

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: 1146/2020

Applicant: **LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS & MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE
ENTITY OF THE LM FIRST MORTGAGE INCOME
FUND ARSN 089 343 288**

AND

First Respondent: **PETER CHARLES DRAKE**

AND

Second Respondent: **LISA MAREE DARCY**

AND

Third Respondent: **EGHARD VAN DER HOVEN**

AND

Fourth Respondent: **FRANCENE MAREE MULDER**

AND

Fifth Respondent: **SIMON JEREMY TICKNER**


AFFIDAVIT



I, **SCOTT COUPER** of c/- Gadens Lawyers, Level 11, 111 Eagle Street, Brisbane in the State of Queensland, Solicitor, state on oath:

1. I am a partner of Gadens Lawyers (**Gadens**), the solicitors for the Applicant instructed by David Whyte, the court appointed receiver of the property of the LM First Mortgage Income Fund ARSN 089 343 288 (**FMIF**).
2. I have the carriage of this matter on behalf of the Applicant. I am authorised to swear this affidavit on behalf of the Applicant.
3. I swear this affidavit in response to the affidavit of John Richard Park filed 17 April 2020 (**Mr Park's affidavit**).

Correspondence with the Liquidator of LMIM concerning the Director Proceeding

4. As I refer to in paragraph 4 of my affidavit filed 31 January 2020, on 19 December 2014 the Applicant filed Supreme Court proceeding numbered 12317/14 (**the Director Proceeding**) against LM Investment Management Limited (receivers & managers appointed) (in liquidation) (**LMIM**), the Trustee of the LM Managed Performance Fund and former directors of LMIM.
5. I refer to paragraph 8 and 9 of Mr Park's affidavit. LMIM was a defendant to the Director Proceeding. Accordingly, as the representative of LMIM, Mr Park, as liquidator of LMIM

Signed By: 

Witnessed By:  

Affidavit
Filed on behalf of the Plaintiff Applicant
Form 47 R.435

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SZC:JSO:201401822

was not consulted prior to the Director Proceedings being filed or about any settlement of the Director Proceedings.

6. On 23 December 2014 the Applicant's claim and statement of claim in the Director Proceeding was served on FTI Consulting at 22 Market Street Brisbane for the attention of John Park and Ginette Muller, the Liquidators of LMIM.
7. By letter dated 7 January 2015 Clayton Utz, acting on behalf the Liquidators of LMIM, acknowledged receipt of the claim and statement of claim in the Director Proceeding.
8. Exhibited hereto and marked "SC-1" is a copy of the letter of Clayton Utz to Gadens of 7 January 2015.
9. By letter dated 9 January 2015 from Gadens to Clayton Utz, the Liquidators of LMIM were put on notice of the Applicant's intention to bring an application for leave to proceed against LMIM as the seventh defendant in the Director Proceeding.
10. Exhibited hereto and marked "SC-2" is a copy of the Gadens letter of 9 January 2015.
11. By letter dated 3 February 2015 Gadens wrote to Clayton Utz:
 - a) confirming the application for leave to proceed against LMIM would be filed shortly;
 - b) seeking confirmation as to whether Clayton Utz had instructions to accept service on behalf of the Liquidators of LMIM;
 - c) providing a list of possible hearing dates; and
 - d) requesting confirmation as to whether LMIM consented to the application.
12. Exhibited hereto and marked "SC-3" is a copy of the Gadens letter of 3 February 2015.
13. By letter also dated 3 February 2015 Clayton Utz confirmed their instructions to accept service on behalf of the Liquidators of LMIM, also that they would need to review the application for leave to proceed before confirming the Liquidators' position and would require 5 days to consider it and respond.
14. Exhibited hereto and marked "SC-4" is a copy of the letter of Clayton Utz of 3 February 2015.
15. On 4 February 2015 the Applicant filed an application pursuant to section 500(2) of the *Corporations Act 2001* (Cth) for leave nunc pro tunc to proceed as against LMIM as the seventh defendant in the Director Proceeding (**the Leave Application**).
16. Exhibited hereto and marked "SC-5" is a sealed copy of the Leave Application filed 4 February 2015 in the Supreme Court of Queensland in the Director Proceeding.
17. The Leave Application together with the supporting affidavit of David Whyte of 4 February 2015 was served on Clayton Utz on 4 February 2015.
18. Exhibited hereto and marked "SC-6" is a copy of the letter dated 4 February 2015 from Gadens to Clayton Utz enclosing the sealed Leave Application and supporting affidavit (without exhibiting the enclosed Leave Application and supporting affidavit).

Signed By:




Witnessed By:



19. By letter dated 10 February 2015 from Clayton Utz to Gadens, the Liquidators of LMIM confirmed their consent to the Leave Application on certain conditions.
20. Exhibited hereto and marked "SC-7" is a copy of the letter of Clayton Utz of 10 February 2015.
21. The Leave Application was heard by the Supreme Court of Queensland on 12 February 2015. The order of Justice Mullins granting the Applicant leave nunc pro tunc to proceed against LMIM was made with the consent of the Liquidators of LMIM who were represented at the hearing (**Consent Order**).
22. Exhibited hereto and marked "SC-8" is a copy of the sealed Consent Order.
23. By letter dated 12 February 2015 to Clayton Utz the Applicant served the seventh defendant with a sealed copy of the claim and statement of claim in the Director Proceeding.
24. Exhibited hereto and marked "SC-9" is a copy of the letter dated 12 February 2015 from Gadens to Clayton Utz enclosing the claim and statement of claim (without exhibiting the claim and statement of claim).
25. By letter (incorrectly dated 13 January 2015 rather than 13 February 2015) Gadens received a letter from Clayton Utz confirming they accepted service on behalf of the seventh defendant in accordance with rule 115 of the Uniform Civil Procedure Rules 1999 (Qld).
26. Exhibited hereto and marked "SC-10" is a copy of the letter of Clayton Utz of 13 (January) 2015.
27. The Consent Order provided the Liquidators of LMIM the ability to apply to revoke the granting of leave.
28. The Liquidators of LMIM did not at any stage during the Director Proceeding apply to revoke the granting of leave.
29. On 12 March 2015 Gadens were advised by Clayton Utz that they were instructed to withdraw as the representatives for the Liquidators of LMIM and conduct was handed to Russells Law (**Russells**).
30. Exhibited hereto and marked "SC-11" is a copy of the email from Clayton Utz of 12 March 2015.
31. By letter dated 22 May 2015 Russells wrote to Gadens on behalf of the Liquidators of LMIM expressing concerns related to the Director Proceedings.
32. Exhibited hereto and marked "SC-12" is a copy of the letter of Russells of 22 May 2015.
33. Gadens replied to Russells by letter dated 1 June 2015.
34. Exhibited hereto and marked "SC-13" is a copy of the letter of Gadens of 1 June 2015.
35. LMIM as the seventh defendant in the Director Proceeding filed a defence on 1 July 2015.

Signed By:



Witnessed By:

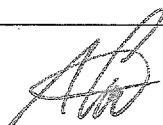


36. Exhibited hereto and marked "SC-14" is a copy of the covering letter from Russells dated 1 July 2015 enclosing the defence of the seventh defendant (without exhibiting the defence of the seventh defendant).
37. The Applicant filed an application in the Director Proceeding on 14 July 2015 pursuant to section 59 of the Trusts Act 1973 (Qld) for directions that:
- a) its interests continue to be represented by David Whyte;
 - b) the interests of LMIM continue to be represented by John Park and Ginette Muller; and
 - c) the cause of action pursuant to section 182 of the *Corporations Act 2001* (Cth) be prosecuted by David Whyte.
38. The Liquidators for LMIM consented to the application with the exception of the final direction in paragraph 37(c) above.
39. The application was heard before Justice Jackson on 21 July 2015 and the Directions Order was made in the terms sought by the Applicant.
40. Exhibited hereto and marked "SC-15" is a sealed copy of the order of the Supreme Court of Queensland of 21 July 2015.
41. Pursuant to the order of Justice Jackson on 28 April 2016 the Seventh Defendant was excused from taking any further steps in the Director Proceeding.
42. Exhibited hereto and marked "SC-16" is a sealed copy of the order of the Supreme Court of Queensland dated 28 April 2016.
43. LMIM did not at any stage during the Director Proceeding bring an application to strike-out the Applicant's claim and statement of claim.

Liquidator's Application for control of the Director Proceeding

44. John Park in his capacity as the Liquidator for LMIM filed an application in the Supreme Court of Queensland in proceedings numbered 3508 of 2015 (known as the **FTI Remuneration Proceedings**) dated 10 October 2018 seeking certain directions which included a direction limiting David Whyte's appointments to supervise the winding up of the FMIF in accordance with its constitution and appointment as receiver and manager of the FMIF. The effect of the application was, in part, to seek to transfer control of the Director Proceeding to John Park and remove responsibility from David Whyte.
45. Exhibited hereto and marked "SC-17" is a copy of the application dated 10 October 2018 as filed (in proceedings numbered 3508/2013).
46. The application was heard by Justice Jackson on 10 December 2018. On 2 October 2019 Justice Jackson delivered judgment dismissing the Liquidator's application.
47. Exhibited hereto and marked "SC-18" is a copy of the judgment *LM Investment Management Limited & Anor v Whyte* [2019] QSC 233.

Signed By:



Witnessed By:



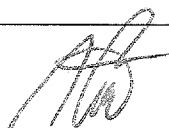
FMIF receivership and information regarding costs

48. I refer to paragraph 10 of Mr Park's affidavit. In relation to David Whyte's remuneration as receiver and manager of the FMIF all remuneration applications, supporting affidavits, notices to members and subsequent orders made are accessible to the Liquidator of LMIM on the website David Whyte maintains for the members of the FMIF at www.lmfimf.com.
49. I am instructed by David Whyte that in his role as Court Appointed Receiver of the FMIF he has made 12 applications to Court for approval of his remuneration. I am further instructed that all 12 applications have been approved in full by the Court. I am further instructed that Mr Park as Liquidator of LMIM appeared on and contested the first such application. Further, I am instructed that Mr Park has not appeared on or contested any subsequent applications despite being on notice of all such applications.
50. Similarly, in relation to receipts and payments, all of Mr Whyte's reports as receiver and manager, from the first report dated 27 August 2013 to the most recent report dated 31 March 2020, are accessible to the public including the Liquidator of LMIM on the www.lmfimf.com website maintained by Mr Whyte.
51. All documents filed in this application are available on the www.lmfimf.com website as referred to in the affidavit of service of Ryan Whyte of 16 April 2020 filed in this application.
52. Documents filed in the Director Proceeding are uploaded to and remain available for review on the Supreme Court of Queensland website.
53. In relation to Mr Whyte's commercial considerations concerning the Appeal numbered 14258 of 2019 in the Court of Appeal Supreme Court of Queensland (the **Appeal**) I refer to the affidavit of David Whyte of 3 February 2020 filed in this application.
54. In relation to costs of the Director Proceeding and the Appeal I refer to my earlier affidavit of 31 January 2020 filed in this application.
55. The estimate of costs which I provided in paragraphs 44 to 48 of my affidavit of 31 January 2020 is the best estimate that I can reasonably provide at this time based on my experience in commercial litigation and my knowledge of this matter. There are many variables which will impact on Mr Whyte's costs of the Appeal and on the costs of the Director Defendants. For example, the level of participation of the Director Defendants in the Appeal and the scale of their representation, i.e. whether they choose to engage both Senior and Junior Counsel. As to the costs of the Director Proceedings, again the estimate I have provided is the best estimate I can reasonably provide at this time. Given the Appeal, I have not yet received any claim for costs from the Director Defendants and have not had Mr Whyte's costs assessed.

Responses to the Application received from Feeder Funds and other Members

56. I refer to paragraphs 2 to 5 of Mr Park's affidavit. Said Jahani of Grant Thornton was appointed the receiver and manager of LMIM in its capacity as Responsible Entity of the LM Institutional Currency Protected Australia Income Fund (**ICPAIF**) and LM Currency Protected Australian Income Fund (**CPAIF**) on 16 November 2015.
57. Trilogy Funds Management Limited (**Trilogy**) is the Responsible Entity of the Wholesale First Mortgage Income Fund (**WFMIF**).

