

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)

First Applicant: JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 007 208 461 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 LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288

AND

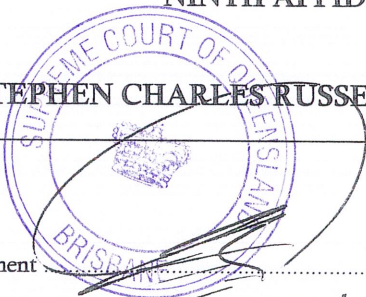
First Respondent: DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001

AND

Second Respondent: SAID JAHANI IN HIS CAPACITY AS RECEIVER AND MANAGER OF THE ASSETS, UNDERTAKING, RIGHTS AND INTERESTS OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 AS THE RESPONSIBLE ENTITY OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 110 247 875 AND THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 122 052 868

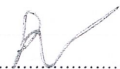
NINTH AFFIDAVIT OF STEPHEN CHARLES RUSSELL

I, **STEPHEN CHARLES RUSSELL** of Level 18, 300 Queen Street, Brisbane in the State of



Page 1

Deponent

Taken by 

NINTH AFFIDAVIT OF STEPHEN CHARLES RUSSELL
Filed on behalf of the First Applicant
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Russells
Level 18, 300 Queen Street
Brisbane QLD 4000
Tel: (07) 3004 8888
Fax: (07) 3004 8899
Ref: MKR:20200030

Queensland, Solicitor, state on oath:

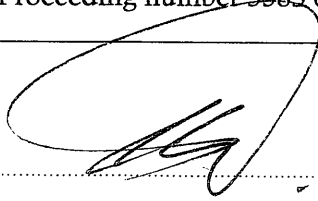
1. I am a solicitor of this Honourable Court and the Managing Partner of Russells, Solicitors for the Applicants. I have the conduct of this proceeding and of numerous related matters for the Applicants.
2. Now produced and shown to me and marked “**SCR-9**” is an indexed, paginated bundle of documents to which I shall refer to in more detail throughout my Affidavit. References in square brackets are references to page numbers in the bundle of documents at “**SCR-9**”.
3. The present application is for approval of expenses of the Applicants, being legal costs and disbursements, pursuant to the order of Justice Jackson, made on 17 December 2015, as varied by his Honour on 18 July 2018.
4. The invoices the subject of this Application are those referred to in Mr Park's Fifteenth Affidavit (and summarised below); they were rendered for legal advice and services provided by my firm to the Liquidators of the Second Applicant (LMIM) acting as Responsible Entity for the LM First Mortgage Investment Fund ARSN 089 343 288 (FMIF) in relation to the following matters (identified by the following matter numbers):
 - (a) 20141556 – Remuneration of the Receiver David Whyte (**Remuneration Application Retainer**);
 - (b) 20190072 – Supreme Court Proceeding Number 2166 of 2015 (**EY Proceeding Retainer**); and
 - (c) 20131259 – Directions regarding the winding-up of the FMIF (**Interim Distribution Application Retainer**).

The Remuneration Application Retainer

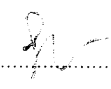
5. My firm is retained by LMIM (by the Liquidator) to advise them and act for LMIM in Supreme Court Proceeding 3383 of 2013 in which LMIM is a Respondent. The written retainer agreement for the retainer is at [1] to [8].
6. As the Court Appointed Receiver of the FMIF and in accordance with the orders of the Honourable Justice Dalton made 21 August 2013, in Supreme Court of Queensland Proceeding number 3383 of 2013, Mr Whyte is entitled to claim remuneration in respect

Page 2

Deponent



Taken by



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of the time spent by him and by employees of his firm who perform work in carrying out the Appointment (as defined in the order) at rates and in the sums from time to time approved by the Court and to be indemnified out of the assets of the FMIF in respect of any approved remuneration.

7. The services rendered in the Remuneration Application Retainer were work done in relation to numerous applications filed by Mr Whyte for approval and payment of his remuneration as receiver of the FMIF from the assets of the FMIF. LMIM has, on one occasion, appeared, represented by counsel, and made substantive submissions on the (approximately) bi-annual applications by Mr Whyte for approval of his remuneration in respect of the winding-up of the FMIF, and ancillary orders for payment thereof. That occasion resulted in the judgment *Bruce & another v LM Investment Management Limited & others* [2020] QSC 317.
8. That judgment included an order for the payment of the costs incurred by LMIM (on the instructions of the Liquidator); and those costs have been quantified and paid.
9. Otherwise, the Liquidator's instructions in respect of the Remuneration Application Retainer are, in summary, to the following effect:
 - (a) The winding up of the FMIF has taken a very long time – almost nine years.
 - (b) Particularly in recent years, the conclusion of the winding up has been delayed by the institution of proceedings against EY (Ernst Young) the auditors of the FMIF.
 - (c) Those proceedings have been very expensive.
 - (d) The utility of the proceedings is a matter of concern to the Liquidator.
10. The services rendered to date in the Remuneration Application Retainer were for advice, in the context of those instructions, in respect of the applications filed by Mr Whyte on the following dates:
 - (a) 7 November 2014 (CFI 224);
 - (b) 8 June 2016 (CFI 316);
 - (c) 10 November 2017 (CFI 379);

- (d) 1 June 2018 (CFI 391);
- (e) 14 November 2018 (CFI 400);
- (f) 6 June 2019 (CFI 437);
- (g) 2 March 2021 (CFI 483);
- (h) 14 July 2021 (CFI 496); and
- (i) 2 December 2021 (CFI 510).

(I shall refer to these applications as the **Remuneration Applications**.)

- 11. The work undertaken in relation to the Remuneration Applications was, in summary, reviewing the Applications and voluminous supporting Affidavit evidence, advising the First Applicant in relation to the proportionality and reasonableness of the remuneration sought and corresponding with Mr Whyte's solicitors in regard to the First Applicant's response to the Applications, both generally and, more recently, in accordance with the process established by the orders of the Honourable Justice Callaghan in *Bruce & another v LM Investment Management Limited & others* [2020] QSC 317.
- 12. Each of the Remuneration Applications involved the examination of large affidavits (by Mr Whyte and others) served on LMIM, care of my firm, as the solicitors on record for LMIM.
- 13. These services were undertaken in my firm by various persons under my ultimate supervision as managing partner; initially by Mr Ashely Tiplady, then a Partner of the firm, and later by Ms Millicent Russell, a Partner of the firm. Mr Tiplady and Ms Russell had the direct responsibility for the matter and various other solicitors and support staff worked under their supervision.

