

TO THE INVESTOR AS ADDRESSED

21 December 2020

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

## 1. Introduction

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 32<sup>nd</sup> update to investors, which provides details of the progress made in the winding up of the Fund since my last report to investors dated 29 September 2020. This report should be read in conjunction with my previous reports, which are available on the website [www.lmfimf.com](http://www.lmfimf.com).

## 2. Progress and Status of the Winding Up

### 2.1 Legal Actions/Potential Recoveries

#### 2.1.1 Proceedings against the MPF, LMIM and the Directors of LMIM

I refer to my previous updates to investors in relation to a statement of claim I caused to be filed in the Supreme Court of Queensland, against a number of parties, including the MPF Trustee and a number of directors of LMIM, in respect of loss allegedly suffered by the FMIF as a result of an amount paid to the MPF in the Bellpac litigation matter. The claim was for approximately \$15.5M plus interest.

As previously advised, the Judge dismissed my claim against the directors of LMIM on 22 November 2019.

Costs were awarded in favour of the defendants.

On 20 December 2019 I filed an appeal of the decision. The progress of the appeal was awaiting the outcome of an application for judicial advice I made to the Court seeking advice from the Court that I was justified in making and pursuing the appeal. That application was heard by the Court on 2 June 2020. The Court declined to provide me with judicial advice that I was justified in pursuing the appeal. After careful consideration, taking into account all of the relevant circumstances, I have taken steps to discontinue the appeal. The directors' costs of the proceedings, the appeal and the judicial advice application are yet to be determined.

#### 2.1.2 Claim against the former auditors (EY Proceeding)

I refer to my previous updates to investors and provide a brief summary of the key events since my last report, as follows:

- As previously advised, I made an application to strike out the Privilege Claims made by the defendants in the proceedings which was heard on 14 February 2020 (the Privilege Application). Judgement was handed down by the Court in the Privilege Application on 20 October 2020 in my favour whereby certain paragraphs of the defendants defence were struck out and the defendants granted leave to make an application to replead the defence and certain other ancillary orders were made;
- Further orders were made by the Court on 20 October 2020 whereby leave was provided to me to file and serve a 7<sup>th</sup> Further Amended Statement of Claim, ancillary orders made regarding a proposed 8<sup>th</sup> Further Amended Statement of Claim, orders regarding the conduct of disclosure in the proceedings and orders for the delivery of my expert and lay evidence;
- An 8<sup>th</sup> Further Amended Statement of Claim was filed on 28 October 2020;
- Following an application made by me to be relieved from certain undertakings to the Court in related proceedings, an order was made by the Court on 2 November 2020 to allow me to more efficiently proceed with disclosure in the proceedings;
- Further orders of the Court were made on 11 December 2020 to adjust the timing for the defendants' application for leave to replead, for the delivery of further particulars, for the provision for security for costs and for the dates for discovery, and filing of expert reports to be extended to the early new year;
- The matter is otherwise presently being progressed including briefing expert witnesses, reviewing and considering reports of experts and the undertaking of disclosure.

The proceedings are ongoing working towards a trial late next year and an update will be provided in the next report.

### 2.1.3 Bellpac Proceedings - Wollongong Coal Ltd (WCL)

I refer to my previous updates to investors and provide a brief summary 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. A partial distribution of \$1M was received from the Bellpac liquidator in October 2019;
- 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 entered into a binding heads of agreement (HOA) relating to the settlement of the litigation commenced against WCL. The terms of the heads of agreement included that WCL 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;
- The conditions precedent to the settlement with WCL included obtaining necessary approvals to undertake the settlement transactions. In this regard:
  - The Bellpac Liquidator obtained creditor approval to enter into the settlement with WCL;

- o 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 was therefore required to seek shareholder approval.

The remaining condition precedent (Sunset Date) to the settlement with WCL was extended a number of times over the last four years and WCL paid \$3M towards the settlement into their solicitors' trust account, to be released upon receiving shareholder approval of the settlement.