Signed By:



Witnessed By:

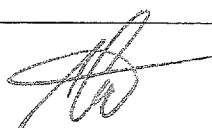


58. I am instructed by Mr Whyte that collectively the ICPAIF, CPAIF and WMIF are known as the "Feeder Funds" and hold 46.64% of the total units in the FMIF.
59. Said Jahani has not retired as receiver and manager of the ICPAIF and CPAIF and remains appointed as such.
60. Exhibited hereto and marked "SC-19" is a copy of the current extracts of the company searches of the ICPAIF and CPAIF and LMIM.
61. I refer to the affidavit of Ryan Whyte of 16 April 2020 and confirm both Said Jahani and Trilogy were served with the Notice to Members in this application pursuant to the order of Justice Callaghan of 14 February 2020.
62. I am instructed by David Whyte that neither Said Jahani nor Trilogy have expressed any objection to the Applicant's application for judicial advice.
63. I am instructed by David Whyte that no other FMIF member has objected to the application for judicial advice.
64. Gadens has not received notice from any of the named Respondents to this application (who are the named Respondents to the appeal) that they object to the application for judicial advice.

Recent correspondence between Gadens and Russells

65. I refer to paragraph 16 of Mr Park's affidavit. Mr Park's affidavit did not exhibit Gadens letter to Russells dated 12 March 2020. Exhibited hereto and marked "SC-20" is a true copy of the letter from Gadens to Russells dated 12 March 2020.
66. Since 17 April 2020, the date of Mr Park's affidavit and further to the affidavit of Claudia Dennison also of 17 April 2020 the following correspondence has passed between Gadens and Russells:
 - a) On 21 April 2020 Russells wrote to Gadens. Exhibited hereto and marked "SC-21" is a true copy of the letter from Russells to Gadens dated 21 April 2020.
 - b) On 27 April 2020 Gadens responded to Russells. Exhibited hereto and marked "SC-22" is a true copy of the letter from Gadens to Russells.
 - c) On 6 May 2020 Russells wrote to Gadens. Exhibited hereto and marked "SC-23" is a true copy of the letter from Russells to Gadens dated 6 May 2020.
 - d) On 6 May 2020 Russells wrote a second letter to Gadens. Exhibited hereto and marked "SC-24" is a true copy of the letter from Russells to Gadens dated 6 May 2020.
 - e) On 8 May 2020 Gadens wrote to Russells. Exhibited hereto and marked "SC-25" is a true copy of the letter from Gadens to Russells dated 8 May 2020.

Signed By:



Witnessed By:



ALL THE FACTS and circumstances above 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 on the face of this my affidavit.

SWORN by SCOTT COUPER on this 8TH
day of May 2020 at Brisbane in the presence
of:

Solicitor



Tahlia Jessica O'Connor
Solicitor

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: 1146/2020

Applicant: **LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS & MANAGERS APPOINTED) (IN
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ENTITY OF THE LM FIRST MORTGAGE INCOME
FUND ARSN 089 343 288**
AND
First Respondent: **PETER CHARLES DRAKE**
AND
Second Respondent: **LISA MAREE DARCY**
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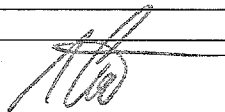
CERTIFICATE OF EXHIBIT

INDEX TO EXHIBITS

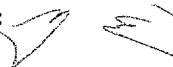
Exhibits "SC-1" to "SC-25" to the affidavit of **SCOTT COUPER** sworn at Brisbane on this 8TH day of May 2020.

Exhibit	Description	Page No.
SC-1	Letter from Clayton Utz to Gadens Lawyers dated 7 January 2015	1
SC-2	Letter from Gadens Lawyers to Clayton Utz dated 9 January 2015	2
SC-3	Letter from Gadens Lawyers to Clayton Utz dated 3 February 2015	3
SC-4	Letter from Clayton Utz to Gadens Lawyers dated 3 February 2015	4
SC-5	Sealed copy of the Leave Application filed 4 February 2015 in the Supreme Court of Queensland in the Director Proceeding	5-7
SC-6	Letter from Gadens Lawyers to Clayton Utz dated 4 February 2015	8
SC-7	Letter from Clayton Utz to Gadens Lawyers dated 10 February 2015	9-10

Signed By:



Witnessed By:



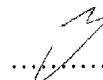
Certificate of Exhibit
Filed on behalf of the Plaintiff Applicant
Form 47 R.435

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SZC:JSO:201401822

Exhibit	Description	Page No.
SC-8	Sealed Consent Order	11-12
SC-9	Letter from Gadens Lawyers to Clayton Utz dated 12 February 2015	13
SC-10	Letter from Clayton Utz to Gadens Lawyers incorrectly dated 13 January 2015 rather than 13 February 2015	14
SC-11	Email from Clayton Utz to Gadens Lawyers dated 12 March 2015	15
SC-12	Letter from Russells Law to Gadens Lawyers dated 22 May 2015	16-19
SC-13	Letter from Gadens Lawyers to Russells Law dated 1 June 2015	20-24
SC-14	Letter from Russells Law dated 1 July 2015	25-26
SC-15	Sealed copy of the order of the Supreme Court of Queensland dated 21 July 2015	27-28
SC-16	Sealed copy of the order of the Supreme Court of Queensland dated 28 April 2016	29-30
SC-17	Copy of the application in the Supreme Court of Queensland dated 10 October 2018	31-38
SC-18	Copy of the judgement <i>LM Investment Management Limited & Anor v Whyte</i> [2019] QSC 233	39-67
SC-19	Current extracts of the company searches for ICPAIF, CPAIF, and LMIM	68-101
SC-20	Letter from Gadens Lawyers to Russells Law dated 12 March 2020	102
SC-21	Letter from Russells Law to Gadens Lawyers dated 21 April 2020	103-105
SC-22	Letter from Gadens Lawyers to Russells Law dated 27 April 2020	106-107
SC-23	Letter from Russells Law to Gadens Lawyers dated 6 May 2020	108-109
SC-24	Letter from Russells Law to Gadens Lawyers dated 6 May 2020	110-112
SC-25	Letter from Gadens Lawyers to Russells Law dated 8 May 2020	113



Deponent



Solicitor

Certificate of Exhibit
Filed on behalf of the Plaintiff Applicant
Form 47 R.435

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No.: 07 3229 5850
SZC:JSO:201401822

Confidential

Email

7 January 2015

Scott Couper
Gadens
111 Eagle Street
Brisbane QLD 4000
scott.couper@gadens.com

Dear Sir

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (LMIM)
Supreme Court of Queensland proceeding no. 12317/14**

We act for the Liquidators of LMIM in relation to the above proceeding.

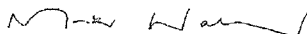
We refer to your letter to the Liquidators dated 23 December 2014 purporting to serve a claim and statement of claim dated 19 December 2014 in the proceeding. LMIM is named as the seventh defendant to the proceeding.

The proceeding against LMIM is incompetent. Section 471B of the Corporations Act provides that a person cannot begin a proceeding in a court against a company in liquidation except with the leave of the court and in accordance with such terms as the court imposes. Your client has not obtained such leave.

Further, clearly our clients are entitled to be heard on any application for such leave.

Please advise by 11am this Friday, 9 January 2015 what action your client intends to take in regard to the incompetency of its proceeding against LMIM. The rights of LMIM and the Liquidators are fully reserved.

Yours faithfully



Mark Waller, Partner
+61 7 3292 7005
mwaller@claytonutz.com

Chris Erfurt, Senior Associate
+61 7 3292 7799
cerfurt@claytonutz.com

Your ref Jacqueline Ogden 201401822
Our ref 12415/18810/80143342

Copy by email to Jacqueline Ogden, Gadens, jacqueline.ogden@gadens.com

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Our Reference Jacqueline Ogden 201401822
Direct Line +61 7 3231 1688
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Partner Responsible Scott Couper

gadens

ABN 30 326 150 968

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111 Eagle Street
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Australia

9 January 2015

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Attention: Mark Waller and Chris Erfurt

gadens.com

By email: mwaller@claytonutz.com and cerfurt@claytonutz.com

Dear Sirs

**LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) (LM)
Supreme Court of Queensland proceeding no. 12317/14 (Proceedings)**

We refer to your letter dated 7 January 2015.

We act for the Plaintiff in the Proceedings, instructed by David Whyte, the court appointed receiver of the LM First Mortgage Income Fund (**Fund**).

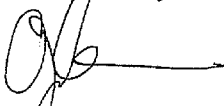
We have been instructed to apply for leave of the Court in respect of the Proceedings pursuant to the *Corporations Act 2001* (Cth). We will serve you with this application in due course.

Separately, we understand that your Melbourne office currently acts for Joseph David Hayes and Anthony Norman Connelly of McGrathNicol, the receivers and managers appointed to the Fund by Deutsche Bank (**Receivers**). We further understand that Clayton Utz acts for Deutsche Bank. The Receivers have been made aware of the Proceedings by our client.

In light of the above, our client considers that continuing to act for the liquidators of LM in the Proceedings presents a conflict of interest. If you contend that there is no present conflict, would you please explain the basis for your contention.

Our client's rights are strictly reserved.

Yours faithfully



Jacqueline Ogden
Associate

"SC-3"

Our Reference Jacqueline Ogden 201401822
Direct Line +61 7 3231 1688
Email jacqueline.ogden@gadens.com
Partner Responsible Scott Couper

gadens

ABN 30 326 150 968

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Australia

3 February 2015

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F +61 7 3229 5850

Attention: Mark Waller and Chris Erfurt

gadens.com

By email: mwaller@claytonutz.com and cerfurt@claytonutz.com

Dear Sirs

**LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ("LM")
Supreme Court of Queensland proceeding no. 12317/14 ("Proceedings")**

We refer to our recent correspondence regarding the above matter.

We continue to act for the Plaintiff in the Proceedings, instructed by David Whyte, the court appointed receiver of the LM First Mortgage Income Fund.

As foreshadowed in our previous correspondence, we have been instructed to apply for leave of the Court in respect of the Proceedings pursuant to the *Corporations Act 2001* (Cth). We are presently settling the application and supporting material and will serve your clients with this material shortly.

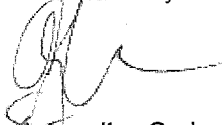
Would you please confirm whether you hold instructions to accept service of the application on behalf of the liquidators of LM.

In relation to the hearing of the application, our client presently intends to have the matter listed for hearing in the week commencing 9 February 2015 (but not on Monday, 9 February 2015 as the Court time for that day is fully booked).

Would you please advise whether your clients are prepared to consent to our client's application.

We look forward to receiving your response as soon as possible but in any event by no later than close of business, **Wednesday, 4 February 2015**.

Yours faithfully



Jacqueline Ogden
Associate

Liability limited by a scheme approved under professional standards legislation.

BNEDOCS 13950770_1.docx

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Email

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Email

Jacqueline Ogden
Gadens
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jacqueline.ogden@gadens.com

3 February 2015

Dear Sir and Madam

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (LMIM)
Supreme Court of Queensland proceeding no. 12317/14**

We refer to your letter to us of today's date.

We confirm that we have instructions to accept service of the proposed application on behalf of the Liquidators of LMIM.

Unless and until we receive the proposed application and supporting material, our clients can neither meaningfully consider, nor by corollary consent to, the application. Our clients will require a reasonable period (we suggest five days after you provide us with a copy of the application and supporting material) to consider and respond to that request.