The EY Proceeding Retainer

- 14. My firm is retained by LMIM (by the Liquidator) to advise them and act for LMIM in Supreme Court Proceeding 3383 of 2013 (**EY Proceeding**) to which LMIM was joined as a Third Party. The written retainer agreement for the retainer is at [9] to [19].
- 15. The services rendered in the EY Proceeding Retainer that are the subject of this Application were provided to LMIM in respect of the Third-Party proceeding against

LMIM in the EY Proceeding. On 17 October 2019, Jackson J delivered reasons for judgment: *LM Investment Management Limited (in liq) v EY (also known as Ernst & Young) & Ors* [2019] QSC 258. As appears therefrom, his Honour made two orders for costs on that occasion in favour of LMIM (as First Third-Party), namely that:

- (a) the defendants (EY) pay the first third party's costs of the application filed by the defendants on 21 June 2019; and
 - (b) the applicant (LMIM, by Mr Whyte) pay the first third party's costs of the application filed by the applicant on 21 June 2019.
16. LMIM eventually recovered sums, on the standard basis, under those orders for costs. However, there remains \$16,254.90 as legal costs incurred by LMIM (on instructions of the Liquidator) for the legal services in respect of the EY Proceeding Retainer.
17. The balance of the services in respect of the EY Proceeding Retainer relates to advice concerning documents that Mr Whyte has disclosed in the EY Proceeding but which were first reviewed by our firm. The work undertaken involved reviewing the documents provided by Mr Whyte's solicitors, advising the client in respect of whether they were subject to privilege and corresponding with the solicitors of Mr Whyte as to whether the Applicants objected to their disclosure.
18. The EY Proceeding Services were undertaken in my firm by various persons under my ultimate supervision as managing partner; principally by Ms Millicent Russell a Partner of the firm with the direct responsibility for the matter and various other solicitors and support staff worked under her supervision.

Interim Distribution Application Retainer

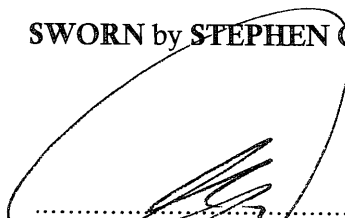
19. On 1 February 2019, Mr Whyte filed an application in this Proceeding, (CFI 206), seeking orders to the effect that Mr Whyte have the authority to make an interim distribution to the members of the FMIF of up to \$40 million (**Interim Distribution Application**).
20. My firm was retained by the Liquidator for LMIM to advise and act for LMIM in respect of the Interim Distribution Application. The written retainer agreement for the retainer is at [1] to [8]. The application was heard by the Honourable Justice Jackson on 13 March 2019. Following advice, the Liquidator did not appear at that hearing.

21. Subsequent to the hearing, two directors of LMIM commenced corresponding with the parties to the Application and the Court advising that they wished to be heard on the Application and advertising their intention to re-open the Interim Distribution Application.
22. The Interim Distribution Application Retainer the subject of this Application concerns work performed reviewing this correspondence and providing advice in respect of it.
23. The work for the Interim Distribution Application Retainer was undertaken in my firm by various persons under my ultimate supervision as managing partner; principally by Mr Julian Walsh, then a Special Counsel of the firm and various other solicitors and support staff working under his supervision.

General

24. All the professional fees were rendered on my firm's usual rates of charge in accordance with our agreement with LMIM and the Liquidators and the fees rendered to the Liquidators were incurred in connection with LMIM acting as Responsible Entity for the FMIF.
25. When rendering invoices for professional services, it is my firm's practice that the supervising partner examines the time recorded before the time is charged; and that only time that can properly and reasonably be charged is the subject of a charge for professional fees. That practice was followed in respect of each of the invoices the subject of the present application.
26. Having reviewed the invoices the subject of the present application, I am not aware of any reason why the expenses comprised by these legal fees and disbursements, incurred by LMIM and its Liquidator would not be payable out of the property of the FMIF.
27. All the facts and circumstances herein deposed to are within my own knowledge, save such as are deposed to from information only, and my means of knowledge and sources of information appear in this my affidavit.

SWORN by **STEPHEN CHARLES RUSSELL** on 2, March 2022 at Brisbane in the presence of:



 Stephen Charles Russell
 Deponent



 Name: Francis Joseph
 Lawyer/Commissioner for Declarations/JP

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

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CERTIFICATE OF EXHIBIT

CERTIFICATE OF EXHIBIT
Filed on behalf of the First Applicant
Form 47, Version 2
Uniform Civil Procedure Rules 1999
Rule 435

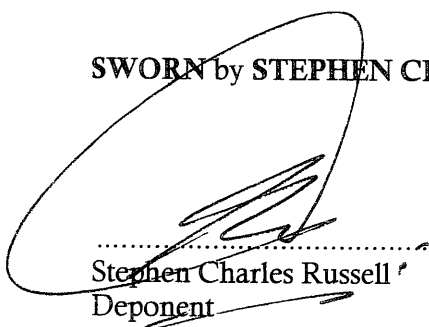
Russells
Level 18, 300 Queen Street
Brisbane QLD 4000
Tel: (07) 3004 8888
Fax: (07) 3004 8899
Ref: MKR:20200030

21. Subsequent to the hearing, two directors of LMIM commenced corresponding with the parties to the Application and the Court advising that they wished to be heard on the Application and advertising their intention to re-open the Interim Distribution Application.
22. The Interim Distribution Application Retainer the subject of this Application concerns work performed reviewing this correspondence and providing advice in respect of it.
23. The work for the Interim Distribution Application Retainer was undertaken in my firm by various persons under my ultimate supervision as managing partner; principally by Mr Julian Walsh, then a Special Counsel of the firm and various other solicitors and support staff working under his supervision.

