Dear Colleagues

LM Investment Management Limited (In Liquidation)(Receivers Appointed) ("LMIM")
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") - Indemnity Claim

We refer to your letter dated 23 November, 2016.

Thank you for confirming that your client will contend that the 'clear accounts' rule applies to our clients' indemnity claims for their expenses in connection with the FMIF. This serves to clarify the issues to be raised on our clients' application. We also assume your client will take this point regarding all further claims which may be made by our clients for indemnity from the FMIF, including regarding their remuneration. Please correct us if we are incorrect in this assumption.

Of course, as you will be aware from our correspondence of 11 May, 2016, our clients consider your client's contention as tantamount to an allegation of personal misconduct.

It is worth restating why our clients consider that to be the case.

Clause 19.1(c) of the constitution of the FMIF provides:-

"In addition to any indemnity under any Law, the RE has a right of indemnity out of Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust." [Emphasis added]

Clause 19.1(a) of the constitution of the FMIF provides:-

"The RE is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:-

- i. otherwise than in accordance with this Constitution and its duties;*
- and*

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-
- ii. without a belief held in good faith that it was acting in accordance with this Constitution or its duties..." [emphasis added]

In our view, while the principles have a long pedigree and are clear, they have been conveniently summarised recently by Gordon J (as her Honour then was), in *ASIC v Letten (No 17)* (2011) 286 ALR 346 at 350 – 353.

In light of the terms of the FMIF constitution, in order for our clients, the administrators and then liquidators of the trustee, to be denied a right of indemnity on the basis of these principles, your client must be alleging a breach of trust involving the absence of a belief, held by our clients in good faith, that they were acting in accordance with the constitution and their duties. Given the express wording of the FMIF constitution and your client's stated intention to argue that our clients are disentitled from an indemnity against the assets of the FMIF, Mr Whyte's case must be that the administrators (now liquidators) were motivated by *mala fides* in their dealings which founded the indemnity claims which have been made. We are proceeding on that basis. We draw these principles to your client's attention in an effort to ensure that he is perfectly aware of the seriousness of the case he proposes to advance.

Mr Whyte's now stated allegations are no mere set-off; they must go beyond that. It is also not sufficient that there may be potential cross-liabilities; again, much more is needed. Despite this, your client seems committed to the course outlined in your letter. We invite Mr Whyte to reconsider his position in light of the matters raised in this letter so that the members of the FMIF might be spared further unnecessary expense.

It is worth noting against this background that at paragraph 63 of his affidavit sworn 8 March, 2016 in Supreme Court proceeding number 3508 of 2015, Mr Park deposes that he and Ms Muller took legal advice about the loan management fees and their ability to continue to charge those fees. No responsive material was put to that evidence. Without waiving the content of that advice, it should suffice to say that the advice was followed. This is, in our view, sufficient to dispose of Mr Whyte's claims (as presently formulated).

If, after considering these comments, Mr Whyte nevertheless intends to press the 'clear accounts' rule:-

1. our clients will contend that Mr Whyte is prevented from raising that point on this application because of the principles in *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 197 CLR 589; and
2. if that argument does not succeed, our clients will require your client to put the claim with a level of particularity appropriate to the seriousness of the allegations.

Our clients, also, do not believe that the FMIF should bear the cost of Mr Whyte running this argument as it is destined to fail.

The allegation is estopped

Despite what is said in your letter of 23 November, 2016, your client has never clearly articulated his opposition to our client's indemnity on the basis of the 'clear accounts' rule.

There have been at least three substantial opportunities which your client has had to raise the issue, the failure to do so making your client's current reliance on the rule unreasonable:-

1. on 22 May, 2015, your client agreed to pay Mr Shotton's costs of the appeal to the Queensland Court of Appeal from the decision of Justice Dalton. That liability arose consequent upon an order that LMIM pay Mr Shotton's costs. Your client agreed, in respect of that liability (ultimately payable to your firm), that LMIM was entitled to exercise its right of indemnity. The relevant circumstances are set out with more particularity in paragraphs 21 to 36 of Mr Park's affidavit sworn 18 October, 2016;
2. on 17 December, 2015, Justice Jackson relevantly directed your client (a court appointed receiver) to provide reasons for his decision to reject any claim for indemnity for our clients' expenses. Your client provided reasons on 21 April, 2016 and 27 April, 2016 (which appear at pages 99 to 101 and 105 to 111 respectively of the exhibits to Mr Park's affidavit sworn on 18 October, 2016 ("the Reasons")). The Reasons did not clearly state your client's reliance on the clear accounts rule; and
3. if your client had intended to run the point, he ought to have done so at our clients' application for the approval of their remuneration heard on 22 February, 2016 and 14 March, 2016. He did not.

You have previously contended in correspondence that the issue was raised before Justice Jackson at our clients' remuneration application (the matters raised before Justice Jackson being the only reference to the position your client now takes which appears in the Reasons). We will explain why that is not so.

At paragraph 50 of his affidavit sworn 19 February, 2016, and filed in the remuneration application your client deposes:-

"There may be a set off against any indemnity claimed by LMIM."

Mr Whyte then refers to a letter from his other solicitors, Gadens, dated 17 February, 2016, being exhibit DW-11 to that affidavit. Therein, in addition to raising the 'clear accounts' rule (and we pause to note that Gadens did not address the constitution of the FMIF and simply referred to 'breaches of trust'), Gadens say that your client has "... identified a number of potential claims against LMIM (in its capacity as responsible entity for the FMIF) for breach of trust". The comments under the subheading "Loan recovery costs" in that letter appear to relate to the matters on which your client now relies.

Importantly, Mr Whyte did not depose to needing more time to investigate or to any obstacle to his investigations. That stance continued into the hearing of our clients' remuneration application in February and March, 2016.

It follows that, by mid-February, 2016, your client was aware of (at least) the substance of the claims he now says that he wishes to advance.

In response to the late delivery of that affidavit (which was served at 3:22 pm on Friday, 19 February, 2016, ahead of a hearing listed for the following Monday morning), our client managed, by working through the weekend, to provide responses to the matters raised by your client so late in the piece.

Paragraphs 34 to 46 of Mr Park's affidavit of 22 February, 2016 dealt with those issues as best our client was able in the short time permitted.

In written submissions prepared by Ms Brown QC and Mr de Jersey for your client on 22 February, 2016, the clear accounts rule was not pressed. The thrust of the submissions is a complaint about the insufficiency of our clients' evidence to persuade the Court that an order for remuneration should be made. The only reference to the substantive issue appears at paragraphs 70 and 71. The high point of the submission is at paragraph 71:-

"...The basis of the calculation of historical Management Fees is unclear, and whether any such charging was a breach of trust by LMIM as RE of the FMIF, and may, in turn, set off any such indemnity to LMIM."

At the conclusion of our clients' counsels' oral submissions the following exchange between Justice Jackson and Mr McQuade QC, for our client, occurred:-¹

MR McQUADE: There's one other point, which I'm not quite sure whether is still being pressed, but in the respondent's, Mr Whyte's affidavit and in the submissions, there was a point raised that my clients wouldn't be entitled to an indemnity for anything because of alleged defalcations by the trustee prior to the appointment, and what I'll do is I reserve the position to wait and hear from - - -

HIS HONOUR: This is the setoff argument?

MR McQUADE: Yes, and I'm not quite sure how that's being pressed and on what basis, but I'll leave that to reply, if I may, your Honour.

HIS HONOUR: All right.

Between pages 1-63 and 1-67, Ms Brown QC on behalf of Mr Whyte makes oral submissions about the relevancy of the loan management fees. At 1-66, his Honour summarises the effect of Ms Brown QC's oral submissions as follows:-

HIS HONOUR: All right. So that's not the problem that I'm seeing. The problem I'm seeing is you say there's an unclear aspect as to whether LMA was reimbursed but through distress asset controllership appointments for fees or otherwise for invoices that may be included in the LMA amounts that it claimed by way of remuneration or expenses.

MS BROWN: Yes.

That is distinctly not an assertion that the incurrence of the loan management fees amounts to a breach of trust of sufficient gravity to disentitle our clients to an indemnity at all. It raises a general concern that there may be double counting or, perhaps, that a sufficient quantum of money to satisfy our clients' claim for remuneration has already been paid by the FMIF.

Paragraphs 43(b) and 53 to 67 of Mr Park's affidavit sworn 8 March, 2016 set out the factual matters which underpin the loan management fees, which your client suggests amount to a breach of trust involving *mala fides*.

¹ Transcript of argument 22 February, 2016, 1-42, lines 21-32

In respect of the loan management fees, in his affidavit of 11 March, 2016, your client deposes:-

28. *I refer to the explanation by Mr Park at paragraph 43(b) of Mr Park's March Affidavit, to the effect that the loan management fees were ultimately borne by borrowers.*
29. *I have reviewed the loan account positions with respect to each of the borrowers in respect of whom there were controllership appointments at the time of (and subsequent to) my appointment. After realisation of the securities held by the FMIF over or with respect to those borrowers, there was a significant shortfall in each case of the amount recovered as against the total amount owing to the FMIF.*
30. *I have concerns about the reasonableness of charging such loan management fees, and whether it was a proper expense to the FMIF.*

Your client's affidavit material is replete with references to his "concerns" or "queries", the factual relevance of which to the application is unclear. Mr Whyte here seems to be contending, with the substantial benefit of hindsight, that the loan management fees should not have been charged because the risk of borrower default was foreseeable, as was the outcome that such fees would not be recoverable from the specific secured assets but rather would ultimately lie as an expense payable by the FMIF.

He does not, however, put the proposition anywhere near that directly.

In any event, it is certainly not a statement that the loan management fees amount to a breach of trust of sufficient gravity to disentitle our clients to an indemnity.

On 14 March, 2016, your client provided supplementary written submissions.

Paragraphs 35 to 38 of those written submissions contain submissions under the subheading "*Significance of Loan Management Fees paid to LMA*". The relevant parts of the submission are:

37. *In this regard there is a question of whether there may be a set-off available against any indemnity claimed from LMIM against FMIF assets given the matters raised in the correspondence from Gadens lawyers to Russells of 17 February, 2015 [sic, 2016]: affidavit of Mr Whyte at exhibit DW-11 which raised whether loan management fees were paid in breach of trust.*
38. *Mr Park in his March affidavit indicated that those fees have been added as an expense to the borrowers' costs: [43(b)]. These costs have just added to amount of default of the loans (Whyte March Affidavit [29]). Given the resource fee that was already paid to LMA which would appear to have included loan management there is a question as to whether this could be an expense properly incurred by LMIM for the benefit of FMIF when there appears to be little prospect of recovery. As such if that was not a properly incurred expense of the fund it should be set off against any other indemnity claimed from LMIM through LMA or as category 2 expenses. It should be assessed accordingly and any dispute dealt with pursuant to the Court's orders of 17 December, 2015. [Emphasis added]*

That is a submission, in substance, that:-

1. in Mr Whyte's letter of 17 February, 2016, he raised a concern that the loan management fees were paid in breach of trust; and
2. Mr Whyte's position now is that it may (not will) be the case that those expenses were not a proper expense of the FMIF in that they were not for the benefit of the FMIF given that there was little prospect of their recovery.

What it is not is a submission that our clients acted in breach of trust with an absence of good faith so as to disentitle them to an indemnity. Such a submission would require very careful substantiation.

Paragraph 21 contains the only reference to the 'clear accounts' rule in the written submissions. Therein, Mr Whyte's counsel submit:-

"It may be that the Court would consider, in deciding whether to make any order for direct payment to the first applicants as administrators or liquidators, the fact that any indemnity of LMIM could be subject to the application of the clear accounts rule."

The submission does not deign to actually submit that a particular course is appropriate; it merely raises the spectre of suspicion on a matter not properly argued, though clearly in contemplation and left to linger for Jackson J to work through himself; your client having avoided taking a definite position.

The submission is further clouded by the fact that there is a footnoted reference to *Re Rivercity Motorway Pty Ltd* (2014) 102 ACSR 185 at [68] and [69]. Those paragraphs of Greenwood J's judgment read:

"Third, confirming a direct right of indemnity in the liquidators avoids any risk that the interests of the trusts and their members might be subordinated to any concern the liquidators might have as they undertake particular tasks concerning any personal liability."

I am satisfied that the work required of the liquidators is work which will benefit the trusts and their beneficiaries, and the liquidators are in the best position to efficiently, and particularly cost efficiently, undertake that beneficial work."

Whatever your counsel had in mind with that reference, it has nothing at all to do with the 'clear accounts' rule; perhaps where his Honour's attention was being drawn was the necessary element of there being benefit to a trust from work undertaken by a liquidator to support any claim for the costs associated with such work. A wholly different point to that is presently under consideration.

In oral argument at the second day's substantive hearing, your client brushed up against the argument but, again, failed to press it in any detail. There is a discussion between your client's counsel and Justice Jackson throughout pages 1-53 to 1-56 before lunch and then again at pages 1-60 to 1-62. Therein, your client's counsel withdraws the 'at large' concern about our clients' right to remuneration being defeated by any conduct of LMIM prior to their appointment and substantially narrows the submission in respect of post-appointment conduct.

Relevantly:-

MS BROWN: ... In terms of the question of the clear accounts rule and any setoff, I clarified the position over lunch in that regard, your Honour, and the only matter that would be raised as a point of setoff by any indemnity claimed by LMIM post appointment of the applicants would be in relation to conduct by them which could be said to be disentitling conduct for an indemnity.

HIS HONOUR: But what's that? That's a statement by you of some future attitude by Mr White?

MS BROWN: It's actually – it's – the only matter that has been raised has been identified in his affidavit, which is in relation to the loan management fees and that 45 has been the subject of correspondence by Gadens to Russells.

HIS HONOUR: But that's not what his affidavits have said. His affidavits have relied on the proposition in general twice, but you are now clarifying and you're saying that Mr White's intention is narrower?

MS 5 BROWN: Yes.

HIS HONOUR: But that's not binding unless you're promising to be bound for him. You could be sued if he changes his mind. I mean, how am I supposed to pay any attention to that?

MS BROWN: Well, the point – the point about that, though, is this, your Honour: the pre-administration – pre-administration conduct would ultimately, in terms of creditors' claims, be dealt with under the 17 December 2015 regime. The claims by

HIS HONOUR: But you're saying this should be not a remuneration claim by a liquidator which he or she seeks to have made payable out of a trust fund carried on by the company that was in liquidation, this should be dealt with under the constitution, meaning it should be a company claim, and that would be a claim subject to – however framed, to the rules about indemnities.

MS BROWN: It would, but as I said, your Honour, my – at least in terms of the conduct which could disentitle the first applicants from being able to claim their indemnity - - -

HIS HONOUR: But the first applicants don't have an indemnity under the hypothesis that it's going to be a company claim.

MS BROWN: Well, the company has the indemnity, you're right.

HIS HONOUR: Once you say it's done under the constitution, it's not some officer of the company, it is the company.

MS BROWN: It is the company, your Honour is quite right, and I can't take it further than the fact that – in terms of any setoff that would be claimed in terms of work carried out by the company post the appointment of the liquidators, that I'm instructed to say it would not be raised, other than in relation to conduct by them, but returning to the question of the remuneration application here, there is no general entitlement after Mr White's appointment to continue to carry out the work which Mr Park has referred to in his affidavit, and the requisite nexus between the administration of the trust and the work carried out which is required under any of the principles, whether it be under Suco Gold, Universal Distributorship or Berkeley Applegate, has not been established..." [Emphasis added]

Your client could not be said to have argued the point when there were absolutely no submissions put towards how or why our clients' conduct in respect of the loan management fees was a breach of trust.

There are only two possible analyses of your client's approach to the issue on our client's remuneration application; either:-

1. the argument was not raised, despite the opportunity to do so; or
2. it was raised and the submissions and evidence put were those to which we have referred above, in which case:-
 - (a) your client never said what our clients' obligations were;
 - (b) your client never said how the loan management fees are said to have breached those obligations;
 - (c) your client never said why it is that type of breach of trust is so serious as to amount to disentitling conduct;
 - (d) your client never said how it can be inferred that our clients acted in the absence of good faith;
 - (e) your client never said why it is that taking legal advice on the transactions does not evidence good faith; and
 - (f) no case was relied upon in which an administrator or liquidator was denied their remuneration because of their *mala fide* conduct of the affairs of the company.

If your client considers that the latter position is correct and the argument was raised, the only evidence on the matter is your client's broadly expressed concern (at paragraphs 28 to 30 of his affidavit of 11 March, 2016) and our clients' unchallenged explanation of the transactions (at paragraphs 43(b) and 53 to 67 of Mr Park's affidavit sworn 8 March, 2016), including his unchallenged evidence that he took advice about the transactions.

We have focused the substance of our clients' response to your client's attitude to the application on the loan management fees because that is the sole basis raised in your letter of 11 May, 2016 for the application of the 'clear accounts' rule. If your client believes that there exists other grounds to found his allegations, please let us know immediately what are those facts.

Your letter of 11 May, 2016 also suggests there are some outstanding amounts due from LMIM for operational expenses. There does not seem to be any serious attempt in your letter to suggest that the 'clear accounts' rule (that is, the principle that a sufficiently serious breach of trust can deprive a trustee of their right to exercise their indemnity) applies. Rather, an amorphous "set off" is claimed. Again, if we have misunderstood your client's contentions please let us know.

In any event, would you please let us know if you contend that your client does not need to establish the absence of good faith on our clients' part in order for the 'clear accounts' rule to apply and, if so, the basis for that position (including by reference to clauses 19.1(a) and 19.1(c) of the constitution of the FMIF).

In summary, the position which our clients take is that your client was well apprised of the circumstances surrounding the loan management fees by, at the latest, the hearing of our clients' remuneration application and, as such, your client could have submitted that those transactions involved a sufficiently serious breach of trust to operate to deprive LMIM (and our clients) of a right to an indemnity. He did not.

Your client could have sought an adjournment of the application to permit those matters to be fully investigated if (as he deposed and submitted) he remained in real doubt about the effect and propriety of the transactions. He did not.

The only conclusion which can therefore be drawn is that:-

1. your client was aware of the substance of the transactions;
2. your client was aware (and must have taken advice to the effect) that he could contend that the transactions amounted to a breach of trust in the absence of good faith on the part of our clients; and
3. your client made a forensic decision not to do so.

Your client's foreshadowed submission that the loan management fees amount to a (bad faith) breach of trust is so clearly connected and relevant to the subject matter of the earlier proceedings mentioned above that it is unreasonable (in the sense meant by Gibbs CJ, Mason and Aickin JJ in *Anshun*) to raise it now.

Doing so only serves to unnecessarily and unfairly increase the costs of this application.

If, in light of the matters raised above, your client still intends to press the allegations of personal misconduct, and then fails, our client will seek an order that your client personally pay our clients' costs of the application on the indemnity basis without recourse to the assets of the FMIF.

Such an order would be justified because:

1. there is a clear basis for an *Anshun* estoppel set out above and your client is being given an opportunity to retreat from his position; and
2. in light of the unchallenged evidence by Mr Park (including that he took legal advice) there can be no proper basis for the allegation of personal misconduct and bad faith on our clients' part.

Directions to advance

Assuming, for the moment, that your client intends to proceed with the argument that the 'clear accounts' rule applies to our clients' application, it seems to us that there are three 'limbs' to the proceeding:-

1. the *Anshun* point raised above;
2. if your client is not estopped from raising the 'clear accounts' rule, whether our clients have, in fact, committed a breach of trust and whether that breach is sufficiently serious to displace their right of indemnity; and
3. whether the particular expenses claimed fall within the scope of the indemnity or have the requisite connection to the FMIF.

The first matter ought to be heard as a separate question pursuant to rule 483 of the *Uniform Civil Procedure Rules 1999* (Qld). If it succeeds, there is no need for any argument in relation to the second issue (which will likely be lengthy and expensive). If it fails, our clients will require your client to establish his contention with the level of specificity befitting the gravity of the allegation; that is, by pleadings.

The third issue is, in our view, relatively narrow and could be heard in less than half a day. The parties' respective positions in this regard have been reduced to writing for some time now.

Accordingly, there ought to be a hearing on the substance of our clients' *Anshun* point at the earliest opportunity and, if it succeeds, the parties can immediately move to a hearing on the substantive third issue. We do not see the need for directions before a hearing of that nature is set down.

If the *Anshun* point fails, there ought to be directions requiring your client to plead the alleged breach of trust with associated directions for the exchange of evidence. As the 'moving party' in respect of that allegation, your client should plead first.

On the basis of your previous correspondence, we anticipate that your client will resist that course. Accordingly, we propose to write to Justice Jackson's associate in the following terms:

Dear Associate

We act for Mr John Park and Ms Ginette Muller, the liquidators of LM Investment Management Limited ("LMIM"). Tucker & Cowen, who are copied in to this correspondence, act for Mr David Whyte, the person appointed to supervise the winding up of the LM First Mortgage Income Fund ("the Fund"), a registered managed investment scheme of which LMIM was (and remains) the responsible entity. Several matters relating to the affairs of LMIM have been heard by his Honour in the past eighteen months or so.

On 17 December, 2015, his Honour made the attached orders in this proceeding. On 20 May, 2016, our clients filed an application as contemplated by paragraph 9(a) of the order.

The parties have been in correspondence about the application and have been unable to agree on the best course to move the matter forward.

In essence (and without intending to pre-empt the submissions which will be made to the Court), our clients contend that they are entitled to an indemnity out of the Fund for certain expenses. Mr Whyte disputes that position for (at least) two reasons;

- a) firstly, that there is not a sufficient connection between the expense incurred and the Fund. Our clients believe that part of the dispute can be determined in very short order; perhaps in a few hours, certainly in much less than a day; and*
- b) secondly, Mr Whyte contends that certain other transactions call for the application of the 'clear accounts' rule, such that our clients are not entitled to an indemnity. In respect of the second point, in addition to a substantive answer to the matters raised by Mr Whyte, our clients wish to rely on the principles in Port of Melbourne Authority v Anshun Pty Ltd (1981) 147 CLR 589 to argue that Mr Whyte is estopped from running that point and wish to have that issue determined as a separate question pursuant to UCPR 483.*

The parties' respective contentions to move the matter forward are as follows:-

- (a) Mr Whyte contends that there should be a directions hearing to allow these matters to be ventilated; and*
- (b) our clients wish to have the Anshun point set down immediately to be determined in advance because, if that issue is decided in their favour, there can then be a very short hearing disposing of the entire substantive application.*

Would you please let us know which course would be preferable to his Honour.

This correspondence has been sent with the consent of Mr Whyte's solicitors.

Would you please let us know if your client objects to correspondence in those terms being sent. We intend to send that correspondence by email to his Honour's associate at midday, Friday, 16 December, 2016.

Yours faithfully



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3 February 2017

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Dear Colleagues

Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("LMIM");
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") v David Whyte
Supreme Court of Queensland Proceeding No. 3508/2015
Administration Indemnity Claims & Recoupment Indemnity Claims by LMIM; Application filed 20 May 2016

We refer to your letter of 13 December 2016 in relation to your clients' application filed on 20 May 2016.

It appears from your letter that your clients do not have a clear understanding of our client's position as to the 'clear accounts' rule and its application to LMIM's indemnity from the FMIF, notwithstanding that our client's position has been the subject of considerable correspondence, affidavit material and submissions to the Court.

