

TO THE INVESTOR AS ADDRESSED

28 January 2016

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

## 1. Executive Summary

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 twelfth update to investors which provides details of the progress made in the winding up of the Fund, since my last report to investors dated 3 November 2015.

A summary of the key issues covered in the report, is as follows:

- There are three property assets remaining to be sold that are estimated to realise approximately \$6.5M. Two of these property assets are subject to contract and due to settle in February 2016 and April 2016 respectively. Further details are provided at Section 3 below;
- Cash at bank as at 31 December 2015 was \$58.7 million;
- The estimated return to investors is currently 14.4 to 15.4 cents per unit;
- I will not be in a position to make distributions to investors until the claims by Korda Mentha as trustee of the LM Managed Performance Fund (MPF Trustee) and other litigation matters involving a potential claim against the Fund have been resolved and the Receivers and Managers of the Fund (DB Receivers) appointed by the secured creditor have retired. Further details in relation to the status of the retirement of the DB Receivers are provided in Section 2.1 below;
- The public examination of the Fund's former auditors, certain directors and former directors of LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (Receivers and Managers Appointed) (LMIM) and three additional persons conducted in June and October 2015 has assisted with the preparation of a substantial claim against the former auditors, which is currently being finalised. Further details are provided in Section 4.1 below;
- I was successful in the claim against a quantity surveyor. Judgement was handed down in my favour on 18 December 2015 awarding \$2.14M plus interest and costs with final orders to be

settled; however, on 8 January 2016 a notice of appeal was filed by the defendant. Further details are provided in Section 4.4.1 below;

- The Liquidator of Bellpac Pty Ltd (Bellpac Liquidator) has been successful in recovering the final instalment of \$500K (before preservation and realisation costs) of the \$2M Bonds held in Wollongong Coal Limited. Further details are provided in Section 4.2.2 below;
- Although the Bellpac Liquidator was successful in the \$8M Bonds proceedings (Bellpac has been declared as the true owner of the Bonds held in Wollongong Coal Limited), an appeal was filed by the defendants in November 2015. Further details are provided in Section 4.2.2 below;
- I was successful in my application to the Court for directions as to the appropriate party or parties to conduct the defence in the proceedings commenced by the MPF Trustee against LMIM (seeking equitable compensation against LMIM and a declaration of constructive trust over assets of the Fund in the sum of about \$29.2M plus interest). I have now been added as a defendant in the proceedings to defend the claim against the assets of the FMIF (see Section 2.1 below for further details);
- On 17 December 2015, an order was handed down by the Court in relation to an application by the Liquidators of LMIM (FTI) for directions and orders pertaining to the extent of their powers and responsibilities and in respect of their remuneration as liquidators of the responsible entity of the Fund. This order confirms FTI's limited role in the winding up of the Fund and does not change the powers and rights conferred upon me as set out in the order leading to my appointment as receiver of the Fund dated 21 August 2013. Further details in this respect are provided at Section 8.1;
- The claim against the Fund for FTI's remuneration in the sum of \$3,098,251.83 will be heard by the Court on 22 February 2016 as detailed at Section 8.1.

## **2. 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**

### **2.1 Secured creditor and proceedings by KordaMentha**

I summarise the status of this matter as at the date of my last report as follows:

- Even though the secured creditor has been repaid in full, the DB Receivers have advised me that they are not in a position to retire until the potential claims by the MPF Trustee are resolved;
- In August 2014, the MPF Trustee filed two proceedings in the Supreme Court of Queensland against LMIM seeking equitable compensation and a declaration of constructive trust over assets of the Fund in the sum of about \$29.2M plus interest relating to two loans that were allegedly assigned from the FMIF to the MPF on 28 August 2008 in the sums of about \$9.7 million and \$19.5 million;
- On 29 May 2015 the MPF Trustee filed an application under the Trusts Act for directions. To assist the Court in considering whether or not the MPF Trustee's application for directions

should be granted, I conducted some preliminary investigations and filed in the Court evidence questioning the quantum of the claims asserted by the MPF Trustee in the proceedings, and in particular, questioning whether the payments made by the MPF for the assignment of the loans the subject of the proceedings can be traced into identifiable property of the Fund. On 26 August 2015, judgment was delivered giving the directions sought by the MPF Trustee under the Trusts Act that it would be justified in prosecuting the two proceedings against LMIM;

- Amended statements of claim were served on LMIM on 8 September 2015;
- Further amended statements of claim were served on LMIM on 14 October 2015 seeking additional proprietary relief against the assets of the FMIF, including:
  - Declarations to the effect that LMIM is entitled to be indemnified out of the Fund's assets in respect of any liability of LMIM to the MPF Trustee in the proceedings and that the Trustee is entitled to be subrogated to the rights of LMIM in this regard;
  - An equitable charge or lien over the assets of the FMIF to secure any liability of LMIM to the MPF Trustee in the proceedings;
- Given my preliminary investigations, I considered that the claims made against assets of the FMIF in the proceedings should be defended as the quantum of such claims appear highly questionable, and any adverse judgment has the potential to erode the assets of the FMIF available for distribution to members. I filed applications and a supporting Affidavit in the Court seeking directions that:
  - I would be justified in representing the interests of LMIM in the proceedings and in conducting the defence of the claim made against the LMIM in the name of LMIM to the extent necessary to defend any claim pursuant to which relief is sought against the assets of the Fund;
  - Alternatively, that I would be justified in seeking to be joined as court appointed receiver of the property of the Fund as a party to the proceedings as a further defendant and to defend the claims made in the proceedings for relief against the assets of the Fund.