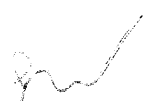
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27. All the facts and circumstances herein deposed to are within my own knowledge, save such as are deposed to from information only, and my means of knowledge and sources of information appear in this my affidavit.

SWORN by **STEPHEN CHARLES RUSSELL** on 4 March 2022 at Brisbane in the presence of:



.....
 Stephen Charles Russell
 Deponent



.....
 Name: Francis Joseph
 Lawyer/Commissioner for Declarations/JP

SUPREME COURT OF QUEENSLAND

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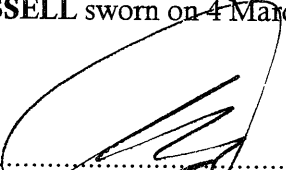
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**INDEX OF EXHIBITS
TO AFFIDAVIT OF STEPHEN CHARLES RUSSELL
SCR-9**

INDEX OF EXHIBITS
Filed on behalf of the Plaintiff
Uniform Civil Procedure Rules 1999

Russells
Level 18, 300 Queen Street
Brisbane QLD 4000
Tel: (07) 3004 8888
Fax: (07) 3004 8899
Ref: FHJ:20200030

Bound and marked "SCR-09" are the exhibits to the affidavit of **STEPHEN CHARLES RUSSELL** sworn on 4 March 2022:


.....
Stephen Charles Russell
Deponent



.....
Name: Francis Joseph
Lawyer/Commissioner for Declarations/JP

EXHIBIT NO.	DESCRIPTION	DATE	PAGE NOS
28.	Professional Services Agreement between Russells and John Park and Ginette Muller, LM Investment Management Limited (Administrators Appointed)	12.04.2013	1 to 8
29.	Professional Services Agreement between Russells and John Park in his capacity as liquidator of LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)	07.03.2019	9 to 19

RUSSELLS

PROFESSIONAL SERVICES AGREEMENT

BETWEEN: RUSSELLS, Solicitors, of Level 21, 300 Queen Street, Brisbane 4000 ("the Firm")

AND: JOHN PARK AND GINETTE MULLER, LM
INVESTMENT MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED) ACN 077 208 461
c/- FTI Consulting (Australia) Pty Ltd, GPO Box 3127,
Brisbane Queensland 4000 (collectively, "the Client")

1. Acceptance of Offer

- 1.1 This document constitutes an offer by the Firm to the Client to enter into a Professional Services Agreement.
- 1.2 The Client may accept this offer and enter into the Agreement by:-
- (a) signing and returning this Agreement to the Firm;
 - (b) paying money to the Firm;
 - (c) instructing the Firm to act; or
 - (d) signing (in handwriting, digitally, electronically or otherwise) and giving to the Firm any document whereby the Client asks or instructs the Firm to proceed with the work set out in Clause 4.1.

2. Obligations of the Firm

- 2.1 The Firm must render the legal services with reasonable skill and diligence.
- 2.2 The Firm must, as far as reasonably practicable, keep the Client informed of the progress of the matter.
- 2.3 The Firm must act on the instructions of the Client, so far as it is lawful to do so.

3. Obligations of the Client

- 3.1 The Client must:-
- (a) provide the Firm with timely and accurate instructions, including all documents relevant to the matters the subject of this Agreement;

Liability limited by a scheme approved under professional standards legislation

- (b) make arrangements with the Firm to remain in contact with the Firm and available to give instructions when necessary; and
- (c) pay the professional fees and disbursements charged by the Firm, in accordance with this Agreement.

4. The Services

4.1 The Client retains the Firm to render the legal services described as follows:-

To advise upon and conduct Supreme Court of Queensland proceeding number 3383 of 2011 on behalf of the First Respondent, regarding the LM First Mortgage Income Fund;

To advise you on legal issues arising from or in connection with the administration of LM Investment Management Limited (Administrators Appointed); and

Such other services which are, in the Firm's opinion, reasonably necessary for that purpose or which are, in the Firm's opinion, incidental thereto.

4.2 These are the Client's instructions as understood by the Firm. The Client should immediately contact the Firm if the Firm has misunderstood the Client's instructions.

5. Professional Fees

5.1 The Firm charges for work on the basis of the time spent by the Lawyers who render the legal services under the Retainer.

5.2 Professional fees are calculated at an hourly rate. Subject to Clause 7 below, the hourly rates of the Firm's Lawyers are, at the date of this Agreement, as follows:-

Mr Stephen Russell	\$650.00 per hour
Mr Peter McLeod	\$525.00 per hour
Mrs Malisa Craig	\$475.00 per hour
Mr Chris Studach	\$500.00 per hour
Mr Ashley Tiplady	\$550.00 per hour
Mr Mark Gray	\$500.00 per hour
Mr Michael Miller	\$400.00 per hour
Mr Brian O'Shea	\$350.00 per hour
Mr Martin Taylor	\$400.00 per hour
Mrs Clare Owen	\$400.00 per hour

Ms Ilenna Copley	\$495.00 per hour
Mr Daniel Goodwin	\$375.00 per hour
Mrs Amanda Skoien	\$350.00 per hour
Ms Teneale Henderson	\$300.00 per hour
Mr Derek Finch	\$325.00 per hour
Mr Sarmein Jamieson	\$325.00 per hour
Ms Shani Trabucco	\$275.00 per hour
Mrs Monique Clarke	\$275.00 per hour
Mr Sean Russell	\$250.00 per hour
Mr Tim McCarthy	\$250.00 per hour

- 5.3 The Firm periodically reviews its rates of charge. The Firm may, by written notice to the Client, change all or any of these hourly rates. Such notice may be given by notation of the new hourly rate on any account. Any such notice must be given promptly.
- 5.4 The Client acknowledges and agrees that:-
- (a) from time to time, the Lawyers nominated as having conduct of the matter at the date of this Agreement may change for various reasons (for example, annual leave, cessation of employment, re-organisation of resources within the Firm etc);
 - (b) from time to time, it may be necessary for the Firm to direct other Lawyers to undertake work on the matter;
 - (c) when such changes occur, the Firm will advise the Client;
 - (d) further, in order properly to conduct the matter the subject of this Agreement, the Lawyer(s) having conduct of the matter from time to time may consult with, and receive supervision or direction from other Lawyers in the Firm, including one or more Partners;
 - (e) the Firm shall keep appropriate time records of such attendances in the same way as other professional attendances;
 - (f) the Client is liable for, and shall pay the Fees for the professional work involved in such consultations, supervision or directions.
- 5.5 The Firm cannot increase its rates of charge for Lawyers under this Agreement by more than 10% per annum.
- 5.6 The method which the Firm employs in recording the time spent on a matter is based upon minimum five minute units. This does not mean that the Firm charges the Client for every single piece of work as though it was of five minutes duration. Nor does the Firm charge,

literally, for every piece of work. The Firm endeavours to be fair when recording time and charging fees. For example, if a Lawyer makes a telephone call limited simply to leaving a message for a person to return the call, and that is the only work done, there is no time recorded and no professional charge made.