Yours faithfully



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mwaller@claytonutz.com

Chris Erfurt, Senior Associate
+61 7 3292 7799
cerfurt@claytonutz.com

Your ref Jacqueline Ogden 201401822
Our ref 12415/18810/80143342

SUPREME COURT OF QUEENSLAND
SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 12317/14

- 4 FEB 2015

Plaintiff:

FILED
BRISBANE

LM INVESTMENT MANAGEMENT LIMITED
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FUND ARSN 089 343 288

AND

First Defendant:

PETER CHARLES DRAKE

AND

Second Defendant:

LISA MAREE DARCY

AND

Third Defendant:

EGHARD VAN DER HOVEN

AND

Fourth Defendant:

FRANCENE MAREE MULDER

AND

Fifth Defendant:

JOHN FRANCIS O'SULLIVAN

AND

Sixth Defendant:

SIMON JEREMY TICKNER

AND

Seventh Defendant:

LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS & MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461

AND

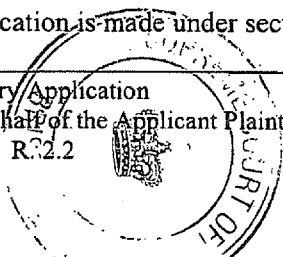
Eighth Defendants:

KORDA MENTHA PTY LTD ACN 100 169 391 AND
CALIBRE CAPITAL PTY LTD ABN 66 108 318 985 IN
THEIR CAPACITY AS JOINT AND SEVERAL TRUSTEES
OF THE LM MANAGED PERFORMANCE FUND

A. DETAILS OF INTERLOCUTORY APPLICATION

This application is made under section 500(2) of the *Corporations Act 2001* (Cth).

Interlocutory Application
Filed on behalf of the Applicant Plaintiff
Form 3 v2 R.2.2

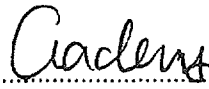


GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
JSO/SZC:201401822

On the facts stated in the supporting affidavit(s), the applicant plaintiff applies for the following interlocutory relief:

1. That pursuant to section 500(2) of the *Corporations Act 2001* (Cth), the applicant plaintiff be granted leave nunc pro tunc to commence and proceed with Supreme Court Proceeding numbered 12317 of 2014 against the seventh defendant, LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ACN 077 208 461.
2. Such further or other order as the Court deems appropriate.
3. The costs of this application be costs in the proceeding.

Date: 4 February 2015


.....
Gadens Lawyers
Solicitors for the applicant plaintiff

B. NOTICE TO RESPONDENTS

TO: John Richard Park and Ginette Dawn Muller as Liquidators of LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ACN 077 208 461
c/- FTI Consulting
'Corporate Centre One', Level 9
2 Corporate Court
BUNDALL QLD 4217

AND: LM Investment Management Limited (Receivers and Managers Appointed)
(In Liquidation) ACN 077 208 461
c/- FTI Consulting
Corporate Centre One
Level 9, 2 Corporate Court
BUNDALL QLD 4217

This application will be heard by the Supreme Court of Queensland, Brisbane Registry at QEII Courts of Law Complex, 415 George Street, Brisbane at 10am on *12 Feb 2015*.

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you. In addition you must before the day for hearing file a notice of appearance in this Registry. The notice should be in Form 4. You must serve a copy of it at the applicant's address for service shown in this application as soon as possible.

Note: Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

This interlocutory application is filed by Gadens Lawyers for the applicant.

D. SERVICE

The applicant's address for service is c/- Gadens Lawyers, Level 11, 111 Eagle Street, Brisbane, ph: (07) 3231 1666; fax (07) 3229 5850.

It is intended to serve a copy of this interlocutory application on each respondent and on any person listed below:

John Richard Park and Ginette Dawn Muller as Liquidators of LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ACN 077 208 461
c/- FTI Consulting
'Corporate Centre One', Level 9
2 Corporate Court
BUNDALL QLD 4217

LM Investment Management Limited (Receivers and Managers Appointed)
(In Liquidation) ACN 077 208 461
c/- FTI Consulting
Corporate Centre One
Level 9, 2 Corporate Court
BUNDALL QLD 4217

Note: An address for service must include telephone number, fax number, email address and document exchange address when appropriate.

"SC-6"

Our Reference Jacqueline Ogden 201401822
Direct Line +61 7 3231 1688
Email jacqueline.ogden@gadens.com
Partner Responsible Scott Couper

gadens

ABN 30 326 150 968

ONE ONE ONE
111 Eagle Street
Brisbane QLD 4000
Australia

4 February 2015

Clayton Utz
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71 Eagle Street
Brisbane QLD 4000

GPO Box 129
Brisbane QLD 4001

T +61 7 3231 1666
F +61 7 3229 5850

Attention: Mark Waller and Chris Erfurt

gadens.com

By email: mwaller@claytonutz.com and cerfurt@claytonutz.com

Dear Colleagues

**LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ("LM")
Supreme Court of Queensland proceeding no. 12317/14 ("Proceedings")**

We refer to our recent correspondence regarding the above matter.

We continue to act for the Plaintiff in the Proceedings, instructed by David Whyte, the court appointed receiver of the LM First Mortgage Income Fund.

We **enclose** by way of service on the liquidators of LM:

1. Interlocutory Application filed 4 February 2015 (**Application**); and
2. Affidavit of David Whyte sworn 4 February 2015.

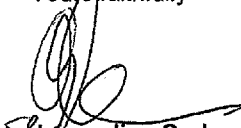
The Application is returnable on Thursday, 12 February 2015.

Would you please confirm that you accept service of the Application and the supporting affidavit on behalf of the liquidators of LM by providing us with a copy of the documents with a note on each document to the effect that you accept service for the party (in accordance with rule 115 of the *Uniform Civil Procedure Rules 1999* (Qld)).

Please be advised, we are also today separately serving LM with the Application and supporting affidavit by delivering the documents to the registered office of LM.

Would you otherwise please advise whether your clients are prepared to consent to the Application as soon as possible but in any event by no later than **close of business on Tuesday, 10 February 2015**.

Yours faithfully


Jacqueline Ogden
Associate

Enc.

Liability limited by a scheme approved under professional standards legislation.

BNEDOCs 13972260_1.DOCX



Confidential

Email

Scott Couper
Gadens
111 Eagle Street
Brisbane QLD 4000
scott.couper@gadens.com

Email

Jacqueline Ogden
Gadens
111 Eagle Street
Brisbane QLD 4000
jacqueline.ogden@gadens.com

10 February 2015

Dear Sir and Madam

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (LMIM)
Supreme Court of Queensland proceeding no. 12317/14**

1. The Plaintiff's application

1.1 We refer to your letter to us dated 4 February 2015.

1.2 Our clients are prepared to consent to the Plaintiff's application subject to the following conditions:

- (a) The liquidators of the Seventh Defendant are reserved liberty to apply to revoke the grant of leave.
- (b) The Plaintiff may not enforce any judgment against the Seventh Defendant without leave of the Court, with such leave not to be sought without the Plaintiff first giving the liquidators of the Seventh Defendant seven days' notice in writing of its intention to do so.

1.3 Please confirm, as soon as possible, that the Plaintiff is amenable to these conditions and send us the proposed consent order for review.

2. Security for costs

2.1 The proceeding appears to be an appropriate case for ordering that the Plaintiff give security for costs. It is clear that the Plaintiff has brought the proceeding for the benefit of others, being the LM First Mortgage Income Fund (FMIF)/the investors in FMIF.

2.2 Please advise how your client proposes that the Plaintiff will satisfy adverse costs orders against it in the proceeding. In our clients' view, the appropriate course is for your client to retain on trust a certain amount of FMIF's fund to meet potential adverse costs orders and the most expeditious course would be for that amount to be determined in consultation with all defendants.

2.3 Please advise your client's position.

3. The pleading

3.1 It is clear that the Plaintiff has no standing to prosecute the claims set out in paragraphs 38 to 43 of the statement of claim, which are founded upon alleged breaches of duty owed to the Seventh Defendant (and not to the Fund, FMIF).

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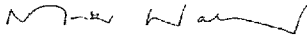
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Gadens

10 February 2015

- 3.2 Our clients invite the Plaintiff to abandon those claims. Please confirm that your client will deliver an amended Claim and statement of claim and that our client will be allowed 28 days from the delivery of the amended pleading to deliver its defence. In the event your client does not agree to do so, we reserve the Seventh Defendant's right to apply to strike out those parts of the pleading and to bring this letter to the attention to the Court on the issue of costs.
- 3.3 Please advise your client's intended course of action.

Yours faithfully



Mark Waller, Partner
+61 7 3292 7005
mwaller@claytonutz.com

Chris Erfurt, Senior Associate
+61 7 3292 7799
cerfurt@claytonutz.com

Your ref Jacqueline Ogden 201401822
Our ref 12415/18810/80143342

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 12317/14

Plaintiff: **LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS & MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE
ENTITY OF THE LM FIRST MORTGAGE INCOME FUND
ARSN 089 343 288**

AND

First Defendant: **PETER CHARLES DRAKE**

AND

Second Defendant: **LISA MAREE DARCY**

AND

Third Defendant: **EGHARD VAN DER HOVEN**

AND

Fourth Defendant: **FRANCENE MAREE MULDER**

AND

Fifth Defendant: **JOHN FRANCIS O'SULLIVAN**

AND

Sixth Defendant: **SIMON JEREMY TICKNER**

AND

Seventh Defendant: **LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS & MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461**

AND

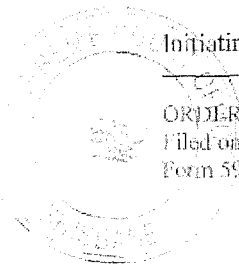
Eighth Defendants: **KORDA MENTHA PTY LTD ACN 100 169 391 AND
CALIBRE CAPITAL PTY LTD ABN 66 108 318 985 IN
THEIR CAPACITY AS JOINT AND SEVERAL TRUSTEES
OF THE LM MANAGED PERFORMANCE FUND**

ORDER

Before: Mullins J

Date: 12 February 2015

Initiating document: Interlocutory Application filed 4 February 2015



ORDER
Filed on Behalf of the Plaintiff
Form 59 Rule 661

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
BNEDOCs Order (12_02_15)

THE ORDER OF THE COURT, BY CONSENT, IS THAT:

1. Pursuant to section 500(2) of the *Corporations Act 2001* (Cth), the applicant plaintiff be granted leave nunc pro tunc to commence and proceed with Supreme Court Proceeding numbered 12317 of 2014 against the seventh defendant, LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ACN 077 208 461.
2. The liquidators of the seventh defendant are reserved liberty to apply to the Court to revoke the grant of leave pursuant to this order.
3. The plaintiff may not enforce any judgment against the seventh defendant without leave of the Court, with such leave not to be sought without the plaintiff first giving the liquidators of the seventh defendant seven days' notice in writing of its intention to do so.
4. The costs of this application be costs in the proceeding.



Signed: _____

Deputy Registrar

"SC-9"

Our Reference Jacqueline Ogden 201401822
Direct Line +61 7 3231 1688
Email jacqueline.ogden@gadens.com
Partner Responsible Scott Couper

gadens

ABN 30 326 150 968

ONE ONE ONE
111 Eagle Street
Brisbane QLD 4000
Australia

12 February 2015

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Level 28, Riparian Plaza
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Attention: Mark Waller and Chris Erfurt

gadens.com

By email: mwaller@claytonutz.com and cerfurt@claytonutz.com

Dear Colleagues

**LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ("LM")
Supreme Court of Queensland proceeding no. 12317/14 ("Proceedings")**

We continue to act on behalf of the plaintiff in the above Proceedings, instructed by the court appointed receiver of the LM First Mortgage Income Fund (FMIF), David Whyte.

We refer to our correspondence today.

We hereby **enclose** by way of service on the seventh defendant Claim and Statement of Claim numbered 12317 of 2014 (**Claim**).

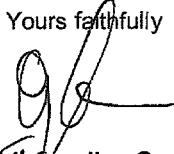
Would you please confirm that you accept service of the Claim on behalf of the seventh defendant by providing us with a copy of the documents with a note on each document to the effect that you accept service for the party (in accordance with rule 115 of the *Uniform Civil Procedure Rules 1999 (Qld)*).