Further developments since my last report to investors is summarised below:

#### **Proceedings by KordaMentha (as Trustee of the MPF)**

- At the hearing of my application for directions on 7 December 2015, Justice Jackson proposed draft orders which were to be finalised by the parties. At the review hearing on 17 December 2015, FTI did not consent to the draft orders and pressed for further investigations to be finalised by me (additional to that as set out in the final orders below) however, this was rejected by Justice Jackson. Final orders were made which included the following:
  - That I, as receiver of FMIF, be joined as second defendant;
  - The MPF Trustee file and serve a second further amended statement of claim by 4pm on 29 February 2016;

- Until further order, LMIM as first defendant is not required to file any defence;
  - I finalise my investigations in relation to the dates and amounts of payments made by the MPF under the deeds of assignment into the FMIF bank accounts and provide the information to the MPF Trustee by 23 December 2015; and
  - The matter be listed for review after 7 March 2016.
- The results of my investigations have now been provided to the MPF Trustee which reveal that:
    - Payments by MPF into the FMIF bank accounts for the assigned loans total \$5.227M however, these payments may also relate to payments for another assigned loan or a management fee receivable (both not part of the subject proceedings); and
    - There are payments of \$1.3M into the FMIF bank accounts that may be payments by MPF under the deeds of assignment.
  - I am currently liaising with my solicitors in relation to this claim and I will provide further details of any further developments in my next report to investors.

#### **Position of the secured creditor**

- In my previous report to investors I advised that:
  - The MPF Trustee had advised that it had concluded its investigations in relation to a number of matters and that it is unlikely that it will pursue many of the possible claims referred to in previous correspondence;
  - The MPF Trustee no longer considers it likely that its claims will exhaust the Fund's assets.
- I continue to liaise with the DB Receivers about their ongoing role and the possibility of their retirement.

## **2.2 Proceedings against the MPF, LMIM and the Directors of LMIM**

As advised in previous reports to investors, on 17 December 2014, I filed a statement of claim in the Supreme Court of Queensland, against a number of parties including the MPF Trustee, in respect of the loss suffered by the FMIF as a result of the amount paid to MPF in the Bellpac litigation matter. The claim is for in excess of \$20M.

The proceedings are at the discovery stage. See Section 4.2.1 below for further details.

### 3. Realisation of Assets

There are three property assets of the FMIF remaining to be sold with realisations of approximately \$6.5 million anticipated. A summary of the status of the remaining properties is provided below.

Location	Description of asset	
QLD	Residential land subdivision with 11 out of 80 lots remaining. Since my last report to investors, no further lots have been sold, however a further marketing campaign has been commenced.	On the market
QLD	72 strata titled unit resort complex with management rights. At the time of my appointment 57 units remained.  A Contract of Sale for 26 units & management rights has been entered into, with settlement scheduled for 1 April 2016.  A further 2 units remain to be sold.	Subject to contract / On the market
WA	Possession of a guarantor's property has been obtained with it subject to a contract of sale and settlement scheduled for 2 February 2016.	Subject to contract

### 4. Other Potential Recoveries/Legal Actions

I provide an update in relation to investigations undertaken to date, legal proceedings on foot and further work to be done, as follows:

#### 4.1 Public Examination (PE) and Claim Against the Former Auditors

As advised in my previous reports, a public examination of the former auditors and certain directors and former directors (Directors) of LMIM was conducted over a period of 9 days in June 2015 and a further 9 days in October 2015. Three additional examinees were examined in October 2015 which included Alexander David Monaghan (former commercial manager and legal advisor to LMIM), Shelley Chalmers (former paralegal officer for LMIM) and Angelo Venardos (former chairperson of LMIM's compliance committee).

The public examinations have been beneficial to my investigations and as a result, I will be pursuing a substantial claim against the former auditors.

I am currently finalising an amended statement of claim against the former auditors, which I anticipate will be filed within the next month. Further details of the claim will be provided in my next report to investors.

## 4.2 Bellpac Proceedings

### 4.2.1 Settlement of Gujarat proceedings - Claim against LMIM, MPF and Certain Directors

FMIF has first ranking security over the assets of a borrower, Bellpac Pty Ltd (In Liquidation) (Receivers and Managers Appointed) (Bellpac).

Please refer to my previous reports to investors for further details. I provide a brief summary of this matter as follows:

- In November 2010, proceedings by Bellpac, LMIM and LMIM's custodian (PTAL) against Gujarat NRE Minerals Limited (Gujarat) were agreed to be settled at mediation;
- As MPF funded the majority of the costs of the litigation, the settlement proceeds received in 2011 totalling approximately \$45.6M were shared between the funds on the basis of a 65%/35% split;
- According to the security held by FMIF and MPF over the property the subject of the litigation, FMIF held first priority to all of the proceeds of the settlement and was entitled to all of the settlement proceeds;
- On 17 December 2014, I filed a statement of claim in the Supreme Court of Queensland claiming \$15,546,147.85 plus interest (calculated from mid/late 2011 with the claim in excess of \$20M) being the loss suffered by FMIF as a result of the amount paid to MPF, against LMIM, MPF and 6 directors/former directors (Director Defendants);
- All of the defences have now been filed and served;
- At the review hearing on 14 August 2015, orders were made in relation to the process of discovery which included that:
  - I am permitted to undertake discovery of all documents of LMIM, the MPF and LMIM for the purposes of the proceeding which is directly relevant to an allegation in issue in the proceedings;
  - Each of the Director Defendants are relieved from making disclosure;
  - The other parties make disclosure and exchange their disclosure in accordance with the Document Plan;
- I engaged a specialist consultant to facilitate discovery which will include undertaking agreed key word searches of the computer servers held by me to identify relevant documents in order to comply with the discovery process required by the Court;
- As part of the discovery process, I agreed with FTI to recover and extract any permanently deleted emails from the forensic image of the LM servers obtained by them, that are directly relevant to an allegation in issue in the proceedings. This process has commenced by way of comparison of the FTI forensic image of the LM exchange email server with the copy obtained by me from the LMA receiver in March 2015. However, this process has also taken longer than expected and I am awaiting an update on progress.