- 5.7 However, more substantive work which takes less than five minutes is charged on the basis that it took five minutes. Similarly, work which takes a little over five minutes will be charged as though it took only five minutes.
- 5.8 Although the Firm endeavours to be as careful and as fair as possible with its time recording, the Client acknowledges and agrees that the time which is recorded for the purpose of charging professional fees on the hourly rates mentioned above will never be perfectly accurate and there will inevitably be work recorded as taking more time than the precise time actually taken (and vice versa).

6. Other Charges

- 6.1 The Firm will bear and pay its operating and indirect costs. Accordingly, there will be no additional charges for internal photocopying, faxing, emails, telephone call costs, printing, taxis, deliveries or staff overtime. However, in addition to the professional fees set out in Clause 5 and subject to Clause 7 below, the Client shall also pay the following charges:-
- (a) fees payable to barristers. The Firm is authorised to retain a barrister or barristers to conduct Court work, provide other advice or other services in relation to the matter. The Firm will generally consult the Client as to the choice of the barrister but the Firm retains the right to brief a barrister and to select the appropriate barrister;
 - (b) travel and accommodation costs. The Firm will travel with Qantas within Australia. Partners fly business class and other staff will travel economy class. International travel will be subject to the Client's prior authorisation;
 - (c) where reasonably practical, the Firm will contract out large photocopying, binding and collation work;
 - (d) other costs or charges payable to third parties, and which we incur on your behalf, directly referable to your matter. These include search fees, the cost of expert consultants, expert reports, electronic disclosure costs, filing and lodgment fees, fees payable to process servers, agents' fees including fees payable to interstate Lawyers, witness fees, transcript fees etc. These fees are charge at their invoiced cost.
- 6.2 Where new professional staff join the Firm after the date of this Agreement, and those staff undertake professional work for the Client, the Firm will give notice thereof to the Client. The Firm must charge the Client for such work at a rate commensurate with the seniority and experience of such staff, by reference to the rates set out above (or prevailing at the time those staff join the Firm).

7. Goods and Services Tax ("GST")

- 7.1 In addition to the fees, disbursements and other monies payable by the Client to the Firm under this Agreement, the Client must, upon receipt of an account (in this clause, a "tax invoice") from the Firm, pay the Firm an amount equal to the GST paid or payable by the Firm on the taxable supply specified in the tax invoice on the same basis as the other monies are payable by the Client under this Agreement.
- 7.2 The Firm must render a tax invoice to the Client including the amount of GST referable to the taxable supply.
- 7.3 The Firm must include in each tax invoice under this clause such particulars as are required by the GST law in order that the Client may obtain a credit for the amount of GST payable on the taxable supply.
- 7.4 For the avoidance of doubt, the Client hereby authorises the Firm to act as the Client's agent in relation to each and every cost, expense or disbursement which the Firm incurs or makes in the course of discharging the retainer, or with respect to the retainer and whether directly or indirectly therefor.

8. Payment in Advance

- 8.1 The Firm does not extend credit to its Clients.
- 8.2 The Client shall deposit to the Firm's trust account the sum of \$20,000.00 to be held by the Firm for professional fees and disbursements, including GST.
- 8.3 If the Client does not, for any reason, make such advance payments, the Firm may suspend work or terminate this Agreement, irrespective of the stage of the matter, even if to do so would prejudice the Client's interests. The Client acknowledges and agrees that the Firm is not obliged to extend credit to the Client. The Client understands that it should not retain the Firm if the Client is unable to pay the fees and disbursements under this Agreement.

9. Authority to transfer Fees and Disbursements; Security

- 9.1 The Client hereby irrevocably authorises the Firm to transfer from its trust account to its general account any money held from time to time (whether on account of professional fees and disbursements or not and whether paid by the Client or not) in payment of accounts rendered by the Firm to the Client from time to time in relation to this matter, or in relation to any other matter in which the Firm may be acting for the Client.
- 9.2 The Client hereby charges in favour of the Firm, sums owing or to become owing by the Client to the Firm:-
- (a) the proceeds of any litigation or dispute which the Firm conducts on the Client's behalf under this or any other retainer;

(b) any real or personal property of any form, of which possession, ownership or other interest is recovered by reason of the services rendered by the Firm to the Client.

9.3 The Client hereby irrevocably authorises the Firm to receive into its trust account the proceeds of any judgment, award, settlement, compromise or agreement in respect of which the Firm acts for the Client.

10. Accounts

10.1 The Firm will render interim accounts to the Client where appropriate - usually monthly - but in some cases it may be appropriate to render accounts either more or less frequently.

10.2 If, at any time, the Client seeks further details of the work done (for example to allow the Client to decide whether the fees and costs in the account are reasonable and in accordance with this Agreement), then the Firm must provide such details as the Client reasonably requests.

10.3 The Client must pay accounts within 30 days of issue.

10.4 If accounts are not paid from time to time, the Firm may suspend work or terminate this Agreement, even if that would prejudice the Client's interests.

11. Costs Orders

11.1 The Client acknowledges that if the Client is successful in the litigation (or any part thereof), the other party may be ordered to pay the Client's costs. The Firm estimates that the total of the fees and disbursements which would be the subject of such an order would be between one-half and two-thirds of the Firm's total fees and disbursements the Firm charges the Client.

11.2 The Client acknowledges that if the Client is not successful in the whole or any part of any litigation or dispute the subject of this Agreement, the Client may be ordered to pay another party's fees and disbursements.