As to the other matters raised in your correspondence of 10 February 2015, we confirm our client is presently considering those matters. We will revert to you with our client's response as soon as possible.

At this time, we anticipate being in a position to revert to you with our client's response by close of business tomorrow, 13 February 2015.

We otherwise confirm we will provide you with a sealed copy of the Order made by Her Honour Justice Mullins today, as soon as it is received from the Court.

Yours faithfully



Jacqueline Ogden
Associate

Enc.

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Email and post

13 January 2015

Jacqueline Ogden
Gadens
111 Eagle Street
Brisbane QLD 4000
jacqueline.ogden@gadens.com

Dear Jacqueline

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (LMIM)
Supreme Court of Queensland proceeding no. 12317/14**

We refer to your letter to us of yesterday's date.

As requested, we **enclose** copies of the Claim and Statement of Claim with a note that we accept service on behalf of the seventh defendant in accordance with rule 115 of the Uniform Civil Procedure Rules 1999 (Qld).

We note that you anticipated being in a position to provide us with a response to the other matters raised in our letter of 10 February 2015 by today. We look forward to receiving your response.

Yours sincerely



Mark Waller, Partner
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mwaller@claytonutz.com

Chris Erfurt, Senior Associate
+61 7 3292 7799
cerfurt@claytonutz.com

Our ref 12415/18810/80143342

Enc.

Caitlin Miller

From: Erfurt, Chris <CErfurt@claytonutz.com>
Sent: Thursday, 12 March 2015 12:47 PM
To: Scott Couper; Jacqueline Ogden
Cc: Waller, Mark
Subject: LMIM - FMIF claim

Dear Scott and Jacqueline

We refer to Chris' conversation with Jacqueline earlier today and our letter to you yesterday (seeking a response by 4pm yesterday, but to which we have had no response) noting that there is no apparent or good reason why our clients should be required to deliver LMIM's defence ahead of the other defendants and requesting that your client agree that LMIM's defence need not be filed until the interlocutory issues noted in our letter have been resolved and a timetable for delivery of the other defendants has been established.

As discussed with Jacqueline, there has been a new development today in that we have been instructed to withdraw from acting on behalf of the Liquidators in the proceeding and to hand over conduct of the matter to Russells. Russells will of course need time to review the file.

In the circumstances (in particular, where, as noted, there is no good reason why our clients should be required to deliver LMIM's defence and where your client will clearly suffer no prejudice as a result), our clients seek your client's urgent confirmation that your client will not take any steps adverse to our clients' interests without 7 days' prior notice or by direction of the Court.

Please let us have your client's response by 3pm today.

Yours sincerely

Mark Waller, Partner
Clayton Utz

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 Please consider the environment before printing this e-mail

This email is confidential. If received in error, please delete it from your system.

RUSSELLS

22 May, 2015

Our Ref: Mr Russell / Mr Tiplady
Your Ref: Mr Couper / Ms Ogden

Gadens Lawyers
BRISBANE

email: scott.couper@gadens.com
email: jacqueline.ogden@gadens.com

Dear Colleagues

LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM") as responsible entity for the LM First Mortgage Income Fund ("the FMIF") – ats – Whyte (sub nomine LMIM) Brisbane Supreme Court of Queensland Proceeding No. 12317/14 ("the Proceeding")

We refer to the Amended Statement of Claim (the "SOC") served on 14 May, 2015.

The purpose of this letter is to raise the more fundamental difficulties with the SOC. These difficulties are more constitutional than innate and raise threshold issues which, in the view of the liquidators of LMIM, should be resolved immediately.

Firstly, the SOC foreshadows an intention to amend the Claim by adding the words underlined in paragraphs 1 to 7 of the prayer for relief at the end of the pleading.

In our view, the application to amend the prayer for relief will re-enliven subsection 500(2) of the *Corporations Act 2001* ("the Act") and require your client to renew his application for leave to proceed with the proceedings, if leave to amend the Claim is granted.

Please advise when you propose to make that application for leave to amend the Claim and for leave to proceed with it under subsection 500(2) of the Act. We will be grateful if you would liaise with us as to a convenient date for the hearing of those applications.

Secondly, whilst the liquidators entertain considerable doubt about whether these proceedings are authorised by the order of Dalton J, they think that by far the better question is, assuming the proceedings have a reasonable prospects of success, which is the better plaintiff vehicle.

We are instructed that Mr Whyte made no attempt to discuss the institution of these proceedings with the liquidators before he commenced them. In so doing, Mr Whyte has shut LMIM out of access to the provisions of part 5.7B of the Act. We and our clients wish to discuss with you and your client the potential application of provisions such as sections 588FB (uncommercial transactions) and 588FDA (unreasonable director-related transactions).

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Brisbane / Sydney

Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000

Telephone (07) 3004 8888 / Facsimile (07) 3004 8899

RussellsLaw.com.au

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This second point is related to the third point: we respectfully adopt what fell from his Honour in argument prior to the amendment of the Statement of Claim; namely, in the present proceedings, it is not competent for LMIM to sue itself. Senior Counsel for your client referred in argument to section 59 of the *Trusts Act 1973* but we have serious reservations about how that State legislation could apply to a Responsible Entity, particularly in light of provisions such as sections 601FS and 601FT of the Act.

Apart from that nice question, however, the core difficulty with the allegations in paragraphs 41 to 43 of the SOC are, in summary, an allegation that a company was involved in a breach by its directors of duties owed to it, purely by circumstance that those directors knew of their own conduct. A related difficulty is that the allegation of independent wrong-doing alleged in paragraph 42 of the SOC, are not only without particulars, but without any material facts.

The SOC contains allegations that all six of the directors of LMIM were guilty of what amounts to fraudulent conduct, in that they are alleged to have improperly used their respective positions as directors of LMIM to gain an advantage for themselves or someone else (the beneficiaries of the trust estate of the MPF). Yet, the only facts relied on to show that LMIM participated or was knowingly concerned in those alleged breaches are that the directors knew what they were doing, presumably (indeed obviously) on the basis that such knowledge is to be imputed to LMIM.

In our view, the imputation of knowledge of a director of a company does not necessarily occur merely because the subject matter of the knowledge concerns the business of the company. Where it is alleged, as here, that directors are acting improperly as directors, their knowledge is not imputed to the company. For these (very summary) reasons, LMIM cannot sue itself as a knowing participant in the wrong-doing of its directors. It is necessary to add that the same analysis applies to the allegation of knowing wrong-doing on the part of LMIM "in its capacity" as trustee of the MPF. In that regard, we note that no tracing remedy is sought and that the sole basis for the liability of LMIM (to itself) is section 1317H of the Act.

This difficulty is both exacerbated and highlighted by the contrast between the very brief heading "*LMIM's involvement in contravention by Directors*" and the actual provisions of section 79 of the Act. Nowhere in the SOC is any attempt made to bring LMIM within the description of "*a person*" in any of the four limbs or subparagraphs of section 79 of the Act. All that is alleged is that "*LMIM as trustee of the MPF knew*" certain matters (amounting to wrongful conduct on the part of the directors). In our respectful view, this attempt to sheet home liability to the company knowledge of matters held by certain directors is misconceived.

In that respect, in our view, section 83 of the Act informs the construction of section 79 and it is simply not possible for LMIM to say that it was knowingly concerned in the wrongful conduct of its directors because its directors knew of the conduct in which they were engaging.

These difficulties are compounded when one considers that the gravamen of the case is that it was one company acting as trustee of two trust estates, and its directors wrongly presided over the transfer of a sum of money from one trust estate to another. So, the case is really about loss suffered by the members of the registered scheme, the FMIF, because of a breach by the responsible entity of its duties under subsection 601FC(1) of the Act. We note in that regard that subsection 601FC(5) is a corporation/scheme penalty provision, probably most apt to the case being pleaded, although reference to section 601FC does not appear at all in the SOC.

Our Ref: Mr Russell / Mr Tiplady Page 2 of 4
Your Ref: Mr Couper / Ms Ogden

That, with all due respect, highlights the reason for these constitutional difficulties with the SOC. The loss is a loss suffered not by LMIM, but by the members of the scheme and the pleaded case fundamentally misconceives that basic fact.

We also note that subsection 1317H(4) of the Act seems particularly apt to the present circumstances. LMIM is, on the pleaded case, more appropriately a defendant, not a plaintiff, at least at the suit of those who have suffered loss, namely the members of the FMIF.

This too is recognised by the provisions of subsection 1317H(3) of the Act. In several places in the SOC, it is alleged that "*LMIM as RE of the FMIF has suffered damage*"; however, the loss is alleged to have flowed from the wrongful conduct of LMIM's own directors in which, LMIM alleges, LMIM was knowingly involved. It is, with respect, bizarre that a trustee company could allege that it has suffered loss and damage because of its own wrongful conduct, solely on the basis of accessorial liability.

The next constitutional difficulty with the SOC is the way in which allegations are made concerning the alleged knowledge of natural persons. In paragraphs 41 and 47, it is alleged that "*LMIM as trustee of the MPF knew of [certain] matters*". No attempt is made to plead the material facts necessary to establish the imputation of the alleged knowledge of the natural person officers to the corporation. That is not a matter that can be cured by a request for, or the provision of, particulars. For the reasons outlined above, a substantial factual matrix is missing from the material facts necessary to found an allegation of imputation of knowledge to LMIM.

For all of these reasons, the liquidators instruct us to invite Mr Whyte to discontinue the proceedings against the seventh defendant and consequently, to pay the costs that it has incurred in defending the proceedings to date. As you will appreciate, these are comparatively modest so far.

If Mr Whyte declines to give you those instructions, we must, regrettably, put your client on notice that should our clients succeed in having the proceedings dismissed, they will seek an appropriate order for costs against Mr Whyte personally. In order to avert that possibility, we are instructed to also invite you to undertake that Mr Whyte will not pay any of the legal costs associated with the proceedings out of the FMIF, pending further order.

We appreciate that the matters raised in this letter might take some little time to digest. We therefore request your considered response to the liquidators' invitation to discontinue the proceedings by the close of business on Friday, 29 May, 2015.

Yours faithfully



Stephen Russell
Managing Partner

Direct (07) 3004 8810
Mobile 0418 392 015
SRussell@RussellsLaw.com.au

Our Ref: Mr Russell / Mr Tiplady Page 3 of 4
Your Ref: Mr Couper / Ms Ogden

cc James Conomos Lawyers
By email: Wiebke@jcl.com.au

cc Bartley Cohen
By email: benc@bartleylaw.com / mmanning@bartleylaw.com

cc HW Litigation
By email:
mwilliams@hwlitigation.com.au / mdaniel@hwlitigation.com.au

cc Minter Ellison
by email:
David.O'Brien@minterellison.com nadia.braad@minterellison.com

cc Rodgers Barnes and Green
By email:
greg.rodgers@rbglawyers.com.au / steven.muller@rbglawyers.com.au

Our Ref: Mr Russell / Mr Tiplady Page 4 of 4
Your Ref: Mr Couper / Ms Ogden

Our Reference Jacqueline Ogden 201401822
Direct Line 3231 1688
Email jacqueline.ogden@gadens.com
Partner Responsible Scott Couper

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1 June 2015

Russells Law
Level 18, 300 Queen Street
Brisbane QLD 4000

Attention: Stephen Russell and Ashley Tiplady

By email: srussell@russellslaw.com.au and atiplady@russellslaw.com.au

Dear Colleagues

**LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ACN 077 208 461 ("LMIM") as Responsible Entity ("RE") for the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF") -v- LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ACN 077 208 461 & Ors
Supreme Court of Queensland Proceeding No. 12317/14 ("Proceedings")**

We refer to your letter of 22 May 2015. We are instructed to respond as follows.