Further developments since my last report to investors is summarised below:

- The timetable for the process by which the documents are to be exchanged in the discovery process, was extended by the Court on 3 December 2015 by consent of the parties due to the time it has taken to copy and process the substantial quantity of documents on the LM servers. My

solicitors have proposed to the defendants that partial discovery of the documents by 29 January 2016 with the balance of documents to be provided by 29 February 2016.

Once discovery has been completed, I will be proposing that the matter is set down for mediation in an effort to save the costs of a trial.

#### 4.2.2 Other Bellpac litigation

##### a. \$2 million of Wollongong Coal Ltd (WCL) - Convertible Bonds

Please refer to my previous reports to investors for further details. I provide a brief summary of this matter as follows:

- FMIF has first ranking security over the assets of a borrower, Bellpac. As FMIF will be the beneficiary of the funds recovered, FMIF has been funding the Liquidator to realise the \$2M Bonds as well as the \$8M Bonds which is discussed further below ;
- The Liquidator has been successful in recovering \$2M in relation to the \$2M Bonds settlement agreement with Wollongong Coal Limited;
- The Liquidator has advised that before any funds are remitted to the FMIF, he will be seeking approval for his remuneration as liquidator and claiming care, preservation and realisation costs from the FMIF under the funding deed. Also, he will need to obtain advice in relation to a priority claim made by a third ranking secured creditor of Bellpac; and
- It is proposed that the funds held by the Liquidator will be partly used to fund the appeal proceedings in the \$8M Bonds case (see below).

##### b. \$8 million of WCL Convertible Bonds

Please refer to my previous reports to investors for further details. I provide a brief summary of the status of this matter as follows:

- The proceedings by Bellpac and its Liquidators commenced in July 2012 seeking orders that Bellpac is the true owner of the \$8 million Bonds;
- The trial was heard over four days and ended on 12 March 2015 with the decision reserved;
- The decision was handed down on 18 September 2015 and Bellpac was successful;
- The Liquidator has advised that he has served notices on WCL to convert the Bonds to shares so steps can be taken to realise the shares or if there is again a failure by WCL to issue shares (as happened with the \$2M Bonds matter), seek redemption of the Bonds for cash;
- An appeal was filed by the defendants on 24 November 2015 and orders were made at the review hearing on 18 December 2015 that the appeal be listed for hearing before the Full Court in Sydney on a date to be fixed for sitting in May 2016 with other orders as to filing of documents leading up to that time.

I will continue to monitor the progress of the appeal proceedings and will provide a further update in my next report to investors.

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

Please refer to my previous reports to investors for further details. I provide a brief summary of this matter as follows:

- In February 2013, parties including the third mortgagee over Bellpac commenced proceedings against the Parties in relation to the alleged sale at undervalue of the Bellpac property. The property that was sold formed part of the settled proceedings outlined at Section 4.2.1 above;
- LMIM as RE for FMIF and the other respondents filed applications seeking security for costs from the applicants which were successful as the plaintiffs were required to pay \$550,000 into Court before the proceedings could continue;
- The proceedings against LMIM and the Bellpac Receivers were discontinued and security of \$150,000 was put up by the plaintiffs to continue the proceedings against PTAL;
- PTAL has now filed its defence and the next review hearing is set down for 5 May 2016 with various steps to be taken by the parties in the intervening period;
- Under the custody agreement with PTAL, it has a right of indemnity from LMIM out of the Fund's assets for any liability, demand, loss etc. incurred in connection with any action, suit, claim and demand which may be brought or threatened against PTAL by reason of it complying with any instruction by an authorised person. I am expecting a proposal from PTAL as to the future conduct of the proceedings and the entitlement of PTAL to claim indemnity against FMIF;
- As a consequence of the plaintiffs discontinuing the proceedings against the other defendants, including LMIM and the Bellpac Receivers, I am entitled to claim our costs incurred in the proceedings against the plaintiffs. Our costs have been assessed and the Court hearing to confirm the costs is set down for the week commencing 18 January 2016. I have arranged for the Bellpac Receivers to have their costs assessed by the same costs assessor. Once these costs are assessed the Bellpac Receiver and I will be pursuing the plaintiffs for the payment of these costs.

I will continue to monitor the progress of the proceedings and will provide a further update in my next report to investors.

### **4.3 Other Potential Claims against LMIM and related Parties**

#### **4.3.1 LM Administration Pty Ltd (In Liquidation)('LMA')/Director related claims**

Please refer to my previous reports to investors in which I summarised the status of my investigations in relation to the following matters:

- Management Service Agreements with LMA;
- Changes to Constitution; and
- Fund Valuation Policy.

I confirm that as part of my investigations for the public examinations, I have reviewed the above issues as they relate to the financial statements and compliance plan audits. Subject to the outcome and advice received following the recent public examinations, I will assess what claims, if any, that may arise against certain parties.