We are instructed to attempt to further clarify the position in order to limit the scope for any misunderstanding. We are also instructed to write to you as follows, to address some of the other issues raised in your correspondence.

The Indemnity Application

Your letter appears to misconstrue the nature of the application filed 20 May 2016 ("the Indemnity Application"); your letter refers to "*our clients' indemnity claims for their expenses...*" (emphasis added) thus suggesting that the indemnity referred to is one available to, or claimed by, both Mr Park and Ms Muller personally, as well as by LMIM as responsible entity. As we understand the Indemnity Application, however, the application concerns only LMIM's right of indemnity, and does not in its terms purport to seek any directions or orders at all concerning any indemnity in favour of Mr Park and Ms Muller personally.

We pause at this point to note that, while the Indemnity Application seeks declarations as to LMIM's right of indemnity for certain amounts (being amounts that Mr Whyte rejected) under paragraphs 4 and 5 of the Order of the Honourable Justice Jackson dated 17 December 2015 ("the December Order"), your clients' Indemnity Application is (as we understand it) in fact for directions as contemplated by paragraph 9 of the December Order.

If our understanding is incorrect, please tell us.

Remuneration of the LMIM liquidators

Insofar as the remuneration of Mr Park and Ms Muller is concerned:-

1. Your clients have already made application to the Court for orders concerning their remuneration referable to the period to 30 September 2015; that application has been heard, extensive submissions made and judgment is reserved;
2. An order has been made (by paragraph 18 of the December Order) for your clients to be remunerated for work carried out by them and their staff in connection with the performance of the requirements of the December Order; although your clients have not yet made application for any such remuneration, the entitlement of your clients (Mr Park and Ms Muller) to be remunerated is the subject of a Court order for an indemnity to them personally and Mr Whyte, naturally, recognises your clients' entitlement to seek approval of remuneration under that Order; and
3. We had understood that there would be little, if any, additional remuneration sought by your clients for work not required by the December Order which has not already been sought by that part of the Further Amended Originating Application filed 16 December 2015 which was heard by Justice Jackson on 22 February and 14 March 2016 ("the Remuneration Application"); at least so far as we are aware, it has not been suggested that there is any such additional remuneration and there has been no claim made for any. If your clients do envisage making further claims for "Category 1" or "Category 2" remuneration (as those categories were defined in the Remuneration Application) other than under the December Order, please let us know.

Accordingly, so far as we can see, the questions that arise in the context of the Indemnity Application concerning the application of the clear accounts rule are not likely to have any real bearing upon any future remuneration claims by your clients under the December Order.

LMIM's indemnity from the FMIF

Your letter refers to clauses 19.1(a) and (c) of the constitution of FMIF ("the Constitution"). Your letter of 11 May 2016 also addressed these provisions of the Constitution of the FMIF, and advanced a construction of them which, it was said, effectively precluded the operation of the clear accounts rule except in relation to liabilities for conduct in bad faith or undertaken fraudulently.

We do not agree with that construction.

Clause 19 (or any other provision of the Constitution providing for an indemnity in favour of LMIM out of the property of the FMIF) must be read subject to section 601GA(2) of the *Corporations Act 2011*, (Cth) ("the CA"). As you know, that provides that any right of indemnity out of scheme property in favour of the responsible entity for (relevantly) liabilities or expenses incurred in relation to the performance duties "*must be available only in relation to the proper performance of those duties*" and further provides that "*any other agreement or arrangement has no effect to the extent that it purports to confer such a right*".

Clause 19.1(c), as we read it, does not seek to go further than to confer a right to indemnity for expenses and liabilities properly incurred; nor could it. The provision appears to attempt a restatement of the conditions upon a trustee's right of indemnity in equity, namely that the indemnity will be available only if the relevant expense or liability was "properly incurred"; that is to say, not "improperly incurred". By stating that the indemnity is available in respect of a matter "*unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust*" we think that the Constitution does

no more than reflect the principle, concisely stated by Gordon J (as Her Honour then was) in in *ASIC v Letten* (No 17)¹ ("*Letten*"), that:-

*"the indemnity is not available if the activity which generated the liability involved a breach of trust or a breach of a duty by the trustee, was beyond the powers given to the trustee or was criminal or fraudulent in nature... The indemnity is also not available where the liability is "unreasonable or unnecessary" and therefore is not "properly incurred"."*² (citations omitted) (emphasis added)

Such a construction of clause 19.1(c) is consistent with other provisions of the Constitution, such as clause 18.8 which provides that:-

"The RE is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution."

Clause 19.1(c) accordingly simply draws attention to the point that, when considering whether an indemnity is available at all in respect of an expense or liability (setting to one side any potential application of the clear accounts rule), it is the activity that generated the liability that must be examined in order to determine whether the liability or expense was properly incurred.

Clause 19.1(a) does not seek to oust the operation of the clear accounts rule, either. That clause does not seek to expand the right of indemnity, but rather to limit the responsible entity's liability for loss or damage arising out of a breach of duty. It is possible, of course, for a trust instrument to limit the liability of a trustee arising from a breach of duty, or even to exclude such liability to an extent, but it is well established that the trust instrument cannot exempt the trustee from liability for breaches of those duties that constitute the "*irreducible core*" of a trustee's obligation.

An important point, for present purposes, is that clause 19.1(a) does not say anything about LMIM's obligation to account, or to restore to the FMIF property that has been applied in breach of trust, nor does it seek to expand the right of indemnity beyond an indemnity for liabilities properly incurred.

Further, clause 18.7 of the Constitution provides as follows:-

"In the event of any dispute regarding the payment of fees and expenses, the RE shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the RE shall be repaid forthwith upon the identification of the overpayment." (emphasis added)

Accordingly, if an amount has been paid out of the FMIF in respect of an expense for which the RE did not, in fact, have a right of indemnity (because, for example, it was an expense not properly authorised by the terms of the trust), the amount of that overpayment must be repaid by the RE; that is, restored to the FMIF.

The point of this recitation of provisions of the FMIF Constitution and an explanation of our client's understanding of how they are to be construed, is that, contrary to the proposition advanced in your correspondence, our client does not understand the Constitution to preclude the operation of the clear accounts rule except where the trustee has acted fraudulently or in bad faith, nor to allow an indemnity other than for (relevantly) expenses and liabilities properly incurred.

¹ (2011) 87 ACSR 155; [2011] FCA 1420

² At [14]

Anshun estoppel

Your letter of 13 December 2016 asserts that Mr Whyte “*has never clearly articulated his opposition to our client’s indemnity on the basis of the clear accounts rule.*” On page 3 of your letter, you identify “*three substantial opportunities*” when you say Mr Whyte might have raised the clear accounts rule, but did not do so. Of those three, only two involve court proceedings in which the clear accounts rule might have been raised for determination (a necessary circumstance if *Anshun estoppel* is to be raised); namely, our client’s decision in respect of your clients’ claims for indemnity under the December Order, and your clients’ Remuneration Application.

As to the first of those two occasions, the acceptance or rejection of an Eligible Claim by Mr Whyte did not call for the consideration of the clear accounts rule. Rather, by adjudicating upon those claims, Mr Whyte was deciding simply whether LM had a right to be indemnified from the property of the FMIF in respect of the particular expenses or liabilities the subject of those claims.

As you know, the clear accounts rule was described by Gordon J in *Letten* as “*essentially a mathematical exercise setting off the trustee’s right to indemnity against its liability with respect to previous breaches of trust.*” Mr Whyte’s task was directed only to the first of those countervailing considerations – that is, the ascertainment of the trustee’s right to indemnity. It did not involve (at least as far as Mr Whyte and we understand it) a determination about any liability on the part of LMIM to restore funds to, or make good loss suffered by, the FMIF with respect to previous breaches of trust, nor any determination about whether any such claims ought be set off against the right to indemnity.

That said, we do not think that your clients could have been under any misapprehension that our client considered there to be a potential for the clear accounts rule to apply.

As to the Remuneration Application:-

1. that application was, in substance, an application for remuneration to be approved and paid to the liquidators personally, rather than a claim for indemnity by LMIM; and
2. the clear accounts rule was in fact the subject of both affidavit material and submissions to His Honour.

In any event, the issues arising under the December Order have not yet been fully and finally determined; neither, for that matter, has the Remuneration Application, in which judgment remains reserved.

For these reasons, we fail to see how Mr Whyte could be estopped from raising the clear accounts rule.

Regardless of these matters, the potential application of the clear accounts rule is not a “newly” articulated position, contrary to what was said in your letter of 11 May 2016. Our letter of 23 November 2016 identified instances in which the issue had been raised. Those instances include the following:-

1. On 18 December 2015, you wrote to us regarding your clients’ remuneration; in particular, your letter noted that the orders made on 17 December 2015 oblige your clients to undertake work, and you explained that “*our clients wish to ensure that they will be paid for those tasks...*” Your letter then asked the following:-

“If your client is of the view that there is some reason why clients ought not be paid for the work they have and will undertake because there is some impediment or reason to deny or defer LMIM’s right of indemnity against the assets of the FMIF, we ask that be communicated to us immediately.”

2. We responded by our letter of 23 December 2015. In that letter, we said the following:-

"As regards LMIM's right of indemnity from the property of the FMIF, we are instructed that our client considers that there may be circumstances by which LMIM's right of indemnity from the property of the FMIF may be impaired, or which give rise to claims as against LMIM in connection with the FMIF. Your clients are, of course, aware of at least one of those claims, being the claim made in proceeding no. 12317 of 2014 in the Supreme Court of Queensland.

Our client's investigations and consideration of those matters are ongoing. Our client reserves completely his position and rights concerning those circumstances and any claims, including any circumstances that may be relevant to the operation of the "clear accounts rule".

3. On 17 February 2016, Gadens (who, as you know, act for Mr Whyte in respect of certain aspects of the winding up and receivership of the FMIF) wrote to you. Their letter gave notice of certain potential claims against LMIM (in its capacity as responsible entity of the FMIF) for breach of trust. Those potential claims included the following:-

"A claim against LMIM in its capacity as responsible entity of the FMIF in respect of the entry into and payment of fees and certain costs and expenses to LM Administration Pty Ltd (LMA) purportedly for services provided by LMA for loan management and controllership services in replacement of appointing external receivers."

Those LMA loan management and controllership fees mentioned in the letter included an amount of \$928,483.39 referable to the period from 1 March 2013 (calculated by reference to LMIM's ledger report for the period from 1 March 2013 to 30 June 2013). As was noted in the letter from Gadens to your firm, the circumstances surrounding those payments were (and are) still being investigated by our client.

At the conclusion of their letter, Gadens referred to the substance of the 'clear accounts' rule upon any right of indemnity of a trustee (such as LMIM) and said the following:-

"As part of our client's consideration of any claim for indemnity from the FMIF, our client will necessarily have to consider the nature of the claim for indemnity, whether such claim was properly incurred by LMIM on behalf of the FMIF and whether there are any matters which disentitle or reduce LMIM's entitlement to an indemnity from the FMIF (which may include further consideration of the claims against LMIM for breach of trust, foreshadowed above)."

The Gadens letter concluded by reserving Mr Whyte's rights, and by noting that it may be appropriate for Mr Whyte to apply to the court for directions as contemplated by paragraph 10 of the Indemnity Order.

4. That letter from Gadens was exhibited to Mr Whyte's affidavit filed in this proceeding (for the purposes of the Remuneration Application) on 19 February 2016; it is exhibit "DW-11". Paragraphs 50 to 53 of Mr Whyte's affidavit referred to the possibility of a set-off against any indemnity claimed by LMIM, and referred to the letter from Gadens.
5. Paragraph 114 of Mr Whyte's February affidavit referred to the LMA loan management fees (among the other fees charged to the FMIF) and referred to Mr Whyte's concern about the possibility of duplication and lack of clarity in connection with those fees. You will recall that in our letter of 25 January 2016, we had referred to the LMA 'loan management fees' and the state of accounts as between LMA and LMIM as responsible entity for the FMIF; our

- letter invited your clients to address those issues in their material to be filed in support of their Remuneration Application.
6. The written outline of submissions on behalf of the Respondent dated 22 February 2016 referred, at paragraph 15, to the position that, *"A right of indemnity would normally be subject to a set off for breach of trust or breach of duty"*.
7. The issue was dealt with in a more direct fashion in Mr Whyte's affidavits sworn and filed on 11 March 2016 in which:-
- (a) Paragraphs 14(b)(iii) and (iv) were in the following terms:-
- "(iii) *I have concerns (but in the absence of a full reconciliation have not yet been able to form a concluded view) that the loan management fees may not have been reasonably justified;*
- (iv) *to the extent to which LMIM claims an indemnity from the FMIF property, it may be that the "clear accounts rule" would operate such that the indemnity would not, in fact, be enforced against the FMIF property;...*"
- (b) Paragraph 30 stated, *"I have concerns about the reasonableness of charging such loan management fees, and whether it was a proper expense to the FMIF."*
8. The written supplementary submissions on behalf of Mr Whyte which were relied upon at the hearing on 14 March 2016 addressed the issue of the clear accounts rule as follows:-
- (a) At paragraph 21 (in the part of the submissions dealing with claims made under the FMIF constitution, and thus claims relying on LMIM's indemnity) the submissions say the following:-
- "It may be that the Court would consider, in deciding whether to make any order for direct payment to the first applicants as administrators or liquidators, the fact that any indemnity of LMIM could be subject to the application of the clear accounts rule. ...";*
- (b) Paragraphs 35 to 38 concern the LMA loan management fees. Paragraph 37 is in the following terms:-
- "In this regard there is a question of whether there may be a set off available against any indemnity claimed from LMIM against FMIF assets given the matters raised in the correspondence from Gadens Lawyers to Russells of 17 February 2015: affidavit of Mr Whyte at exhibit DW-11 which raised whether loan management fees were paid in breach of trust."*
- (c) Paragraph 38 submits that *"there is a question as to whether..."* the LMA loan management fees could be an expense properly incurred by LMIM for the benefit of FMIF, when there appears to be little prospect of recovery.

Notwithstanding those matters, paragraph 4 of the submissions makes clear the position of Mr Whyte that work undertaken by your clients for "getting in, preserving, managing or realising the property of the FMIF" is work that would have been properly undertaken for the benefit of the FMIF, and is work for which your clients *"would be entitled to be paid remuneration directly from the property of the FMIF"*.

9. There were significant exchanges between Justice Jackson and Counsel for the respective parties on 14 March 2016 as to the operation of the clear accounts rule; your letter of 13 December 2016 refers to some of them.

In these circumstances, it can hardly be said that Mr Whyte has been keeping the issue of the clear accounts rule "up his sleeve".

Mr Whyte's position – the clear accounts rule and your clients

As mentioned at the beginning of this letter, it appears that your clients do not fully or clearly understand Mr Whyte's position concerning the clear accounts rule and its potential operation in connection with indemnity claims by your clients. It is appropriate to clearly state the following, and we do so upon instructions:-

1. Where a claim for indemnity is made by LMIM (as distinct from a claim for indemnity or payment to the liquidators personally; so far only the Remuneration Application), the clear accounts rule has potential operation in respect of LMIM's liabilities 'to the FMIF'³ (subject to what is said below) – that fairly clearly appears to be the position that emerges from the relevant authorities that consider the issue;
2. Nonetheless, Mr Whyte considers it reasonable that the liquidators be appropriately remunerated and reimbursed from the FMIF property for work they have done, and expenses they have properly incurred, to benefit the FMIF or to perform (through LMIM) the relevant obligations of the RE of the FMIF; and
3. Mr Whyte therefore considers that it would be reasonable and appropriate that a distinction be drawn between liabilities incurred before the appointment of your clients, the liquidators, to LMIM and those incurred after; and that, in respect of claims for indemnity by your clients in connection with liabilities by them incurred after their appointment, only liabilities 'to the FMIF' arising from transactions, acts or omissions of your clients after the appointment of the liquidators (first as administrators) should be set off against the indemnity claim.

In other words, to the extent that LMIM claims indemnity from the FMIF under the regime established by the December Order for expenses properly incurred in the performance of the FMIF during the appointment of the liquidators either as administrators or liquidators, Mr Whyte thinks it reasonable and appropriate that the only off-setting claims or liabilities that should be taken into account for the purposes of the operation of the clear accounts rule are those arising from your clients' own conduct. This is, we think, another way of expressing Mr Whyte's intention as conveyed in oral submissions by Ms Brown QC (as Her Honour then was) to Jackson J on 14 March 2016.

While the summary in point 3 above is, and was then, our client's view as to what would be a reasonable position, Jackson J appeared to express some doubt as to whether Mr Whyte could adopt such a position. We also note that the general position may be identified in point 1 above may be wider than Mr Whyte intends. It is therefore a matter about which our client considers that judicial guidance is likely required. Since the matter was raised before Jackson J, our client is hopeful that His Honour will provide that guidance in his judgment on the Remuneration Application.

Potential set-off raised by Mr Whyte

In our letter of 11 May 2016, we raised two matters that potentially give rise to liabilities that should be set off against a post-appointment right of indemnity, namely:-

³ To use loose, but convenient, language; we mean obligations to make good any loss caused to the fund (the FMIF) or otherwise to compensate the FMIF; similarly, the RE would usually be required to make good any debts owed to the FMIF as a condition of gaining reimbursement

1. First, we suggested that there were questions as to the reasonableness and propriety of certain payments which LMIM caused the FMIF to make to LM Administration Pty Ltd (in liq.) ("LMA") for "loan management fees" in the period of March to July 2013, following the appointment of the liquidators as administrators of LMA and LMIM; and
2. Second, we mentioned the amount of \$779,266 which we were instructed was owing by LMIM to the FMIF, arising from the arrangements put in place with Mr Clout as liquidator of LMA for the utilisation of LMA's staff, premises and resources – the amount claimed related to, in effect, the proportion of the amounts that had been paid by the FMIF to LMA (Mr Clout) in connection with work being undertaken by your clients other than in connection with the FMIF. We are instructed that this amount remains unpaid to the FMIF, but that your clients have requested some further information to support the allocation of costs, which information is being gathered by Mr Clout.

The second of those is not, we think, controversial.

It is the first, relating to the loan management fees, that is the subject of controversy between our respective clients.

Loan management fees

The first point to note about these fees, is that the concern held by our client as to whether loan management fees (charged prior to the appointment of the liquidators) were properly incurred in the performance of the FMIF is a concern that was also held by Mr Park; although the issue for present purposes relates to fees charged after the appointment of your clients, our client understands that the pre-appointment arrangement about which Mr Park had been concerned, did not alter for the purposes of the fees charged after the appointment of the liquidators.

The payments in question amount to just under \$1 million. Such sum relates to the following invoices:-

1. \$560,722.62 (inc GST) paid prior to 19 March, 2013 – and apparently credited, after the event, as a part payment of LMA's invoice 8973Inv003 of 31 May, 2013 for \$785,462.68 (inc GST) said to be for "loan management fees";
2. \$224,740.07 (inc GST) on 17 June, 2013 – evidently in satisfaction of the balance said to be owing then in respect of LMA invoice 8973Inv003 of 31 May, 2013; and
3. \$214,426.40 (inc GST) on 8 July, 2013 – evidently in satisfaction of LMA invoice 8973Inv004 of 30 June, 2013 for the same amount.

These payments are mentioned in Table C of the Summary of Fees which formed part of our client's written outline of submissions at the hearing in March, 2016. The specific invoices formed part of the evidence before the Court.

As you know, our client is continuing investigations concerning the loan management fees. It is appropriate to set out our client's understanding of a relevant chronology of some of the relevant circumstances relating to the relevant loan management fees, as follows:-

1. 19 March 2013: John Park and Ginette Muller appointed as voluntary administrators of LMIM;
2. 19 March 2013: John Park and Ginette Muller appointed as voluntary administrators of LMA;
3. 21 March 2013: Ms Muller signs 'LMA Services Agreement' between LMIM and LMA, for provision of resources and payment of Resource Fee;

4. 31 March 2013: Invoice 1106 raised by LMIM to FMIF for 'loan management fees' in the amount of \$209,953.38;
5. 15 April 2013: Originating Application filed by Raymond and Vicki Brice (members of the FMIF) seeking the replacement of LMIM by Trilogly as RE of the FMIF ("the Bruce Proceedings");
6. 31 May 2013: Invoice 8973003 from LMA to PTAL as custodian of the FMIF for 'loan management fees' in the gross amount of \$785,462.68 (said to be for the periods March to May 2013). Net amount of \$224,740.07 (inclusive of GST), following an off-set of income received in advance by LMA from the FMIF prior to 19 March 2013 (\$509,747.84 + GST; being \$560,722.62 inclusive of GST);
7. 30 June 2013: Invoice 8973Inv004 from LMA to PTAL as custodian of the FMIF for 'loan management fees' in the amount of \$214,426.40;
8. 15 July 2013: affidavit by John Park in proceeding 3383 of 2013. As to 'loan management fees':-

15. ...I have not been able to gain anything approaching a full understanding of these transactions. I understand, however, that the Board and Management of LMIM took the view that, in order to save external costs paid or payable to third party receivers or agents for a mortgagee in possession, default work was done inhouse.

16. I also understand from my very brief discussions today that detailed advice was taken from independent solicitors - Allens about these arrangements. They are of course a very reputable firm.

17. The managements fees for 2012 were not \$20 million but \$9.1 million, according to the accounts.

18. However, I am not defending the transactions; nor am I impugning them.

19. I do believe, however, that, as with the distributions of income that were declared but not paid, the same applies to these fees. Accordingly, should it transpire that these fees were not properly charged, it will be a relatively simple matter of righting the situation. Again, we will obtain legal advice, now that the matter has been raised. If a conflict develops, appropriate action will be taken.

[emphasis added]

9. 15 to 17 July 2013: trial before Justice Dalton in Supreme Court proceeding 3383;
10. 16 July 2013: John Park cross-examined in regard to, amongst other things, the charging of 'loan management fees'. The exchange, beginning at page 2-20 of the transcript of proceedings, is as follows:-

[Mr Tucker] If I could take you over to the next issue in your affidavit at paragraph 15 where you deal with loan management services?---[Mr Park] Yes.

Now, you had identified these in the accounts previously?---I have seen those, yes.

Yes. And did it cause you - did it cause you to have cause for concern?---It's an issue that certainly we needed to - to address and report on, yes.

Okay. Now, could I ask you to look at page 157 of Mr Bruce's affidavit?---Yes.

And you'll see that about halfway down the page there's a heading Fees Paid to and Interest Held by the RE and Associated Entities?---Yes, I can see that.

And then the auditors record, "The following fees were paid to the RE and its associated companies out of scheme property."?---Yes.

Okay. Have you made any investigations as to whether these fees were in fact paid?---No, I have not.

Okay. Well, the next - further down it says "management fees paid or payable". Are you able to tell us whether these management fees have in fact been paid or paid?---No, I cannot personally.

So we don't know whether there's still a debt owing?---No, I don't know.

You don't know. So when you say in paragraph 19 - sorry, I'll withdraw that. So if you go down further, Mr Park, in the accounts, you'll see the last dotted paragraph describes what are called loan management fees paid to the responsible entity for loan management and receivership services provided by the RE?---Yes.

And there's collectively \$10 million?---Correct, yes.

