

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3508 of 2015

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

First Applicants:

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

AND

Respondent:

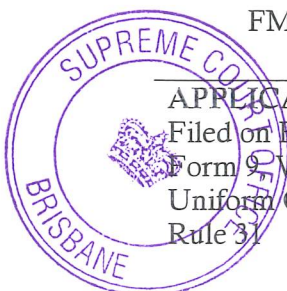
DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288
PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001

APPLICATION

TAKE NOTICE that the Applicants are applying to the Court for the following orders:

On the first return date of the application, 18 July 2018:

1. Service of this Application be effected on the members of the Funds, other than the FMIF, as follows:



APPLICANT
Filed on Behalf of the Applicants
Form 9 Version 1
Uniform Civil Procedure Rules 1999
Rule 31

Russells
Level 18, 300 Queen Street
Brisbane, Qld, 4000
Phone: 07 3004 8888
Fax: 07 3004 8899
Email: JWalsh@RussellsLaw.com.au
Ref: AJT:JTW:20170799

- (a) by the First Applicants uploading to the website www.lminvestmentadministration.com (“the Website”): copies of this Application, a Notice to Members in the form of Schedule 1 to this Application (“the Notice”), any order made as to service and any substantive affidavit (including all exhibits) that the First Applicant intends to rely upon in support of this Application;
- (b) by sending an email to those members of the Funds, for whom an email address is recorded:
 - (i) attaching the Notice; and
 - (ii) stating that they may view all substantive Court documents upon which the First Applicants intends to rely in support of the relief sought by paragraphs 9 to 15 herein on the Website; and
- (c) where the First Applicants receives a response to an email that indicates the email was not received, or if the First Applicant does not hold an email address for any member, and the First Applicant has a postal address for those members, the First Applicant is to post the Notice to the postal address of those members.

2. Service of this Application be effected on the creditors of the Second Applicant as follows:

- (a) by the First Applicants uploading to the Website: a Notice to Creditors in the form of Schedule 2 to this Application (“the Creditors’ Notice”) any order made as to service and any substantive affidavit (including all exhibits) that the First Applicant intends to rely upon in support of this Application;
- (b) by sending an email to those creditors of the Second Applicant, for whom an email address is recorded:
 - (i) attaching the Creditors’ Notice; and

- (ii) stating that they may view all substantive Court documents upon which the First Applicant intends to rely in support of the relief sought by paragraphs 1 and 7 herein on the Website; and
 - (c) where the First Applicants receives a response to an email that indicates the email was not received, or if the First Applicant does not hold an email address for any creditor, and the First Applicant has a postal address for those creditors, the First Applicant is to post the Notice to the postal address of those creditors.
- 3. Service of this Application in accordance with any orders made be deemed effective on each of the members of the Funds, other than the FMIF, and the creditors of the Second Applicant.
- 4. Service of this Application on the members of the FMIF be deemed effective by service on the Respondent.
- 5. Where the First Applicants intend to rely on further material, service of that material will be deemed effective by the First Applicants uploading the material to the Website and sending an email (or, where the First Applicant does not hold a valid email address, a notice by post) to the members and creditors informing them that further material in relation to the Application has been uploaded to the Website.
- 6. Directions for the future conduct of the Application.
- 7. The First Applicants not be required to take further steps to serve the members of the Funds or creditors of the Second Applicant whose email addresses return permanent undeliverable receipts and for whom the Applicants do not have a postal address.
- 8. Costs of the hearing on 18 July 2018 be reserved.

On the further return of the application, on a date to be fixed:

9. The First Applicants are entitled to be paid, and be paid, the sum of \$667,708.34 (including GST), for their remuneration as administrators of the Second Applicant from the scheme property of the following funds:
- (a) LM Australian Income Fund ARSN 133 497 917 (“AIF”) as to \$166,708.34;
 - (b) LM First Mortgage Income Fund ARSN 089 343 288 (“FMIF”) as to \$166,708.34;
 - (c) LM Australian Structured Products Fund ARSN 149 875 669 (“ASPF”) as to \$166,708.34; and
 - (d) LM Cash Performance Fund ARSN 087 304 032 (“CPF”) as to \$166,708.34.
10. Pursuant to section 511(1) of the *Corporations Act 2001* as in force immediately before 1 March 2017 (“the Old Act”) or, alternatively, subdivision 90-15(3)(f) of Schedule 2 to the *Corporations Act 2001* currently in force (“**Insolvency Schedule**”):
- (a) the First Applicants’ corporate remuneration as liquidators of the Second Applicant, for the period 2 August 2013 to 30 June 2018, be fixed, alternatively determined, in the sum of \$663,321.45 (including GST);
 - (b) the First Applicants’ Category 1 remuneration as liquidators of the Second Applicant, for the period 1 October 2015 to 30 June 2018, be fixed, alternatively determined, in the sum of \$1,089,078.65 (including GST);
 - (c) the First Applicants’ Category 2 remuneration as liquidators of the Second Applicant, for the period 1 October 2015 to 30 June 2018, be fixed, alternatively determined, in the sum of \$380,021.95 (including GST).