11.3 The Client acknowledges that the Client's failure to provide documents or give prompt and accurate instructions to the Firm may result in such orders being made.

12. Amendment

12.1 This Agreement may be amended only in writing signed by the Firm and the Client.

13. Client may terminate

- 13.1 The Client may terminate this Agreement at any time, but such termination does not affect:-
- (a) any of the Client's obligations or any of the Firm's rights or authority under this Agreement;
 - (b) the Firm's security and rights under Clause 9.
- 13.2 The Firm will retain priority over any other solicitor whom the Client retains in relation to the subject-matter of this Agreement in place of the Firm.
- 13.3 The Firm is entitled to a lien to retain all of the Client's documents and any other property in its custody, to secure any fees and charges owing to the Firm under this or any other retainer.

14. The Firm may terminate

- 14.1 The Firm may terminate this Agreement and cease to act for the Client for lawful cause, including if the Client:-
- (a) breaches this Agreement;
 - (b) asks the Firm to act unlawfully or unethically;
 - (c) fails to give the Firm adequate or timely instructions;
 - (d) indicates that the Client has lost confidence in the Firm;
 - (e) fails to pay the professional fees and charges due under this Agreement, or to deposit monies in the Firm's trust account in accordance with any reasonable request from time to time;
 - (f) loses legal capacity.
- 14.2 The Firm must give the Client reasonable notice of its intention to terminate this Agreement.
- 14.3 Termination of this Agreement by the Firm does not affect the Firm's rights to be paid its fees and disbursements in accordance with this Agreement, nor its other rights under this Agreement.

15. *Legal Profession Act 2007 (Qld)*

- 15.1 The Client agrees with the Firm that Chapter 3, Part 3.4, Division 7 of the *Legal Profession Act 2007 (Qld)* does not apply to this Agreement.

16. Destruction of files

- 16.1 The Client authorises the Firm to destroy the file seven years after this Agreement is completed or terminated, or such lesser period depending upon the nature of the matter.

17. Acknowledgment

17.1 The Client has read, understood and agrees to be bound by the terms of this Agreement.

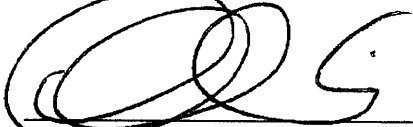
17.2 The Client has received and will retain the Client's own copy of this Agreement.

DATED this 12th day of April, 2013.

Signed:



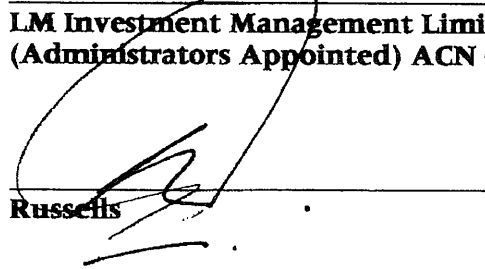
Mr John Park



Ms Ginette Muller



**LM Investment Management Limited
(Administrators Appointed) ACN 077 208 461**



Russells

Client	Re	Matter No
LM Investment Management Limited (Administrators Appointed)	LM First Mortgage Income Fund	20130471

RUSSELLS

PROFESSIONAL SERVICES AGREEMENT

BETWEEN: **Russells**, Solicitors, of Level 18, 300 Queen Street, Brisbane, Qld 4000
("Firm")

AND: **Mr John Park in his capacity as liquidator of LM Investment Management Limited (in Liquidation) (Receivers and Managers Appointed) ACN 077 208**
461 c/- FTI Consulting (Australia) Pty Ltd of Level 20, Central Plaza One,
345 Queen Street, Brisbane City, QLD 4000 ("Client")

1. OFFER

- (a) This document constitutes an offer by the Firm to the Client to enter into a Professional Services Agreement, by which Part 3.4 of the *Legal Profession Act 2007 (Qld)* ("Act") will apply. The Client may accept this offer and enter into the Agreement by:
- (i) signing (handwriting, digitally or electronically) and returning this Agreement to the Firm;
 - (ii) paying money to the Firm; or
 - (iii) instructing the Firm to act.
- (b) A Disclosure Notice accompanies this Agreement. By signing this Agreement, or otherwise accepting the Firm's offer, the Client acknowledges that the Client has received the Disclosure Notice and has read the Disclosure Notice.

2. OBLIGATIONS OF THE FIRM

- (a) The Firm must render the legal services with reasonable skill and diligence.
- (b) The Firm must, as far as reasonably practicable, keep the Client informed of the progress of the matter.
- (c) The Firm must act on the instructions of the Client, so far as it is lawful to do so.

3. OBLIGATIONS OF THE CLIENT

- (a) The Client must:

Liability limited by a scheme approved under professional standards legislation

Brisbane, Brisbane
Postal: GPO Box 400, Brisbane, QLD 4001. Phone: Level 18, 300 Queen Street, Brisbane, QLD 4000
Telephone: 07 3224 0282. Facsimile: 07 3224 0100
Email: enquiries@russells.com.au

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- (i) provide the Firm with timely and accurate instructions, including all documents relevant to the matters the subject of this Agreement;
 - (ii) make arrangements with the Firm to remain in contact with the Firm and available to give instructions when necessary; and
- (b) pay the professional fees and disbursements charged by the Firm, in accordance with this Agreement.

4. THE SERVICES

The Client retains the Firm to render the legal services described as follows:

Advise upon and act in Supreme Court of Queensland proceeding number 2116 of 2015, being the EY Auditor Claim brought by Mr Whyte, including taking all necessary interlocutory steps, briefing counsel and appearing, where necessary, in court; and

Such other services which are, in the Firm's opinion, reasonably necessary for that purpose or which are, in the Firm's opinion, incidental thereto.