You don't know - - -?---Over - over two years.

Over two years?---Yes, yes.

That's right, yes?---Yes.

And you don't know whether they've been paid or are still due to be paid?---I don't know the answer to that, no.

Okay. But the accounts actually say they're paid, so - - -?---Yes. - - - it's fair to assume they've been paid?---It's fair to assume that. They've been audited, yes.

So in paragraph 19 of your affidavit, when talking about these fees you say, "I do believe, as with the distributions of income that were declared but not paid, that the same applies to these fees." What's the basis of your belief for that?---Sorry, if I can just - I just want to read that paragraph.

Sure?---My affidavit is referring to the fact that I personally hadn't determined if those - if those fees had actually been paid through - with respect to the \$4.8 million.

In the 2012 year?---Yes.

But what's your belief for that? What's the basis of saying this? You just told me you hadn't investigated it?---Yeah, I think what I'm suggesting to you is exactly as - as the affidavit deposes. That para is particularly going to whether the payment of the 4.8 and indeed the 5.3 - the issue at heart is whether that - they were payments in addition to the management fee and whether it is an issue that we

need to address as to whether it was proper for those to be paid and indeed not part of the management fee.

Oh, so you're not throwing doubt on to whether they're actually paid or not?---No, it's my understanding that they have been paid.

But do you say - do you say that they're in addition to the management fee or part of the management fee?---My understanding is they're in addition to the management fee, which gives us cause for concern.

Yes?---Yes.

And then you say, "Should it transpire the fees are not properly charged it's a relatively simple matter of righting the situation." How would you do that?---Again, given the complexity - from what I understand, advice was obtained by LMIM from - from both Allens and WMS that they had an ability to - to - to make those payments.

That's pre your appointment, isn't it?---That's pre our appointment.

Okay?---So I basically obtained some - again some independent legal advice to see what options are available to us with respect to those payments and whether indeed it is capable of some form of recovery in that regard.

Well, you said it's a relatively simple matter of righting the situation. Tell me the relatively simple matter?---Obtaining legal advice.

[emphasis added]

11. 25 July 2013: Invoice 8973Inv005 from LMA to PTAL as custodian of the FMIF for 'loan management fees' in the amount of \$252,310.87;
12. 26 July 2013: David Clout and Lorraine Smith appointed as liquidators of LMA (replacing Mr Park and Ms Muller who had been its administrators);
13. 1 August 2013: John Park and Ginette Muller appointed liquidators of LMIM;
14. 8 August 2013: Dalton J delivers judgment, *Bruce & Anor v LMIM & Ors*, and pronounces orders:
 - (a) directing LMIM to wind up the FMIF;
 - (b) appointing David Whyte to take responsibility for the winding-up of the FMIF;
 - (c) appointing Mr Whyte receiver of the property of the FMIF;
15. 16 December 2015: Further Amended Originating Application filed in Supreme Court proceeding 3508 of 2016 seeking remuneration for the administrators and liquidators of LMIM, Mr Park and Ms Muller (the Remuneration Application);

16. 8 March 2016: Affidavit of John Park in Supreme Court proceeding 3508 of 2015, addressing the 'loan management fees'. As to that, Mr Park relevantly deposed to the following:-

53. I refer to the invoices which appear at pages 370, 396, 399, 403, 405 and 408 of Mr Whyte's Affidavit. Those invoices relate to the practice of charging loan management fees which was in place at the time of my appointment.

54. I have caused to be located from the books and records of LMIM and LMA documents which provide an example of how those fees were calculated and charged.

55. At [43] to [68] is an agreement, entitled 'Management Services Agreement' between The Trust Company (PTAL) Limited (the FMIF's custodian trustee, "PTAL"), LMIM and LMA, which is undated. The 'Borrower' for that agreement is Brambleton Pty Ltd ACN 118 835 742 ("Brambleton").

56. Pursuant to that agreement, PTAL appointed LMA to provide, what is described in Schedule 2 of the agreement as, services relating to general administration, development management, and marketing and sales. From the description of those services in the agreement, they appear to be largely analogous to the services required to manage a defaulting loan (akin to a controllership).

57. By clause 7.1 and schedule 1, for general administration services, LMA was entitled to charge to PTAL as custodian (and to be paid out of the Fund) a fee based on hourly rates for its staff. Ultimately, LMIM as responsible entity of a Fund would then 'on-charge' the loan management fee to a borrower's loan account as an expense through the entry of a debit to the loan account for such fees (usually on a monthly basis).

58. This charging of borrowers for this expense was provided for in the standard Fund loan agreements and thus such costs were ultimately met by the specific borrower in respect of whose asset LMA had been appointed controller. At [69] to [92] is a copy of the agreement between LMIM, PTAL and Brambleton by which PTAL agreed to loan monies to Brambleton.

59. At [93] is a spreadsheet which appears to contain a list of each borrower from the FMIF in respect of which there is a management services agreement. The spreadsheet contains hourly rates for particular LMA staff members and the hours each LMA staff member worked in relation to each borrower (with an associated charge).

60. The spreadsheet records charges, calculated at the applicable hourly rates, for Brambleton for the month of June, 2013 as \$6,848.75. For all FMIF borrowers, the total amount for June, 2013 is \$203,705.08.

61. The loan management fee for each borrower was subsequently charged to each borrower's loan account by LMIM as responsible entity or, in this case, the FMIF. At [94] to [96] is a copy of an extract from the loan statement for Brambleton for the relevant period.

62. At [98] is an invoice from LMA to PTAL for loan management fees for June, 2013.

63. Ms Muller and I took legal advice as to the effect of the administration on the loan management agreements. Having considered that advice (the privilege in which I do not intend

to waive), it was decided that those agreements should be maintained in order to continue to provide LMA with its own income stream.

64. During the course of the appointment, LMA issued PTAL as custodian for the FMIF with the following invoices for loan management fees:-

(a) for the months of March, April and May, 2013, invoice number '8973Inv003' (which appears at [97]) in the amount of \$714,056.99 (excl. GST). Of that amount, the sum of \$509,747.84 (excl. GST) was 'offset' against LMIM (acting by its administrators) because I became aware that the FMIF had prepaid, or advanced, management fees to LMA in that amount, pursuant to the historical services agreement prior to my and Ms Muller's appointment. In so doing, Ms Muller and I acted on legal advice, the privilege in which I do not intend to waive. The balance of \$224,740.07 (inclusive of GST) was paid from the assets of the FMIF to LMIM. By way of a book entry, those funds were used to partially repay the loan from LMIM to LMA referred to in paragraph 48 herein, such that no actual cash was paid to LMA. That invoice replaced the earlier invoices created by LMA staff, including those which appear at pages 352 and 353 of Mr Whyte's Affidavit;

(b) for the month of June, 2013, invoice number '8973Inv004' being the same invoice referred to in paragraph 62 herein, which appears at [98]. That invoice resulted in the payment of the sum of \$214,426.40 from the FMIF to LMA;

(c) for the month of July, 2013, invoice number '8973Inv005', which appears at [99], for the amount of \$252,310.87 (inclusive of GST). That invoice remains unpaid.

65. The 'offset' referred to in subparagraph 64(a) herein is not the same offset described in paragraph 48 herein.

66. At [100] to [116] is a copy of the ledger maintained by my staff for receipts into and payments out of LMA. Based on that ledger, I believe that the sum of \$214,426.50 (the amount referred to in subparagraph 64(b) herein) was applied to meet the operating costs and expenses of LMA:-

(a) which were not limited to the costs covered by the Resources Fee; and

(b) in respect of which there was a shortfall for the Resources Fee charged to MPF because of the settlement referred to in paragraph 19 of my Second Affidavit.

67. At [117] is an extract from the records maintained by my staff in the administration of LMA for the purpose of recording the transactions which occurred in respect of the loan management fees.

[emphasis added]

Requests for information

Clearly, the legal advice provided to the liquidators (both as to loan management fees charged pre-appointment, and as to the continued charging of those fees after their appointment) is highly relevant to an understanding of the justification for charging the loan management fees. Our client has not been provided with a copy of that advice, nor informed of the substance of the advice; indeed, so far as we and our client are aware, your clients have not yet advanced any reasons to justify the charging of the loan management fees other than to say that it was done in accordance with legal advice.

As you would be aware, a trustee may act in breach of trust even though the trustee acted in accordance with advice obtained by the trustee. The fact of having obtained the advice is, of course, a relevant circumstance, but it does not necessarily determine the question as to whether an expense incurred by a trustee, acting on advice, was properly incurred in the execution of the trust.

Accordingly, we are instructed to request a copy of the legal advice obtained by your clients.

We also note that our client has requested, on a number of occasions, a complete reconciliation of the amounts invoiced in respect of various fees, and also of amounts paid, as between:-

1. The FMIF and LMIM (in its corporate capacity); and
2. LMIM (whether in its own corporate capacity or as responsible entity for the FMIF) and LMA.

To date, we are instructed that our client has not received that reconciliation. We are instructed to again make the request.

Other matters

Your clients have given Mr Whyte notice (in October 2016) that they intend to make further indemnity claims for expenses incurred in the period after the appointment of the liquidators, but prior to the making of the December Order.


Mr Park's affidavit sworn on 18 October 2016 (received in the evening of 8 November 2016) says, at paragraph 19, that Mr Park and Mr Whyte have agreed to delay any request for information or decision about the "Further Claims" pending the resolution of the Indemnity Application. We are instructed, however, that your clients in fact stated that the schedule of the Further Claims provided without any additional information, was not to be taken as an indemnity claim under the December Order, and that Mr Whyte has not agreed that your clients should defer submitting their Further Claims if they are of the kind that your clients were required to notify within sixty days of the December Order.

Given that your clients appear to consider that determination of the Indemnity Application is likely to be relevant to Mr Whyte's decision as to the Further Claims, it may be appropriate that the Further Claims be made and determined now and, if Mr Whyte decides to reject any part of any of those claims, then your clients may seek directions regarding those rejected claims at the same time as the other claims the subject of the Indemnity Application. That seems to be an efficient way of dealing with those claims. Please let us know if your clients agree.

Conclusion

We look forward to hearing from you.

Yours faithfully


David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au

Direct Line: (07) 3210 3506

Individual liability limited by a scheme approved under Professional Standards Legislation.

"DW-54"

SERVICE AGREEMENT

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SCHEDULE 1

THIS SERVICE AGREEMENT is made on the date specified in schedule BETWEEN LM Investment Management Ltd (ACN 077 208 461) (the principal) and LM Administration Pty Ltd (ACN 055 691 426) as trustee for the LM Administration Trust (the Service Provider.)

Recitals:

- 1 The Principal conducts the business from the premises.
- 2 The Service Provider is in business as a provider of staff, plant and equipment, administrative funds management services, consulting and other services to persons for the purposes of providing assistance in the operation of the businesses which those persons respectively conduct.
- 3 The Principal has agreed to engage the Service Provider for the purpose of providing services to the principal in the conduct of the business and the Service Provider has agreed to be so engaged.
- 4 The Service Provider has agreed to render to the Principal the services of such of them or such other services as may be agreed upon by the Service Provider and the Principal from time to time on the terms and conditions contained in this agreement.

IT IS AGREED as follows:

1. Interpretation

- 1.1 "the business" means the business specified in schedule 1 and any other business from time to time conducted by the Principal and which the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement.
- 1.2 "commencement" date means the commencement date specified in schedule 1;
- 1.3 "commercial rates" in relation to the service fees payable under this agreement means the rates which it could be expected would be charged by a Service Provider to a client if the Service Provider and the client were dealing with each other at arm's length.
- 1.4 "confidential information" means and includes, but is not limited to, information relating to the business of the Principal and which is not in the public domain, such as

developments relating to existing and future products and services marketed or used or to be marketed or used by the Principal or the Service Provider and persons or companies dealing with the Principal or the Service Provider and, also, information relating to the general business operations of the Principal including profit and loss statements balance sheets, customer or client lists, costs and selling price information, any trade secrets, know-how or product specifications, business and marketing plans and information provided to the Principal by persons other than the Service provider;

- 1.5 “the equipment” means the plant and equipment specified in schedule 1 and such other equipment as the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement;
- 1.6 “the other services” means the other services specified in schedule 1 and such other services as the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement”;
- 1.7 “person” or persons means and includes all natural persons and corporations whether acting in their own capacity or as the trustee of a trust”;
- 1.8 “the premises” means the premises specified in schedule 1 and such other premises from which the Principal may from time to time conduct the business;
- 1.9 “the Principal” means the party named in schedule 1 and any other company or persons which may at any time after the commencement date merge with the Principal or take over or carry on either in whole or in part the business and the undertaking of the Principal;
- 1.10 “the Service Provider” means the party named in schedule 1 and any other company or person which may at any time after the commencement date merge with the Service Provider or take over or carry on either in whole or in part the business and undertaking of the Service Provider;

- 1.11 "the services" means the services specified and/or referred to in schedule 1;
- 1.12 "the service fees" means the fees payable to the Service Provider pursuant to clause 5;
- 1.13 "the staff" means the persons specified in schedule 1 and all such other persons who from time to time are employed by the Service Provider in the provisions of the services;
- 1.14 "the term" means the period of this agreement specified in clause 3;
- 1.15 if any party consists of more than one person then the liability of those persons in all respects under this agreement shall be a joint liability of all those persons and the liability of each of them severally;
- 1.16 in this agreement except to the extent that the context otherwise requires:
- 1.16.1 words denoting the singular include the plural and vice versa;
- 1.16.2 words denoting individuals or persons include bodies corporate and trusts and vice versa;
- 1.16.3 reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this agreement;
- 1.16.4 reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time;
- 1.16.5 reference to any statutory enactment is a reference to that enactment as amended and modified from time to time;
- 1.16.6 words denoting any gender includes all genders; and
- 1.16.7 where a word or phrase is given a definite meaning in this agreement as part of speech or other grammatical form for that word or phrase has a corresponding meaning.

2. Engagement of Service Provider

The Principal engages the Service Provider and the Service Provider agrees to be so engaged to provide and make available during the term the services to the Principal on the terms and conditions set out in this agreement.

3. Term

The term of this agreement shall be the period commencing on the commencement date and continuing until termination in accordance with the provisions of clause 16.

4. Place of the Services

The services shall be provided at the premises and/or any other place or places as the Principal and the Service Provider may agree upon.

5. The Service Fees

5.1 The Principal shall subject to any review of the method of the calculation of the service fees pursuant to paragraph 14.1.1, pay to the Service Provider for the provision of the services the service fees set out in schedule1.

5.2 The service fees shall be calculated quarterly with the first of such quarterly payments being due and payable on the last day of the quarter.

5.3 The Service Provider acknowledges and agrees that in any review of the method of calculation of the service fees it shall not seek to have the service fees set at rates which exceed commercial rates for the services on the date of review.

6. Invoices for Service Fees

The Service Provider shall for each quarter or part of a quarter during the term as soon as practicable after the last day of each quarter of the term prepare and submit to the Principal an tax invoice for the service fees payable for each such quarter or part of a quarter.

7. Interest and security on unpaid money

7.1 The Principal shall at the request of the Service Provider pay to the Service Provider interest at a rate specified in schedule 1 (as varied from time to time under paragraph 14.1.5);

7.1.1 on any part of the service fees which remains outstanding for more than seven (7) days after the last day of the quarter for which the service fees are payable; and

7.1.2, on any other money from time to time outstanding and owed by the Principal to the Service Provider.

7.2 All interest payable by the Principal to the Service Provider in respect of unpaid service fees or any other money owed by the Principal to the Service Provider shall unless otherwise agreed by the Principal and the Service Provider be calculated quarterly on the last day of each quarter during the term on the total amount outstanding (including all unpaid interest) at the beginning of each quarter during the term.

7.3 For the purposes of securing payment to the Service Provider of all amounts (including interest) referred to in sub-clause 7.1 the Principal shall at the request of the Service Provider provide to the Service Provider security in the form and over the assets reasonable requested by the Service Provider and if the Principal is a company, for the purposes of this sub-clause, if a request is made by the Service Provider the Principal shall execute a mortgage debenture over all its assets and undertaking in favour of the Service Provider.

8. The Service Provider to maintain separate account

The Service Provider shall at all time during the term maintain a bank account into which it shall ensure all service fees are paid. The payment may alternatively be directly offset against any monies owed by the principal to the service provider.

9. Administrative Staff of Service Provider

The Service Provider shall ensure that all times during the term it has sufficient properly trained staff to enable it to carry out and honor all its obligations under this agreement and in particular to administer the calculation, collection and banking of the service fees.

10. Staff

- 10.1 The Service Provider shall as soon as practicable after the receipt of a request from the Principal to do so, provide to the Principal all of the staff to be provided by the Service Provider in the provision of the services.
- 10.2 Subject to the Principal having at the time of the request for the provision of any of the staff informed the Service Provider of the nature of the duties, tasks and/or work to be undertaken by each of the persons who comprise the staff the Service Provider shall make every reasonable endeavour to satisfy itself that each of these persons is fully qualified to carry out and provide those duties, tasks and/or work.
- 10.3 The Service Provider shall be responsible for salaries and/or wages and all income tax deductions, workers compensation or equivalent insurance, payroll tax, holiday pay, sick pay, superannuation and other employee entitlements payable in respect of the staff.
- 10.4 The Service Provider shall if requested by the Principal remove and replace any person who may from time to time comprise any of the staff.
- 10.5 The Service Provider shall be responsible for attending to all registrations required by State and Federal Law due to its status as an employer, including but not limited to, group employer registration, payroll tax registration, Workcover insurance registration, and any administrative requirements arising out of its management of any superannuation fund.

11. Equipment

- 11.1 The equipment shall remain the property of the Service Provider.

11.2 The Principal covenants with the Service Provider;

- 11.2.1 to treat and care for the equipment as would a cautious and prudent owner in order to prevent the deterioration of the equipment or its being damaged, lost or destroyed.
 - 11.2.2 to at its own expense maintain the equipment in good repair, working order and condition and regularly and properly serviced and adjusted;
 - 11.2.3 to preserve all identification marks on the equipment;
 - 11.2.4 to permit the Service Provider or any person nominated by the Service Provider to inspect the equipment at any reasonable time of day or night without prior notice and to enter any premises to inspect, test or retake possession of the equipment;
 - 11.2.5 to keep the equipment in its own possession control and custody and not to conceal or hide same or attempt to do so;
 - 11.2.6 to indemnify and keep indemnified the Service Provider from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to the provision of the services or the use of the equipment during the term;
 - 11.2.7 not to create or incur any lien or charge on the equipment nor to pledge, sub-let, assign, sell or part with possessions of the equipment;
 - 11.2.8 upon expiration of the term forthwith to surrender the equipment to the Service Provider in the same condition as it was delivered, fair wear and tear excepted.
 - 11.2.9 not without the consent of the Service Provider to all the equipment to be operated by any person other than an employee of the Principal;
- and

12. Devotion of time

During the term the Service Provider shall devote so much of its time and attention to the performance of the services and its duties under this agreement as is required for the proper and efficient provision of the services and those duties.

13. Promotion of Principal

The Service Provider shall wherever it is reasonably practicable so to do promote, develop and extend the business of the Principal.

14. Review of service fees and terms of agreement

14.1 Whenever the principal shall upon reasonable notice require and in any event on not less than one (1) occasion in each period of the term ending on 30 June the Principal and the Service Provider shall meet with the view to determining whether any of the following terms of agreement need to be reviewed and/or varied:

14.1.1 the service fees and the method of calculation of the service fees;

14.1.2 the services provided by the Service Provider.

14.1.3. the number and suitability of the staff

14.1.4 the state of repair, general condition, adequacy and quality of the equipment;

14.1.5 the rate of interest which under the provisions of clause 7 may from time to time be payable on any part of the service fees and on any other money which from time to time remains outstanding and owed by the Principal to the Service Provider.

14.1.6 the operation of the terms of this agreement and generally the administrative arrangements between the Service Provider and the Principal; and

14.1.7 any other matters raised by either the Service Provider or the Principal.

15. Non -disclosure of information

Any information supplied by the Principal or any of its employees or agents to the Service Provider or by the Service Provider to the Principal shall be treated as confidential information and shall not be disclosed to any other person or firm unless the Principal or the Service Provider respectively consents to such disclosure.

16. Termination of agreement

This agreement shall be deemed to be terminated forthwith upon the happening of any of the following events:

- 16.1 if the Service Provider, the Principal or any of the directors of either of them is convicted of any offence which may reasonably be regarded as prejudicing the rights of the other of them under this agreement or otherwise;
- 16.2 subject to payment of all outstanding service fees payable under this agreement at the expiration of thirty (30) days after the receipt of a written notice of termination of this agreement given by either the Principal or the Service Provider to the other of them;
- 16.3 if either the Service Provider or the Principal shall fail to rectify any breach of the terms and conditions of this agreement within thirty (30) days of the service on the other of them of a written notice requiring rectification of the breach;
- 16.4 if a petition is presented or an order is made or any effective resolution is passed for the winding up of the Service Provider or the Principal or a meeting is summoned or convened for that purpose.
- 16.5 if a receiver of the business and undertaking of the Service Provider or the Principal or any part of their respective businesses and undertakings is appointed or proposed.
- 16.6 if an administrator is appointed to the Service Provider or the Principal under the provisions of the Corporations Law or the Service Provider or the Principal enters into any arrangements, reconstruction or composition with its creditors or any of them or proposes so to do;

16.7 If without the prior written consent of the Principal of the Service Provider as the case may be, a change occurs:

16.7.1 in the membership of the Service Provider or the Principal;

16.7.2 in the beneficial ownership of the issued capital of the Service Provider or the Principal;

16.7.3. the beneficial ownership of the business or assets of the Service Provider or the Principal;

resulting in the effective control of the Service Provider or the Principal or the beneficial ownership of their respective businesses being with a person whom at the commencement date did not have that control.

17. Costs

The Principal shall bear the costs in relation to the preparation and execution of this agreement.

18. Further assurance

The Principal and the Service Provider agree to do all such things and execute all such documents as may be necessary or desirable or reasonable required to give full effect to the provisions of this agreement and the transactions contemplated by it.

19. Applicable law

This agreement shall be governed by the laws of the State in which this agreement is executive and the Principal and the Service Provider agree to submit to the jurisdiction of the Courts in that State in relation to any question or dispute that may arise under this agreement.

20. Services of notices

Any demand notice or document under this agreement shall be sufficiently served or delivered if served or delivered personally or posted by prepaid post addressed to the person to be served at his address set out in schedule 1 or if served in any other manner authorised by the rules of the applicable law for the service of documents.

21. Entire Agreement

This agreement constitutes the sole and entire agreement between the Principal and the Service Provider and not warranties representations guarantees or other terms or conditions other than those contained and recorded in this agreement shall be of any force or effect.

22. Severability

If any provision of this agreement shall be invalid and not enforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with those terms.

23. No variation unless in writing

Any variation termination or attempted waiver of any of the provisions of this agreement shall only be binding if it is in writing and executed by the Principal and the Service Provider or their respective duly authorized officers.

24. No assignment without consent

Neither the Principal nor the Service Provider shall assign or permit a third party to obtain the benefit of its rights and interests under this agreement except with the prior written consent of the other of them.