Application for leave to proceed

We disagree that an application for leave to amend the claim will re-enliven section 500(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**) for the following reasons:

1. First of all the grant of leave was not limited to a particular relief or sum of damages or compensation. The order of Mullins J granting leave to proceed was, relevantly, in the following general terms:

"Pursuant to s 500(2) of the Corporations Act 2001 (Cth) the applicant plaintiff be granted leave nunc pro tunc to commence and proceed with Supreme Court Proceeding numbered 12317 of 2014 against the seventh defendant....."

The amendments made to the prayer for relief in the claim have the effect of seeking damages or compensation in an alternative reduced amount with respect to the same causes of action. No new cause of action is added and no new claim is asserted.

2. Secondly, the legislative purpose of provisions such as s 500(2) of the *Corporations Act* is to ensure civil proceedings do not affect the orderly winding up of the company or unreasonably prejudice other creditors. The amendment to seek to claim a reduced sum of compensation or damages cannot sensibly be said to alter the position regarding prejudice to the assets of the estate that was considered by the Court at the time leave was granted. No obvious legislative purpose is achieved in requiring a fresh grant of leave to make what is in truth a formal amendment to the claim.
3. Thirdly, a general grant of leave to "*commence and proceed with*" a "*civil proceeding*" comes with permission to take the steps which follow from the filing the claim and take the matter to trial, including amendments. An amended claim or pleading is filed in the same "*civil proceeding*" as that which was the subject of a grant of leave.

In this regard we note the decision of the Full Court of the Federal Court in *Frost v Bovaird* (2014) 223 FCR 275, which considered this issue in the context of section 249(3) of the *Bankruptcy Act 1966* and is, in our view, apposite in relation to leave granted pursuant to s 500(2) of the *Corporations Act*.

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Accordingly, our view is that any application to amend the claim falls within the existing grant of leave and our client does not propose to make any fresh application.

Justice Dalton's order of 21 August 2013

You state in your letter that your clients "*entertain considerable doubt about whether [proceedings 12317/14] are authorized*" by Justice Dalton's order of 21 August 2013 (**Order**).

We note however that your clients were served with the application and material and appeared, by Counsel, on the hearing of our client's application for leave to proceed before Mullins J. No doubts were raised by your clients before the Court as to our client's authority or power to commence the Proceedings. Indeed, your clients consented to the orders granting our client leave. Further, under the terms of the order of Mullins J your clients were granted liberty to apply to the Court to revoke the grant of leave but have not done so despite some considerable time having passed since that order was made and the Proceedings having progressed in the interim.

We also note that your clients have now filed a separate application seeking directions regarding the respective roles of LMIM and our client in the winding up of the FMIF. As you are aware we do not act for Mr Whyte in those proceedings however, as we are instructed, that application does not seek any orders in relation to the Proceedings, nor does it seek to challenge Mr Whyte's authority to bring the Proceedings.

Our client's position is that he is expressly vested with the power to bring the Proceedings by the Order and maintains that the Order authorises him to bring the Proceedings in the name of LMIM as RE of the FMIF.

In light of the above, we ask that your clients advise once and for all whether they maintain any challenge to our client's authority or power to bring the Proceedings and if so the basis for that challenge.

Part 5.7B of the Act

We are uncertain as to why you say your clients say that the commencement of the Proceedings "*has shut LMIM out of access to the provisions of Part 5.7B of the Act*".

We also do not understand how your clients maintain a complaint about lack of consultation as to the institution of the Proceedings when they appeared on and consented to orders granting our client leave to commence such proceedings and did not raise any complaint about lack of consultation at the hearing of that application.

Our client reiterates his position, as previously advised to your clients, that whilst his understanding of the effect of the Order is that he will, in substance and effect, conduct the winding up of the FMIF and that LMIM is to have a limited role in the winding up of the FMIF, he has been and remains prepared where appropriate to consult with your clients as liquidators of LMIM in relation to the winding up.

As to the potential application of the provisions of Part 5.7B of the Act generally, our client remains pleased to discuss this with your clients and in particular, as he has previously raised, any evidence your clients may have as to the solvency of LMIM at the relevant times.

Section 59 of the Trusts Act

You say you hold serious reservations about the application of State legislation, namely s 59 of the *Trusts Act 1973* (Qld) (**Trusts Act**) to a responsible entity (that is, to LMIM as responsible entity for the FMIF).

We are uncertain as the basis for that reservation, particularly given your clients have previously applied for directions under s 96 of the Trusts Act on the basis that LMIM remains the responsible entity of the FMIF and thus is a trustee. Sections 601FS and 601FT of the Corporations Act apply to a former responsible entity and any impact those section have upon the application of the Trusts Act in so far as it relates to LMIM as RE for the FMIF is not immediately apparent to us.

If you could expand upon the basis for your reservations we would be pleased to give the matter further consideration.

Amended Statement of Claim

You raise a number of “constitutional” matters about the Amended Statement of Claim and we are instructed to respond as set out below.

Involvement of LMIM

You say that:

1. the core difficulty with paragraphs 41 to 43 of the Amended Statement of Claim (**SOC**) is that in summary the allegation is that LMIM was involved in a breach of duty by its directors purely by circumstance that those directors knew of their own conduct.
2. “the only facts relied on to show that LMIM participated or was knowingly concerned in those alleged breaches are that the directors knew what they were doing”.
3. the SOC contains allegations that all six directors of LMIM were guilty of what amounts to fraudulent conduct in that they are alleged to have “improperly” used their respective positions which, in turn you say raises a question about whether knowledge of those directors can be imputed to the company.

With respect we disagree.

LMIM’s involvement is not purely premised upon the knowledge of the directors. As pleaded in paragraph 37B, LMIM acted in accepting and retaining the Settlement payment.

In addition, there are different and separate statutory duties owed by the directors of LMIM in its capacity as RE for the FMIF (to the members of the FMIF) and by the directors of LMIM in its capacity as trustee for the MPF (to the members of the MPF). The requirements of the duties varies depending upon the nature of the decision being made and with respect to which fund.

It is wrong to suggest the SOC alleges fraudulent conduct by the directors. It does not. Further, as you would be aware, impropriety in the context of the relevant section, “dishonest use of a director’s position would necessarily mean that the use was also improper, but not every improper use of position is necessarily dishonest”.¹

For that reason, if your concern regarding the imputation of knowledge of the directors arises because you say the principle from *In re Hampshire Land Company* [1896] 2 Ch 743 applies because fraud is alleged, we do not accept that it does. If we have misapprehended your concern then please tell us so we may consider it and respond.

Section 79 of the Act

You say that nowhere in the SOC is any attempt made to bring LMIM within the provisions of s 79 of the Corporations Act.

We disagree. On the pleaded case LMIM’s involvement in the contraventions (which as set out above is not purely based upon knowledge of the directors) falls squarely within the provisions of section 79(c) of the Act.²

We are not certain what point you seek to make about s 83 of the Corporations Act. LMIM is a “person”³ and s 83 does not operate to exclude it from being so.

¹ See Santow JA in *Kwok v R* (2007) 64 ACSR 307 at [80]

² See for example *Agricultural Land Management Ltd v Jackson* [2014] WASC 102

³ As that term is defined in the *Acts Interpretation Act 1901* (Cth) s 2C

Section 601FC of the Act

Our client is not pursuing a claim under section 601FC of the Corporations Act and for that reason no reference to that section appears in the SOC.

Loss suffered by LMIM as RE for the FMIF

We do not accept that our client's pleaded case "*fundamentally misconceives*" the fact that the loss is not suffered by LMIM but by the members of the scheme.

The relief being sought in the Proceedings under section 1317H of the Act is for compensation for loss suffered by the FMIF. As explained by Edelman J in *Agricultural* the reference to a registered scheme in s 1317H is a shorthand reference to the responsible entity of the registered scheme. It is clear from the terms of the section that it is the Responsible Entity who is entitled to "*recover the compensation on behalf of the scheme*" where a "*scheme*" has suffered damage as a consequence of a breach of a civil penalty provision. Thus it is entirely appropriate for LMIM to be named as the plaintiff.

Paragraphs 41 and 47 of the Statement of Claim

We understand your concern to be that no attempt has been made to plead the material facts to establish the imputation of the knowledge of the directors to LMIM.

The particulars of paragraphs 41 and 47 of the SOC state that:

"LMIM's knowledge arises by reason of its position as former trustee of the MPF and by virtue of the knowledge of the first to sixth defendants being directors of LMIM as former trustee of the MPF".

Accordingly the pleading identifies both the persons (that is the directors) whose knowledge is sought to be attributed to LMIM and the basis for imputing that knowledge by reference to those persons (that is by reference to their "closeness" and "relevance" to the company).⁴

This is not a case where the transaction took place between two subsidiary companies but effectively within the one entity between two funds where the entity owed separate duties to the funds arising out to the one transaction. If you have some case authority that you rely upon in this regard that you might direct us to we would give it further and careful consideration.

Costs order against Mr Whyte

We note your clients propose to seek a costs order against Mr Whyte personally in the event they succeed in having the proceedings dismissed. Can you please tell us the basis for such an order in circumstances where your clients consented to the Court granting him leave to commence the proceedings?


You also suggest that Mr Whyte should not pay any of the legal costs "associated with the proceeding" out of the FMIF pending further order. Do you mean to suggest this with respect to the whole of the proceedings or only that portion involving your client?

Finally, do we take it that you intend making an application to the Court given the reference to "*pending further order*"? If so could you tell us the nature of such application.

We trust the above has addressed those issues traversed in your letter of 22 May 2015. To the extent there are any other particular issues your clients consider remain to be dealt with, please let us know as our client remains willing to constructively deal with them and with the litigation.

⁴ See *Krakwoski v Eurolynx Properties Ltd* (1995) 183 CLR 563

Yours faithfully,



Handwritten signature of Jacqueline Ogden, consisting of stylized initials and a horizontal line.

Jacqueline Ogden
Associate

"SC-14"

RUSSELLS

1 July, 2015

Our Ref: Mr Tiplady/Ms Williamson
Your Ref: Mr Couper/Ms Ogden

Gadens Lawyers
BRISBANE

email: scott.couper@gadens.com
jacqueline.ogden@gadens.com

Dear Colleagues

**LM Investment Management Limited (Receivers and Managers
Appointed) (In Liquidation)
Supreme Court of Queensland Proceeding No. 12317/14**

We enclose, by way of service, the seventh defendant's Notice of Intention to Defend and Defence filed in the Supreme Court of Queensland today, 1 July, 2015.