Delays were encountered in calling the meeting of shareholders, including WCL entering into a scheme of arrangement which was terminated after failing to meet certain conditions, but which was subsequently reinstated. A revised binding heads of agreement was executed on 9 June 2020 with the conditions precedent to be satisfied by 31 October 2020.

As the conditions precedent were not going to be satisfied by 31 October 2020, the Bellpac liquidator entered into further negotiations to try and conclude a settlement. As a result of those negotiations, a further deed of settlement was entered into on 30 October 2020 with \$2.76M payable upon obtaining creditors approval and a further \$600,000 payable within six months if WCL opts to buy-back the shares held in WCL.

Creditors approved the revised deed of settlement at a meeting held on 18 November 2020 and \$2.5M was distributed to the Fund on 27 November 2020. A further \$250,000 will be distributed to the Fund in early January 2021 after the maturity of a term deposit.

A further update will be provided in the next report.

#### 2.1.4 Claims against guarantors

There is one remaining matter which can be summarised, as follows:

- PTAL as custodian of the FMIF obtained judgment against a guarantor, for approximately \$3 million, plus interest and costs. The trustee in bankruptcy has identified potential recoveries for the benefit of creditors of the bankrupt estate, of which the Fund is a major creditor. The bankrupt, along with other parties, contributed land to a development. The land was subdivided, developed and sold, and the net proceeds of sale in the sum of approximately \$12 million is presently held in a solicitors trust account on an interim basis, protected by certain undertakings given by the solicitor holding the funds. The trustee claims an entitlement in respect of all or at least a substantial portion of the funds held in the solicitors trust account; however, other parties to the dispute allege that associated entities of the bankrupt are entitled to the funds. I instructed PTAL as custodian of the FMIF to enter into a Deed of Indemnity to fund a public examination and any agreed recovery proceedings in respect of this matter. A public examination was held in the Federal Court on 7, 12, 13, 18 and 19 November 2019. Subsequently, demands were served on several parties. The trustee has held two mediations with several parties in relation to the dispute and the most recent mediation held on 11 September 2020 has been adjourned with settlement discussions ongoing.

#### 2.1.5 Liquidators of LMIM (FTI Consulting)

##### 2.1.5.1 Remuneration claim and expenses claim

I refer to my previous reports to investors.

The judgement regarding and orders made in relation to FTI's first remuneration claim and indemnity claim are available on the websites [www.lmfimf.com](http://www.lmfimf.com) and [www.lminvestmentadministration.com](http://www.lminvestmentadministration.com).

The judgement and orders made with respect to FTI's second remuneration claim are summarised in paragraph 2.1.5.2 of my report to investors dated 31 March 2020.

#### 2.1.5.2 Third FTI Remuneration Application

I was provided with a further application by FTI for approval of remuneration on 5 May 2020. The application seeks a total of \$194,180.25 from the FMIF for the period 1 July 2018 to 29 February 2020, made up of Category 1 remuneration (remuneration that is specifically referable to the FMIF) of \$126,462, and Category 2 Remuneration (remuneration that relates to all of the funds of which LMIM is the Responsible Entity) of \$67,717.65.

The application has not yet been filed or listed for hearing although I have raised a number of queries with FTI in relation to the application.

FTI has been followed up several times for an update on when the application will be progressed however has not provided a meaningful response other than to say it would be after the handing down of the decision of my most recent remuneration application. This was handed down on 15 October 2020.

An update regarding this application, will be provided in my next report to investors.

#### 2.1.5.3 Indemnity claim against the Fund and proof of debt process

The proof of debt process and claims notified to me, or potential claims by LMIM for indemnity from the FMIF, with respect to debts or claims of creditors of LMIM, are summarised in paragraph 2.1.5.3 of my report to investors dated 31 March 2020.

There have been no significant developments in relation to these indemnity claims since my last report to investors.

#### 2.1.5.4 Expenses

The judgment and orders of the Court made with respect to two further applications by the Liquidator for payment of expenses from the FMIF, which were heard in January and February of 2020, are summarised in paragraph 2.1.5.4 of my report to investors dated 31 March 2020.

FTI informed me some-time ago that they intend to make a further claim against the Fund for indemnity for expenses incurred by LMIM and/or the Liquidator, however despite several enquiries regarding the status of this claim, the application and supporting material has not yet been received.