25. Parties not joint venturers

This agreement does not constitute either the Principal or the Service Provider a joint venturer, partner, agent, employee or fiduciary of the other of them and subject to any other agreement between the Principal and the Service provider any act or omission of any party shall not bind or obligate the other of them except as expressly set out in this agreement.

26. Agreement to bind successors

This agreement shall extend to bind the Principal and the Service Provider and their respective assigns, transferees and successors, and any reference to the Principal or the Service Provider shall where the context so admits include its respective assigns, transferees and successors.

Executed as an agreement at the place specified in schedule 1..

THE COMMON SEAL of LM Administration Pty Ltd)

ACN 055 691 426 was hereunto affixed in accordance)

with its Articles of Association in the)

presence of:)

..... Director

THE COMMON SEAL of LM Investment Management Ltd)

ACN 077 208 461 was hereunto affixed in accordance)

with its Articles of Association in the)

presence of:)

..... Director

SCHEDULE 1

1. Date of this agreement The First day of July 2003
2. Principal LM Investment Management Ltd
3. Service Provider: LM Administration Pty Ltd as trustee for LM
Administration Trust
4. Business: Funds management
5. Premises: Level 4, 9 Beach Road Surfers Paradise 4217
Level 2, 333 Sussex Street Sydney
6. Commencement Date: The 1st day of July 2003
7. Services:
 - 7.1 Staff
 - 7.2 Equipment:
 - 7.3 Other Services:

*7.3.1 All services necessary for the proper and efficient management and administration of the business including but not limited to:

*7.3.1.1 the collection of all debts owed to the Principal by its customers and all other amounts from time to time outstanding to the Principal.

7.3.1.2 do all things necessary to remain the holder of the direct debit license on behalf of the principal between ANZ Banking Group Ltd (or other banking institution).

7.3.1.3 the payment of all electronic distributions under the direct debit license of behalf of the principal.

7.3.1.4 the provision of all administration funds management services on behalf of the principal for which the service provider will be entitled to payment (on behalf of the principal) of all management fees earned by the principal in its business of operating managed investment schemes. These management fees will be paid directly to the service provider and is in addition to the quarterly service fee paid for all other services.

*7.3.1.2 the preparation of all financial statements necessary for the external accountants for the Principal to prepare the year end financial statements of the Principal including the maintenance of all records necessary to properly maintain the general ledger of the principal and prepare a trial balance of the Principal on an ongoing basis;

*7.3.1.3 the employment and dismissal and the management of all personnel to be employed by the Principal in the operation of the business;

*7.3.1.4 all computer and administrative services required for the provision of the administration and operation of the business;

*7.3.1.5 all office supplies and materials to be used in connection with the conduct of the business;

*7.3.1.6 negotiating for the Principal all financial, leasing and hire purchase contracts including all the terms and conditions of those contracts;

*7.3.1.7 all services necessary for the proper management and administration of all properties from time to time leased and/or occupied by the Principal including the acquisition, design, layout, refurbishment and redecoration, sub-leasing, maintenance and repair of all those properties; and

*7.3.2 any services other than those referred to in sub-clauses 7.1 and 7.2 of this schedule 1 and this sub-clause from time to time provided by the Service Provider to the Principal by agreement of those persons.

8. The Service Fees

The service fees payable for the services shall be calculated as follows. All of the services shall be provided at 40% of the total expenses incurred by the Service Provider of the provision of the services to be provided plus such percentage or proportionate amount of that cost as may be agreed upon between the Principal and the Service Provider. In addition, the service provider will also be directly paid all management fees on behalf of the principal earned in the principals capacity as manager of all of its managed investment schemes.

9. Place of execution of agreement: Surfers Paradise Queensland

SERVICE AGREEMENT

**LM Investment Management Ltd
And
Administration Trust**

1.7.2009

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SCHEDULE 1

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Recitals:

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- 2 The Service Provider is in business as a provider of staff, plant and equipment, administrative funds management services, consulting and other services to persons for the purposes of providing assistance in the operation of the businesses which those persons respectively conduct.
- 3 The Principal has agreed to engage the Service Provider for the purpose of providing services to the principal in the conduct of the business and the Service Provider has agreed to be so engaged.
- 4 The Service Provider has agreed to render to the Principal the services of such of them or such other services as may be agreed upon by the Service Provider and the Principal from time to time on the terms and conditions contained in this agreement.

IT IS AGREED as follows:

1. Interpretation

- 1.1 "the business" means the business specified in schedule 1 and any other business from time to time conducted by the Principal and which the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement.
- 1.2 "commencement" date means the commencement date specified in schedule 1;
- 1.3 "commercial rates" in relation to the service fees payable under this agreement means the rates which it could be expected would be charged by a Service Provider to a client if the Service Provider and the client were dealing with each other at arm's length.
- 1.4 "confidential information" means and includes, but is not limited to, information relating to the business of the Principal and which is not in the public domain, such as

developments relating to existing and future products and services marketed or used or to be marketed or used by the Principal or the Service Provider and persons or companies dealing with the Principal or the Service Provider and, also, information relating to the general business operations of the Principal including profit and loss statements balance sheets, customer or client lists, costs and selling price information, any trade secrets, know-how or product specifications, business and marketing plans and information provided to the Principal by persons other than the Service provider;

- 1.5 “the equipment” means the plant and equipment specified in schedule 1 and such other equipment as the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement;
- 1.6 “the other services” means the other services specified in schedule 1 and such other services as the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement”;
- 1.7 “person” or persons means and includes all natural persons and corporations whether acting in their own capacity or as the trustee of a trust”;
- 1.8 “the premises” means the premises specified in schedule 1 and such other premises from which the Principal may from time to time conduct the business;
- 1.9 “the Principal” means the party named in schedule 1 and any other company or persons which may at any time after the commencement date merge with the Principal or take over or carry on either in whole or in part the business and the undertaking of the Principal;
- 1.10 “the Service Provider” means the party named in schedule 1 and any other company or person which may at any time after the commencement date merge with the Service Provider or take over or carry on either in whole or in part the business and undertaking of the Service Provider;

- 1.11 "the services" means the services specified and/or referred to in schedule 1;
- 1.12 "the service fees" means the fees payable to the Service Provider pursuant to clause 5;
- 1.13 "the staff" means the persons specified in schedule 1 and all such other persons who from time to time are employed by the Service Provider in the provisions of the services;
- 1.14 "the term" means the period of this agreement specified in clause 3;
- 1.15 if any party consists of more than one person then the liability of those persons in all respects under this agreement shall be a joint liability of all those persons and the liability of each of them severally;
- 1.16 in this agreement except to the extent that the context otherwise requires:
 - 1.16.1 words denoting the singular include the plural and vice versa;
 - 1.16.2 words denoting individuals or persons include bodies corporate and trusts and vice versa;
 - 1.16.3 reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this agreement;
 - 1.16.4 reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time;
 - 1.16.5 reference to any statutory enactment is a reference to that enactment as amended and modified from time to time;
 - 1.16.6 words denoting any gender includes all genders; and
 - 1.16.7 where a word or phrase is given a definite meaning in this agreement as part of speech or other grammatical form for that word or phrase has a corresponding meaning.

2. Engagement of Service Provider

The Principal engages the Service Provider and the Service Provider agrees to be so engaged to provide and make available during the term the services to the Principal on the terms and conditions set out in this agreement.

3. Term

The term of this agreement shall be the period commencing on the commencement date and continuing until termination in accordance with the provisions of clause 16.

4. Place of the Services

The services shall be provided at the premises and/or any other place or places as the Principal and the Service Provider may agree upon.

5. The Service Fees

5.1 The Principal shall subject to any review of the method of the calculation of the service fees pursuant to paragraph 14.1.1, pay to the Service Provider for the provision of the services the service fees set out in schedule1.

5.2 The service fees shall be calculated quarterly with the first of such quarterly payments being due and payable on the last day of the quarter.

5.3 The Service Provider acknowledges and agrees that in any review of the method of calculation of the service fees it shall not seek to have the service fees set at rates which exceed commercial rates for the services on the date of review.

6. Invoices for Service Fees

The Service Provider shall for each quarter or part of a quarter during the term as soon as practicable after the last day of each quarter of the term prepare and submit to the Principal an tax invoice for the service fees payable for each such quarter or part of a quarter.

7. Interest and security on unpaid money

7.1 The Principal shall at the request of the Service Provider pay to the Service Provider interest at a rate specified in schedule 1 (as varied from time to time under paragraph 14.1.5);

7.1.1 on any part of the service fees which remains outstanding for more than seven (7) days after the last day of the quarter for which the service fees are payable; and

7.1.2. on any other money from time to time outstanding and owed by the Principal to the Service Provider.

7.2 All interest payable by the Principal to the Service Provider in respect of unpaid service fees or any other money owed by the Principal to the Service Provider shall unless otherwise agreed by the Principal and the Service Provider be calculated quarterly on the last day of each quarter during the term on the total amount outstanding (including all unpaid interest) at the beginning of each quarter during the term.

7.3 For the purposes of securing payment to the Service Provider of all amounts (including interest) referred to in sub-clause 7.1 the Principal shall at the request of the Service Provider provide to the Service Provider security in the form and over the assets reasonable requested by the Service Provider and if the Principal is a company, for the purposes of this sub-clause, if a request is made by the Service Provider the Principal shall execute a mortgage debenture over all its assets and undertaking in favour of the Service Provider.

8. The Service Provider to maintain separate account

The Service Provider shall at all time during the term maintain a bank account into which it shall ensure all service fees are paid. The payment may alternatively be directly offset against any monies owed by the principal to the service provider.

9. Administrative Staff of Service Provider

The Service Provider shall ensure that all times during the term it has sufficient properly trained staff to enable it to carry out and honor all its obligations under this agreement and in particular to administer the calculation, collection and banking of the service fees.

10. Staff

- 10.1 The Service Provider shall as soon as practicable after the receipt of a request from the Principal to do so, provide to the Principal all of the staff to be provided by the Service Provider in the provision of the services.
- 10.2 Subject to the Principal having at the time of the request for the provision of any of the staff informed the Service Provider of the nature of the duties, tasks and/or work to be undertaken by each of the persons who comprise the staff the Service Provider shall make every reasonable endeavour to satisfy itself that each of these persons is fully qualified to carry out and provide those duties, tasks and/or work.
- 10.3 The Service Provider shall be responsible for salaries and/or wages and all income tax deductions, workers compensation or equivalent insurance, payroll tax, holiday pay, sick pay, superannuation and other employee entitlements payable in respect of the staff.
- 10.4 The Service Provider shall if requested by the Principal remove and replace any person who may from time to time comprise any of the staff.
- 10.5 The Service Provider shall be responsible for attending to all registrations required by State and Federal Law due to its status as an employer, including but not limited to, group employer registration, payroll tax registration, Workcover insurance registration, and any administrative requirements arising out of its management of any superannuation fund.

11. Equipment

The equipment shall remain the property of the Service Provider.

The Principal covenants with the Service Provider;

- 11.2.1 to treat and care for the equipment as would a cautious and prudent owner in order to prevent the deterioration of the equipment or its being damaged, lost or destroyed.
- 11.2.2 to at its own expense maintain the equipment in good repair, working order and condition and regularly and properly serviced and adjusted;
- 11.2.3 to preserve all identification marks on the equipment;
- 11.2.4 to permit the Service Provider or any person nominated by the Service Provider to inspect the equipment at any reasonable time of day or night without prior notice and to enter any premises to inspect, test or retake possession of the equipment;
- 11.2.5 to keep the equipment in its own possession control and custody and not to conceal or hide same or attempt to do so;
- 11.2.6 to indemnify and keep indemnified the Service Provider from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to the provision of the services or the use of the equipment during the term;
- 11.2.7 not to create or incur any lien or charge on the equipment nor to pledge, sub-let, assign, sell or part with possessions of the equipment;
- 11.2.8 upon expiration of the term forthwith to surrender the equipment to the Service Provider in the same condition as it was delivered, fair wear and tear excepted.

11.2.9 not without the consent of the Service Provider to all the equipment to be operated by any person other than an employee of the Principal;

and

12 Devotion of time

During the term the Service Provider shall devote so much of its time and attention to the performance of the services and its duties under this agreement as is required for the proper and efficient provision of the services and those duties.

13. Promotion of Principal

The Service Provider shall wherever it is reasonably practicable so to do promote, develop and extend the business of the Principal.

14. Review of service fees and terms of agreement

14.1 Whenever the principal shall upon reasonable notice require and in any event on not less than one (1) occasion in each period of the term ending on 30 June the Principal and the Service Provider shall meet with the view to determining whether any of the following terms of agreement need to be reviewed and/or varied:

14.1.1 the service fees and the method of calculation of the service fees;

14.1.2 the services provided by the Service Provider.

14.1.3. the number and suitability of the staff

14.1.4 the state of repair, general condition, adequacy and quality of the equipment;

14.1.5 the rate of interest which under the provisions of clause 7 may from time to time be payable on any part of the service fees and on any other money which from time to time remains outstanding and owed by the Principal to the Service Provider.

14.1.6 the operation of the terms of this agreement and generally the administrative arrangements between the Service Provider and the Principal; and

14.1.7 any other matters raised by either the Service Provider or the Principal.

15. Non-disclosure of information

Any information supplied by the Principal or any of its employees or agents to the Service Provider or by the Service Provider to the Principal shall be treated as confidential information and shall not be disclosed to any other person or firm unless the Principal or the Service Provider respectively consents to such disclosure.

16. Termination of agreement

This agreement shall be deemed to be terminated forthwith upon the happening of any of the following events:

- 16.1 if the Service Provider, the Principal or any of the directors of either of them is convicted of any offence which may reasonably be regarded as prejudicing the rights of the other of them under this agreement or otherwise;
- 16.2 subject to payment of all outstanding service fees payable under this agreement at the expiration of thirty (30) days after the receipt of a written notice of termination of this agreement given by either the Principal or the Service Provider to the other of them;
- 16.3 if either the Service Provider or the Principal shall fail to rectify any breach of the terms and conditions of this agreement within thirty (30) days of the service on the other of them of a written notice requiring rectification of the breach;
- 16.4 if a petition is presented or an order is made or any effective resolution is passed for the winding up of the Service Provider or the Principal or a meeting is summoned or convened for that purpose.
- 16.5 if a receiver of the business and undertaking of the Service Provider or the Principal or any part of their respective businesses and undertakings is appointed or proposed.
- 16.6 if an administrator is appointed to the Service Provider or the Principal under the provisions of the Corporations Law or the Service Provider or the Principal enters into

any arrangements, reconstruction or composition with its creditors or any of them or proposes so to do;

16.7 If without the prior written consent of the Principal of the Service Provider as the case may be, a change occurs:

16.7.1 in the membership of the Service Provider or the Principal;

16.7.2 in the beneficial ownership of the issued capital of the Service Provider or the Principal;

16.7.3 the beneficial ownership of the business or assets of the Service Provider or the Principal;

resulting in the effective control of the Service Provider or the Principal or the beneficial ownership of their respective businesses being with a person whom at the commencement date did not have that control.

17. Costs

The Principal shall bear the costs in relation to the preparation and execution of this agreement.

18. Further assurance

The Principal and the Service Provider agree to do all such things and execute all such documents as may be necessary or desirable or reasonable required to give full effect to the provisions of this agreement and the transactions contemplated by it.

19. Applicable law

This agreement shall be governed by the laws of the State in which this agreement is executed and the Principal and the Service Provider agree to submit to the jurisdiction of the Courts in that State in relation to any question or dispute that may arise under this agreement.

20. Services of notices

Any demand notice or document under this agreement shall be sufficiently served or delivered if served or delivered personally or posted by prepaid post addressed to the person to be served at

his address set out in schedule 1 or if served in any other manner authorised by the rules of the applicable law for the service of documents.

21. Entire Agreement

This agreement constitutes the sole and entire agreement between the Principal and the Service Provider and not warranties representations guarantees or other terms or conditions other than those contained and recorded in this agreement shall be of any force or effect.

22. Severability

If any provision of this agreement shall be invalid and not enforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with those terms.

23. No variation unless in writing

Any variation termination or attempted waiver of any of the provisions of this agreement shall only be binding if it is in writing and executed by the Principal and the Service Provider or their respective duly authorized officers.

24. No assignment without consent

Neither the Principal nor the Service Provider shall assign or permit a third party to obtain the benefit of its rights and interests under this agreement except with the prior written consent of the other of them.

25. Parties not joint venturers

This agreement does not constitute either the Principal or the Service Provider a joint venturer, partner, agent, employee or fiduciary of the other of them and subject to any other agreement between the Principal and the Service provider any act or omission of any party shall not bind or obligate the other of them except as expressly set out in this agreement.

26. Agreement to bind successors

This agreement shall extend to bind the Principal and the Service Provider and their respective assigns, transferees and successors, and any reference to the Principal or the Service Provider shall where the context so admits include its respective assigns, transferees and successors.

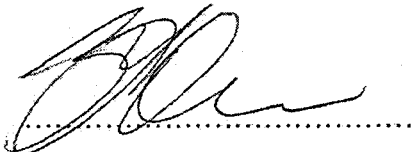
Executed as an agreement at the place specified in schedule 1.

THE COMMON SEAL of LM Administration Pty Ltd)

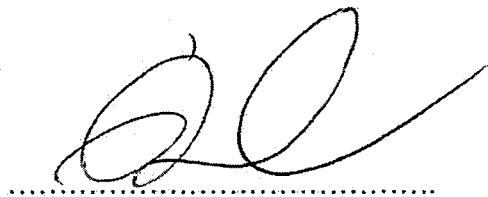
ACN 055 691 426 was hereunto affixed in accordance)

with its Articles of Association in the)

presence of:



Grant Fischer



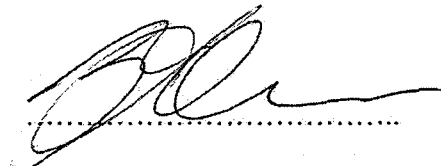
Peter Drake - Director

THE COMMON SEAL of LM Investment Management Ltd)

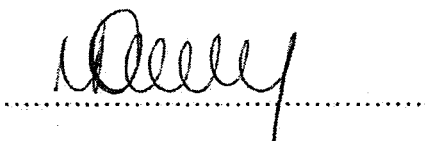
ACN 077 208 461 was hereunto affixed in accordance)

with its Articles of Association in the)

presence of:)



Grant Fischer



Lisa Darcy - Director

SCHEDULE 1

1. Date of this agreement The First day of July 2005
2. Principal LM Investment Management Ltd
3. Service Provider: LM Administration Pty Ltd as trustee for LM
Administration Trust
4. Business: Funds management
5. Premises: Level 4, 9 Beach Road Surfers Paradise 4217
Level 2, 333 Sussex Street Sydney
6. Commencement Date: The 1st day of July 2005
7. Services:
 - 7.1 Staff
 - 7.2 Equipment:
 - 7.3 Other Services:

*7.3.1 All services necessary for the proper and efficient management and administration of the business including but not limited to:

*7.3.1.1 the collection of all debts owed to the Principal by its customers and all other amounts from time to time outstanding to the Principal.

7.3.1.2 do all things necessary to remain the holder of the direct debit license on behalf of the principal between ANZ Banking Group Ltd (or other banking institution).

7.3.1.3 the payment of all electronic distributions under the direct debit license of behalf of the principal.

7.3.1.4 the provision of all administration funds management services on behalf of the principal for which the service provider will be entitled to payment (on behalf of the principal) of all management fees earned by the principal in its business of operating managed investment schemes. These management fees will be paid directly to the service provider and is in addition to the quarterly service fee paid for all other services.

*7.3.1.2 the preparation of all financial statements necessary for the external accountants for the Principal to prepare the year end financial statements of the Principal including the maintenance of all records necessary to properly maintain the general ledger of the principal and prepare a trial balance of the Principal on an ongoing basis;

*7.3.1.3 the employment and dismissal and the management of all personnel to be employed by the Principal in the operation of the business;

*7.3.1.4 all computer and administrative services required for the provision of the administration and operation of the business;

*7.3.1.5 all office supplies and materials to be used in connection with the conduct of the business;

*7.3.1.6 negotiating for the Principal all financial, leasing and hire purchase contracts including all the terms and conditions of those contracts;

*7.3.1.7 all services necessary for the proper management and administration of all properties from time to time leased and/or occupied by the Principal including the acquisition, design, layout, refurbishment and redecoration, sub-leasing, maintenance and repair of all those properties; and

*7.3.2 any services other than those referred to in sub-clauses 7.1 and 7.2 of this schedule 1 and this sub-clause from time to time provided by the Service Provider to the Principal by agreement of those persons.

8. The Service Fees

The service fees payable for the services shall be calculated as follows. All of the services shall be provided at 48% of the total expenses incurred by the Service Provider of the provision of the services to be provided plus such percentage or proportionate amount of that cost as may be agreed upon between the Principal and the Service Provider. In addition, the service provider will also be directly paid all management fees on behalf of the principal earned in the principals capacity as manager of all of its managed investment schemes.

9. Place of execution of agreement: Surfers Paradise Queensland

"DW-56"

SERVICE AGREEMENT

**LM Investment Management Ltd
And
Administration Trust**

1.7.2010

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SCHEDULE 1

THIS SERVICE AGREEMENT is made on the date specified in schedule BETWEEN LM Investment Management Ltd (ACN 077 208 461) (the principal) and LM Administration Pty Ltd (ACN 055 691 426) as trustee for the LM Administration Trust (the Service Provider.)

Recitals:

- 1 The Principal conducts the business from the premises.
- 2 The Service Provider is in business as a provider of staff, plant and equipment, administrative funds management services, consulting and other services to persons for the purposes of providing assistance in the operation of the businesses which those persons respectively conduct.
- 3 The Principal has agreed to engage the Service Provider for the purpose of providing services to the principal in the conduct of the business and the Service Provider has agreed to be so engaged.
- 4 The Service Provider has agreed to render to the Principal the services of such of them or such other services as may be agreed upon by the Service Provider and the Principal from time to time on the terms and conditions contained in this agreement.