Yours faithfully



Stephanie Williamson
Lawyer

Direct (07) 3004 8822
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

cc James Conomos Lawyers
By email: Wiebke@jcl.com.au

cc Bartley Cohen
By email: benc@bartleylaw.com / mmanning@bartleylaw.com

cc HW Litigation
By email: mwilliams@hwlitigation.com.au
mdaniel@hwlitigation.com.au

cc Minter Ellison
by email: David.O'Brien@minterellison.com /
nadia.braad@minterellison.com

Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney
Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899
RussellsLaw.com.au
S.J.W._20150298_102.docm

cc Rodgers Barnes and Green
 By email: greg.rodgers@rbglawyers.com.au /
 steven.muller@rbglawyers.com.au

Our Ref: Mr Tiplady/Ms Page 2 of 1
 Williamson
Your Ref: Mr Couper / Ms Ogden

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 12317/14

Plaintiff: **LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS & MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE
ENTITY OF THE LM FIRST MORTGAGE INCOME
FUND ARSN 089 343 288**

AND

First Defendant: **PETER CHARLES DRAKE**

AND

Second Defendant: **LISA MAREE DARCY**

AND

Third Defendant: **EGHARD VAN DER HOVEN**

AND

Fourth Defendant: **FRANCENE MAREE MULDER**

AND

Fifth Defendant: **JOHN FRANCIS O'SULLIVAN**

AND

Sixth Defendant: **SIMON JEREMY TICKNER**

AND

Seventh Defendant: **LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS & MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461**

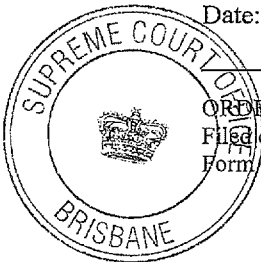
AND

Eighth Defendant: **KORDA MENTHA PTY LTD ACN 100 169 391 IN ITS
CAPACITY AS TRUSTEE OF THE LM MANAGED
PERFORMANCE FUND**

ORDER

Before: Jackson J

Date: 21 July 2015



ORDER
Filed on Behalf of the Plaintiff
Form 59 Rule 661

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
BNEDOCS Order of Justice Jackson (21 July 2015)

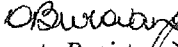
Initiating document: Interlocutory application filed 14 July 2015

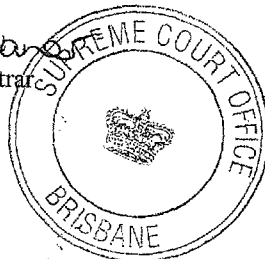
THE COURT DIRECTS THAT:

1. Pursuant to section 59 of the *Trusts Act 1973* (Qld),
 - (a) the interests of LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ACN 077 208 461 in its capacity as responsible entity of the LM First Mortgage Income Fund as plaintiff have been and continue to be represented in these proceedings by David Whyte, as court appointed receiver of the property of the LM First Mortgage Income Fund and person responsible for ensuring it is wound up pursuant to its constitution, pursuant to the order of Dalton J in proceedings numbered 3383/2013 and dated 21 August 2013;
 - (b) the interests of LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ACN 077 208 461 in its own capacity and in its capacity as former trustee of the LM Managed Performance Fund as seventh defendant have been and continue to be represented in these proceedings by the liquidators of LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ACN 077 208 461, Mr John Park and Ms Ginette Muller.
2. David Whyte, as court appointed receiver of the property of the LM First Mortgage Income Fund, has properly included in proceeding 12317 of 2014 the alternative claim for compensation under section 1317H of the *Corporations Act 2001* (Cth) for damage suffered by the Plaintiff for contravention of section 182 of the *Corporations Act 2001* (Cth) as against the seventh defendant as a person who has contravened section 182 and whose contravention resulted in the damage for the purposes of paragraph 7(b) of the order of Dalton J in proceedings numbered 3383/2013 and dated 21 August 2013.

THE ORDER OF THE COURT IS THAT:

3. The parties' costs of and incidental to this application, each on the indemnity basis, be paid from the assets of the LM First Mortgage Income Fund.

Signed: 
Deputy Registrar



SUPREME COURT
OF QUEENSLAND
19 MAY 2016
FILED
BRISBANE

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 12317 of 2014

Plaintiff: LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE
ENTITY OF THE LM FIRST MORTGAGE INCOME
FUND ARSN 089 343 288

AND

First Defendant: PETER CHARLES DRAKE

AND

Second Defendant: LISA MAREE DARCY

AND

Third Defendant: EGHARD VAN DER HOVEN

AND

Fourth Defendant: FRANCINE MAREE MULDER

AND

Fifth Defendant: JOHN FRANCIS O'SULLIVAN

AND

Sixth Defendant: SIMON JEREMY TICKNER

AND

Seventh Defendant: LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461

AND

Eighth Defendant: KORDAMENTHA PTY LTD ACN 100 169 391 IN ITS
CAPACITY AS TRUSTEE OF THE LM MANAGED
PERFORMANCE FUND



Filed on behalf of the Seventh Defendant

Form 59 Rule 661

Russells
Level 18
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

Draft Order 28-4-16

ORDER

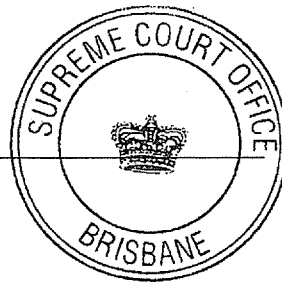
Before: Justice Jackson
Date: 28 April, 2016
Initiating document: Application filed by leave 28 April, 2016

THE ORDER OF THE COURT IS THAT:-

1. Orders 3 and 4 made on 14 August, 2015, as varied, be vacated insofar as they require any action against by the Seventh Defendant.
2. The liquidators and solicitors for the Seventh Defendant be excused from any further appearance. *OB*
3. There be no order as to the costs of the application.

Signed:

OBw...
Deputy Registrar



SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3508 of 2015

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

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

AND

Second Applicant: LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288

AND

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

APPLICATION

Definitions

Where the following terms appear in this Application, they have the following meaning:

Act means *Corporations Act 2001* (Cth)

Conclusion means the date not before the conclusion of all Proceedings and after the Receiver and the Liquidator file an affidavit in these proceedings stating that there is no impediment to the distribution of funds to members of all Funds, with such affidavit to include an estimate of the

APPLICATION
Filed on behalf of the Applicants
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

Russells
Level 18, 300 Queen Street
Brisbane, Qld, 4000
Tel: 07 3004 8888
Fax: 07 3004 8899
Ref: JTW:20180543

amount to be distributed pending the making of orders in the Final remuneration and expenses determination.

Budget(s) means the estimates of the Liquidator and the Receiver respectively for their remuneration and expenses up to the Conclusion.

Feeder funds means CPAIF and ICPAIF.

Final Distribution means making a final distribution to members of FMIF at the Conclusion in the event that they were responsible for winding up the affairs of the FMIF

Final remuneration and expenses determination means any application for remuneration and expenses to be brought by either the Receiver or the Liquidator at the Conclusion

Funds means, together:

1. LM First Mortgage Income Fund ARSN 089 343 288 (“**FMIF**”);
2. LM Cash Performance Fund ARSN 087 304 032 (“**CPF**”);
3. LM Currency Protected Australian Income Fund ARSN 110 247 875 (“**CPAIF**”);
4. LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (“**ICPAIF**”);
5. LM Australian Income Fund ARSN 133 497 917 (“**AIF**”); and
6. LM Australian Structured Products Fund ARSN 149 875 669 (“**ASPF**”).

Insolvency Schedule means schedule 2 to the *Corporations Act 2001* (Cth).

Interim Distribution means an interim distribution to members of the FMIF, in the event that they were responsible for winding up the affairs of the FMIF

Liquidator means the First Applicant, Mr John Park

LMIM means LM Investment Management Limited (in liquidation) (receivers and managers appointed) ACN 077 208 461

Old Act of the *Corporations Act 2001* (Cth) as in force immediately before 1 March 2017.

Proceedings means, together:

1. Supreme Court of Queensland Proceeding number 11560 of 2016 (“**the Clear Accounts Proceeding**”);
2. Supreme Court Proceedings BS 2166/2015 (“**Ernst & Young Proceedings**”);
3. Supreme Court of Queensland Proceeding number 13534 of 2016 (“**the Feeder Fund Proceedings**”)

Receiver means the Respondent, Mr David Whyte

21 August 2013 Order means the Order of Dalton J dated 21 August 2013 in Supreme Court Proceedings BS3383/13

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

At the directions hearing on 19 November 2018:

1. Directions pursuant to section 511(1) of the Old Act and section 601NF (2) of the Act or, alternatively section 90-15(1) of the Insolvency Schedule and section 601NF(2) of the Act:
 - (a) that subject to the payment pursuant to paragraphs 2(i) and (j) of this application being made, the Liquidator be directed to act as contradictor in respect of:
 - (i) the Clear Accounts Proceeding; and
 - (ii) the Feeder Fund Proceeding;
 - (b) That by no later than 27 November 2018 the Liquidator and the Receiver file affidavits setting out a Budget up to and including the payment of the final distribution to the creditors of LMIM and final distribution to the members of each of the Funds;
 - (c) The Budget set out in the affidavits to be filed in accordance with paragraph 1(b) are to include:
 - (i) estimates of the monthly remuneration of the Liquidator and the Receiver respectively up to and including the Conclusion;
 - (ii) an estimate of the monthly expenses of the Liquidator and the Receiver up to the Conclusion;
 - (iii) an estimate by each of the Liquidator and the Receiver of the remuneration and expenses they would charge for making the Interim Distribution;
 - (iv) an estimate by each of the Liquidators and the Receivers of the remuneration and expenses they would charge for making the Final Distribution;
 - (v) an estimate of the total remuneration and expenses up to the Conclusion in the event that they were responsible for winding up the affairs of the FMIF (other than conduct of the Proceedings);
 - (vi) a description of the work to be carried out by the Liquidator and the Receiver in respect of their estimated remuneration (other than conduct of

the Proceedings) in the event that they were responsible for winding up the affairs of the FMIF;

- (vii) an estimate as to the expenses to be incurred by the Liquidator and the Receiver up to the Conclusion in the event that they were responsible for winding up the affairs of the FMIF (other than conduct of the Proceedings);
- (viii) a description of the expenses to be incurred by the Liquidator and the Receiver up to the Conclusion (other than conduct of the Proceedings) in the event that they were responsible for winding up the affairs of the FMIF;
- (ix) for any Proceeding of which either the Liquidator or Receiver has conduct of, a breakdown by each proceeding of the estimated costs of solicitors, experts and counsel to the conclusion of each proceeding (including any appeal to an intermediate Court of Appeal);
- (x) for any Proceeding of which either the Liquidator or Receiver has conduct of, an estimate of any costs exposure to each counterparty to such proceeding in the event of the proceeding being unsuccessful.

On the further return of the Application, set down provisionally for 10 December 2018

2. Directions pursuant to section 511(1) of the Old Act and section 601NF(2) of the Act or, alternatively section 90-15(1) of the Insolvency Schedule and section 601NF(2) of the Act that:
- (a) The Receiver's appointment pursuant to the 21 August 2013 Order to act as the person appointed to supervise the winding up of the FMIF is to continue only in respect of the conduct on behalf of the FMIF of:
 - (i) the Clear Accounts Proceeding;
 - (ii) the Feeder Fund Proceeding; and
 - (iii) the EY Proceeding;
 - (b) From the date of this Order, the Liquidator is appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution, together with such ancillary Orders as may be appropriate to give effect to this appointment;
 - (c) the Liquidator, or the Receiver in the event of Order in paragraph 2(b) of this application is not made, will:

- (i) within three months of this order, file an affidavit describing any impediment that might exist to his knowledge as to why an interim distribution cannot be forthwith made to members of the FMIF; and
 - (ii) in the event of that the affidavit does not describe an impediment, make the Interim Distribution within a further three months;
- (d) approving the Budgets, in the amounts sought or as varied by the Court, as being reasonable estimates of the remuneration and expenses that may be incurred in the winding up of LMIM and the Funds;
- (e) the remuneration of the Liquidator for the period from the date of this order to the Conclusion:
- (i) be fixed or determined in the amount of 50% of the amount stated in the Budget for the Liquidator for that period, with the Liquidator reserving the right to seek a fixing or determination of the other 50% of the Budget and all other additional remuneration at the Final remuneration and expenses determination; or alternatively
 - (ii) be fixed or determined in the amount of 50% of the amount stated in the Budget for the Liquidator for that period with such amount being on account of an amount to be fixed determined at the Final remuneration and expenses determination at which the initial fixing or determination of 50% of the amount stated in the Budget for the Liquidator can be reduced, increased or stay the same;
- (f) the remuneration of the Receiver for the period from the date of this order to the Conclusion:
- (i) be fixed or determined in the amount of 50% of the amount stated in the Budget for the Receiver for that period, with the Receiver reserving the right to seek a fixing or determination of the other 50% of the Budget and all other additional remuneration at the Final remuneration and expenses determination; or alternatively
 - (ii) be fixed or determined in the amount of 50% of the amount stated in the Budget for the Liquidator for that period with such amount being on account of an amount to be fixed or determined at the Final remuneration and expenses determination at which the initial fixing or determination of 50% of the amount stated in the Budget for the Liquidator can be reduced, increased or stay the same