#### 2.1.5.5 Further application by FTI for directions

The judgment and orders of the Court with respect to a further application filed by Mr Park on 10 October 2018 seeking directions in relation to the dual appointments of Mr Park and I to wind up the FMIF are summarised in paragraph 2.1.5.5 of my report to investors dated 31 March 2020.

#### 2.1.5.6 Claim filed against LMIM

The claims made in this proceeding and the key steps to date in the proceeding, are summarised in paragraph 2.1.5.6 of my report to investors dated 19 December 2019. The current status of this claim is that it remains stayed until further order. I will keep investors updated as to any developments in relation to this claim.

### 3 Management Accounts

As advised in my previous report, the management accounts for the year ended 30 June 2020 are available on the website [www.lmfmf.com](http://www.lmfmf.com).

The management accounts for the half year ending 31 December 2020 will be uploaded to the website [www.lmfmf.com](http://www.lmfmf.com) by 31 March 2021.

#### 4.1 Estimated Return to Investors

##### 4.1.1 Based on current cash at bank and excluding future recoveries and costs

I provide an estimated remaining return to Investors of 6.7 cents per unit as at 30 November 2020, and a total estimated return of 13.2 cents per unit taking into account the interim distribution paid of 6.5 cents per unit, calculated as follows:

Description	\$ Amount
Cash at bank	33,417,046
Estimated Assets Position	33,417,046
Other unsecured creditors	(1,455,211)
Returned First Interim Distribution to investors (6.5 cents)	(1,566,964)
Receiver's fees & outlays (BDO) 1 May 2020 to 30 November 2020	(1,300,908)
Total Liabilities	(4,323,083)
Estimated net amount available to investors as at 30 November 2020	29,093,963
Benefit of Feeder Fund settlement of amounts withheld*	3,757,725*
Total estimated amount available to investors	32,851,688
Total investor units (AUD Equivalent as at date of appointment)	492,125,624
Estimated return in the dollar	6.7 cents
Add: Distributions to date	6.5 cents
Total estimated return in the dollar	13.2 cents

If further recoveries are made this will increase the amount due from the Feeder Funds settlement.

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 or other third parties.

The Feeder Fund settlement will reduce the amount of cash to be paid to the Feeder Funds. Based on the amounts in the above table, I attach at Annexure 1 calculations showing the net amounts payable to the Feeder Funds, as follows:

Feeder Fund	Estimated Return
LM Currency Protected Australian Income Fund ("CPAIF")	3.5 cents
LM Institutional Currency Protected Australian Income Fund ("ICPAIF")	3.5 cents
LM Wholesale First Mortgage Income Fund ("WMFIF")	5.2 cents

These are the amounts that would be paid to the responsible entities of each of the Feeder Funds, the costs and expenses of the Feeder Funds would need to be distributed from the net cash that is paid to each of the Feeder Funds before distributions are made to Feeder Fund investors.

#### 4.2 Further Distributions to Investors

The Court authorised and empowered me on 2 October 2019 to make an interim capital distribution of 6.5 cents per unit to investors of the LM First Mortgage Income Fund. I confirm the interim distribution was paid to investors in October 2019.

Once the above matters in section 2 have been finalised, I intend to pay, subject to court approval, the final distribution to investors.

#### 4.3 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 4.4 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 31 March 2021.

#### 4.4 Investors Queries

For any changes to investors details, please review the Useful Forms/Procedures tab on the website [www.lmfmfif.com](http://www.lmfmfif.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](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

## 5 Receiver's Remuneration and Expenses

There have been thirteen applications to Court to date to approve my remuneration from the date of my appointment on 8 August 2013 until 30 April 2020.

The thirteenth application for the approval of my remuneration for the period 1 November 2019 to 30 April 2020 was heard by the Court on 2 July 2020 with the decision handed down on 15 October 2020. My remuneration claim for this period was approved in the amount of \$989,373.55 (inclusive of GST). During this period, my disbursements were \$1,363.49 (inclusive of GST).