IT IS AGREED as follows:

1. Interpretation

- 1.1 "the business" means the business specified in schedule 1 and any other business from time to time conducted by the Principal and which the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement.
- 1.2 "commencement" date means the commencement date specified in schedule 1;
- 1.3 "commercial rates" in relation to the service fees payable under this agreement means the rates which it could be expected would be charged by a Service Provider to a client if the Service Provider and the client were dealing with each other at arm's length.
- 1.4 "confidential information" means and includes, but is not limited to, information relating to the business of the Principal and which is not in the public domain, such as

developments relating to existing and future products and services marketed or used or to be marketed or used by the Principal or the Service Provider and persons or companies dealing with the Principal or the Service Provider and, also, information relating to the general business operations of the Principal including profit and loss statements balance sheets, customer or client lists, costs and selling price information, any trade secrets, know-how or product specifications, business and marketing plans and information provided to the Principal by persons other than the Service provider;

- 1.5 "the equipment" means the plant and equipment specified in schedule 1 and such other equipment as the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement;
- 1.6 "the other services" means the other services specified in schedule 1 and such other services as the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement";
- 1.7 "person" or persons means and includes all natural persons and corporations whether acting in their own capacity or as the trustee of a trust";
- 1.8 "the premises" means the premises specified in schedule 1 and such other premises from which the Principal may from time to time conduct the business;
- 1.9 "the Principal" means the party named in schedule 1 and any other company or persons which may at any time after the commencement date merge with the Principal or take over or carry on either in whole or in part the business and the undertaking of the Principal;
- 1.10 "the Service Provider" means the party named in schedule 1 and any other company or person which may at any time after the commencement date merge with the Service Provider or take over or carry on either in whole or in part the business and undertaking of the Service Provider;

- 1.11 "the services" means the services specified and/or referred to in schedule 1;
- 1.12 "the service fees" means the fees payable to the Service Provider pursuant to clause 5;
- 1.13 "the staff" means the persons specified in schedule 1 and all such other persons who from time to time are employed by the Service Provider in the provisions of the services;
- 1.14 "the term" means the period of this agreement specified in clause 3;
- 1.15 if any party consists of more than one person then the liability of those persons in all respects under this agreement shall be a joint liability of all those persons and the liability of each of them severally;
- 1.16 in this agreement except to the extent that the context otherwise requires:
 - 1.16.1 words denoting the singular include the plural and vice versa;
 - 1.16.2 words denoting individuals or persons include bodies corporate and trusts and vice versa;
 - 1.16.3 reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this agreement;
 - 1.16.4 reference to a document or agreement includes reference to that document or ~~agreement as changed, novated or replaced from time to time;~~
 - 1.16.5 reference to any statutory enactment is a reference to that enactment as amended and modified from time to time;
 - 1.16.6 words denoting any gender includes all genders; and
 - 1.16.7 where a word or phrase is given a definite meaning in this agreement as part of speech or other grammatical form for that word or phrase has a corresponding meaning.

2. Engagement of Service Provider

The Principal engages the Service Provider and the Service Provider agrees to be so engaged to provide and make available during the term the services to the Principal on the terms and conditions set out in this agreement.

3. Term

The term of this agreement shall be the period commencing on the commencement date and continuing until termination in accordance with the provisions of clause 16.

4. Place of the Services

The services shall be provided at the premises and/or any other place or places as the Principal and the Service Provider may agree upon.

5. The Service Fees

5.1 The Principal shall subject to any review of the method of the calculation of the service fees pursuant to paragraph 14.1.1, pay to the Service Provider for the provision of the services the service fees set out in schedule 1.

5.2 The service fees shall be calculated quarterly with the first of such quarterly payments being due and payable on the last day of the quarter.

5.3 The Service Provider acknowledges and agrees that in any review of the method of calculation of the service fees it shall not seek to have the service fees set at rates which exceed commercial rates for the services on the date of review.

6. Invoices for Service Fees

The Service Provider shall for each quarter or part of a quarter during the term as soon as practicable after the last day of each quarter of the term prepare and submit to the Principal an tax invoice for the service fees payable for each such quarter or part of a quarter.

7. Interest and security on unpaid money

7.1 The Principal shall at the request of the Service Provider pay to the Service Provider interest at a rate specified in schedule 1 (as varied from time to time under paragraph 14.1.5);

7.1.1 on any part of the service fees which remains outstanding for more than seven (7) days after the last day of the quarter for which the service fees are payable; and

7.1.2. on any other money from time to time outstanding and owed by the Principal to the Service Provider.

7.2 All interest payable by the Principal to the Service Provider in respect of unpaid service fees or any other money owed by the Principal to the Service Provider shall unless otherwise agreed by the Principal and the Service Provider be calculated quarterly on the last day of each quarter during the term on the total amount outstanding (including all unpaid interest) at the beginning of each quarter during the term.

7.3 For the purposes of securing payment to the Service Provider of all amounts (including interest) referred to in sub-clause 7.1 the Principal shall at the request of the Service Provider provide to the Service Provider security in the form and over the assets reasonable requested by the Service Provider and if the Principal is a company, for the purposes of this sub-clause, if a request is made by the Service Provider the Principal shall execute a mortgage debenture over all its assets and undertaking in favour of the Service Provider.

8. The Service Provider to maintain separate account

The Service Provider shall at all time during the term maintain a bank account into which it shall ensure all service fees are paid. The payment may alternatively be directly offset against any monies owed by the principal to the service provider.

9. Administrative Staff of Service Provider

The Service Provider shall ensure that all times during the term it has sufficient properly trained staff to enable it to carry out and honor all its obligations under this agreement and in particular to administer the calculation, collection and banking of the service fees.

10. Staff

10.1 The Service Provider shall as soon as practicable after the receipt of a request from the Principal to do so, provide to the Principal all of the staff to be provided by the Service Provider in the provision of the services.

10.2 Subject to the Principal having at the time of the request for the provision of any of the staff informed the Service Provider of the nature of the duties, tasks and/or work to be undertaken by each of the persons who comprise the staff the Service Provider shall make every reasonable endeavour to satisfy itself that each of these persons is fully qualified to carry out and provide those duties, tasks and/or work.

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10.5 The Service Provider shall be responsible for attending to all registrations required by State and Federal Law due to its status as an employer, including but not limited to, group employer registration, payroll tax registration, Workcover insurance registration, and any administrative requirements arising out of its management of any superannuation fund.

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The equipment shall remain the property of the Service Provider.

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- 11.2.6 to indemnify and keep indemnified the Service Provider from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to the provision of the services or the use of the equipment during the term;
- 11.2.7 not to create or incur any lien or charge on the equipment nor to pledge, sub-let, assign, sell or part with possessions of the equipment;
- 11.2.8 upon expiration of the term forthwith to surrender the equipment to the Service Provider in the same condition as it was delivered, fair wear and tear excepted.

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During the term the Service Provider shall devote so much of its time and attention to the performance of the services and its duties under this agreement as is required for the proper and efficient provision of the services and those duties.

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- 16.2 subject to payment of all outstanding service fees payable under this agreement at the expiration of thirty (30) days after the receipt of a written notice of termination of this agreement given by either the Principal or the Service Provider to the other of them;
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- 16.6 if an administrator is appointed to the Service Provider or the Principal under the provisions of the Corporations Law or the Service Provider or the Principal enters into

any arrangements, reconstruction or composition with its creditors or any of them or proposes so to do;

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The Principal shall bear the costs in relation to the preparation and execution of this agreement.

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The Principal and the Service Provider agree to do all such things and execute all such documents as may be necessary or desirable or reasonable required to give full effect to the provisions of this agreement and the transactions contemplated by it.

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This agreement shall be governed by the laws of the State in which this agreement is executive and the Principal and the Service Provider agree to submit to the jurisdiction of the Courts in that State in relation to any question or dispute that may arise under this agreement.

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Any demand notice or document under this agreement shall be sufficiently served or delivered if served or delivered personally or posted by prepaid post addressed to the person to be served at

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This agreement constitutes the sole and entire agreement between the Principal and the Service Provider and not warranties representations guarantees or other terms or conditions other than those contained and recorded in this agreement shall be of any force or effect.

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If any provision of this agreement shall be invalid and not enforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with those terms.

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Any variation termination or attempted waiver of any of the provisions of this agreement shall only be binding if it is in writing and executed by the Principal and the Service Provider or their respective duly authorized officers.

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Neither the Principal nor the Service Provider shall assign or permit a third party to obtain the benefit of its rights and interests under this agreement except with the prior written consent of the other of them.

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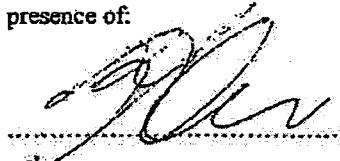
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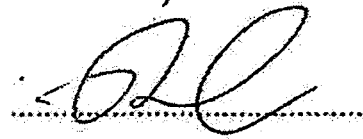
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This agreement shall extend to bind the Principal and the Service Provider and their respective assigns, transferees and successors, and any reference to the Principal or the Service Provider shall where the context so admits include its respective assigns, transferees and successors.

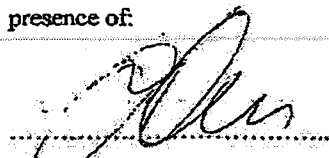
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ACN 055 691 426 was hereunto affixed in accordance)
with its Articles of Association in the)
presence of:)


Grant Fischer


Peter Drake - Director

THE COMMON SEAL of LM Investment Management Ltd)
ACN 077 208 461 was hereunto affixed in accordance)
with its Articles of Association in the)
presence of:)


Grant Fischer


Lisa Darcy - Director

SCHEDULE 1

1. Date of this agreement The First day of July 2005
2. Principal LM Investment Management Ltd
3. Service Provider: LM Administration Pty Ltd as trustee for LM
Administration Trust
4. Business: Funds management
5. Premises: Level 4, 9 Beach Road Surfers Paradise 4217
Level 2, 333 Sussex Street Sydney
6. Commencement Date: The 1st day of July 2005
7. Services:
 - 7.1 Staff
 - 7.2 Equipment:
 - 7.3 Other Services:

*7.3.1 All services necessary for the proper and efficient management and administration of the business including but not limited to:

*7.3.1.1 the collection of all debts owed to the Principal by its customers and all other amounts from time to time outstanding to the Principal.

7.3.1.2 do all things necessary to remain the holder of the direct debit license on behalf of the principal between ANZ Banking Group Ltd (or other banking institution).

7.3.1.3 the payment of all electronic distributions under the direct debit license of behalf of the principal.

7.3.1.4 the provision of all administration funds management services on behalf of the principal for which the service provider will be entitled to payment (on behalf of the principal) of all management fees earned by the principal in its business of operating managed investment schemes. These management fees will be paid directly to the service provider and is in addition to the quarterly service fee paid for all other services.

*7.3.1.2 the preparation of all financial statements necessary for the external accountants for the Principal to prepare the year end financial statements of the Principal including the maintenance of all records necessary to properly maintain the general ledger of the principal and prepare a trial balance of the Principal on an ongoing basis;

*7.3.1.3 the employment and dismissal and the management of all personnel to be employed by the Principal in the operation of the business;

*7.3.1.4 all computer and administrative services required for the provision of the administration and operation of the business;

*7.3.1.5 all office supplies and materials to be used in connection with the conduct of the business;

*7.3.1.6 negotiating for the Principal all financial, leasing and hire purchase contracts including all the terms and conditions of those contracts;

*7.3.1.7 all services necessary for the proper management and administration of all properties from time to time leased and/or occupied by the Principal including the acquisition, design, layout, refurbishment and redecoration, sub-leasing, maintenance and repair of all those properties; and

*7.3.2 any services other than those referred to in sub-clauses 7.1 and 7.2 of this schedule 1 and this sub-clause from time to time provided by the Service Provider to the Principal by agreement of those persons.

8. The Service Fees

The service fees payable for the services shall be calculated as follows. All of the services shall be provided at 52% of the total expenses incurred by the Service Provider of the provision of the services to be provided plus such percentage or proportionate amount of that cost as may be agreed upon between the Principal and the Service Provider. In addition, the service provider will also be directly paid all management fees on behalf of the principal earned in the principals capacity as manager of all of its managed investment schemes.

9. Place of execution of agreement: Surfers Paradise Queensland

**KING & WOOD
MALLESONS**

Services agreement

Dated

LM Investment Management Limited (Administrators Appointed) ABN 66
077 208 461 ("RE")

LM Administration Pty Ltd (Administrators Appointed) ACN 055 691 426
("ServiceCo")

King & Wood Mallesons
Level 33
Waterfront Place
1 Eagle Street
Brisbane QLD 4000
Australia
T +61 7 3244 8000
F +61 7 3244 8999
DX 311 Brisbane
www.kwm.com

Services agreement

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Services agreement

Details

Parties	RE and ServiceCo	
RE	Name	LM Investment Management Limited (Administrators Appointed)
	ABN	68 077 208 461
	Address	c/- FTI Consulting 22 Market Street BRISBANE QLD 4000
	Fax	+61 7 3225 4999
	Attention	Mr John Park / Ms Ginette Muller
ServiceCo	Name	LM Administration Pty Ltd (Administrators Appointed)
	ACN	055 691 426
	Address	c/- FTI Consulting 22 Market Street BRISBANE QLD 4000
	Fax	+61 7 3225 4999
	Attention	Mr John Park / Ms Ginette Muller
Recitals	A	The Administrators were appointed as the joint and several administrators of each of RE and ServiceCo on 19 March 2013.
	B	RE is the responsible entity/trustee of the Trusts and trustee of various feeder funds and sub-trusts owned by the Trusts.
	C	RE has requested, and ServiceCo has agreed, to provide RE with certain resources to enable RE to administer, care for, preserve and wind up the Trusts (or any of them) and perform the administrative and management functions set out in Schedule 1 in relation to the Trusts, any Sub-Trusts and its own operations on the terms and conditions set out in this agreement.
Governing law		Queensland
Date of agreement		See Signing page

Services agreement

General terms

1 Definitions and interpretation

1.1 Definitions

In this agreement, unless the context requires otherwise:

Administrators means John Richard Park and Ginette Muller of FTI Consulting (jointly and severally) in their capacity as voluntary administrators of RE and ServiceCo.

AFS Licence means an Australian financial services licence.

ASIC means the Australian Securities and Investments Commission.

Business Day means a day other than a Saturday or a Sunday or public holiday in Brisbane.

Calculation Date has the meaning given to that term in clause 4.1.

Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this agreement relating to the business, technology or other affairs of RE.

Constitutions means the constitutions containing the governing rules of the Trusts.

Corporations Act means the Corporations Act 2001 (Cwth).

Custodian means The Trust Company (PTAL) Limited and any other custodian of Trust property from time to time.

Custody Agreement means the agreement entitled "Custody Agreement" (or any such similarly titled agreement) between RE and the Custodian.

Details means the section of this agreement headed "Details".

Effective Date means 19 March 2013.

Functions means the Functions listed in Schedule 1 in respect of which Resources are required by RE from time to time.

Group means RE and ServiceCo and any subsidiaries of any of these companies.

GST has the same meaning as it has in A New Tax System (Goods and Services Tax) Act 1999 (Cwth).

GST Law has the same meaning as it has in A New Tax System (Goods and Services Tax) Act 1999 (Cwth).

Licence means any licence or authorisations that RE is required to hold to carry on its business, including an AFS Licence.

Other Resources means premises, computer systems and other equipment, software, know-how and other tangible and intangible property owned, leased, licensed or otherwise procured by ServiceCo or a related body corporate or associate of ServiceCo and used by the Staff to assist RE to perform the Functions.

related body corporate has the meaning given to it in the Corporations Act.

Resources means Staff and Other Resources.

Resources Fee means the fee calculated in accordance with clause 4.2 for Resources provided by ServiceCo to RE in respect of each Trust and RE in its personal capacity, as the case may be.

scheme property has the meaning given to this term in the Corporations Act.

Staff means staff employed by or engaged as a consultant to ServiceCo or its related bodies corporate who are provided as to all or part of their time to RE to perform the Functions under this agreement.

Sub-Trust means any trust (other than the Trusts) in respect of which RE is trustee.

Termination Date means the date on which this agreement is terminated in accordance with Clause 6 or otherwise.

Trusts means (collectively):

- (a) LM First Mortgage Income Fund ABN 13 089 343 288;
- (b) LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868;
- (c) LM Currency Protected Australian Income Fund ARSN 110 247 875;
- (d) LM Managed Performance Fund;
- (e) LM Cash Performance Fund;
- (f) LM Australia Income Fund;
- (g) LM Australian Income Fund Currency Protected;
- (h) any other trust, sub-trust, scheme, fund or feeder fund,

in respect of which RE is the responsible entity/trustee, as the case may be.

Writing means any form of legible words including a document, facsimile transmission or email.

1.2 Interpretation

In this agreement, unless the context requires otherwise:

- (a) a reference to a document (including this agreement) includes any variation or replacement of it;
- (b) the word "law" includes common law, principles of equity, and legislation and a reference to legislation includes regulations and other instruments under it, and variation or replacements of any of them);

- (c) all monetary amounts are in Australian dollars unless stated otherwise;
- (d) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and an authority;
- (e) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;
- (f) the singular includes the plural and vice versa; and
- (g) headings are for convenience only and do not affect interpretation.

2 Appointment of ServiceCo

2.1 Agreement

RE appoints ServiceCo to provide, and ServiceCo agrees to provide, the Resources to RE in accordance with this agreement.

2.2 Duration of agreement

This agreement commences on the date of execution of this agreement and ends on the Termination Date.

2.3 Application prior to signing

The parties agree and acknowledge that the terms of this agreement evidence the terms of an agreement between the parties existing from the Effective Date.

3 Provision of Resources

3.1 Resources to be provided by ServiceCo

ServiceCo will provide the Resources in or from Australia.

3.2 Performance standard

ServiceCo must provide to RE sufficient Resources of appropriate quality so that the Functions can be properly performed in a manner and to a standard which allows RE to discharge its duties under (as applicable) the relevant legislation, the constituent documents and compliance plans for the Trusts and any other trusts in respect of which RE is trustee, ASIC Regulatory Guide 133 (or any similar policy statements issued by ASIC), the Group custody policy (if any) and the conditions of a Licence.

3.3 Custodian

ServiceCo does not have an obligation to provide Resources to RE in relation to RE performing self-custody services as set out in Paragraph 3 of Schedule 1 to the extent those services are being provided to RE by the Custodian under the Custody Agreement.

3.4 Staff

When Staff provided by ServiceCo to assist RE in the performance of the Functions are acting in that capacity:

- (a) ServiceCo must procure that the Staff must act only in accordance with the directions of RE;
- (b) RE, and not ServiceCo, is responsible for the acts of the Staff as if they were employees or consultants of RE; and
- (c) despite paragraphs (a) and (b) above, the Staff remain employees or consultants of ServiceCo for all purposes including any contract of employment, consultancy agreement or other rights and liabilities as between ServiceCo and the Staff, the payment of PAYG income tax, fringe benefits tax or other taxes, employer and employee superannuation contributions or any similar payments to the appropriate authorities in respect of the Staff.

ServiceCo must ensure that all Staff provided to perform a task for RE for which a licence, authorisation, experience level or qualification is required by law or in connection with a Licence, have and maintain the appropriate licence, authorisation, experience level or qualification.

3.5 Documents, other records and information

Any documents or records prepared by Staff as part of performing the Functions are the property of RE.

ServiceCo agrees that it will direct Staff that any Confidential Information obtained by them while performing Functions for RE must not be disclosed other than for purposes connected with this agreement, if required by law, or in connection with the requirements of a regulatory authority or legal proceedings or is information already in the public domain.

3.6 Compliance report

ServiceCo will, as soon as reasonably possible:

- (a) after the last Business Day of every calendar quarter; and
- (b) after a reasonable request by RE,

provide RE with a detailed report outlining ServiceCo's provision of Resources in compliance with its obligations under this agreement.

3.7 Non-compliance report

To facilitate compliance by RE with its obligations at law, including without limitation its AFS Licence and responsible entity breach reporting obligations under the Corporations Act, where ServiceCo:

- (a) becomes aware that it has breached; or
- (b) reasonably considers that it will not be able to comply with,

any of its obligations under this agreement, including without limitation the representations and warranties made by ServiceCo, ServiceCo will:

- (i) immediately provide RE with written notice that it has failed to comply with, or it reasonably considers that it may fail to comply with, its obligations under this agreement;
- (ii) include in the notice all details known to ServiceCo of the breach or suspected breach; and

- (iii) take all steps and do all things necessary to promptly comply with the reasonable instructions of RE given to ServiceCo in relation to its breach or suspected breach of its obligations under this agreement.

4 Resources Fee

4.1 Resources Fee

Subject to clause Error! Reference source not found., a Resources Fee in respect of each Trust and the RE in its personal capacity will be calculated by RE within 5 Business Days of the last Business Day of every calendar month (or such other period as may be agreed by the parties) and (subject to clause 4.3) on the Termination Date (each a "Calculation Date") for all Resources provided during the period from and including the day immediately following the previous Calculation Date or the Effective Date, in respect of the period ending on the first Calculation Date up to and including the Calculation Date.

4.2 Calculation of Resources Fee

The Resources Fee in respect of each Trust and the RE in its personal capacity for providing the Resources will be either:

- (a) subject to review by the Administrators, the management fee payable to RE under the relevant Constitution for the relevant period less any amount of the management fee that RE reasonably considers should be withheld to pay, or provide for, other actual or contingent liabilities it has incurred or will incur in its personal capacity; or
- (b) any other fixed or variable fee agreed by the parties from time to time.

4.3 Payment of Resources Fee

The parties intend that:

- (a) RE will calculate the Resources Fee in respect of each Trust and the RE in its personal capacity and notify ServiceCo within one Business Days of the relevant Calculation Date or as the parties determine; and
- (b) subject always to clause 4.6, RE will pay the Resources Fee in respect of each Trust and the RE in its personal capacity to the ServiceCo within two Business Days of being notified by RE in accordance with clause 4.3(a) above or as the parties determine.

The Resources Fee will be deferred (on terms to be agreed by the parties) or will be reduced (as agreed by the parties) to the extent that the payment of the Resources Fee would result in RE breaching the conditions of a Licence.

4.4 Goods and Services Tax

- (a) Unless expressly stated otherwise in this agreement, all amounts payable or consideration to be provided under this agreement are exclusive of GST.
- (b) If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST at the same time that the consideration for the supply, or the first part of the

consideration for the supply (as the case may be), is to be provided. However:

- (i) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note; and
 - (ii) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment.
- (c) If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.
- (d) A term which has a defined meaning in the GST Law has the same meaning when used in this clause 4.4.

4.5 No set-off

RE must pay when due all amounts to ServiceCo due and payable by RE to ServiceCo under this agreement in full without set off, deduction or counterclaim of any kind whatsoever.

4.6 Limitation of liability

Notwithstanding any other provision of this agreement, the parties acknowledge and agree that RE's liability under this agreement, to the extent that it relates to a particular Trust, is limited to the extent that RE is able to be indemnified or reimbursed out of the assets of that Trust for that liability.

4.7 Payment of Resources Fee in advance

Notwithstanding any provision in this clause 4, RE may, in its absolute discretion, pay all or part of the Resources Fee in respect of a Trust or the RE in its personal capacity in advance of any Calculation Date.

5 Representations and warranties

Each party represents and warrants for the benefit of the other party that:

- (a) its obligations under this agreement constitute valid and binding obligations, enforceable in accordance with their terms; and
- (b) the execution of and performance by it of its obligations under this agreement do not and will not contravene any contractual restriction binding on it.

6 Termination

6.1 Termination with notice

Either party may terminate this agreement at any time by not less than 14 days' prior written notice to the other Party.

6.2 Termination by agreement

In addition to clause 6.1, ServiceCo and RE may terminate this agreement at any time on such terms as they agree in writing.

6.3 Automatic termination

Notwithstanding any other provision in this clause 6, this agreement will terminate immediately and automatically if the Administrators cease to be either the voluntary administrators or liquidators of either of RE or ServiceCo.

6.4 Effect of termination

Termination of ServiceCo's appointment under this agreement does not prejudice any right of action or remedy which RE has or, but for the termination of this agreement, may have had against ServiceCo for any breach of this agreement occurring before the date of termination.

6.5 ServiceCo's obligations on termination

Following termination of its appointment under this clause 6, ServiceCo must promptly provide or procure that the Staff provide all necessary documents, records and other information and take all reasonable action to assist in the transition to any replacement provider of resources or services appointed by RE or to enable RE itself to continue to perform the Functions.