- (g) All of the remuneration of the Liquidator as fixed, or alternatively determined, pursuant to paragraph 2(e) be paid within 30 days from the date of this order from the respective scheme property of FMIF, AIF and ASPF in such proportions as may be just;
- (h) All of the remuneration of the Receiver fixed, or alternatively determined, pursuant to 2(f) be paid within 7 days after the payments in paragraph 2(g) above from the scheme property of FMIF.
- (i) The expenses of the Liquidator to the Conclusion be paid on an indemnity basis from the scheme property of the FMIF, AIF and ASPF in such proportions as may be just on the following basis:
 - (i) in an amount equal to 50% of the expenses stated in the Budget of the Liquidator be paid within 7 days after the end of each calendar month as set out in the Budget with the Liquidator reserving the right to seek an order for payment of the other 50% of the Budget and all other additional expenses as ordered to be paid at the Final remuneration and expenses determination; or alternatively
 - (ii) in an amount equal to 50% of the expenses stated in the Budget of the Liquidator be paid within 7 days after the end of each calendar month as set out in the Budget with such amount being on account of an amount to be paid at the Final remuneration and expenses determination at which the initial payment of 50% of the amount stated in the Budget for the Liquidator can be reduced, increased or stay the same;
- (j) The expenses of the Receiver to the Conclusion be paid on an indemnity basis from the scheme property of the FMIF on the following basis:
 - (i) in an amount equal to 50% of the expenses stated in the Budget of the Receiver be paid within 7 days after the payments in paragraph 2(i)(i) above with the Receiver reserving the right to seek an order for payment of the other 50% of the Budget and all other additional expenses at the Final remuneration and expenses determination; or alternatively
 - (ii) in an amount equal to 50% of the expenses stated in the Budget of the Receiver be paid within 7 days after the payments in paragraph 2(i)(ii) above with such amount being on account of an amount to be order to be paid at the Final remuneration and expenses determination at which time the initial payment of 50% of the amount stated in the Budget for the Receiver can be reduced, increased or stay the same

3. Costs of this Application be payable, and paid, on the indemnity basis from the respective scheme property of the FMIF, AIF and ASPF in such proportions as may be just.
4. Such further or other Order as the Court deems meet.

This application will be heard by the Court at QEII Courts of Law Complex, 415 George Street, Brisbane, Qld, 4000 on 19 November 2018 and provisionally for 10 December 2018.

Filed in the Brisbane Registry on 10 October 2018:

Registrar:

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

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

1. Affidavit of Kelly-Anne Lavina Trenfield to be sworn;
2. Affidavit of Renee Lobb to be sworn;

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

3. Affidavit of John Richard Park to be sworn; and
4. Affidavit of Kelly-Anne Lavina Trenfield to be sworn.

THE APPLICANTS ESTIMATE THE FIRST HEARING SHOULD BE ALLOCATED TWO HOURS

Signed: 

Description: Julian Walsh, Solicitor for the Applicants

Dated: 10 October 2018

This application is to be served on:

Respondent Name:

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

Address:

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

Notice fo this application is to be given in accordance with the 3 October 2018 Order of the Honourable Justice Jackson on:

Third Party Name:

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Address:

Level 20, 240 Queen Street, Brisbane Queensland, 4000

SUPREME COURT OF QUEENSLAND

CITATION: *LM Investment Management Limited & Anor v Whyte* [2019]
QSC 233

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

AND

**LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) (RECEIVERS APPOINTED) ACN 077
208 461 THE RESPONSIBLE ENTITY OF THE LM
FIRST MORTGAGE INCOME FUND ARSN 089 343 288
(Second Applicant)**

v

**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
(First Respondent)**

AND

**SAID JAHANI IN HIS CAPACITY AS RECEIVER AND
MANAGER OF THE ASSETS, UNDERTAKINGS,
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
(Second Respondent)**

FILE NO/S: BS No 3508 of 2015

DIVISION: Trial Division

PROCEEDING: Application filed 10 October 2018 and an application filed 1 February 2019

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 2 October 2019

DELIVERED AT: Brisbane

HEARING DATE: For the application filed 10 October 2018 – 10 December 2018

For the application filed 1 February 2019 – 13 March 2019

JUDGE: Jackson J

ORDER: **On the application filed 10 October 2018 the order of the court is that:**

1. **The application is dismissed.**
2. **The parties exchange and file written submissions as to costs by 8 October 2019.**

On the application filed 1 February 2019 the order of the court is that:

1. **The first respondent is authorised and empowered to make an interim distribution from the property of the LM First Mortgage Investment Income Fund (“FMIF”) among the members of the FMIF of up to \$40 million.**
2. **It is declared that each member holding “Class C” Units in the FMIF is entitled to be paid in the winding up of the FMIF amounts calculated by reference to the calculation of that member’s units in the foreign currency of investment as adjusted for the foreign exchange spot rate between the currency of investment and the Australian dollar prevailing at the date of the commencement of the winding up of the FMIF.**
3. **The first respondent’s costs of the application be costs in the winding up of the FMIF to be assessed on the indemnity basis and paid to the first respondent from the property of the FMIF.**
4. **Trilogy exchange and file with any opposite party submissions as to costs by 8 October 2019.**

CATCHWORDS: CORPORATIONS – MANAGED INVESTMENTS – WINDING UP – Where the second applicant is the responsible entity of a registered managed investment scheme – Where the first applicant is the liquidator of the second applicant – Where the first respondent was appointed to take responsibility for ensuring the scheme is wound up in accordance with its

constitution – where the first applicant applied to the court for directions that the first applicant take responsibility for ensuring the scheme was wound up in accordance with its constitution – Where the court held that the winding up of the scheme should not be transferred from the first respondent to the first applicant

CORPORATIONS – MANAGED INVESTMENTS – WINDING UP – Where the first respondent was appointed to ensure a registered managed investment scheme is wound up in accordance with its constitution – Where the first respondent applied for orders that he be authorised to make an interim distribution to the members of the scheme in a sum of up to \$40 million

CORPORATIONS – MANAGED INVESTMENTS – WINDING UP – Where the first respondent was appointed to ensure a registered managed investment scheme is wound up in accordance with its constitution – Where the first respondent sought a declaration that Class C unit holders were entitled to be paid amounts in the winding up of the scheme – Where the court held that Class C members could receive distributions on the footing their entitlements were ascertained by reference to the appropriate calculation of units in AUD as at the dates of the winding up

ASIC v Atlantic 3-Financial (Aust) Pty Ltd [2004] 1 Qd R 591, cited

ASIC v Letten (No. 7) (2010) 190 FCR 59, cited

ASIC v Letten [2010] FCA 140, cited

Bruce v LM Investment Management Limited (in liquidation) & Ors [2019] QSC 126, cited

Carl Zeiss Stiftung v Herbert Smith & Co (No 2) [1969] 2 Ch 276, cited

Frost v Bovaird (2012) 203 FCR 95, cited

Hung v Warner; re Bellpac Pty Ltd (receivers and managers appointed) (in liquidation) [2013] FCAFC 48, cited

Ide v Ide (2004) 184 FLR 44, cited

LM Investment Management Ltd (in liq) v Bruce and others (2014) 102 ACSR 481, cited

Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar the Diocesan Bishop of Macedonian Orthodox Diocese of Australia and New Zealand (2008) 237 CLR 66, cited

Park & Muller (liquidators of LM Investment Management Ltd) v Whyte (receiver of the LM First Mortgage Investment Fund) [2015] QSC 283, cited

Park v Whyte (No. 2) [2018] 2 Qd R 413, cited

Park v Whyte (No. 3) [2018] 2 Qd R 475, cited

Re Bruce & Anor v LM Investment Management Limited & Ors
 [2013] QSC 192, cited
Re Stacks Managed Investments Ltd (2005) 54 ACSR 466,
 cited

Corporations Act 2001 (Cth), ss 420, 473, 563B, 601NF,
 1581,
Insolvency Law Reform Act 2016 (Cth)
Trusts Act 1973 (Qld), s 59

COUNSEL: For the application filed on 10 October 2018 (“first application”):
 J Peden QC and S Russell for the applicant liquidator
 J McKenna QC and D Ananian-Cooper for the respondent
 David Whyte
 D Turner for Said Jahani

For the application on 1 February 2019 (“second application”):

J McKenna QC and D Ananian-Cooper for the applicant
 David Whyte

SOLICITORS: For the application on 10 December 2018:
 Russells for the applicant liquidator
 Tucker & Cowen for the respondent David Whyte
 HWL Ebsworth for Said Jahani

For the application on 13 March 2019:
 Tucker & Cowen for the respondent David Whyte
 HWL Ebsworth for Said Jahani

JACKSON J:

- [1] These two applications are related and, accordingly, may be dealt with together in these reasons. They are also related to a separate set of applications that proceeded after these applications were heard.¹
- [2] The first application was heard on 10 December 2018. By it, the liquidator of LM Investment Management Limited (in liquidation) (receivers appointed) (“LMIM”) applied for directions as to how the registered managed investment scheme named the LM First Mortgage Investment Fund (“FMIF”) is to be wound up consequent upon earlier orders resolving an earlier directions application court made on 8 and 21 August 2013.²

¹ *Bruce v LM Investment Management Limited (in liquidation) & Ors* [2019] QSC 126.

² *Re Bruce & Anor v LM Investment Management Limited & Ors* [2013] QSC 192.

and 17 December 2015 as varied,³ that I will term the “First Directions Application”,⁴ and other relevant decisions as to the liquidator’s remuneration and expenses.⁵ Although mostly directed to the winding up of the FMIF, the first application sought some orders in relation to two other registered managed investment schemes, the LM Australian Income Fund (“AIF”) and the LM Australian Structured Products Fund (“ASPF”). LMIM is the responsible entity of all three schemes. The first respondent, David Whyte is a person appointed⁶ to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution and any orders made under s 601NF(2) of the *Corporations Act 2001* (Cth) (“CA”).⁷ He was also appointed as the receiver of the scheme property of the FMIF, with powers to start and defend proceedings on behalf of LMIM as responsible entity of the FMIF.⁸

- [3] The orders applied for in the first application, in substance, would see the management of how the FMIF is to be wound up transferred to the liquidator, subject to the continuation of existing legal proceedings by Mr Whyte as receiver of LMIM as responsible entity of the FMIF. It is necessary to deal with the facts and grounds of the application in some detail. Nevertheless, it is relevant to observe that as long ago as July 2013 the liquidator opposed any order that Mr Whyte be appointed as a person to take responsibility for ensuring that the FMIF was wound up in accordance with its constitution⁹ and, since that order was made, the liquidator has sought to overturn or reduce Mr Whyte’s role on two previous occasions, by an appeal from the orders made on 8 and 21 August 2013,¹⁰ and by the First Application for Directions.¹¹ Accordingly, this is not the first occasion on which the liquidator has sought to resist or reduce Mr Whyte’s appointed role.
- [4] The second application was heard on 13 March 2019, and then adjourned for consideration until after the third related but separate set of applications were heard and decided. The order applied for in the second application would see Mr Whyte authorised to make an interim distribution to the members of the FMIF in a sum of up to \$40 million. It is necessary for him to seek such an order because an existing direction as to how the FMIF is to be wound up is that he not make a distribution without an order of the court.¹² Again, it will be necessary to consider the facts and grounds advanced on the second application in some detail, but an appropriate initial observation is that Mr Whyte’s application is founded on the winding up of the FMIF coming to an end, subject to two

³ *Park & Muller (liquidators of LM Investment Management Ltd) v Whyte (receiver of the LM First Mortgage Investment Fund)* [2015] QSC 283. See also the order made 17 December 2015 and the order made on 18 July 2018 (CFI 138).

⁴ *Park & Muller (liquidators of LM Investment Management Ltd) v Whyte (receiver of the LM First Mortgage Investment Fund)* [2015] QSC 283.

⁵ *Park v Whyte (No. 2)* [2018] 2 Qd R 413; *Park v Whyte (No. 3)* [2018] 2 Qd R 475. As well, there have been a number of decisions relevant to David Whyte’s remuneration as receiver and person appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution and the court’s orders.

⁶ *Re Bruce & Anor v LM Investment Management Limited & Ors* [2013] QSC 192.