11. The First Applicants be paid the sum of \$799,849.60 (including GST) from the scheme property of the AIF for their remuneration as liquidators of the Second Applicant, such sum to include:
 - (a) \$165,830.36 (including GST) for corporate remuneration for the period 2 August 2013 to 30 June 2018;
 - (b) \$539,013.75 (including GST) for Category 1 remuneration for the period 1 October 2015 to 30 June 2018; and
 - (c) \$95,005.49 (including GST) for Category 2 remuneration for the period 1 October 2015 to 30 June 2018.

12. The First Applicants be paid the sum of \$577,181.55 (including GST) from the scheme property of the FMIF for their remuneration as liquidators of the Second Applicant, such sum to include:
 - (a) \$165,830.36 (including GST) for corporate remuneration for the period 2 August 2013 to 30 June 2018;
 - (b) \$316,345.70 (including GST) for Category 1 remuneration for the period 1 October 2015 to 30 June 2018; and
 - (c) \$95,005.49 (including GST) for Category 2 remuneration for the period 1 October 2015 to 30 June 2018.

13. The First Applicants be paid the sum of \$494,555.05 (including GST) from the scheme property of the ASPF for their remuneration as liquidators of the Second Applicant, such sum to include:
 - (a) \$165,830.36 (including GST) for corporate remuneration for the period 2 August 2013 to 30 June 2018;

- (b) \$233,719.20 (including GST) for Category 1 remuneration for the period 1 October 2015 to 30 June 2018; and
- (c) \$95,005.49 (including GST) for Category 2 remuneration for the period 1 October 2015 to 30 June 2018.

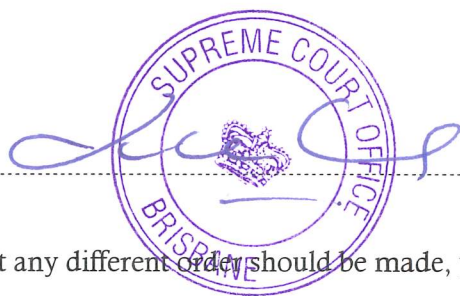
14. Costs of the Application be payable, and paid, on the indemnity basis from the respective scheme property of the FMIF, AIF, ASPF and CPF in such proportions as may be just.

15. Such further or other Order as the Court deems meet.

This application will be heard by the Court at QEII Courts of Law Complex, 415 George Street, Brisbane, Qld, 4000 on a date to be fixed.

Filed in the Brisbane Registry on 17 July 2018:

Registrar:



If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the first hearing of the Application the Applicants intend to rely on the following affidavits:

1. Affidavit of Kelly-Anne Lavinia Trenfield sworn on 17 July 2018.

On the further hearing of the Application the Applicants intend to rely on the following affidavits:

2. Affidavit of Kelly-Anne Lavinia Trenfield sworn on 17 July 2018; and
3. Affidavit of John Richard Park to be sworn.

THE APPLICANTS ESTIMATE THE FIRST HEARING SHOULD BE ALLOCATED
FIFTEEN MINUTES

Signed:



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Description:

Julian Walsh, Solicitor

Dated:

17 July 2018

This Application is to be served on:

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 of BDO, Level 10, 12 Creek Street, Brisbane, Queensland, 4000 C/- Tucker & Cowen, Level 15, 15 Adelaide Street, Brisbane, Queensland, 4000

SCHEDULE 1

NOTICE TO MEMBERS

TO: The Members of [INSERT FUND]

John Richard Park is the liquidator of LM Investment Management Limited (in liquidation) (receivers and managers appointed) ACN 077 208 461 (“LMIM”), which remains the responsible entity of the LM First Mortgage Income Fund ARSN 089 343 288 (“FMIF”), LM Australian Income Fund ARSN 133 497 917 (“AIF”), LM Australian Structured Products Fund ARSN 149 875 669 (“ASPF”), LM Cash Performance Fund ARSN 087 304 032 (“CPF”), LM Currency Protected Australian Income Fund ARSN 110 247 875 (“CP-AIF”) and LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (“ICP-AIF”).

TAKE NOTICE that John Richard Park, the liquidator of LMIM, has applied to the Supreme Court of Queensland for:

- (a) an order permitting him to be paid the sum of \$662,981.80 (plus GST), being remuneration as voluntary administrator of the Second Applicant as follows:
 - (i) from the scheme property of the FMIF, \$165,745.45 (plus GST);
 - (ii) from the scheme property of the AIF, \$165,745.45 (plus GST);
 - (iii) from the scheme property of the ASPF, \$165,745.45 (plus GST);
 - (iv) from the scheme property of the CPF, \$165,745.45 (plus GST);
- (b) the determination of his remuneration as liquidators of LMIM for “corporate remuneration” (being remuneration relating to LMIM in its own right and general liquidation work), for the period 2 August 2013 to 30 June 2018, in the sum of \$603,019.50 (plus GST);
- (c) an order permitting him to be paid that remuneration of \$603,019.50 (plus GST) as follows:

- (i) from the scheme property of the FMIF, \$150,754.87 (plus GST);
 - (ii) from the scheme property of the AIF, \$150,754.87 (plus GST);
 - (iii) from the scheme property of the ASPF, \$150,754.87 (plus GST);
 - (iv) from the scheme property of the CPF, \$150,754.87 (plus GST);
- (d) the determination of his remuneration as liquidator of the Second Applicant, save for corporation remuneration, for the period 1 October 2015 to 30 June 2018, in the sum of \$1,335,546.00;
- (e) an order permitting him to be paid part of that remuneration of \$1,335,546.00 (plus GST) as follows:
- (i) from the scheme property of the AIF, \$576,381.13 (plus GST);
 - (ii) from the scheme property of the ASPF, \$298,840.63 (plus GST);
 - (iii) from the scheme property of the FMIF, \$373,955.62 (plus GST).