5. PROFESSIONAL FEES

- (a) The Firm will charge the Client professional fees for the Services calculated at an hourly rate and recorded on the basis of five minute units. Subject to clause 7 below, the Firm's Lawyers, Graduate Lawyers and Paralegals who will be working on the matter from the outset and their hourly rates are as follows:

Lawyer	Position	Hourly Rate (excluding GST)
Amanda Skoien	Senior Associate	\$495.00
Ashley Tiplady	Partner	\$695.00
Ian Bisson	Special Counsel	\$495.00
Jay Coverdale	Lawyer	\$325.00
Julian Walsh	Special Counsel	\$475.00
Leesa Matthews	Law Clerk	\$120.00
Malisa Craig	Partner	\$600.00
Matthew Foster	Lawyer	\$350.00
Michael Miller	Special Counsel	\$495.00
Stephen Russell	Managing Partner	\$900.00
Teneale Henderson	Senior Associate	\$495.00
Tim Russell	Associate	\$400.00

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Lawyer	Position	Hourly Rate (excluding GST)
Timothy Wright	Lawyer	\$325.00
Yuzo Araki	Special Counsel	\$495.00

- (b) The Firm may, by written notice to the Client, change these hourly rates.
- (c) The Client acknowledges and agrees that:
- (i) from time to time, the Lawyers nominated as having conduct of the matter at the date of this Agreement may change for various reasons (for example annual leave, cessation of employment, re organisation of resources within the Firm etc);
 - (ii) from time to time, it may be necessary for the Firm to direct other Lawyers to undertake work on the matter;
 - (iii) when such changes occur, the Firm will advise the Client;
 - (iv) further, in order to properly conduct the matter the subject of this Agreement, the Lawyer(s) having conduct of the matter from time to time may consult with, and receive supervision or direction from other Lawyers in the Firm, including one or more Partners; and
 - (v) the Client is liable for, and shall pay the Fees for the professional work involved in such consultations, supervision or directions.

6. OTHER CHARGES

The Firm will bear and pay its operating and indirect costs. There will be no additional charges for internal photocopying, faxing, emails, telephone call costs, printing, taxis, deliveries or staff overtime. However, in addition to the professional fees set out in clause 5 and subject to clause 7 below, the Client shall also pay the following charges:

- (a) fees payable to barristers. The Firm is authorised to retain a barrister or barristers to conduct Court work, provide other advice or other services in relation to the matter. The Firm will generally consult the Client as to the choice of the barrister but the Firm retains the right to brief a barrister and to select the appropriate barrister;
- (b) travel and accommodation costs. The Firm will travel with Qantas within Australia. Partners fly business class and other staff will travel economy class. International travel will be subject to the Client's prior authorisation;
- (c) external photocopying, binding and collation work and, where reasonably practical, the Firm will contract out such work; and
- (d) other costs or charges payable to third parties, and which we incur on your behalf, directly referable to your matter. These include search fees, the cost of expert consultants, expert reports, electronic disclosure costs, filing and lodgment fees, fees payable to process servers, agents' fees including fees payable to interstate Lawyers, witness fees, transcript fees etc. These fees are charge at their invoiced cost.

7. GOODS AND SERVICES TAX ("GST")

In addition to the fees, disbursements and other monies payable by the Client to the Firm under this Agreement, the Client must, upon receipt of an account (in this clause, a "tax invoice") from the Firm, pay the Firm an amount equal to the GST paid or payable by the Firm on the taxable supply specified in the tax invoice on the same basis as the other monies are payable by the Client under this Agreement.

8. PAYMENT IN ADVANCE

- (a) Although the Firm does not ordinarily extend credit to any clients, it is, in light of its relationship with the Client, delighted to accept the Client's instructions, bill the Client monthly, and accept payment in the usual course.
- (b) From time to time, the Firm may ask the Client to deposit sums into its trust account, to be held by the Firm for disbursements, including GST.
- (c) If the Client does not, for any reason, make such advance payments, the Firm may suspend work or terminate this Agreement, irrespective of the stage of the matter, even if to do so would prejudice the Client's interests.

9. AUTHORITY TO TRANSFER FEES AND DISBURSEMENTS; SECURITY

- (a) The Client hereby irrevocably authorises the Firm to transfer from its trust account to its general account any money held from time to time (whether on account of professional fees and disbursements or not and whether paid by the Client or not) in payment of accounts rendered by the Firm to the Client from time to time in relation to this matter, or in relation to any other matter in which the Firm may be acting for the Client.
- (b) The Client hereby charges in favour of the Firm, to secure sums owing or to become owing by the Client to the Firm:
 - (i) the proceeds of any litigation or dispute which the Firm conducts on the Client's behalf under this or any other retainer; and
 - (ii) any real or personal property of any form, of which possession, ownership or other interest is recovered by reason of the services rendered by the Firm to the Client.
- (c) The Client hereby irrevocably authorises the Firm to receive into its trust account the proceeds of any judgment, award, settlement, compromise or agreement in respect of which the Firm acts for the Client.

10. ACCOUNTS

- (a) The Firm will render interim accounts to the Client where appropriate - usually monthly - but in some cases it may be appropriate to render accounts either more or less frequently. The Client consents to the Firm delivering accounts electronically.
- (b) The Client must pay accounts within 14 days of issue.
- (c) If the Client does not pay an account by the due date, the Firm may charge interest at the rate prescribed by sections 308(1)(e) and 308(2) of the Act, and section 72 of the

*Legal Profession Regulation 2017 (Qld)*¹ on any monies unpaid from the date payment was due. If the Firm charges interest, it will issue an account for same, which is payable on receipt.

- (d) If accounts are not paid when due, the Firm may suspend work or terminate this Agreement, even if that would prejudice the Client's interests.

11. COSTS ORDERS

- (a) The Client acknowledges that if the Client is successful in the litigation (or any part thereof), the other party may be ordered to pay the Client's costs. The Firm estimates that the total of the fees and disbursements which would be the subject of such an order would be between one-half and two thirds of the Firm's total fees and disbursements the Firm charges the Client.
- (b) The Client acknowledges that if the Client is not successful in the whole or any part of any litigation or dispute the subject of this Agreement, the Client may be ordered to pay another party's fees and disbursements.
- (c) The Client acknowledges that if the Client is ordered to pay another party's fees and disbursements, those fees and disbursements may have to be paid during the course of the litigation.
- (d) The Client acknowledges that the Client's failure to provide documents or give prompt and accurate instructions to the Firm may result in such orders being made.

12. AMENDMENT

This Agreement may be amended only in writing signed by the Firm and the Client.