#### **4.3.2 Distribution to Class B Unit Holders**

Please refer to my previous reports to investors for further details. I provide a brief summary of the matter as follows:



- During the financial year ended 30 June 2012 distributions of approximately \$16.9M were made to Class B unit holders at a time when class A and C unit holders did not receive any distributions, apart from hardship distributions;
- Class B unit holders relate to the three feeder funds of FMIF;
- The auditors qualified the financial statements in regard to this transaction;
- As a result of the distribution and reinvestment of a major portion of that distribution into units in FMIF, Class B unit holders increased their interest held in the fund at the expense of the Class A & C unit holders. This will result in the Class B unit holders (the feeder funds) receiving a greater amount in the winding up of the Fund;
- Further investigation of this matter was undertaken at the public examination as well as the redemption of units held by the Feeder Funds in the FMIF which LMIM permitted during a time the Fund had suspended redemptions.

I confirm that subject to the outcome and advice received following the recent public examinations, I will assess what claims that may arise against certain parties.

On 16 November 2015, Gayle Dickerson and Said Jahani of Grant Thornton were appointed as Receivers and Managers of LMIM in its capacity as responsible entity for the LM Currency Protected Australian Income Fund and the LM Institutional Currency Protected Australian Income Fund, being two of the Feeder Funds. I have liaised with Grant Thornton in relation to information they have sought regarding the status of the FMIF, investigations and claims against the FMIF.

#### **4.3.3 External Valuations**

I have continued to review the loans where material losses have occurred to ascertain whether the valuations relied on were too high and if there was negligence by the valuer which contributed to the losses.

I have engaged an expert valuer to review professional valuations relied on in three substantial loans made by the Fund. Based on the review undertaken, the expert valuer has advised that there are no claims on two of the loans with further information required to determine the position of the other potential claim.

In relation to the remaining loans where large losses have occurred, I am finalising my investigations however, I have not at this stage identified any claims that would be commercial to pursue.

#### **4.3.4 Claim by ASIC against the directors**

As advised in my previous reports, 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 alleges Mr Drake used his position to gain an advantage for himself and the former directors breached their duties for failing to act with the proper degree of care and diligence regarding transactions involving the MPF.

In January 2015, Mr Drake became a bankrupt. Under the law, ASIC may make a banning order against a person if the person becomes bankrupt.

On 24 March 2015, ASIC banned Mr Drake from providing any financial services until 11 January 2018, being the remaining period of his bankruptcy.

On 15 April 2015, the proceedings were listed for the hearing of an interlocutory application on 22 May 2015 at which Orders were made in relation to discovery.

On 13 August 2015, His Honour Edelman J made directions regarding minor amendments to the statement of claim and foreshadowed directions to be made by consent.

The next directions hearing is scheduled for 2 February 2016.

Further details can be found on the ASIC website [www.asic.gov.au](http://www.asic.gov.au) under media releases.

#### **4.4 Other actions against Borrowers and guarantors**

As advised in previous reports, in late February 2015, by agreement with McGrathNicol, the Receivers and Managers of the Fund, I now have the conduct of the following matters:

##### **4.4.1 Claim against a quantity surveyor in the amount of \$2.4 million plus interest**

Please refer to my previous reports to investors for further details. I provide a brief summary of this matter as follows:

- The matter was set down for a four day trial commencing on 2 November 2015, then was adjourned and subsequently concluded on 9 December 2015;
- Judgement was handed down on 18 December 2015 in my favour for \$2.1M plus interest and costs. The final orders are being agreed between the parties in relation to the interest and costs;
- On 8 January 2016 a notice of appeal was filed by the defendant whereby the defendant has indicated that they intend commencing appeal proceedings on or before 18 March 2016.

##### **4.4.2 Various claims against guarantors**

Several claims are being pursued against guarantors where it is considered commercially worthwhile to do so.

### **5. Western Union**

As advised in my previous reports, Western Union held funds on account of the FMIF at the date of FTI's appointment, 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 liabilities of other LM related entities, however a confidential commercial settlement has been negotiated with a deed of settlement to be finalised shortly. The amount of the claim is approximately \$93,000 (subject to exchange rate fluctuations).

### **6. Management Accounts**

The management accounts for the half year ending 31 December 2015 are currently being prepared and will be uploaded to the website [www.lmfimf.com](http://www.lmfimf.com) on or before 31 March 2016.

## 7. Investor Information

### 7.1 Estimated Return to Investors

Based on the professional valuations, offers received and unconditional contracts entered into for the properties charged to the Fund, I provide an estimated return to investors of between 14.4 cents and 15.4 cents per unit as at 31 December 2015, calculated as follows:

	Low \$	High \$
Cash at Bank	58,769,437	58,769,437
Deferred Payment - Sale of Retirement Villages (secured by Bank Guarantee)	16,000,000	16,000,000
Estimated selling prices of properties to be sold	6,432,000	6,632,000
<b>Estimated Assets Position</b>	<b>81,201,437</b>	<b>81,401,437</b>
Selling costs (estimated 2.5% of sale price)	(160,800)	(165,800)
Other unsecured creditors	(7,316,561)	(2,587,496)
FTI Fees & legal expenses advised (subject to approval)- refer to Section 8.2 for further details	(4,211,638)	(4,211,638)
Receivers and Managers' Fees (McGrathNicol)	(60,500)	(60,500)
Receivers and Managers' Legal fees (McGrathNicol)	(70,400)	(70,400)
Receiver's fees & outlays (BDO) (including controllerships)	(445,270)	(445,270)
Receiver's legal fees (BDO)	(129,872)	(129,872)
<b>Total Liabilities</b>	<b>(12,395,041)</b>	<b>(7,670,976)</b>
<b>Estimated net amount available to investors as at 31 December 2015</b>	<b>68,806,396</b>	<b>73,730,461</b>
Total investor units	478,274,000	478,274,000
<b>Estimated return in the dollar</b>	<b>14.4 cents</b>	<b>15.4 cents</b>

The above table does not take into account future operating costs and future Receivers fees. The table also excludes 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 claim filed by the MPF Trustee (as detailed in Section 2.1 of this report) as the prospects of a successful claim against the Fund is unknown at this stage noting the claim will be vigorously defended.

