

**TO THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND  
ARSN 089 343 288 (RECEIVER APPOINTED) (“FMIF”)**

TAKE NOTICE that David Whyte, as the person appointed pursuant to section 601NF of the *Corporations Act 2001* (Cth) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution and as receiver of the property of the FMIF (**Mr Whyte**), has applied to the Supreme Court of Queensland for directions as to:-

“whether Mr Whyte is and was justified in making and pursuing the Notice of Appeal number 14258 of 2019 dated 20 December 2019 in respect of the Judgment of the Supreme Court of Queensland in *LM Investment Management Ltd (receiver appt) (in liq) v Drake & Ors* [2019] QSC 281 (the **Director Proceedings Judgment**) on behalf of the Applicant in this proceeding”

The Director Proceedings Judgment concluded proceedings numbered 12317 of 2014 (the **Director Proceedings**) commenced by Mr Whyte in the name of LMIM as responsible entity of the FMIF seeking:

- (a) an order that the first to sixth defendants pay to the plaintiff compensation or damages in an amount of \$15,546,147.85 or in the alternative, the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse it for the contribution it made to the funding of certain legal proceedings together with interest;
- (b) further interest;
- (c) costs.

A trial was held in the Director Proceedings on 1 April 2019 to 9 April 2019.

The Director Proceedings Judgment was delivered by His Honour Justice Jackson on 22 November 2019.

His Honour Justice Jackson dismissed the Plaintiff's claim and the Plaintiff was ordered to pay the costs of the first, second, third, fourth and sixth defendants on a standard basis.

The Director Proceedings did not proceed as against the Fifth Defendant.

The Seventh Defendant was granted leave to withdraw from the proceedings by order dated 28 April 2016. A decision as to the costs of the Seventh Defendant is pending.

The claim as against the Eighth Defendant was settled prior to trial with no order as to costs.

Mr Whyte filed a Notice of Appeal of the decision on 20 December 2019 (proceedings 14258 of 2019).

The Appeal timetable is currently on hold pending this application for directions.

**This application is set down to be heard by the Supreme Court of Queensland at Brisbane on 2 June 2020 at 10am.**

Copies of the court documents in respect of the application, including a copy of the Notice of Appeal, will be made available on the website [www.lmfmf.com](http://www.lmfmf.com). Court documents will be made available progressively, as and when they are filed with the Court.

Any member who reasonably requires a hard copy of the application and supporting material should call BDO on +61 7 3237 5999.

Dated: 18 February 2020

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

David Whyte - Court Appointed Receiver