A copy of all documentation in relation to my applications can be found on the website [www.lmfmif.com](http://www.lmfmif.com).

In addition to the remuneration previously approved by the Court and the thirteenth application set out above, I calculate that, on a time basis, I have incurred further remuneration of \$1,020,768.50 (exclusive of GST) plus disbursements of \$6,333.45 (exclusive of GST) from 1 May 2020 to 31 October 2020 as detailed in the attached summary.

An application to court for approval of this remuneration is currently being prepared and will be heard early in the New Year. Investors will be notified of the relevant details and the material lodged in support of the application will be available on the website [www.lmfmif.com](http://www.lmfmif.com)

## 6 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



ANNEXURE 1  
ESTIMATED RETURN TO FEEDER FUNDS

Feeder Fund	Number of Units	Estimated Return to Feeder Funds as at 30 November 2020			
		Distribution (\$)	Amounts withheld (\$)	Net Amount Paid (\$)	Net Cents per Unit
CPAIF	120,702,630	7,135,816	2,854,326	4,281,490	3.5
ICPAIF	9,350,802	552,810	221,124	331,686	3.5
WFMIF	99,488,929	5,881,684	682,275	5,199,408	5.2
Total	229,542,361	13,570,310	3,757,725	9,812,584	



REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 May 2020 to 31 October 2020  
LM First Mortgage Income Fund (Receiver Appointed)

Employee	Position	Rate	Totals		Task Area									
					Assets		Creditors		Trade On		Dividends		Administration	
			hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
David Whyte	Partner	615	217.5	133,762.50	122.3	75,214.50	8.4	5,166.00	15.4	9,471.00	1.6	984.00	69.8	42,927.00
Clark Jarrold	Partner	615	116.0	71,340.00	116.0	71,340.00								
Gerry Collins	Partner	615	40.8	25,092.00					3.2	1,968.00			37.6	23,124.00
Craig Jenkins	Partner	540	13.6	7,344.00	13.6	7,344.00								
Charles Haines	Associate Director	525	22.0	11,550.00	1.7	892.50	9.0	4,725.00			0.9	472.50	10.4	5,460.00
Arthur Taylor	Senior Manager	500	340.2	170,100.00	333.7	166,850.00			6.5	3,250.00				
Julie Pagcu	Associate Director	465	120.2	55,893.00	120.2	55,893.00								
Jayden Coulston	Manager	460	99.8	45,908.00			96.4	44,344.00			2.0	920.00	1.4	644.00
Antoinette Fielding	Senior Accountant	330	0.1	33.00			0.1	33.00						
Ryan Whyte	Accountant	275	717.9	197,422.50	393.4	108,185.00	178.8	49,170.00	141.3	38,857.50	0.4	110.00	4.0	1,100.00
Jordan Devery	Graduate Accountant	225	556.0	125,100.00	217.7	48,982.50	318.0	71,550.00	15.0	3,375.00	4.9	1,102.50	0.4	90.00
Liam Landrigan	Graduate Accountant	225	709.6	159,660.00	61.8	13,905.00	643.0	144,675.00					4.8	1,080.00
Sarah Cunningham	Accounting Assistant	225	55.1	12,397.50									55.1	12,397.50
Moir Hattingh	Practice Assistant	105	49.2	5,166.00									49.2	5,166.00
TOTALS			3,058.0	1,020,768.50	1,380.4	548,606.50	1,253.7	319,663.00	181.4	56,921.50	9.8	3,589.00	232.7	91,988.50
			GST	102,076.85										
			TOTAL INC GST	1,122,845.35										
AVERAGE HOURLY RATE			334		397		255		314		366		395	

Note: All amounts exclude GST unless otherwise noted



**Disbursements for the period 1 May 2020 to 31 October 2020**  
**LM First Mortgage Income Fund (Receiver Appointed)**

Expense Type	Amount (\$ ex GST)
Postage	5,358.46
Travel	5.73
InfoTrack	969.26
<b>TOTAL</b>	<b>6,333.45</b>
<b>GST</b>	<b>633.35</b>
<b>TOTAL INC GST</b>	<b>6,966.80</b>