As advised in my previous report, I have identified 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, which relates to the method of issuing units to investors who subscribed in foreign currencies. I am currently undertaking a review of all units acquired in foreign currencies. I will provide a further update in this respect in my next report.

## 7.2 Updated Unit Price

The unit price will be updated twice a year as at 30 June and 31 December. In this regard, I provide below an updated unit price as at 31 December 2015 of 15 cents, which is based on the mid-point of the high and low estimated selling prices of the secured assets as at 31 December 2015.

	\$000's
Total Value of Fund Assets as at 31 December 2015 (net of land tax and rates)	81,301
Less Creditors and Other Payables	(10,033)
<b>Total Net Value of Fund Assets</b>	<b>71,268</b>
Total Number of Units as at 31 December 2015	478,274
<b>Unit Price</b>	<b>15 cents</b>

I *attach* a copy of a letter confirming the unit price as at 31 December 2015, which may be forwarded to Centrelink to assist with the review of investors' pensions.

## 7.3 Distributions to Investors

As previously advised, I am on notice from the MPF Trustee of potential breach of trust claims against the Fund. Indeed two proceedings have been commenced in this respect seeking relief against the Fund's assets. In addition, the Receivers and Managers who were appointed to Bellpac have put me on notice not to distribute funds until the proceedings mentioned at section 4.2.2c above are resolved and also due to the MPF position, the secured creditor has not yet released its charge or retired its Receivers.

Once the Receivers and Managers of the fund 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 Bellpac litigation and potentially in relation to the MPF Trustee claims.

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.

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.

#### **7.4 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 7.5 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 April 2016.

#### **7.5 Investors Queries**

For any changes to investors details, please review the Useful Forms/Procedures tab on the website [www.lmfimf.com](http://www.lmfimf.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 communications are sent via email to [enquiries@lmfmif.com](mailto: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

### **8 LM Investment Management Ltd ("LMIM")**

#### **8.1 Residual Powers application by LMIM (by its Liquidators, FTI Consulting)**

As previously advised, the Liquidators of LMIM made an application to the Supreme Court of Queensland, which was heard on 20 July 2015, for directions and orders in relation to their ongoing

role and the extent of their powers and responsibilities to undertake certain duties on behalf of the FMIF and in respect of their remuneration and expenses.

The Court delivered its Judgement on 15 October 2015 clarifying the limited role of the liquidators of LMIM.

Following a further hearing on 17 December 2015, formal orders were handed down, which, inter alia:

- Establishes the process for me to adjudicate on LMIM's indemnity claim against the property of the FMIF in respect to any expense or liability of, or claim against, LMIM in acting as Responsible Entity of the FMIF.
- Permits me to make an application to ASIC for relief from the requirements of an audit of the annual financial reports and compliance plan and review of the half year accounts on the basis that the cost will be an unreasonable burden impacting the return to investors and there will be no material adverse impact on investors by not receiving audited reports as investors are receiving more information now than was provided prior to my appointment. There is a requirement that the accounts of the FMIF are audited once the winding up has been finalised. I am currently finalising an application for this relief for ASIC's approval.
- Establishes the service requirements and timeframes in relation to the Further Amended Originating Application filed by FTI on 16 December 2015 for the determination of their remuneration claimed as liquidators of LMIM in the amount of \$3,098,251.83 from assets of the Fund. FTI is required to serve any affidavit material supporting their remuneration claim by 27 January 2016. The hearing is set down for 22 February 2016.

All material in relation to the residual powers application is available on the websites [www.lmfimf.com](http://www.lmfimf.com) and [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com).

Whilst the members of the FMIF are not respondents to the application they are entitled to be heard at the hearing. Any member who wishes to appear and make submissions at the hearing of the application must file a notice of appearance by 19 February 2016.

## **8.2 Remuneration and other expenses claimed by LMIM (by its Liquidators, FTI Consulting)**

The Liquidators of LMIM have advised of outstanding remuneration and costs, made out to the Fund, totalling \$4,211,638 excluding GST for the period up to 31 December 2015.

The claim can be broken down into the following four categories:

- Category 1 relates to time spent working on specific fund matters;
- Category 2 is in respect of LMIM's role as the Responsible Entity of the Fund with the time spent by the liquidators and their staff being allocated across all Funds under their control based on a percentage of funds under management;
- Operational costs;
- Legal advisors costs; and
- Loan recovery costs.

	Outstanding (GST exclusive) \$
Direct time charged to work undertaken for the Fund - including outlays (category 1)	1,870,571
Allocation of Responsible Entity time (category 2)	1,289,742
Operational costs	61,315
Legal Advisor costs	760,637
Loan recovery costs	229,373
	<b>4,211,638</b>

As previously advised, both McGrathNicol and I have raised legal questions as to whether certain work done by the liquidators of LMIM can properly be charged to the Fund, as well as questions as to the quantum claimed. As outlined in section 8.1 above, a hearing is listed for 22 February 2016 to determine the remuneration claimed for the period ended 30 September 2015.