The application is set down for hearing on **[DATE]**.

Copies of the application and other court documents filed in the proceeding will be available on the website www.lminvestmentadministration.com. Any member who reasonably requires a hardcopy of the application and other court documents should call Russells Lawyers on +61 7 3004 8888.

The members of **[INSERT FUND]** are not respondents to the application but any member is entitled to be heard in the application if they wish. Any member who wishes to appear and to make submissions at the hearing of the application must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act 2001* which are in Chapter 23 of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Russells, the solicitors for John Richard Park, at their office at Level 18, 300 Queen Street, Brisbane, Q. 4000. Tel. +61 7 3004 8888 Fax +61 1 3004 8899 E-mail: Mail@RussellsLaw.com.au.

This notice is given pursuant to an order of the Supreme Court of Queensland made on [DATE].
A copy of the order may be seen on the website www.lminvestmentadministration.com.

Dated: 17 July 2018

SCHEDULE 2

NOTICE TO CREDITORS

TO: The Creditors of LM Investment Management Limited (in liquidation) (receivers appointed)

John Richard Park is the liquidator of LM Investment Management Limited (in liquidation) (receivers appointed) (“LMIM”), which remains the responsible entity of the LM First Mortgage Income Fund ARSN 089 343 288 (“FMIF”), LM Australian Income Fund ARSN 133 497 917 (“AIF”), LM Australian Structured Products Fund ARSN 149 875 669 (“ASPF”), LM Cash Performance Fund ARSN 087 304 032 (“CPF”), LM Currency Protected Australian Income Fund ARSN 110 247 875 (“CP-AIF”) and LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (“ICP-AIF”).

TAKE NOTICE that John Richard Park, the liquidator of LMIM, has applied to the Supreme Court of Queensland for:

- (a) an order permitting him to be paid the sum of \$662,981.80 (plus GST), being remuneration as voluntary administrator of the Second Applicant as follows:
 - (i) from the scheme property of the FMIF, \$165,745.45 (plus GST);
 - (ii) from the scheme property of the AIF, \$165,745.45 (plus GST);
 - (iii) from the scheme property of the ASPF, \$165,745.45 (plus GST);
 - (iv) from the scheme property of the CPF, \$165,745.45 (plus GST);
- (b) the determination of his remuneration as liquidators of LMIM for “corporate remuneration” (being remuneration relating to LMIM in its own right and general liquidation work), for the period 2 August 2013 to 30 June 2018, in the sum of \$603,019.50 (plus GST);

- (c) an order permitting him to be paid that remuneration of \$603,019.50 (plus GST) as follows:
 - (i) from the scheme property of the FMIF, \$150,754.87 (plus GST);
 - (ii) from the scheme property of the AIF, \$150,754.87 (plus GST);
 - (iii) from the scheme property of the ASPF, \$150,754.87 (plus GST);
 - (iv) from the scheme property of the CPF, \$150,754.87 (plus GST);
- (d) the determination of his remuneration as liquidator of the Second Applicant, save for corporation remuneration, for the period 1 October 2015 to 30 June 2018, in the sum of \$1,335,546.00;
- (e) an order permitting him to be paid part of that remuneration of \$1,335,546.00 (plus GST) as follows:
 - (i) from the scheme property of the AIF, \$576,381.13 (plus GST);
 - (ii) from the scheme property of the ASPF, \$298,840.63 (plus GST);
 - (iii) from the scheme property of the FMIF, \$373,955.62 (plus GST).

The application is set down for hearing on [DATE].

Copies of the application and other court documents filed in the proceeding will be available on the website www.lminvestmentadministration.com. Any creditor who reasonably requires a hardcopy of the application and other court documents should call Russells Lawyers on +61 7 3004 8888.

The creditors of LMIM are not respondents to the application but any creditor is entitled to be heard in the application if they wish. Any creditor who wishes to appear and to make submissions at the hearing of the application must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act 2001* which are in Chapter 23 of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Russells, the solicitors for John Richard

Park, at their office at Level 18, 300 Queen Street, Brisbane, Q. 4000. Tel. +61 7 3004 8888 Fax
+61 1 3004 8899 E-mail: Mail@RussellsLaw.com.au.

This notice is given pursuant to an order of the Supreme Court of Queensland made on [DATE].

A copy of the order may be seen on the website www.lminvestmentadministration.com.

Dated: 17 July 2018