6.6 Accrued fees

ServiceCo is entitled to all fees and other amounts for the period up to the date of termination which would have been payable under this agreement but for the termination.

7 Notices and other communications

7.1 Form

All notices and other communications under or in connection with this agreement must be in Writing, signed on behalf of the sender and marked for attention as set out in the Details or as otherwise notified by the intended recipient.

7.2 Delivery and receipt

Notices and other communications must be:

- (a) delivered at the address described in the Details, in which case they will be taken to be received at the time that they are delivered; or
- (b) sent by prepaid post to the address described in the Details, in which case they will be taken to be received three days after posting (or seven days after posting if sent to or from a place outside of Australia); or
- (c) sent by fax to the fax number described in the Details, in which case they will be taken to be received at the time shown in the transmission report as at the time the whole fax was sent; or
- (d) given in any other way permitted by law.

If a notice or communication is received or taken to be received on a day that is not a Business Day or at a time that is after 5.00pm in the place of receipt then it

is taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

7.3 Change of address or details

If the intended recipient has notified a change of postal address or fax number, then the notice or communication must be delivered to the latest address or number so notified.

7.4 Email

Day to day communications and amendments to the schedules may be by email, but other notices may not be delivered by email unless otherwise agreed.

7.5 When effective

Subject to clause 7.2, notices and communications take effect from the time they are received unless a later time is specified in them.

8 General

- (a) **Partial exercise of rights:** The failure or delay by a party to exercise its rights under this agreement will not be a waiver of its rights.
- (b) **Conflict of interest:** A party's rights and remedies under this agreement may be exercised even if their exercise involves a conflict of duty or the party has a personal interest in their exercise.
- (c) **Other interests:** Nothing in this agreement prevents or restricts either party from entering into a similar agreement with any other person.
- (d) **Assignment and novation:** Each party may, with the prior written consent of the other party, assign, novate, transfer or otherwise deal with any of its obligations, powers or rights under this agreement. A party may not unreasonably withhold or delay giving its consent.
- (e) **Inconsistent law:** To the extent permitted by law, this agreement prevails to the extent it is inconsistent with any law. If at any time any provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under any applicable law, that illegality, invalidity or unenforceability will not affect the legality, validity or enforceability of the other provisions of this agreement.
- (f) **Variation and waiver:** Unless this agreement expressly states otherwise, a provision of this agreement, or right created under it, may not be waived or varied except in writing signed by both parties. However, a schedule to this agreement may be varied by agreement of the parties in any form of Writing, and the schedule is taken to be amended at the time the variation is effected in that way.
- (g) **Counterparts:** This agreement may consist of a number of copies, each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document.
- (h) **Governing law:** This agreement is governed by the law in force in the place specified in the Details. The parties submit to the non-exclusive jurisdiction of the courts of that place.

- (i) **Entire agreement:** This agreement constitutes the entire agreement between the parties about this subject, and any previous agreements, understandings and negotiations on the subject matter cease to have any effect.

9 Administrator acknowledgments

Each of RE and ServiceCo acknowledges that:

- (a) the Administrators have been appointed as the administrators of the RE and ServiceCo pursuant to section 436A of the Corporations Act;
- (b) the Administrators act only as the agent of RE and ServiceCo in connection with this agreement;
- (c) each party is contracting with the other and not with the Administrators personally;
- (d) the Administrators shall not be personally liable to any party in any way whatsoever in connection with this agreement;
- (e) it releases the Administrators and the Administrators' employees, agents, advisers, partners, associates, consultants and contractors for any personal liability for, or in connection with, any aspect of this agreement; and
- (f) the benefit of any releases and indemnities and any covenants in favour of the Administrators and the Administrators' employees, agents, advisers, partners, associates, consultants and contractors in this agreement are for the benefit of a third party and section 55 of the *Property Law Act 1974 (Qld)* applies.

EXECUTED as an agreement

Services agreement

Schedule 1 - Functions

For the purpose of the definition in clause 1.1, the Functions are:

- 1 RE's corporate administration other than in connection with the Trusts or a Sub-Trust, including:
 - (a) maintaining company secretarial records, and dealing with matters of internal governance;
 - (b) risk management, including (without limitation) assessment and management of credit, financial, operational and regulatory risk and obligations;
 - (c) providing "financial services" (as defined in the Corporations Act) as authorised by RE's AFS Licence;
 - (d) all necessary IT services;
 - (e) financial operations including (without limitation) accounting, business process re-engineering, corporate reporting, financial planning, budgeting, regulatory reporting and accounts payable functions;
 - (f) preparation of tax returns; and
 - (g) all functions necessary or incidental to any of the functions listed in this paragraph; and
- 2 all functions performed or services provided by RE in respect of administering or winding-up the Trusts or a Sub-Trust (or any of them) and caring for and preserving any property or assets of a Trust or Sub-Trust, such functions including (but not limited to):
 - (a) day to day executive functions in the management of the Trusts or a Sub-Trust and its assets, other than policy matters;
 - (b) administration of applications, redemptions, transfers and investor queries in relation to the Trusts or a Sub-Trust;
 - (c) organising meetings of members of the Trusts or a Sub-Trust if required;
 - (d) publicity and promotion for the Trusts or a Sub-Trust;
 - (e) facilitating offers of interests in the Trusts or a Sub-Trust, including preparation of offer documentation and due diligence;
 - (f) arranging financing for the Trusts or a Sub-Trust;
 - (g) dealing with property of the Trusts or a Sub-Trust as applicable legislation requires;
 - (h) regulatory compliance;
 - (i) keeping of accounts and records, financial models, internal reporting, and preparation and dispatch of reports and communications for investors of the Trusts or a Sub-Trust;

- (j) meeting RE's obligations as a disclosing entity under applicable legislation;
- (k) complying with the constituent documents of the Trusts or a Sub-Trust;
- (l) complying with the compliance plans of the Trusts;
- (m) reporting to the Australian Securities and Investments Commission as applicable legislation and the conditions of a Licence requires;
- (n) valuation of the assets of the Trusts or a Sub-Trust as applicable legislation or RE requires;
- (o) providing "financial services" (as defined in the Corporations Act) as authorised under RE's AFS Licence;
- (p) all necessary IT services;
- (q) complying with any other duties as responsible entity, trustee, manager or adviser as the case may be under applicable legislation, regulations, or a Licence;
- (r) while any Trust or a Sub-Trust is listed, complying with the requirements of the relevant securities exchange in respect of those Trusts or Sub-Trusts; and
- (s) all functions necessary or incidental to any of the functions listed in this paragraph; and

3 all functions performed or services provided by RE in relation to self custody of the assets of the Trusts or a Sub-Trust, including:

- (a) day to day executive functions in conducting the business of holding and dealing with assets of the Trusts or a Sub-Trust;
- (b) administration of applications, redemptions, transfers and investor queries in relation to the assets of the Trusts or a Sub-Trust;
- (c) dealing with property as the law requires, including ensuring that an appropriate system of separation of duties and checks and balances is maintained and that 'scheme property' of the Trusts is held in accordance with ASIC Regulatory Guide 133 (or any similar policy statements issued by ASIC) (as necessary);
- (d) regulatory compliance, including compliance with regulatory policy of ASIC as relevant, including compliance with ASIC Regulatory Guide 133 (or any similar policy statements issued by ASIC);
- (e) keeping of accounts and records, financial models, internal reporting, and preparation and dispatch of reports and communications in relation to assets held;
- (f) reporting to ASIC as the Corporations Act and the conditions of a Licence requires;
- (g) providing "financial services" (as defined in the Corporations Act) as authorised under RE's AFS Licence;
- (h) all necessary IT services;
- (i) valuation of the assets of the Trusts or a Sub-Trust ;

- (j) complying with any other duty in relation to self custody under the Corporations Act, regulations, conditions of a Licence or at general law; and
 - (k) all functions necessary or incidental to any of the functions listed in this paragraph; and
- 4 Any other functions in respect of which RE may require Resources from time to time and in respect of which ServiceCo is willing and able to provide Resources, whether or not in connection with the Trusts or a Sub-Trust.

Signing page

DATED: 21 March 2013

RE

EXECUTED by LM INVESTMENT
MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED)
ABN 68 077 208 461 by its duly
appointed joint and several
administrator in accordance with
section 437A(1)(d) of the Corporations
Act 2001 (Cwlth), in the presence of:



Signature of witness

Damian Justin Bender

Name of witness (block letters)



Signature of administrator

Ginette Dawn Muller

Name of administrator (block letters)

ServiceCo

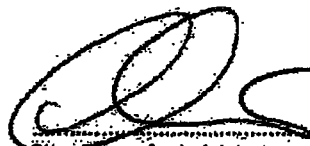
EXECUTED by LM ADMINISTRATION
PTY LTD (ADMINISTRATORS
APPOINTED) ACN 055 691 426 by its
duly appointed joint and several
administrator in accordance with
section 437A(1)(d) of the Corporations
Act 2001 (Cwlth), in the presence of:



Signature of witness

Damian Justin Bender

Name of witness (block letters)



Signature of administrator

Ginette Dawn Muller

Name of administrator (block letters)

Appointment of Agent
Redland Bay Leisure Life Pty Ltd
(ACN 109 932 916)

The Trust Company (PTAL) Limited
LM Investment Management Limited

Appointment of Agent

Date

9/2/2011

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 **Redland Bay Leisure Life Pty Ltd** (ACN 109 932 916) (the *Mortgagor*) of Petrac Projects Pty Ltd, Suite 15, 67 O'Connell Terrace, Bowen Hills in the State of Queensland is indebted to the Mortgagee.
- B The Mortgagee holds:
- (a) a mortgage given by the Mortgagor and registered with the Queensland Land Registry as registered dealing No. 708745479 (the *First Mortgage*) under which the Mortgagor mortgaged the Secured Property as described in the Mortgage (the *First Mortgaged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the First Mortgage);
 - (b) a mortgage given by the Mortgagor and registered with the Queensland Land Registry as registered dealing No. 710688878 (the *Second Mortgage*) under which the Mortgagor mortgaged the Secured Property as 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) a Fixed and Floating Charge given by the Mortgagor dated 2 June 2005 and registered with the Australian Securities and Investments Commission as charge no. 1171483 (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).
- 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.

Appointment of Agent

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

Appointment of Agent

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

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:

Group A Attorney Signature

Print Name

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. 715351029.

GEOFFREY FUNNELL
STATE MANAGER
CORPORATE + LEGAL SERVICES
Group B Attorney Signature

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

EGHARD VANDER HOUEN
Print Name

Director/Secretary Signature

PETER CHARLES DRAKE
Print Name

Agents Indemnity
Redland Bay Leisure Life Pty Ltd
(ACN 109 932 916)

The Trust Company (PTAL) Limited
LM Investment Management Limited

Appointment of Agent

Date

9 / 2 / 2011

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 Redland Bay Leisure Life Pty Ltd (ACN 109 932 916) (the *Mortgagor*) of Petrac Projects Pty Ltd, Suite 15, 67 O'Connell Terrace, Bowen Hills in the State of Queensland is indebted to the Mortgagee.
- B The Mortgagee holds:
- (a) a mortgage given by the Mortgagor and registered with the Queensland Land Registry as registered dealing No. 708745479 (the *First Mortgage*) under which the Mortgagor mortgaged the Secured Property as described in the Mortgage (the *First Mortgaged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the First Mortgage);
 - (b) a mortgage given by the Mortgagor and registered with the Queensland Land Registry as registered dealing No. 710688878 (the *Second Mortgage*) under which the Mortgagor mortgaged the Secured Property as 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) a Fixed and Floating Charge given by the Mortgagor dated 2 June 2005 and registered with the Australian Securities and Investments Commission as charge no. 1171483 (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).
- 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 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 the condition that

Appointment of Agent

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

Appointment of Agent

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.

Appointment of Agent

- (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

Appointment of Agent

- (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.

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) 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

Print Name

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. 71335029

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

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

EGHARD VAN DER HOVEN
Print Name

Director/Secretary Signature

PETER CHARLES DRAKE
Print Name

LM Administration Pty Ltd (Administrators Appointed) ("LMA")

Tax Invoice

ABN 62 558 147 220

Date: 25 July 2013

To: The Trust Company (PTAL) Limited
As custodian for LM First Mortgage Income Fund ("LM FMIF")
Level 1, 38 Cavill Avenue
SURFERS PARADISE QLD 4217

Invoice No: 8973Inv005

Reference: LMA – Loan Management Fees 1 – 25 July 2013

Date	Description	Amount \$
25/07/13	Loan Management Fees 1 – 25 July 2013 schedule attached	
	For loan management services provided on LM FMIF by LMA as per Management Services Agreements held with The Trust Company (PTAL) Limited and LM Investment Management Ltd.	231,623.52
	Credit Simon Tickner overcharge June 2013 invoice	(2,250.00)
		229,373.52

Sale Amount: 229,373.52
GST: 22,937.35

Total Inc GST: 252,310.87
Total Paid: 0.00

Balance Due: 252,310.87

Please pay to following account:

Account Name: LM Administration Pty Ltd (Administrators Appointed)
BSB: 064 000
Account Number: 13405835
Payment Reference: 8973Inv005

FMIF LOANS - RECOVERY COSTS TO 25 July 2013[illegible]

[illegible]



Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

Via email: john.park@fticonsulting.com

Mr John Park
FTI Consulting
22 Market Street
BRISBANE QLD 4000

5 April 2017

Dear John

**LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED)(RECEIVER APPOINTED) (FMIF)
ARSN 089 343 288**

I refer to your letter of 30 May 2016 and to our previous correspondence in relation to requests made on LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (LMIM) to reimburse their proportion of operating costs of LM Administration Pty Ltd (In Liquidation) (LMA Expenses) funded by FMIF.

First of all, I apologise for the delay in responding, initially due to an oversight on our part, and subsequently awaiting further details from the LMA liquidator and our meeting on 21 February 2017 to progress the matter.

In response to your request for further information to substantiate the reimbursement sought, I note the following:-

Timesheet Records

As you are aware, the LMA staff maintained timesheets to record time spent undertaking tasks for each entity in the LM Group.

The LMA Expenses were allocated based on the aforementioned timesheets by the Receivers and Managers, McGrathNicol. Please note, however, the following timesheets were not obtained, and as a result, an average was applied to apportion the LMA Expenses between the relevant entities in respect of the incomplete records.

- Dec 2014 - Irene, Simon
- Nov 2014 - Simon
- Oct 2014 - Irene, Simon,
- Sept 2014 - Simon
- Aug 2014 - Simon
- Oct 2013 - Lucy
- Sept 2013 - All
- Aug 2013 - All
- Jul 2013 - All

Should you wish a copy of the McGrathNicol calculations, please let me know and I will forward by email.

Service Agreement between LMA and FMIF

As you are aware, the LMA Expenses and the service fee (also referred to as a “care and preservation fee”, and calculated as 10% of the LMA Expenses for the relevant period) were funded by the FMIF on the basis of the arrangement mentioned in the letter from McGrathNicol to you dated 22 September 2014. That arrangement was also outlined in a letter from McGrathNicol to you dated 14 November 2013, and extensive discussions and correspondence were exchanged between the various insolvency practitioners. In the course of those discussions and correspondence, the principal terms of the arrangement (the basis on which the LMA Expenses and the service fee would be calculated and charged) never changed.

However, as you know, the service agreement was not formalised in an executed document before the LM office was closed in December 2014. The costs allocation process involved McGrathNicol paying (from the FMIF funds under their control) the LMA Expenses and for there to be an on-charge to the various funds based on the time spent by the staff and consultants on each matter.

LMA Expenses source documents for the period 23 July 2013 to 23 December 2014

As discussed at our meeting on 21 February 2017, it was agreed that David Clout & Associates would provide a summary of the receipts and payments from the date of their appointment to finalisation of the matter rather than having to collate all source documents given the potential cost involved.

I attach a letter from David Clout & Associates dated 5 April 2017 including a summary of the receipts and payments from 26 July 2013 to 19 February 2015 in this respect. This shows total receipts from McGrathNicol for the period of \$3,991,328.31 excluding the fees paid to David Clout & Associates of \$522,002.32 which were funded by the FMIF. The liquidator has confirmed that the cash at bank as at 19 February 2015 of \$142,000.42 was refunded to McGrathNicol. The net total amount advanced by McGrathNicol (from the FMIF) was therefore \$4,371,330.21.

During the course of the reconciliation, the liquidator has identified that due to an error in the recording of the PAYG liability, there was a double counting that resulted in the 10% service fee being overcharged by \$77,278.95 which will need to be repaid by LMA.

This will reduce the net amount funded by the FMIF from \$4,371,330.21 noted above to \$4,294,051.26.

Adjusted Amount Payable

The summary prepared by McGrathNicol that was included with my letter of 11 May 2016 disclosed total costs of \$5,197,796. This was based on summaries provided by the LMA liquidator for each month which were attached to the letter. The first period July 2013 to September 2013 totalling \$1,123,591 included operational costs for July 2013 of \$65,882.87, August 2013 of \$321,622.08 and September of \$283,765.18 together with David Clout & Associates fees of \$452,321.

Following the review and reconciliation by the LMA liquidator detailed above, the revised net funding total has been reduced to \$4,294,051.26. By substituting this amount in the total and applying the same percentages, the amount applicable to FTI (that is, LMIM in its various capacities) for the funds under your control/LMIM total \$643,774, as detailed in the attached summary, and as noted below:



Fund/LMIM	\$
CPAIF	137,920
ICPAIF	47,977
CPF	32,598
AIFCP	290,792
ASPF	98,542
LMIM	35,945
TOTAL	643,774

The amount payable by LMIM in its various capacities and FTI as its liquidators, for the five funds under your control and LMIM in its' own right is approximately 15% of the total.

Finally, you will note from the summary provided by the LMA liquidator that there was funding provided by FTI of \$162,421.60. Can you please provide a summary and description of the transactions between LMA, LMIM and the FMIF for the period since your appointment and advise if this amount has been reimbursed to FTI or if this is required to be taken into account in the allocation of costs.

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

Yours faithfully

David Whyte
Court Appointed Receiver

Summary of LMA reimbursement for the period 25 July 2013 to 23 December 2014																
Month	FMIF McN	FMIF BDO	FMIF FTI	CPAIF FTI	ICPAIF FTI	CPF FTI	AIFCP FTI	ASPF FTI	MPF KM	W/Sale Triloggy	LMIM FTI	LMA	Total			
July 2013 to Sept 2013	499,082	401,369	12,461	34,584	14,387	8,845	69,920	24,787	5,477	545	8,498	43,636	1,123,591			
Oct-13	141,954	109,592	5,349	7,966	3,374	2,483	55,000	15,576	8,605	397	-	20,787	371,083			
Nov-13	114,558	93,167	9,217	23,274	1,985	3,687	30,502	12,092	4,085	621	-	-	293,188			
Dec-13	158,699	129,656	2,700	13,702	1,803	1,226	43,287	5,859	945	-	-	-	357,878			
Jan-14	134,505	97,229	3,655	15,111	999	2,586	30,077	7,467	631	269	-	-	292,628			
Feb-14	108,163	94,049	3,623	16,942	1,773	1,237	23,601	8,468	491	763	7,607	5,778	272,495			
Mar-14	107,471	134,525	2,571	9,503	402	1,840	23,570	12,259	1,417	148	-	-	293,705			
Apr-14	157,736	108,216	2,327	10,578	2,753	472	9,014	11,514	148	-	66	8,123	310,946			
May-14	120,090	69,027	1,243	4,505	2,855	780	7,705	4,303	1,886	-	353	8,196	221,342			
Jun-14	146,138	89,218	2,551	3,270	301	708	8,585	2,949	699	-	98	20,012	274,529			
Jul-14	122,983	67,549	5,304	3,249	342	1,650	6,482	2,151	62	-	-	12,496	222,270			
Aug-14	101,779	75,637	2,327	4,794	384	1,784	8,614	2,303	524	-	1,618	10,305	210,270			
Sep-14	83,958	80,236	1,397	3,307	376	1,496	7,001	2,278	392	-	70	10,080	190,590			
Oct-14	105,882	67,502	1,206	3,739	25,163	5,077	8,675	2,406	507	-	6,748	15,802	242,706			
Nov-14	63,200	78,114	831	3,211	170	2,492	6,251	1,218	298	-	1,652	9,132	166,569			
Dec-14	82,617	185,194	1,246	9,213	1,010	2,996	13,710	3,652	1,720	-	76,799	35,850	354,006			
Total	2,249,216	1,880,480	58,009	166,948	58,075	39,459	351,593	119,282	27,887	2,741	43,510	200,197	5,197,796			
Revised Total	1,858,143	1,553,520	47,923	137,920	47,977	32,598	290,792	98,542	23,038	2,265	35,945	165,388	4,294,051			

Fund/LMIM \$

CPAIF	137,920
ICPAIF	47,977
CPF	32,598
AIFCP	290,792
ASPF	98,542
LMIM	35,945
TOTAL	643,774

check

5 April 2017

David Whyte
BDO
Level 10 / 12 Creek St
BRISBANE QLD 4000

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

Dear David

**LM ADMINISTRATION PTY LTD (IN LIQUIDATION) ("Company")
FMIF TRADE ON FUNDING ADVANCES**

I refer to our ongoing correspondence regarding historical funding advanced by the LM First Mortgage Income Fund ("FMIF") to cover the trading activities of the Company.

As agreed at the offices of FTI Consulting on 21 February 2017, please find attached an updated summary of the Company's trading receipts and payments during the period from my appointment to 19 February 2015 ("R&P Report").

Total FMIF advances

As the R&P Report illustrates the total funding advanced by FMIF towards trading is \$3,991,928.31. In addition, and not illustrated in the R&P Report \$522,002.32 was advanced to the Company to cover my agreed 10% Care and Preservation fee. I have identified an error in my reporting to McGrathNicol resulting in double accounting for PAYG in calculation of the Care and Preservation Fee. As a result the Company owes a debt to FMIF for the amount overcharged and the adjusted amount for my Care and Preservation Fees is \$444,723.37.

The balance of funds advanced to the Company were returned to FMIF at the conclusion of the trade on leaving the net amount advanced and recoverable from the LM funds at \$4,294,051.26.

Calculation of individual fund repayment responsibilities

You have provided us with McGrathNicol's tabulated allocation of trade on expenses based on timesheet data prepared by the Company's staff and issued directly to McGrathNicol. Whilst:-

1. the monthly and total trading figures illustrated in that table are inaccurate primarily as a result of the error I have referred to above; and
2. there were periodic deficiencies in timesheet preparation by certain staff members,

I believe the timesheet data represents the most appropriate manner of apportioning the trade on expenses of the Company against the LM funds. On the assumption McGrathNicol's preparation of that summary was properly completed, I believe the fund allocations set out in that table are accurate

on a proportional basis. Accordingly substitution of the revised total FMIF advances figure of \$4,294,051.26 against the existing percentage liabilities of each fund illustrated in that spreadsheet should give a fair apportionment of individual fund liability to FMIF.

Should you have any queries, please contact John Kennedy of this office on (07) 3039 1519 or by email to jkennedy@clouts.com.au.