In relation to the Liquidators' legal advisor costs, it was brought to my attention that Russells, the Liquidators' solicitors, had made an application to Court to have their costs assessed totalling approximately \$1.45 million and which may be sought for payment against the assets of the FMIF. As a result, I made an application for directions on how this should be dealt with in so far as any costs to be claimed from the FMIF are concerned.

My application was heard on 20 October 2015 and the decision of the Court was reserved. Judgment was delivered on Thursday, 29 October 2015 dismissing my application and confirming that I would not be bound by the assessment. Subsequently, orders have been made in the liquidator's Residual Powers application where FTI have to submit claims for indemnity under the constitution to me for consideration by 15 February 2016.

## 9. Receiver's Remuneration and Expenses

There have been four applications to Court to date to approve my remuneration from the date of my appointment on 8 August 2013 until 31 October 2015.

The application for the approval of my remuneration for the period 1 May 2015 to 31 October 2015 was heard on 11 December 2015. The Court ordered that my remuneration for this period be fixed in the amount of \$2,279,205.50 (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 \$194,052.10 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.lmfimf.com](http://www.lmfimf.com).

In addition to the remuneration previously approved by the Court, I calculate that, on a time basis, I have incurred further remuneration of \$411,958 plus outlays of \$10,816.42 plus GST from 1 November 2015 to 15 January 2016 plus work undertaken in respect of the controllerships for the retirement village assets of \$22,494.50 plus outlays of \$1.12 plus GST as detailed in the table below and attached summaries.

	Remuneration (GST exclusive)	Outlays (GST)
LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed)	411,958.00	10,816.42
OVST Pty Ltd (In Liquidation) (Controllers Appointed)	2,564.50	0.56
Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)	4,085.50	0.56
Bridgewater Lake Estate Ltd (In Liquidation) (Controllers Appointed)	11,008.50	Nil
Redland Bay Leisure Life Ltd (In Liquidation) (Controllers Appointed)	2,247.00	Nil
Redland Bay Leisure Life Development Ltd (In Liquidation) (Controllers Appointed)	875.50	Nil
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers & Managers Appointed) (Controllers Appointed)	1,713.50	Nil
	<b>434,452.50</b>	<b>10,817.54</b>

The key matters addressed during the period, were:

- Work undertaken in relation to the litigation matters detailed at Sections 2 and 4 of this report which include, among other things:
  - Progressing a claim against a quantity surveyor;
  - Providing assistance to the Liquidator of Bellpac regarding the \$2M and \$8M bond claims and progressing these matters;
  - Progressing the claim against the MPF and others;
  - Attending to discovery in the MPF proceedings;
  - Progressing claims against guarantors.
- Reviewing and progressing potential claims against the former auditors, LMIM and related parties regarding the financial statements and compliance plan audits following public examinations held;



- Review of potential claims against former valuers of property securities for negligence and breach of contract;
- Finalising settlement of Western Union's set off claim;
- Dealing with FTI's court application in respect of the Liquidators' residual powers, including meetings and correspondence with our solicitors and counsel, correspondence with FTI's solicitors and undertaking investigations into payments made to LMIM and LMA;
- Preparing an application to ASIC for relief from the requirements of a half year review and annual audit of the financial reports and compliance plan;
- 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 application to Court for approval of my remuneration for the period 1 May to 31 October 2015;
- Finalising outstanding trading matters from the sale of five retirement villages;
- Preparation of unit price calculation as at 31 December 2015;
- Preparation of the update report to Investors in January 2016.

I anticipate that my next application to Court for the approval of my remuneration will be made in May/June 2016 covering the period 1 November 2015 to 30 April 2016. A copy of my application in this respect will be posted to the website [www.lmfmf.com](http://www.lmfmf.com) and investors will be notified when this application has been lodged.

## 10. 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](mailto:enquiries@lmfmif.com)

Yours sincerely



David Whyte  
Receiver

28 January 2016

**TO WHOM IT MAY CONCERN**

**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 provide an update on the estimated unit price of the fund as at 31 December 2015, calculated as follows:

	<b>\$000's</b>
Total Value of Fund Assets as at 31 December 2015	81,301
Less Creditors and Other Payables	(10,033)
<b>Total Net Value of Fund Assets</b>	<b>71,268</b>
Total Number of Units as at 31 December 2015	478,274
<b>Unit Price</b>	<b>15 cents</b>

Should you have any queries in respect of the above, please contact Murray Daniel of my office on (07) 3173 5563.

Yours faithfully,



David Whyte  
Receiver

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2015 to 15 January 2016

LM First Mortgage Income Fund (Receiver Appointed) (Receiver and Manager Appointed)