13. CLIENT MAY TERMINATE

- (a) The Client may terminate this Agreement at any time, but such termination does not affect:
 - (i) any of the Client's obligations or any of the Firm's rights or authority under this Agreement; or
 - (ii) the Firm's security and rights under clause 9.
- (b) The Firm will retain priority over any other solicitor whom the Client retains in relation to the subject-matter of this Agreement in place of the Firm.
- (c) The Firm is entitled to a lien to retain all of the Client's documents and any other property in its custody, to secure any fees and disbursements owing to the Firm under this or any other retainer.

¹ Currently 7.5% per annum

14. THE FIRM MAY TERMINATE

- (a) The Firm may terminate this Agreement and cease to act for the Client for lawful cause, including if the Client:
- (i) breaches this Agreement;
 - (ii) asks the Firm to act unlawfully or unethically;
 - (iii) fails to give the Firm adequate or timely instructions;
 - (iv) indicates that the Client has lost confidence in the Firm;
 - (v) fails to pay the professional fees and charges due under this Agreement, or to deposit monies in the Firm's trust account in accordance with any reasonable request from time to time; or
 - (vi) loses legal capacity.
- (b) Termination of this Agreement by the Firm does not affect the Firm's rights to be paid its fees and disbursements in accordance with this Agreement, nor its other rights under this Agreement.

15. NOTICES

- (a) Formal notices under this Agreement may be sent by prepaid post, hand delivery, facsimile transmission or email as follows:

- (i) If to the Firm:

Name: Russells
Address: Level 18, 300 Queen Street, Brisbane 4000
Attention: Mr Ashley Tiplady
Email: ATiplady@RussellsLaw.com.au
Fax Number: 07 3004 8899

- (ii) If to the Client:

Name: Mr John Park in his capacity as liquidator of LM Investment Management Limited (in Liquidation) (Receivers and Managers Appointed) ACN 077 208 461
Address: c - FTI Consulting (Australia) Pty Ltd of Level 20, Central Plaza One, 345 Queen Street, Brisbane City, QLD 4000
Attention: Mr John Park and Ms Kelly Trenfield
Email: john.park@fticonsulting.com
kelly.trenfield@fticonsulting.com

or to such other address or person as either party may specify in writing to the other.

The parties hereby agree that pursuant to Rule 119 of the *Uniform Civil Procedure Rules (Qld)* that any claim or other process issued by any party to this Agreement may be served on any other party in the manner and at the address specified above.

16. PRIVACY

Personal information about the Client, provided to the Firm by the Client and other sources, is protected under the *Privacy Amendment (Private Sector) Act 2000* (Cth). Disclosure of such information may be compelled by law (eg under the *Social Security Act 1991* (Cth)). The Client authorises the Firm to disclose such information where necessary to others in furtherance of its claim or matter (eg within the Firm, to the Court, the other party or parties to litigation, to valuers, experts, barristers etc).

17. DESTRUCTION OF FILES


The Client authorises the Firm to destroy the file seven years after this Agreement is completed or terminated, or such lesser period depending upon the nature of the matter.

18. ACKNOWLEDGMENT

The Client has read, understood and agrees to be bound by the terms of this Agreement.

DATED this _____ day of _____ 2019

EXECUTED by MR JOHN PARK IN HIS CAPACITY AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 pursuant to section 127 of the *Corporations Act 2001* (Cth) by:


7/13/19

John Park
John Richard Park

Print Name

Ashley Tiplady
Partner
Russells

Client	Re	Matter No
Mr John Park in his capacity as liquidator of LM Investment Management Limited (in Liquidation) (Receivers and Managers Appointed) ACN 077 208 461	LMIM - Supreme Court of Queensland Proceeding Number 2116 of 2015	20190072

RUSSELLS

DISCLOSURE NOTICE FOR PROFESSIONAL SERVICES AGREEMENT

Section 308 *Legal Profession Act 2007* (Qld)

To: **Mr John Park in his capacity as liquidator of LM Investment Management Limited (in Liquidation) (Receivers and Managers Appointed) ACN 077 208 461 c/- FTI Consulting (Australia) Pty Ltd of Level 20, Central Plaza One, 345 Queen Street, Brisbane City, QLD 4000**

1. LEGAL FEES - THE CLIENT'S RIGHTS

- (a) The Client has the right to:
- (i) negotiate a Professional Services Agreement with the Firm;
 - (ii) receive a bill of costs from the Firm;
 - (iii) request an itemised bill of costs after receipt of a lump sum bill from the Firm;
 - (iv) request written reports about the progress of the Client's matter and the costs incurred in the Client's matter;
 - (v) apply for costs to be assessed within 12 months in the event of a dispute in relation to costs (see paragraph (c) below);
 - (vi) apply for the Professional Services Agreement to be set aside (see paragraph (c) below);
 - (vii) accept or reject any offer the Firm makes for an interstate costs law to apply to the Client's matter (see paragraph (b) below);
 - (viii) notify the Firm that the Client requires an interstate costs law to apply to the Client's matter (see paragraph (b) below); and
 - (ix) be notified of any substantial change in the matters disclosed in this Notice.
- (b) The law of Queensland will apply to the proposed Professional Services Agreement. The Client has the right to enter into a Professional Services Agreement with the Firm on the basis that a corresponding law of another state or territory is applicable such as where the legal services are or will be completely or primarily provided in, or where the matter has a substantial connection with, that other state or territory. Further the Client has the right in certain circumstances to notify the Firm in writing in accordance with the time limits of the corresponding law that the Client requires the law of another jurisdiction to apply.

Liability limited by a scheme approved under professional standards legislation

Brisbane - Sydney
Postal: GPO Box 1402, Brisbane QLD 4001
Telephone (07) 3004 3303
Fax (07) 3004 3304
Brisbane - Level 13, 345 Queen Street, Brisbane QLD 4000
Brisbane - Level 13, 345 Queen Street, Brisbane QLD 4000
Sydney - Level 13, 345 Queen Street, Brisbane QLD 4000

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- (c) The following avenues are open to the Client under the terms of the *Legal Profession Act 2007* (Qld) in the event of a dispute in relation to legal costs:
- (i) to apply for a costs assessment within 12 months of delivery of a bill or request for payment or such extended time as may be permitted by the Court or Costs Assessor after considering the reason for the delay (except sophisticated clients as defined in the *Legal Profession Act 2007* (Qld)); and
 - (ii) to apply to set aside the Professional Services Agreement within six years or such other times as the law permits.