Yours faithfully



David Clout
Liquidator

5429LMA: JK

LM ADMINISTRATION PTY LTD (IN LIQUIDATION) (CONTROLLERS APPOINTED)
Operational Receipts and Payments 26 July 2013 to 19 February 2015
 (Version 2 - 04.04.17)

Description	Account	Amount (\$)
RECEIPTS		
	Refunds	335.53
	Wages & Salaries	62.18
	Funding Advance- McGrath Nicol	3,991,328.31
	Funding Advance- FTI Consulting	162,421.60
	Donation- Baby Hudson	400.00
	GST Control	47,975.72
	Total Receipts	4,202,523.34
PAYMENTS		
	Accounting Package	1,158.00
	Bank Charges	585.97
	Cleaning	7,977.90
	GST Control	255.03
	Deposit	5,000.00
	Document Destruction	1,632.81
	Donation- Baby Hudson	400.00
	Electricity	17,419.04
	Hire & Leasing	74,419.11
	Information Technology	312,308.65
	Insurance	70,200.01
	Mail & Postage	1,003.70
	Motor Vehicle Expenses	390.95
	Payroll System	7,573.78
	Payroll Tax	79,395.87
	Petty Cash	3,176.50
	Promotion Manager	1,393.07
	Purchases Non Taxable	2,516.70
	Record Storage	31,238.80
	Rent Paid	205,917.96
	Repairs & Maintenance	1,192.98
	Searches- RP Data	12,757.95
	Security	2,167.65
	Stamp Duty	3,631.52
	Stationery & Printing	30,398.37
	Subcontractors inc Simon Tickner	357,871.14
	Sundry Expenses	1,896.10
	Superannuation	215,761.03
	Telephone & Fax	43,110.27
	Trade on related Legal Fees	47,696.10
	Transport / Courier	2,910.82
	Wages & Salaries	2,517,165.14
	Total Payments	4,060,522.92
	Cash at Bank as at 19.02.15	142,000.42



11 April 2017
Our Ref: KAT_89741180.doc

David Whyte, Receiver
LM First Mortgage Income Fund
BDO
Level 10, 12 Creek Street
BRISBANE QLD 4000

Email: David.Whyte@bdo.com.au

Dear David

RE: LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation)
(LMIM)
Insurance

I refer to your letter of 5 April 2017.

1. Timesheet Records
Whilst I am content with the approach taken with respect to missing timesheet information could you please provide the McGrath Nicol calculations in this regard.
2. Service Agreement
Thank-you for the additional information in this regard. I note while the agreement between the parties was not formalised the course of conduct between the parties appears, as best I can tell from the information provided, consistent with the intended agreement.
3. LMA Expenses Source documents
Thank-you for providing the summary of costs incurred by David Clout as Liquidator of LMA. I am glad such a review has highlighted costs which should not have been payable by the Funds and as such have been corrected.
4. Adjusted Amount Payable
Again, I am pleased that my request for a detailed review of the costs claim has seen such a substantial reduction in the claim.

I note the current amount claimed for reimbursement by LMIM either in its own right or as responsible entity for the various Funds currently stands at \$643,774.

I confirm the amount of \$162,421.60 was provided by payments of \$77,000 and \$85,421.60 on 30 July 2013 and 5 August 2013 respectively has not subsequently been repaid and as such should be taken into account in the allocation of costs.

FTI Consulting (Australia) Pty Limited
ABN 49 160 397 811 | ACN 160 397 811
22 Market Street | Brisbane QLD 4000 | Australia
Postal Address | GPO Box 3127 | Brisbane QLD 4001 | Australia
+61 7 3225 4900 telephone | +61 7 3225 4999 fax | fticonsulting.com

Liability limited by a scheme approved under Professional Standards Legislation.

11 April 2017
Page 2 of 2

Should you have any queries regarding the above matter, please contact Kelly Trenfield on (07) 3225 4920 or Kelly.Trenfield@fticonsulting.com.

Yours sincerely
FTI Consulting



John Park
Liquidator

"DW-62"
SUPREME COURT OF QUEENSLAND

105st

SUPREME COURT
OF QUEENSLAND
Plaintiff:

8 NOV 2016

FILED
BRISBANE

REGISTRY: Brisbane
NUMBER: 12317/14

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS &
MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208
461 AS RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND ARSN 089 343 288

AND

First Defendant:

PETER CHARLES DRAKE

AND

Second Defendant:

LISA MAREE DARCY

AND

Third Defendant:

EGHARD VAN DER HOVEN

AND

Fourth Defendant:

FRANCENE MAREE MULDER

AND

Fifth Defendant:

JOHN FRANCIS O'SULLIVAN

AND

Sixth Defendant:

SIMON JEREMY TICKNER

AND

Seventh Defendant:

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS &
MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208
461

AND

Eighth Defendant:

KORDA MENTHA PTY LTD ACN 100 169 391 IN ITS
CAPACITY AS TRUSTEE OF THE LM MANAGED
PERFORMANCE FUND

SECOND FURTHER AMENDED STATEMENT OF CLAIM

This claim in this proceeding is made in reliance on the following facts:

Parties and roles

1. The seventh defendant, LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ACN 077 208 461 (LMIM):
 - (a) is and was at all material times a company duly incorporated and capable of suing in its own name;

**SECOND FURTHER AMENDED STATEMENT
OF CLAIM**

Filed on behalf of the Plaintiff
Form 16. Rules 22.146

BNEDOCs 18252021_1.docx

- (b) is and was at all material times the Responsible Entity (RE) of the LM First Mortgage Income Fund ARSN 089 343 288 (FMIF);
 - (c) was, until order of this Honourable Court on 12 April 2013 (LM Order), trustee of the trust named The LM Managed Performance Fund (MPF);
 - (d) was placed into voluntary administration on 19 March 2013 and John Park and Ginette Muller of FTI Consulting were appointed voluntary administrators;
 - (e) had receivers and managers, Joseph Hayes and Anthony Connelly of McGrathNicol, appointed to certain of its property held in its capacity as RE of FMIF on 11 July 2013 by Deutsche Bank AG (Deutsche);
 - (f) was placed into liquidation on 1 August 2013 following a resolution of its creditors that it be placed into liquidation and that John Park and Ginette Muller be appointed liquidators (Liquidators).
2. At all material times each of the first to sixth defendants was a director of LMIM.
3. By Order of this Honourable Court dated 21 August 2013 (FMIF Order), David Whyte (Receiver), Partner of BDO Business Recovery & Insolvency (Qld) Pty Ltd:
- (a) was appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution (Appointment);
 - (b) was appointed as receiver of the property of the FMIF;
 - (c) has, in relation to the property of FMIF for which he is appointed receiver, the powers set out in s 420 of the *Corporations Act 2001* (Cth) (Act); and
 - (d) without derogating in any way from the Appointment or the Receiver's powers pursuant to the FMIF Order, was authorised to, inter alia:
 - (i) take all steps necessary to ensure the realisation of property of FMIF held by LMIM as RE of the FMIF by exercising any legal right of LMIM as RE of the FMIF in relation to the property including but not limited to:
 - (A) providing instructions to solicitors, valuers, estate agents or other consultants as are necessary to negotiate or finalise the sale of the property;
 - (B) providing a response as appropriate to matters raised by receivers of property of LMIM as RE of the FMIF to which receivers have been appointed;
 - (C) dealing with any creditors with security over the property of the FMIF including in order to obtain releases of security as is necessary to ensure the completion of the sale of the property;
 - (D) appointing receivers, entering into possession as mortgagee or exercising any power of sale; and
 - (E) executing contracts, transfers or releases or any such other documents as are required to carry out any of the above;
 - (ii) bring, defend or maintain any proceedings on behalf of FMIF in the name of LMIM as is necessary for the winding up of the FMIF in accordance with clause 16 of its constitution, including the execution of documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions;

- (e) is entitled to bring and does bring these proceedings in the name of LMIM as RE of the FMIF.
- 4. Further, by the LM Order, LMIM was removed as trustee of the MPF and Korda Mentha Pty Ltd ACN 100 169 391 and Calibre Capital Pty Ltd ABN 66 108 318 985, were appointed joint and several trustees of the MPF.
- 4A. On or about 5 January 2015, Calibre Capital Pty Ltd ABN 66 108 318 985 resigned as trustee of the MPF.

Bellpac loans

- 5. On or about 10 March 2003, Permanent Trustee Australia Limited as custodian of LMIM as RE of the FMIF (**PTAL**) entered into a loan agreement with Bellpac (**FMIF Bellpac Loan Agreement**).
- 6. Pursuant to the FMIF Bellpac Loan Agreement, PTAL agreed to advance and did advance the sum of \$16M to Bellpac (**FMIF Bellpac Loan**).
- 7. As security for the FMIF Bellpac Loan, Bellpac granted to PTAL:
 - (a) a first registered mortgage (**PTAL Mortgage**) over land known as "Balgownie No 1 Colliery Wollongong" in the state of New South Wales (**Property**); and
 - (b) a registered charge over Bellpac (**PTAL Charge**).
- 8. Between December 2003 and July 2008, the FMIF Bellpac Loan Agreement was varied.
- 9. On or about 23 June 2006 LMIM as trustee for the MPF entered into a loan agreement with Bellpac (**MPF Bellpac Loan Agreement**).
- 10. Pursuant to the MPF Bellpac Loan Agreement, LMIM as trustee for the MPF agreed to advance and did advance the sum of \$6M to Bellpac (**MPF Bellpac Loan**).
- 11. As security for the MPF Bellpac Loan, Bellpac granted to LMIM as trustee for the MPF:
 - (a) a registered mortgage over the Property (which was registered as the third registered mortgage) (**MPF Mortgage**); and
 - (b) a registered charge over Bellpac (**MPF Charge**).
- 12. On or about 23 June 2006 LMIM as RE of the FMIF, LMIM as trustee for the MPF, GPC No. 11 Pty Ltd, GPC No. 12 Pty Ltd, GPC No. 8 (Bulli) Pty Ltd, Austcorp Project No. 20 Pty Ltd and Bellpac entered into a Deed of Priority (**Deed of Priority**) pursuant to which:
 - (a) by clause 3.1(1) LMIM as RE for the FMIF was granted first priority to the extent of the Principal Amount of \$33.8M plus Interest, Other Moneys and Enforcement Expenses as those terms are defined therein;
 - (b) by clause 3.1(2) LMIM as trustee for the MPF was granted second priority to the extent of the Principal Amount of \$11M plus Interest, Other Moneys and Enforcement Expenses as those terms are defined therein;
 - (c) by clause 8, LMIM as trustee for the MPF was required to provide a release of any security held by it where an asset the subject of any security held by PTAL was sold pursuant to a bona fide sale for approximately fair market value;
 - (d) by clause 3.2, subject to any prior right in favour of any other person, all money received by, inter alia, Bellpac, LMIM as RE of the FMIF or LMIM as trustee of the MPF, in respect of the Security (as that term is defined therein) must be applied in order of the priority set out in clause 3.1.

13. From in or about March 2006 Bellpac was in default under the FMIF Bellpac loan and PTAL as custodian of LMIM as RE of the FMIF was entitled to exercise rights under the PTAL Mortgage and the PTAL Charge.
14. On or about 6 May 2009 PTAL appointed receivers and managers to Bellpac.
15. On or about 30 July 2009 voluntary administrators were appointed to Bellpac.
16. On or about 3 September 2009, Bellpac was placed into liquidation following a resolution of its creditors.

Bellpac sale of the Property to Gujarat

17. On or about 22 September 2004 Bellpac and GPC Equipment Pty Ltd (**GPC**) and Gujarat NRE Coking Coal Limited (formerly Gujarat NRE Minerals Limited)(**Gujarat**), Bounty Industries Australia Pty Limited (**Bounty**) and Coalfields (NSW) Pty Limited (**Coalfields**) entered into a Land and Asset Sale Agreement (**LASA**) pursuant to which Bellpac agreed to sell to Gujarat and Coalfields certain assets including, inter alia, the Property.
18. In addition to the LASA, Bellpac and GPC and Gujarat and Coalfields entered into certain other agreements on or about 3 December 2004 which, inter alia, amended the LASA (**2004 Agreements**).
19. A dispute arose between Bellpac and Gujarat as to the parties' rights, obligations and liabilities under the LASA and the 2004 Agreements (**Dispute**).
20. In 2007 and 2008 Bellpac and Gujarat executed settlement deeds (**Settlement Deeds**) in order to resolve the Dispute.
21. In 2009, a dispute arose between LMIM, PTAL and Bellpac and Gujarat and Coalfields as to the parties' rights, obligations and liabilities under and as a consequence of the LASA, the 2004 Agreements and the Settlement Deeds (**2009 Dispute**).
22. Legal proceedings were commenced by:
 - (a) Gujarat against Bellpac in or about May 2009 (**Gujarat proceedings**);
 - (b) LMIM, PTAL and Bellpac against Gujarat, Coalfields, Bounty and GPC in or about November 2009 (**Bellpac proceedings**);
 - (c) by Coalfields against Bellpac and Gujarat by cross-claim in the Gujarat proceedings (**Coalfields cross-claim**),together (the **Proceedings**).

Funding of the Proceedings

23. In or about July 2009 the first to sixth defendants formed the view that LMIM as RE of the FMIF was not in a position to fund the Proceedings.

Particulars

The best particulars that the plaintiff can presently provide are that each of the first to sixth defendants executed the Deed Poll which stated, inter alia, that they had given careful consideration to, inter alia, the circumstances described in the Background to the Deed Poll.

24. From in or about July 2009, as registered mortgagee of the Property with second priority under the Deed of Priority, LMIM as trustee of the MPF:
 - (a) funded the Proceedings as second mortgagee in an amount of not more than \$1,380,431.51; and
 - (b) drew down such funding against the MPF Bellpac Loan.

Mediation Heads of Agreement

25. In or about November 2010, a non-binding Heads of Agreement recording Agreement in Principle was executed in the course of a mediation between the parties to the Proceedings (**Mediation Heads of Agreement**).
26. Pursuant to the Mediation Heads of Agreement:
 - (a) the Property was to be sold to Gujarat or its nominee by either the liquidator of LMIM (with mortgagees' consent) or via a mortgagee sale for an amount up to \$65.5M as follows:
 - (i) \$15.5M to be paid by:
 - (A) An instalment of \$1M within 1 month; and
 - (B) \$14.5M within 6 months;
 - (ii) Vendor finance for \$46-50M (to be updated on amortisation);
 - (b) LMIM was to pay \$1.3M to Coalfields (NSW) Pty Limited ACN 111 369 110 to secure its release of certain caveats over the Property;
 - (c) LMIM was to be granted an option to purchase a half share in the Property for \$15M in certain circumstances.
27. The parties continued to negotiate a settlement of the Proceedings between November 2010 and June 2011.

Settlement of the LMIM Bellpac proceedings

28. On or about 21 June 2011:
 - (a) LMIM in its capacity as RE for FMIF, PTAL, Bellpac, Gujarat and Southbulli Holdings Pty Limited (**Southbulli**) executed a Deed of Release pursuant to which the parties agreed to settle all of their disputes, including the disputes in the Proceedings and to regulate their relationship (**Deed of Release**);
 - (b) simultaneously with the execution of the Deed of Release, PTAL, LMIM in its capacity as RE for FMIF, Bellpac, Gujarat, Southbulli and Coalfields executed a Deed of Settlement and Release pursuant to which these parties agreed to settle their differences in respect of the Proceedings (**Deed of Settlement and Release**); and
 - (c) PTAL, as mortgagee exercising power of sale under the PTAL Mortgage, entered into a contract to sell the Property to Gujarat for a purchase price of \$10M exclusive of GST (**Gujarat Contract**).
29. By clause 7 of the Deed of Release Gujarat was obliged to pay to PTAL the settlement sum of \$35.5M exclusive of GST by way of bank cheque simultaneously with the execution and delivery of that deed.
30. By clause 2 of the Deed of Settlement and Release:
 - (a) PTAL was to pay to Coalfields the sum of \$1.3M by bank cheque simultaneously with the execution and delivery of that deed;
 - (b) the sum of \$1.3M was to be held in trust until completion of the Gujarat Contract; and
 - (c) if the Gujarat Contract was terminated the sum of \$1.3M, together with any accretions thereon, was to be refunded in full to PTAL.

Advice

- 30A. On or about 6 December 2010 LMIM as RE of the FMIF and as trustee of the MPF instructed WMS Chartered Accountants (**WMS**) to provide an opinion about what would be a fair and reasonable split of the likely proceeds from the Proceedings.

Particulars

The instructions were in writing and contained in an email from David Monaghan on behalf of LMIM to Aaron Lavell of WMS (and copied to the second and sixth defendant) dated 6 December 2010.

- 30B. On or about 14 March 2011 LMIM as RE of the FMIF and as trustee of the MPF instructed Allens Arthur Robinson (**Allens**) to provide advice as to whether a proposed split of proceeds from the Proceedings of 65% for the FMIF and 35% for the MPF was "legally acceptable" given that LMIM was in a position of conflict being the RE of the FMIF and the trustee of the MPF.

Particulars

The instructions were in writing and contained in emails from David Monaghan on behalf of LMIM to John Beckinsale of Allens dated 14 March 2011 and 17 March 2011.

- 30C. The instructions provided to WMS and Allens pleaded in paragraphs 30A and 30B above:

- (a) did not include copies of the Gujarat Contract, the Deed of Release or the Deed of Release and Settlement;
- (b) did not otherwise state, as was the fact, that:
 - (i) settlement of the Proceedings was to be effected:
 - A. in part by a contract in the form of the Gujarat Contract, pursuant to which PTAL as mortgagee exercising power of sale would agree to sell the Property to Gujarat;
 - B. in part by a deed in the form of the Deed of Release to which LMIM as trustee of the MPF would not be a party;
 - C. in part by a deed in the form of the Deed of Release and Settlement to which LMIM as trustee of the MPF was not a party;
 - (ii) the consent by LMIM as trustee of the MPF was not required in order for LMIM as RE of the FMIF or PTAL to perform their obligations under the documents in subparagraph (i) above;
- (c) did not include a copy of the Deed of Priority or otherwise state, as was the fact, that the Deed of Priority included the provisions pleaded in paragraph 12 above;
- (d) did not state, as was the fact, that:
 - (i) LMIM as trustee of the MPF had originally funded the Proceedings as second registered mortgagee with second priority under the Deed of Priority; and
 - (ii) drew down such funding against the MPF Bellpac Loan.

- 30D. On or about 7 March 2011 WMS provided a report containing the opinion sought and referred to in paragraph 30A above: (**WMS Report**).

- 30E. On or about 28 March 2011 Allens provided the advice sought and referred to in paragraph 30B above: (**Allens Advice**).

Deed Poll

31. On or about 21 June 2011, a Deed Poll was executed by the first to sixth defendants as directors of LMIM as RE of the FMIF and as trustee of the MPF.

31A. Prior to execution of the Deed Poll and prior to the payment pleaded in paragraph 35 below, each of the first to sixth defendants knew, or ought to have known, the facts pleaded in paragraphs 5-22, 24-30 and 30A-30E above.

Particulars

The best particulars of knowledge and the facts from which knowledge can be inferred that the plaintiff can presently provide are as follows:

- (a) Each of the first to sixth defendants as directors of LMIM had access to the books and records of that company which included:
 - (i) the FMIF Bellpac Loan Agreement and Deeds of Variation;
 - (ii) the MPF Bellpac Agreement;
 - (iii) the FMIF Charge, the PTAL Mortgage and the Deed of Priority;
 - (iv) the MPF Charge, the MPF Mortgage and the Deed of Priority;
 - (v) loan statements showing the balance, from time to time, outstanding with respect to the FMIF Bellpac Loan;
 - (vi) loan statements showing the balance, from time to time, outstanding with respect to the MPF Bellpac Loan;
 - (vii) the existence of default under the FMIF Bellpac Loan;
 - (viii) statements showing the drawdown of costs including costs related to the funding of the Proceedings against the MPF Bellpac Loans;
 - (ix) in relation to the Proceedings, court documents, the Mediation Heads of Agreement, the Deed of Release, the Deed of Settlement and Release, the Gujarat Contract;
 - (x) conflict records dated 1 June 2010 and October 2010;
 - (xi) the Conflicts Management Policy dated July 2005 updated as at September 2009;
 - (xii) the Deed of Release;
 - (xiii) the Deed of Settlement and Release;
 - (xiv) the Gujarat Contract;
 - (xv) the WMS Report (which included the instructions provided by LMIM);
 - (xvi) the Allens Advice (which included the instructions provided by LMIM);
- (b) Each of the first to sixth defendants:
 - (i) executed the Deed Poll which stated, inter alia, that they had given careful consideration to, inter alia, the circumstances described in the Background to the Deed Poll;
 - (ii) were informed of the proposed terms of settlement of the Proceedings on or about 10 and 24 November 2010;

- (iii) took part in directors' discussions about the terms of settlement of the Proceedings in or about March 2011;
 - (iv) were informed of the existence of the WMS Report;
 - (v) discussed with David Monaghan a draft of the WMS Report in December 2010;
 - (vi) were informed of the existence of legal advice about the proposed split of the proceeds of settlement of the Proceedings;
- (c) At material times until in or about June 2012, the first, second, third, fourth and sixth defendants were part of the LM Credit Committee and/or the LM Arrears Committee with access to the financial records of the FMIF and/or the MPF;
- (d) Additionally, in the case of the first defendant, he:
- (i) executed the Deed of Priority;
 - (ii) executed the FMIF Bellpac Loan Agreement and the MPF Bellpac Loan Agreement;
 - (iii) was aware that LMIM as trustee of the MPF as second mortgagee was funding costs in relation to the Property other than the costs of the Proceedings such as rates from in or about August 2010;
 - (iv) was informed by the second defendant in March 2011 that the second defendant had instructed David Monaghan to seek advice from Allens regarding the split of the proceeds of settlement of the Proceedings to supplement the advice in the WMS Report;
 - (iv) executed the Deed of Settlement and Release;
- (e) Additionally, in the case of the second defendant, she:
- (i) executed the Deed of Priority;
 - (ii) was informed by David Monaghan in August 2010 that LMIM as trustee for the MPF was funding the proceedings as second mortgagee;
 - (iii) knew that LMIM as trustee of the MPF as second mortgagee was funding costs in relation to the Property other than the costs of the Proceedings and approved payments such as rates in or about August 2010;
 - (iv) was copied in on the email of 6 December 2010 providing instructions to WMS;
 - (v) was provided with a draft of the WMS Report on 21 December 2010;
 - (vi) instructed David Monaghan to seek advice from Allens regarding the split of the proceeds of settlement of the Proceedings to supplement the advice in the WMS Report;
 - (vii) was provided with a copy of the Allens Advice on 29 March 2011;
 - (viii) executed the Deed of Release;
- (f) Additionally, in the case of the third defendant, he:
- (i) knew that LMIM as trustee of the MPF as second mortgagee was funding costs in relation to the Property other than the costs of the

Proceedings and approved payments such as rates in or about August 2010;

- (ii) was informed by the second defendant on 14 March 2011 that the second defendant had instructed David Monaghan to seek advice from Allens regarding the split of the proceeds of settlement of the Proceedings to supplement the advice in the WMS Report;
- (ii) was provided with a copy of the Allens Advice on 7 April 2011;
- (g) Additionally, in the case of the fourth defendant, she:
 - (i) was informed by the second defendant on 14 March 2011 that the second defendant had instructed David Monaghan to seek advice from Allens regarding the split of the proceeds of settlement of the Proceedings to supplement the advice in the WMS Report;
- (h) Additionally, in the case of the sixth defendant, he:
 - (i) was informed by David Monaghan in August 2010 that there was no funding agreement in place regarding LMIM funding the Proceedings and that one was not necessary because it was simply a situation of LMIM as trustee of the MPF as second mortgagee funding the proceedings;
 - (ii) was copied in on the email of 6 December 2010 providing instructions to WMS;
 - (iii) was provided with a draft version of the WMS report on 15 December 2010;
 - (iv) was provided with a copy of the Allens Advice on 7 April 2011;
 - (v) knew that LMIM as trustee of the MPF as second mortgagee was funding costs in relation to the Property other than the costs of the Proceedings in or about August 2010;
 - (vi) was informed by the second defendant on 14 March 2011 that the second defendant had instructed David Monaghan to seek advice from Allens regarding the split of the proceeds of settlement of the Proceedings to supplement the advice in the WMS Report;
 - (vii) executed the Deed of Settlement and Release and the Deed of Release;
- (i) Each of the first to sixth defendants ought to have known those facts because a reasonable person in the position of the first to sixth defendants would have identified those facts upon raising or making enquiry and upon considering the books and records available to them as set out in paragraph (a) of these particulars and the information set out in sub-paragraphs (b), (c), (d), (e), (f), (g) and (h) of these particulars.