Employee	Position	Rate	Totals		Task Area									
					Assets		Creditors		Trade On		Investigations		Administration	
			hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
Clark Jarrold	Partner	560	27.9	15,624.00					0.8	448.00	27.1	15,176.00		
Matthew Joiner	Partner	560	0.3	168.00			0.3	168.00						
David Whyte	Partner	560	151.3	84,728.00	21.3	11,928.00	28.7	16,072.00	51.8	29,008.00	18.1	10,136.00	31.4	17,584.00
Eric Leeuwendal	Director	495	225.4	111,573.00	40.2	19,899.00	40.5	20,047.50	13.7	6,781.50	99.1	49,054.50	31.9	15,790.50
Craig Jenkins	Partner	485	2.4	1,164.00							2.4	1,164.00		
John Somerville	Senior Manager	440	125.5	55,220.00	2.0	880.00	18.9	8,316.00	21.5	9,460.00	32.5	14,300.00	50.6	22,264.00
Julie Pagcu	Senior Manager	365	2.4	876.00					1.1	401.50	1.3	474.50		
Murray Daniel	Supervisor	360	197.1	70,956.00	29.3	10,548.00	20.8	7,488.00	83.7	30,132.00	26.2	9,432.00	37.1	13,356.00
Chris Demeyere	Supervisor	360	0.3	108.00									0.3	108.00
Ashleigh Simpson-Wade	Supervisor	350	0.9	315.00					0.9	315.00				
Nicola Kennedy	Senior Accountant II	280	92.4	25,872.00			2.6	728.00	76.7	21,476.00	11.7	3,276.00	1.4	392.00
Dermot O'Brien	Accountant II	195	84.1	16,399.50			59.1	11,524.50			2.4	468.00	22.6	4,407.00
Julia Mayne	Accountant II	195	115.6	22,542.00			83.9	16,360.50	11.3	2,203.50	11.5	2,242.50	8.9	1,735.50
Samantha Brown	Accountant II	195	11.9	2,320.50			0.1	19.50			11.8	2,301.00		
Sarah Cunningham	Team Assistant	195	5.8	1,131.00									5.8	1,131.00
Dale Ludwig	Accountant I	185	0.2	37.00	0.2	37.00								
Nicole Jackson	Team Assistant	155	9.8	1,519.00			3.2	496.00					6.6	1,023.00
Ashley Richardson	Team Assistant	155	1.0	155.00									1.0	155.00
Sarah Matthews	Team Assistant	140	0.3	42.00	0.3	42.00								
Moira Hattingh	Team Assistant	80	15.1	1,208.00									15.1	1,208.00
TOTALS			1,069.7	411,958.00	93.3	43,334.00	258.1	81,220.00	261.5	100,225.50	244.1	108,024.50	212.7	79,154.00
			GST	41,195.80										
			TOTAL INC GST	453,153.80										
			AVERAGE HOURLY RATE	385	464	315	383	443	372					

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 November 2015 to 15 January 2016

**LM First Mortgage Income Fund (Receiver Appointed) (Receiver  
and Manager Appointed)**

Expense Type	Amount (\$ ex GST)
Printing	6.30
Postage	5,624.51
General	4,669.20
Courier	311.15
Search Fee	205.26
<b>TOTAL</b>	<b>10,816.42</b>
<b>GST</b>	<b>1,081.64</b>
<b>TOTAL INC GST</b>	<b>11,898.06</b>

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2015  
to 15 January 2016

OVST Pty Ltd (Controller Appointed)

Employee	Position	Rate	Totals		Task Area			
			hrs	\$	Trade On		Administration	
					hrs	\$	hrs	\$
David Whyte	Partner	560	1.2	672.00	0.1	56.00	1.1	616.00
John Somerville	Senior Manager	440	1.0	440.00	0.1	44.00	0.9	396.00
Murray Daniel	Supervisor	360	1.1	396.00	0.7	252.00	0.4	144.00
Nicola Kennedy	Senior Accountant II	280	3.2	896.00	2.8	784.00	0.4	112.00
Sarah Cunningham	Team Assistant	195	0.1	19.50			0.1	19.50
Julia Mayne	Accountant II	195	0.6	117.00			0.6	117.00
Moira Hattingh	Team Assistant	80	0.3	24.00			0.3	24.00
TOTALS			7.5	2,564.50	3.7	1,136.00	3.8	1,428.50
			GST	256.45				
			TOTAL INC GST	2,820.95				
AVERAGE HOURLY RATE			342		307		376	

**Note:** All amounts exclude GST unless otherwise noted

**Disbursements for the period 1 November 2015 to 15 January 2016**

**OVST Pty Ltd (Controller Appointed)**

Expense Type	Amount (\$ ex GST)
Postage	0.56
<b>TOTAL</b>	<b>0.56</b>
<b>GST</b>	<b>0.06</b>
<b>TOTAL INC GST</b>	<b>0.62</b>

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2015  
to 15 January 2016

Pinevale Villas Morayfield Pty Ltd (Controller Appointed)

Employee	Position	Rate	Totals		Task Area			
			hrs	\$	Trade On		Administration	
					hrs	\$	hrs	\$
David Whyte	Partner	560	0.8	448.00	0.1	56.00	0.7	392.00
John Somerville	Senior Manager	440	1.6	704.00	0.6	264.00	1.0	440.00
Murray Daniel	Supervisor	360	0.8	288.00	0.7	252.00	0.1	36.00
Nicola Kennedy	Senior Accountant II	280	8.6	2,408.00	7.9	2,212.00	0.7	196.00
Damien Hicks	Senior Accountant II	225	0.2	45.00			0.2	45.00
Damien Hicks	Senior Accountant II	220	0.5	110.00			0.5	110.00
Sarah Cunningham	Team Assistant	195	0.1	19.50			0.1	19.50
Julia Mayne	Accountant II	195	0.2	39.00			0.2	39.00
Moira Hattingh	Team Assistant	80	0.3	24.00			0.3	24.00
TOTALS			13.1	4,085.50	9.3	2,784.00	3.8	1,301.50
			GST	408.55				
			TOTAL INC GST	4,494.05				
			AVERAGE HOURLY RATE	312	299		343	

**Note:** All amounts exclude GST unless otherwise noted

**Disbursements for the period 1 November 2015 to 15 January 2016**

**Pinevale Villas Morayfield Pty Ltd (Controller Appointed)**

Expense Type	Amount (\$ ex GST)
Postage	0.56
<b>TOTAL</b>	<b>0.56</b>
<b>GST</b>	<b>0.06</b>
<b>TOTAL INC GST</b>	<b>0.62</b>



REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2015  
to 15 January 2016

Bridgewater Lake Estate Pty Ltd (Controller Appointed)

Employee	Position	Rate	Totals		Task Area			
			hrs	\$	Trade On		Administration	
					hrs	\$	hrs	\$
Leisa Rafter	Partner	620	0.5	310.00	0.5	310.00		
David Whyte	Partner	560	1.4	784.00	0.3	168.00	1.1	616.00
John Somerville	Senior Manager	440	3.0	1,320.00	2.5	1,100.00	0.5	220.00
Murray Daniel	Supervisor	360	1.0	360.00	0.7	252.00	0.3	108.00
Ashleigh Simpson-Wade	Supervisor	350	7.0	2,450.00	6.3	2,205.00	0.7	245.00
Samuel Alexander	Supervisor	350	6.5	2,275.00	6.5	2,275.00		
Nicola Kennedy	Senior Accountant II	280	6.1	1,708.00	5.4	1,512.00	0.7	196.00
Sarah Cunningham	Team Assistant	195	0.8	156.00			0.8	156.00
Julia Mayne	Accountant II	195	4.9	955.50	4.3	838.50	0.6	117.00
Joanna Lane	Consultant II	170	3.4	578.00	3.4	578.00		
Sarah Matthews	Team Assistant	140	0.4	56.00	0.4	56.00		
Moira Hattingh	Team Assistant	80	0.7	56.00			0.7	56.00
TOTALS			35.7	11,008.50	30.3	9,294.50	5.4	1,714.00
			GST	1,100.85				
			TOTAL INC GST	12,109.35				
			AVERAGE HOURLY RATE	308	307	317		

**Note:** All amounts exclude GST unless otherwise noted

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2015 to 15 January 2016

Redland Bay Leisure Life Pty Ltd (Controller Appointed)

Employee	Position	Rate	Totals		Task Area							
					Assets		Trade On		Administration			
			hrs	\$	hrs	\$	hrs	\$	hrs	\$		
David Whyte	Partner	560	0.1	56.00			0.1	56.00				
John Somerville	Senior Manager	440	0.7	308.00	0.1	44.00	0.1	44.00	0.5	220.00		
Murray Daniel	Supervisor	360	0.8	288.00			0.7	252.00	0.1	36.00		
Nicola Kennedy	Senior Accountant II	280	4.1	1,148.00			3.6	1,008.00	0.5	140.00		
Damien Hicks	Senior Accountant II	225	0.3	67.50					0.3	67.50		
Sarah Cunningham	Team Assistant	195	0.2	39.00					0.2	39.00		
Julia Mayne	Accountant II	195	1.5	292.50	0.1	19.50	0.6	117.00	0.8	156.00		
Moira Hattingh	Team Assistant	80	0.6	48.00					0.6	48.00		
TOTALS			8.3	2,247.00	0.2	63.50	5.1	1,477.00	3.0	706.50		
			GST	224.70								
			TOTAL INC GST	2,471.70								
			AVERAGE HOURLY RATE	271	318		290		236			

**Note:** All amounts exclude GST unless otherwise noted

**REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November  
2015 to 15 January 2016**

**Redland Bay Leisure Life Development Pty Ltd (Controller Appointed)**

Employee	Position	Rate	Totals		Task Area			
					Trade On		Administration	
			hrs	\$	hrs	\$	hrs	\$
David Whyte	Partner	560	0.8	448.00			0.8	448.00
Murray Daniel	Supervisor	360	0.8	288.00	0.7	252.00	0.1	36.00
Nicola Kennedy	Senior Accountant II	280	0.4	112.00	0.4	112.00		
Julia Mayne	Accountant II	195	0.1	19.50			0.1	19.50
Moira Hattingh	Team Assistant	80	0.1	8.00			0.1	8.00
<b>TOTALS</b>			<b>2.2</b>	<b>875.50</b>	<b>1.1</b>	<b>364.00</b>	<b>1.1</b>	<b>511.50</b>
GST				87.55				
TOTAL INC GST				963.05				
AVERAGE HOURLY RATE				398		331		465

**Note:** All amounts exclude GST unless otherwise noted

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2015  
to 15 January 2016

Cameo Estates Lifestyle Villages (Controller Appointed)

Employee	Position	Rate	Totals		Task Area			
			hrs	\$	Trade On		Administration	
					hrs	\$	hrs	\$
David Whyte	Partner	560	0.4	224.00			0.4	224.00
John Somerville	Senior Manager	440	0.7	308.00	0.1	44.00	0.6	264.00
Murray Daniel	Supervisor	360	0.8	288.00	0.7	252.00	0.1	36.00
Nicola Kennedy	Senior Accountant II	280	2.5	700.00	2.1	588.00	0.4	112.00
Damien Hicks	Senior Accountant II	225	0.3	67.50			0.3	67.50
Sarah Cunningham	Team Assistant	195	0.1	19.50			0.1	19.50
Julia Mayne	Accountant II	195	0.3	58.50			0.3	58.50
Moira Hattingh	Team Assistant	80	0.6	48.00			0.6	48.00
TOTALS			5.7	1,713.50	2.9	884.00	2.8	829.50
			GST	171.35				
			TOTAL INC GST	1,884.85				
			AVERAGE HOURLY RATE	301	305	296		

**Note:** All amounts exclude GST unless otherwise noted