2. HOW THIS FIRM CHARGES

- (a) The Firm's professional fees charged will be an amount calculated by reference to the amount of time spent attending to the Client's matter. The Firm's hourly charge rates are:

Lawyer	Position	Hourly Rate (excluding GST)
Amanda Skoien	Senior Associate	\$495.00
Ashley Tiplady	Partner	\$695.00
Ian Bisson	Special Counsel	\$495.00
Jay Coverdale	Lawyer	\$325.00
Julian Walsh	Special Counsel	\$475.00
Leesa Matthews	Law Clerk	\$120.00
Malisa Craig	Partner	\$600.00
Matthew Foster	Lawyer	\$350.00
Michael Miller	Special Counsel	\$495.00
Stephen Russell	Managing Partner	\$900.00
Teneale Henderson	Senior Associate	\$495.00
Tim Russell	Associate	\$400.00
Timothy Wright	Lawyer	\$325.00
Yuzo Araki	Special Counsel	\$495.00

- (b) The Firm may, by written notice to the Client, change these hourly rates. The hourly rates set out above do not include any provision for GST (if applicable). Where Goods and Services Tax ("GST") will be payable on the services rendered under the Professional Services Agreement, please add 10% to the hourly rates set out above to

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obtain the GST inclusive price for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

(c) Other Charges

The Firm will bear and pay its operating and indirect costs. There will be no additional charges for internal photocopying, faxing, emails, telephone call costs, printing, taxis, deliveries or staff overtime. However, in addition to the professional fees set out in clause 5 of the Professional Services Agreement and subject to clause 7 of the Professional Services Agreement, the Client shall also pay the following charges:

- (i) fees payable to barristers. The Firm is authorised to retain a barrister or barristers to conduct Court work, provide other advice or other services in relation to the matter. The Firm will generally consult the Client as to the choice of the barrister but the Firm retains the right to brief a barrister and to select the appropriate barrister;
 - (ii) travel and accommodation costs. The Firm will travel with Qantas within Australia. Partners fly business class and other staff will travel economy class. International travel will be subject to the Client's prior authorisation;
 - (iii) where reasonably practical, the Firm will contract out large photocopying, binding and collation work; and
 - (iv) other costs or charges which may be incurred on your behalf including search fees, the cost of expert consultants, expert reports, electronic disclosure costs, filing and lodgment fees, banking fees and charges, government revenue charges, fees payable to process servers, investigation costs, agents' fees including fees payable to interstate Lawyers, other travel and accommodation costs, witness fees, transcript fees etc. These fees are charged at their invoiced cost.
- (d) As with the Firm's professional fees, the abovementioned costs and charges do not include GST (if applicable). Most of the costs and charges incurred or made by the Firm will be subject to GST. Hence, please add 10% to the costs and charges mentioned in clause 2(b) in order to obtain the GST inclusive price.
- (e) The scale of costs applicable to this Professional Services Agreement is the Supreme Court Scale.

3. ESTIMATE OF THE CLIENT'S COSTS

The Firm estimates that the total of the professional fees and disbursements to discharge the retainer set out in clause 4 of the Professional Services Agreement is \$500,000.00. Our estimate depends upon the amount of paper with which it will be necessary to deal, the number of interlocutory or other applications to the Court which will be involved, whether the matter proceeds to a mediation and/or trial, the amount of fees payable to Counsel and other external consultants who may be retained (exclusive of GST). The GST payable on the supply and rendering of the Firm's professional fees should be added to this estimate.

4. ACCOUNTS, INTEREST CHARGES AND CONTACT PERSON

- (a) Accounts will be sent to the Client usually monthly, but in some cases it may be appropriate to render accounts either more or less frequently.
- (b) If the Client does not pay any account by the due date, the Firm may charge interest at the rate prescribed by sections 308(1)(e) and 308(2) of the Act, and section 72 of the

*Legal Profession Regulation 2017 (Qld)*² on any monies unpaid from the date payment was due. If the Firm charges interest, it will issue an account for same, which is payable on receipt.

- (c) The Client may contact the Firm's Chief Financial Officer, Kevin Johnston, on (07) 3004 8888 regarding the Client's legal costs.

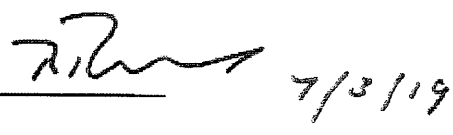
5. COSTS IN COURT PROCEEDINGS

- (a) If Court proceedings are instituted by the Client or against the Client:
 - (i) the Court may order that the Client pay another party's costs (for example, if the Client loses the case);
 - (ii) the Court may order the other party to pay the Client's costs of the proceedings and, as a general rule, this will not be the whole of the legal costs the Client is liable to pay the Firm; and
 - (iii) in the event the Court orders the Client to pay costs, the Court ordered costs are payable by the Client to the other party in addition to the costs liable to be paid pursuant to the proposed Professional Services Agreement.
- (b) If the Client is successful in the litigation, the Client may recover some of its costs from the other party. The Firm estimates that the Client may recover between one-half and two-thirds of the Firm's total fees and disbursements the Firm charges the Client.
- (c) If the Client is unsuccessful in the litigation, the other party may recover some of their costs from the Client. The Firm estimates that the Client may have to pay the other party between one-half and two-thirds of the total fees and disbursements the Firm charges the Client. This is in addition to the fees and disbursements the Client will be required to pay to the Firm.

Acknowledgment

I acknowledge that I have read and understood the contents of this Disclosure Notice.

**EXECUTED by MR JOHN PARK IN HIS CAPACITY
AS LIQUIDATOR OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION)
(RECEIVERS AND MANAGERS APPOINTED) ACN
077 208 461 pursuant to section 127 of the *Corporations Act
2001* (Cth) by:**



John Park

John Richard Park

Print Name

² Currently 7.5%_a per annum