32. The Deed Poll provided, inter alia, that:

- (a) "**Settlement Proposals** means the Bellpac Settlement and the Proceeds Split";
- (b) "**Proceeds Split** means the proposal between FMIF and MPF under which it is proposed to split the proceeds that it has recovered from the litigation in the ratio of 65% of the proceeds to the FMIF and 35% of the proceeds to MPF";
- (c) "**Bellpac Settlement** means the principal agreement that has been reached between LM and Gujarat pursuant to which LM will inter alia sell the Bellpac Land to Gujarat and settle the litigation with Gujarat for a total consideration of \$45.5 Million and the RE will pay \$1.3m to Coalfields to secure the withdrawal of certain caveats";

~~(d) "The FMIF and the MPF did not enter into any formal agreement to split the proceeds recovered by the litigation however it was the understanding of LM's directors that it was appropriate for MPF's contribution to be recognised by providing MPF with a share of any proceeds recovered by the litigation";~~

(e)(d) "after giving full and comprehensive consideration to all of the relevant issues, the directors have concluded ..." inter alia:

- (i) "there is a need for the FMIF RE to reach agreement with the MPF trustee about sharing the litigation settlement proceeds with the MPF because the overall settlement cannot occur without the agreement of the MPF trustee";
- (ii) "LM as trustee of MPF will comply with its general law fiduciary duties as a trustee if it agrees to the Settlement Proposals pursuant to which MPF will be obliged to release its security over the Bellpac Land".

33. At the time LMIM as trustee of the MPF agreed to fund the Proceedings as registered mortgagee of the Property with second priority under the Deed of Priority in or about July 2009 the first to sixth defendants:

- (a) had not considered that MPF's contribution to the funding of the Proceedings was to be recognised by providing MPF with a share of any proceeds recovered by the litigation as a litigation funder;
- (b) had an expectation that if LMIM and PTAL were successful in the Proceedings and the Property was developed by LMIM as RE for the FMIF then:
 - (i) the amount owed under the FMIF Bellpac loan would be repaid in full; and
 - (ii) the amount owed under the MPF Bellpac loan would be repaid in part and possibly in full.

34. In reaching the conclusions and decision stated in the Deed Poll referred to in paragraph 32 above the first to sixth defendants:

- (a) failed to have proper regard or give adequate consideration to the fact that, in circumstances where, as they knew or ought to have known:
 - (i) pursuant to the Gujarat Contract, PTAL sold the Property to Gujarat as mortgagee exercising power of sale; and
 - (ii) in any event the Deed of Priority contains the terms pleaded in paragraph 12 above,

LMIM as trustee of the MPF could not have prevented the sale of the Property to Gujarat under the Gujarat Contract by refusing to provide a release of the MPF Mortgage over the Property;

Particulars

The plaintiff relies upon the particulars set out above in paragraphs 31A(a)(i), 31A(a)(ii), 31A(a)(iii), 31A(a)(iv), 31A(a)(v), 31A(a)(vi), 31A(a)(vii), 31A(a)(ix), 31A(a)(xiv), 31A(b)(i), 31A(d)(i), 31A(d)(ii), 31A(e)(i) and 31A(i).

- (b) failed to have proper regard or give adequate consideration to the fact that there was no necessity for LMIM as RE of FMIF to reach agreement with LMIM as trustee of the MPF about sharing the amounts payable to PTAL under the Deed of Release or the Gujarat Contract because, as they knew or ought to have known:
 - (i) LMIM as trustee of the MPF was not a party to the Deed of Release nor the Gujarat Contract;

- (ii) the agreement of LMIM as trustee of the MPF was not required in order for LMIM as RE of the FMIF or PTAL to perform their obligations under the Deed of Release and the Gujarat Contract;

Particulars

The plaintiff relies upon the particulars set out above in paragraphs 31A(a)(i), 31A(a)(ii), 31A(a)(iii), 31A(a)(iv), 31A(a)(v), 31A(a)(vi), 31A(a)(vii), 31A(a)(viii), 31A(a)(ix), 31A(a)(xii), 31A(a)(xiii), 31A(a)(xiv), 31A(b)(i), 31A(b)(ii), 31A(b)(iii), 31A(d)(i), 31A(d)(ii), 31A(d)(iv), 31A(e)(i), 31A(e)(viii), 31A(h)(vii) and 31A(i).

- (c) failed to have proper regard or give adequate consideration to the fact that, as they knew or ought to have known:
 - (i) LMIM as trustee of the MPF was a subsequent mortgagee of the Property and a subsequent charge holder over the assets of Bellpac;

Particulars

The plaintiff relies upon the particulars set out above in paragraphs 31A(a)(i), 31A(a)(ii), 31A(a)(iii), 31A(a)(iv), 31A(b)(i), 31A(d)(i), 31A(e)(i) and 31A(i).

- (ii) the terms of the Deed of Priority included those pleaded in paragraph 12 above;

Particulars

The plaintiff relies upon the particulars set out above in paragraphs 31A(a)(iv), 31A(b)(i), 31A(d)(i), 31A(e)(i) and 31A(i).

- (iii) LMIM as trustee of the MPF:

(A) was funding had originally funded the Proceedings as second registered mortgagee with second priority under the Deed of Priority;

(B) was drawing down such funding against the MPF Bellpac loan;

Particulars

The plaintiff relies upon the particulars set out above in paragraphs 31A(a)(i), 31A(a)(ii), 31A(a)(iii), 31A(a)(iv), 31A(a)(vi), 31A(a)(viii), 31A(a)(x), 31A(a)(xi), 31A(d)(iii), 31A(e)(ii), 31A(e)(iii), 31A(f)(i), 31A(h)(i), 31A(h)(v) and 31A(i).

- (iv) PTAL sold the Property as mortgagee in possession under the PTAL Mortgage;

Particulars

The plaintiff relies upon the particulars set out above in paragraphs 31A(a)(i), 31A(a)(iii), 31A(a)(v), 31A(a)(vii), 31A(a)(ix), 31A(a)(xii), 31A(a)(xiii), 31A(a)(xiv) and 31A(i).

- (v) PTAL was, as at 22 June 2011, owed the sum of \$52,480,469.12 by Bellpac comprising the Principal Amount, Interest, Other Moneys and Enforcement Expenses (as those terms are defined in the Deed of Priority); and

Particulars

The plaintiff relies upon the particulars set out above in paragraph 31A(a)(i), 31A(a)(ii), 31A(a)(iii), 31A(a)(v), 31A(a)(vii) and 31A(i).

- (vi) LMIM as trustee for the MPF was not entitled to any amount beyond that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount;

Particulars

The plaintiff relies upon the particulars set out above in paragraph 31A above.

- (d) ~~failed to instruct, or provide further instructions to Allens and WMS about the facts and circumstances pleaded in subparagraphs (a), (b) and (c) above or otherwise about the terms of the Gujarat Contract, the Deed of Release or the Deed of Settlement and Release;~~

Particulars

~~The plaintiff relies upon the particulars set out above in paragraph 31A(a)(xv), 31A(a)(xvi), 31A(b)(iv), 31A(b)(v), 31A(b)(vi), 31A(d)(iv), 31A(e)(iv), 31A(e)(v), 31A(e)(vi), 31A(e)(vii), 31A(f)(ii), 31A(f)(iii), 31A(g)(i), 31A(h)(ii), 31A(h)(iii), 31A(h)(iv), 31A(h)(vi) and 31A(i).~~

- (e) ~~in the premises pleaded in subparagraph (d) above, failed to ensure that the Allens Advice and the WMS Report were premised upon correct facts;~~
- (f) ~~in the premises pleaded in subparagraphs (d) and (e) above:~~
- (i) ~~failed to provide proper instructions or further instructions to Allens and WMS;~~
- (ii) ~~failed to have proper regard or give adequate consideration to the fact the WMS Report and the Allens Advice omitted material matters;~~
- (iii) ~~nonetheless, placed reliance upon the Allens Advice and the WMS Report in signing the Deed Poll;~~
- (d) failed to consider whether the LMIM as trustee for the MPF could be treated as if it was an arms-length litigation funder when it was a registered mortgagee with second priority and whether it was appropriate to split the Bellpac Settlement proceeds in accordance with the Proceeds Split;
- (e) failed to obtain independent legal advice or other independent advice as to whether, in the circumstances outlined in subparagraphs (a)(i) and (ii), b(i) and (ii) and c(i), (ii) and (iii) above:
- (i) LMIM as trustee of the MPF could be treated as if it was an arms-length litigation funder;
- (ii) it was reasonable for LMIM as trustee of the MPF to be paid in accordance with the Proceeds Split an amount over and above the amount it had paid to LMIM in respect of the funding of the Proceedings or any amount at all; and
- (iii) it was in the interests of the FMIF for LMIM as RE of the FMIF to agree to LMIM as trustee of the MPF to be paid in accordance with the Proceeds Split an amount over and above the amount it had paid in respect of the funding of the Proceedings or any amount at all;
- (f) took into consideration the Allens Advice and the WMS Report which, as they ought to have known, did not constitute the advice identified in subparagraph (e) above;
- (g) in the premises pleaded in subparagraphs (a), (b), and (c), (d), (e) and (f) above failed to have proper regard or give adequate consideration to the different interests of the FMIF and the MPF.

Payment to MPF of monies payable to FMIF by Gujarat under Gujarat Contract and Deed of Release

35. LMIM as trustee of the MPF received the sum of \$15,546,147.85 (**Settlement payment**) from the proceeds payable to PTAL as custodian of LMIM as RE of the FMIF pursuant to the terms of the:

- (a) Gujarat Contract; and
- (b) Deed of Release.

Particulars

- (a) on or about 21 June 2011, LMIM as trustee for the MPF received:
 - (i) the sum of \$12,747,810.53; and
 - (ii) separately, the sum of \$858,282.79;
 - (b) on or about 29 June 2011, an amount of \$4,545.94 was refunded by LMIM as trustee for the MPF to Gujarat for an overpayment made on settlement;
 - (c) on or about 8 September 2011, LMIM as trustee for the MPF received the sum of \$1,944,600.47.
36. On the basis of the conclusions and the decision recorded in the Deed Poll, LMIM as RE of the FMIF agreed to make and further caused, permitted or directed the Settlement payment to be made to LMIM as trustee of the MPF from the amounts payable to LMIM as RE of the FMIF and PTAL pursuant to the terms of the:
- (a) Gujarat Contract; and
 - (b) Deed of Release.
37. The Settlement payment was scheme property which ought to have been held by LMIM as RE of the FMIF for the benefit of the members of the FMIF.
- 37A. Had the first to sixth defendants had proper regard and given adequate consideration to the facts and matters pleaded in paragraph 34 above LMIM as RE of the FMIF and acted with the degree of reasonable care and diligence that a reasonable person would have exercised if they were a director or officer of a corporation in LMIM's circumstances, and occupied the office held by, and had the same responsibilities within LMIM as the first, second, third, fourth, fifth and sixth defendants respectively:

(aa) they would not have concluded that:

- (i) the overall settlement in accordance with the terms of the Gujarat Contract and the Deed of Release could not occur without the agreement of the MPF trustee;
- (ii) they needed to reach an agreement with LMIM as RE of the MPF about the sharing of proceeds for the settlement to occur;
- (iii) the Proceeds Split was fair to the FMIF;
- (iv) the Proceeds Split was in the best interests of the FMIF's members;
- (v) the Proceeds Split was not unreasonable;
- (v) the MPF was in an analogous position to a litigation funder and the Settlement Proposals would not be reasonable in the circumstances if LM as RE of the FMIF and LM as Trustee of the MPF were dealing at arm's length; and

- (a) they would not have agreed to make, cause, permit or direct the Settlement payment to LMIM as trustee of the MPF and would have determined that:
 - (a)(i) LMIM as trustee of the MPF had no entitlement to be paid the Settlement payment or in the alternative, had no entitlement to receive any payment beyond that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount;
 - (b)(ii) it was not in the interests of the members of the FMIF to do so; and
 - (c)(iii) it would cause detriment, in the form of depletion of its assets, to LMIM as RE of the FMIF if the Settlement payment was made or in the alternative, if an amount beyond that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount was paid to LMIM as trustee of the MPF;
- (b) further, and in the alternative, they would not have split the proceeds at all and would have applied all proceeds of the settlement against the amount owed to LMIM as RE of the FMIF by Bellpac.

37B. LMIM as trustee of the MPF accepted and retained the Settlement payment.

Contraventions of s 180 and 182 of the Corporations Act

38. At all material times in their capacity as directors of LMIM, the first to sixth defendants owed duties to LMIM as RE of the FMIF under:
- (a) section 180(1) of the Act and at general law to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in LMIM's circumstances, and occupied the office held by, and had the same responsibilities within LMIM as the first, second, third, fourth, fifth and sixth defendants respectively;
 - (b) section 182(1) of the Act and at general law not to improperly use their position to gain an advantage for themselves or someone else, or to cause detriment to LMIM.
39. By causing LMIM as RE of the FMIF to agree to make and to cause, permit or direct the Settlement payment to be made to LMIM as trustee of the MPF the first to sixth defendants:
- (a) failed to exercise their powers and discharge their duties with a reasonable degree of care and diligence in breach of the duty pleaded in paragraph 38(a) above in the premises pleaded in paragraph 37A above which, as was reasonably foreseeable, caused harm to the interests of LMIM as RE of the FMIF;
 - (b) improperly used their position as directors of LMIM to gain an advantage for the MPF in breach of the duty pleaded in paragraph 38(b) above in the premises pleaded in paragraph 37A above.
- 39A. As a result of the breaches of duty pleaded in paragraph 39 above, and in the premises pleaded in paragraph 37A above, the assets of LMIM as RE of the FMIF were depleted by the amount of the Settlement payment or, in the alternative, by the amount paid to it in excess of that which was necessary to reimburse the LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.
- 39B. LMIM as RE of the FMIF has suffered damage being the amount of the Settlement payment or, in the alternative, the amount paid to it in excess of that which was necessary to reimburse LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.
40. In the premises, the first to sixth defendants are liable to pay to the plaintiff compensation under s 1317H of the Act or damages at general law in the amount of the Settlement payment.

or, in the alternative, the amount paid to it in excess of that which was necessary to reimburse LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.

LMIM's involvement in contraventions by directors

41. LMIM as trustee of the MPF knew of the matters pleaded in paragraphs 1(b), 1(c), 2, 5-13 and 17-37 above.

Particulars

LMIM's knowledge arises by reason of its position as former trustee of the MPF and by virtue of the knowledge of the first to sixth defendants being directors of LMIM as former trustee of the MPF.

42. By reason of the matters pleaded in paragraph 39(b) and 41 above LMIM as trustee of the MPF was involved in the contravention of the duty pleaded in paragraph 39(b) above and was itself in contravention of section 182(2) of the Act.
- 42A. As a result of the breach of duty pleaded in paragraph 42 above, the assets of LMIM as RE of the FMIF were depleted by the amount of the Settlement payment or, in the alternative, by the amount paid to it in excess of that which was necessary to reimburse the LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.
- 42B. As a result of the matters pleaded in paragraph 42A above and the contravention pleaded in paragraph 42 above, the LMIM as RE of the FMIF has suffered damage in the amount of the Settlement payment or, in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.
43. In the premises LMIM as trustee of the MPF is liable to pay to the plaintiff under s 1317H of the Act compensation in the amount of the Settlement payment or, in the alternative, the amount paid to it in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.

Contravention of s 601FD of the Corporations Act

44. At all material times in their capacity as officers of LMIM as RE of the FMIF, the first to sixth defendants owed duties under:
- (a) section 601FD(1)(b) of the Act to exercise the degree of care and diligence that a reasonable person would exercise were they in the position of the first, second, third, fourth, fifth and sixth defendants respectively;
 - (b) section 601FD(1)(c) of the Act to act in the best interests of members of the FMIF and, if there is a conflict between the members' interests and the interests of the RE, give priority to the members' interests;
 - (c) section 601FD(1)(e) not to make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the FMIF.
45. By causing LMIM as RE of the FMIF to agree to make and to cause, permit or direct the Settlement payment to be made to LMIM as trustee of the MPF the first to sixth defendants:
- (a) failed to exercise the degree of care and diligence that a reasonable person would exercise were they in the position of the first, second, third, fourth, fifth and sixth defendants respectively in breach of the duty pleaded in paragraph 44(a) above in the premises pleaded in paragraph 37A above;

- (b) did not act in the best interests of the members of the FMIF and give priority to the interests of the members of the FMIF in breach of the duty pleaded in paragraph 44(b) above in the premises pleaded in paragraph 37A above;
 - (c) improperly used their position as officers of the RE of FMIF to gain an advantage for the MPF in breach of the duty pleaded in paragraph 44(c) above in the premises pleaded in paragraph 37A above.
- 45A. As a result of the breaches of duty pleaded in paragraph 45 above, the assets of LMIM as RE of the FMIF were depleted by the amount of the Settlement payment or, in the alternative, by the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.
- 45B. As a result of the matters pleaded in paragraph 45A above and the contraventions pleaded in paragraph 45 above, the LMIM as RE of the FMIF has suffered damage in the amount of the Settlement payment or, in the alternative, in the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.
46. In the premises, the first to sixth defendants are liable to pay to the plaintiff compensation under s 1317H of the Act or damages at general law in the amount of the Settlement payment or, in the alternative, in the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.

LMIM's involvement in contraventions by officers

47. LMIM as trustee of the MPF knew of the matters pleaded in paragraphs 1(b), 1(c), 2, 5-13 and 17-31 and 32-37, 37A and 37B above.

Particulars

LMIM's knowledge arises by reason of its position as former trustee of the MPF and by virtue of the knowledge of the first to sixth defendants being directors of LMIM as former trustee of the MPF.

48. By reason of the matters pleaded in paragraphs 45 and 47 above LMIM was involved in the contraventions of the duties pleaded in paragraph 45 above and was itself in contravention of sections 601FD(1)(b), 601FD(1) (c) and 601FD(1)(e) of the Act.
- 48A. As a result of the breaches of duty pleaded in paragraph 48 above, the assets of LMIM as RE of the FMIF were depleted by the amount of the Settlement payment or, in the alternative, by the amount paid to it in excess of that which was necessary to reimburse the LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.
- 48B. As a result of the matters pleaded in paragraph 48A above and the contraventions pleaded in paragraph 48 above, the LMIM as RE of the FMIF has suffered damage in the amount of the Settlement payment or, in the alternative, in the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse LMIM as trustee of the MPF for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.
49. In the premises, LMIM as trustee of the MPF is liable to pay to the plaintiff under s 1317H of the Act compensation in the amount of the Settlement payment or, in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount.

Rights of LMIM as former trustee of the MPF and the Plaintiff's right of subrogation

50. As former trustee of the MPF LMIM has a right of indemnity out of the assets of the MPF with respect to any liability of LMIM in these proceedings.
51. Any right of indemnity of LMIM as former trustee of the MPF operates as an equitable lien over the assets of the MPF.
52. The eighth defendant holds the assets of the MPF subject to any right of indemnity and lien of LMIM over those assets.
53. LMIM is insolvent.
54. By reason of the matters pleaded in paragraphs 50 to 53 above, the plaintiff is entitled to be subrogated to LMIM's right of indemnity and lien to the extent of LMIM's liability in these proceedings.

The Plaintiff claims the following relief:

1. As against the first defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the first defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85 or, in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount in subparagraph (a) above from 8 September 2011 until the date of judgment; and
 - (c) Costs.
2. As against the second defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the second defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85 or, in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount ;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount in subparagraph (a) above from 8 September 2011 until the date of judgment; and
 - (c) Costs.
3. As against the third defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the third defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85 or, in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount in subparagraph (a) above from 8 September 2011 until the date of judgment; and
 - (c) Costs.
4. As against the fourth defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the fourth defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85 or, in

the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount;

(b) Interest under s 58 of the *Civil Proceedings Act 2011 (Qld)* on the amount in subparagraph (a) above from 8 September 2011 until the date of judgment; and

(c) Costs.

5. As against the fifth defendant:

(a) An order under s 1317H of the *Corporations Act 2001 (Cth)* that the fifth defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85 or, in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount;

(b) Interest under s 58 of the *Civil Proceedings Act 2011 (Qld)* on the amount in subparagraph (a) above from 8 September 2011 until the date of judgment; and

(c) Costs.

6. As against the sixth defendant:

(a) An order under s 1317H of the *Corporations Act 2001 (Cth)* that the sixth defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85 or, in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount;

(b) Interest under s 58 of the *Civil Proceedings Act 2011 (Qld)* on the amount in subparagraph (a) above from 8 September 2011 until the date of judgment; and

(c) Costs.

7. As against the seventh defendant:

(a) An order under s 1317H of the *Corporations Act 2001 (Cth)* that the seventh defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85 or, in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of the Proceedings together with interest at a commercial rate upon that amount;

(b) Interest under s 58 of the *Civil Proceedings Act 2011 (Qld)* on the amount in subparagraph (a) above from 8 September 2011 until the date of judgment; and

(c) Costs.


8. As against the seventh and eighth defendant a declaration that:

(a) The seventh defendant is entitled to be indemnified out of the assets of the MPF in respect of the liability of the seventh defendant to the plaintiff in these proceedings;

(b) The seventh defendant has a lien or charge over the assets and undertakings of the MPF in respect of the liability of the seventh defendant to the plaintiff in these proceedings;

(c) The plaintiff is entitled to be subrogated to the rights of the seventh defendant in respect of the assets of the MPF.

This pleading was settled by Ms MJ Luchich of Counsel and Ms Susan Brown of Queens Counsel.

Signed: 
Description: Solicitors for the Plaintiff
Dated: ~~47 June 2015~~ 7 November 2016

NOTICE AS TO DEFENCE

Your Defence must be attached to your Notice of Intention to Defend.