⁷ *Corporations Act 2001* (Cth), s 601NF(1).

⁸ *Re Bruce & Anor v LM Investment Management Limited & Ors* [2013] QSC 192.

⁹ *Re Bruce & Anor v LM Investment Management Limited & Ors* [2013] QSC 192.

¹⁰ *LM Investment Management Ltd (in liq) v Bruce and others* (2014) 102 ACSR 481.

¹¹ *Park & Muller (liquidators of LM Investment Management Ltd) v Whyte (receiver of the LM First Mortgage Investment Fund)* [2015] QSC 283.

¹² *Park & Muller (liquidators of LM Investment Management Ltd) v Whyte (receiver of the LM First Mortgage Investment Fund)* [2015] QSC 283, [106].

or three important pieces of litigation and other lesser matters, so that it is clear that the proposed interim distribution to members is possible and, accordingly, should be made.

- [5] The third related but separate set of applications (“Feeder Funds Proceeding judicial advice applications”) were for orders that the trustees and responsible entities that are parties to proceeding BS 13534 of 2016, known colloquially among the parties as the “Feeder Funds Proceeding” were justified in entering into a deed of settlement and release compromising the proceeding. LMIM as responsible entity of the FMIF, by Mr Whyte, is the plaintiff in the Feeder Funds Proceeding. The Feeder Funds are registered managed investment schemes, namely the LM Currency Protected Australian Income Fund (“CPAIF”), the LM Institutional Currency Protected Australian Income Fund (“ICPAIF”) and the LM Wholesale First Mortgage Income Fund (“WFMIF”). They are the defendants to the Feeder Funds Proceeding, together with LMIM in its own right. Each of the Feeder Funds holds units in the FMIF.
- [6] Orders that the responsible entities were justified in entering into the deed of settlement and release compromising the proceeding were conditions precedent to the performance of the deed of settlement and release, and were made on 22 May 2019.¹³ Because those conditions have now been satisfied, it is possible for the second application for interim distribution to proceed without jeopardising the compromise and settlement of the Feeder Funds Proceeding. Because the first application for directions by the liquidator included an order that he be appointed or authorised to act as a contradictor in respect of the Feeder Funds Proceeding, it was not appropriate to resolve either the first or the second applications before the result of the applications for judicial advice or directions as to whether the responsible entities were justified in entering into and implementing the deed of settlement and release was known.
- [7] For the reasons that follow, the conclusions I have reached are that the first application should be dismissed and an order should be made on the second application authorising Mr Whyte to make the proposed interim distribution.

First application – directions in the winding up of the FMIF and other schemes

- [8] By the first application, the liquidator applies for orders that may be grouped into categories. Summarising, the orders sought are that:
- (a) Mr Whyte’s appointment continue only in respect of his conduct on behalf of LMIM as responsible entity of the FMIF of proceeding BS 11560 of 2016, colloquially known among the parties as the “Clear Accounts Proceeding”, the Feeder Funds Proceeding and proceeding BS 2166 of 2015, colloquially known among the parties as the “EY Proceeding”,¹⁴
- (b) the liquidator henceforth take responsibility for ensuring that the FMIF is wound up in accordance with its constitution together with such ancillary orders as may be appropriate;

¹³ *Bruce v LM Investment Management Limited (in liq) & Ors* [2019] QSC 126.

¹⁴ Surprisingly, the liquidator did not include proceeding BS 12317 of 2014, colloquially known among the parties as the “Bellpac Proceeding”, in those Mr Whyte would continue. I assume this to have been an oversight, as the Bellpac Proceeding was ready for trial at the time of hearing of the first application and it would have made no sense to transfer it from Mr Whyte’s control to the liquidator’s control. Kellie-Anne Trenfield said the most efficient structure moving forward was for Mr Whyte to maintain control of all litigation.

- (c) the liquidator or Mr Whyte, in the event that the last order is not made, file an affidavit describing any impediment that might exist to an interim distribution being made forthwith to members of the FMIF;
- (d) the liquidator and Mr Whyte file affidavits setting out budgets of remuneration and expenses for the period up to and including the payment of the final distribution to creditors and members of the FMIF (and in the liquidator's case, the AIF and ASPF);
- (e) the court approve the budgets for remuneration and expenses to be incurred as reasonable estimates in the winding up of LMIM, the FMIF, the AIF and the ASPF;
- (f) the remuneration of the liquidator be paid forthwith in the amount of 50 percent of the amount of the approved budget, with the liquidator to receive the other 50 percent and all other additional remuneration as might be ordered by the court at the final remuneration and expenses determination, or that the initial 50 percent be treated as being "on account" of the final determination;
- (g) the remuneration of Mr Whyte henceforth be dealt with in the same way;
- (h) 50 percent of the remuneration of the liquidator, in accordance with the approved budget, be paid within 30 days of the order for directions from the respective scheme property of the FMIF, AIF and ASPF, in such proportions as may be just;
- (i) 50 percent of the remuneration of Mr Whyte, in accordance with the approved budget, be paid within seven days after payments are made to the liquidator from the scheme property of the FMIF;
- (j) the expenses of the liquidator to the conclusion of the winding up of the FMIF, AIF and ASPF be paid from the scheme property of the FMIF, AIF and ASPF, in such proportions as may be just, by payment of 50 percent of the expenses in the approved budget within seven days after the end of each calendar month, with the other 50 percent of the approved budget and all other additional expenses as might be ordered to be paid at the final remuneration and expenses determination, or that the initial 50 percent be treated as being "on account" of the final determination;
- (k) the expenses of Mr Whyte henceforth be dealt with on the same basis.

[9] On any view, these proposed directions are unusual. They are opposed by Mr Whyte as to the FMIF. The liquidator's submissions in support of the orders are framed by reference to the grounds of Mr Whyte's opposition. However, at a high level, the liquidator's application is informed by three or four considerations. The most important of them is that the liquidator is unfunded for remuneration and expenses in respect of the FMIF, unless the liquidator is entitled to an indemnity from the scheme property of the FMIF. Second, the liquidator submits that the delay, costs and expenses of the winding up of the FMIF are excessive. Third, the liquidator submits that the proposed budgeting, approval and 50 percent pre-payment mechanism would introduce transparency in relation to remuneration and expenses being charged to the FMIF.

[10] Mr Whyte's opposition to the proposed orders is made only in relation to the FMIF; he has no concern or role in the administration of any other fund.

Progress of winding up the FMIF

- [11] At this point, Mr Whyte (and another receiver appointed by a secured creditor of the FMIF), have realised all of the real property assets of the FMIF, resulting in a substantial cash balance of over \$60 million that is available to meet further expenses in collecting any remaining assets in legal proceedings and for distribution to members. At the time of the hearing of the first application, the cash assets were held in the name of the custodian of the FMIF and were under the control of the secured creditor's receiver, but that receiver has now retired and Mr Whyte has control of the relevant accounts. Accordingly, the steps to finalising the winding up of the FMIF may be summarised as:
- (a) finalising the creditors or claimants who are entitled to indemnity from the FMIF. That is a process provided for by previous orders. That has been partly completed, but not finished, possibly because the liquidator ceased to do the necessary work because he was unfunded;
 - (b) making an interim distribution to the members of the FMIF;
 - (c) completing the remaining litigation matters brought by or against LMIM as responsible entity of the FMIF (by Mr Whyte) and any claims against it or him that need to be completed; and
 - (d) making any final distribution, a final audit and deregistration of the scheme.

Liquidator identifying claims for indemnity

- [12] The order made on 17 December 2015 upon the First Directions Application¹⁵ provided that Mr Whyte was authorised to determine whether and to what extent LMIM is entitled to be indemnified from the property of the FMIF in respect of any expense or liability of, or claim against LMIM acting as responsible entity of the FMIF. The order provided for a mechanism directing the liquidators to ascertain the debts payable by and the claims against LMIM, to adjudicate upon those debts and claims in accordance with the provisions of the *Corporations Act 2001* (Cth) ("CA"), to identify whether LMIM has a claim for indemnity from the property of the FMIF, and to make those claims to Mr Whyte for consideration in accordance with the order. If Mr Whyte rejected a claim for indemnity, provision was made for it to be resolved by the court, if necessary.
- [13] Regrettably, that process did not occur as envisaged, or in a timely way. In the event, on 18 July 2018 the court ordered that any further claim by the liquidator for an indemnity and payment from the property of the FMIF be submitted to the court for approval. The process envisaged by that order for the liquidator to make any further claims apparently has not been completed by the liquidators still, although the picture is somewhat crystallised by the evidence that was adduced in support of the second application for an interim distribution that is made by Mr Whyte.

¹⁵ *Park & Muller (liquidators of LM Investment Management Ltd) v Whyte (receiver of the LM First Mortgage Investment Fund)* [2015] QSC 283.

Appointment of liquidator as contradictor

- [14] At the hearing, the liquidator did not make any detailed oral submissions in support of the application for orders that the liquidator be appointed as a contradictor in either the Feeder Funds Proceeding or the Clear Accounts Proceeding. Nevertheless, it is necessary to deal with those questions as the application for those orders was not withdrawn.

Feeder Funds Proceeding

- [15] LMIM as responsible entity of the FMIF claims relief as plaintiff in the Feeder Funds Proceeding as to whether the Feeder Funds were disentitled from receiving distributions in the winding up of the FMIF by reason of benefits or payments previously provided to and received by them, and allegedly made by LMIM as responsible entity of the FMIF in breach of trust, including whether a number of income distributions and deemed reinvestments by the Feeder Funds in units in the FMIF were void.
- [16] On 13 June 2018, the court made an order under s 59 of the *Trusts Act 1973* (Qld) that the interests of LMIM as responsible entity of the CPAIF and the ICPAIF as defendants to the Feeder Funds Proceedings be represented by Said Jahani, a receiver appointed to the assets of those funds by a secured creditor. The WFMIF was represented by Trilogy Funds Management Ltd (“Trilogy”) as its responsible entity.
- [17] Before the hearing of the first application, the Feeder Funds Proceeding was settled at mediation and the deed of settlement and release was executed by the relevant parties through their representatives. There are, however, a number of conditions precedent to the performance of the deed, including that:
- (a) various parties to the deed, including Mr Whyte, obtain such judicial advice as they considered necessary to confirm that they were justified in entering into the deed; and
 - (b) Mr Whyte is authorised to make an interim distribution to the members of the FMIF of at least \$30 million.
- [18] Mr Whyte submitted that any order for the liquidator to be a “contradictor” in the Feeder Funds Proceeding to represent the interests of LMIM in its personal capacity was unnecessary. I agree. Alternatively, Mr Whyte and Mr Jahani submitted that if the liquidator sought to be appointed as a contradictor to represent the interests of the members of the CPAIF and ICPAIF that too was unnecessary. Mr Jahani, as receiver of the property of the CPAIF and ICPAIF has the power to conduct the defences of LMIM as responsible entity of those schemes in the Feeder Funds Proceeding, in the interests of the secured creditor and, in effect, on behalf of the members of those schemes.¹⁶ Further, on 13 June 2018, the court ordered that he represent LMIM as responsible entity for the CPAIF and ICPAIF in the Feeder Funds Proceeding. There was no evidence that any member of the CPAIF or the ICPAIF had any concern about Mr Jahani representing LMIM as responsible entity of those schemes, or that Mr Jahani had failed or was failing to defend the proceeding properly. Of course, Trilogy is a defendant to the Feeder Funds Proceeding as the responsible entity for the WFMIF and it is the appropriate party and representative as trustee of the members of that scheme.

¹⁶ *Corporations Act 2001* (Cth), 420(2)(k).

- [19] The liquidator's submissions seemed to be premised on the fact that because the liquidator has not seen the deed of settlement and release he could not assess the possibility that Mr Jahani may not have acted in the best interests of the members of the CPAIF and the ICPAIF. That is not a reason to order that the liquidator be a contradictor in the Feeder Funds Proceeding. There was no warrant in the circumstances as disclosed on the application for an order appointing the liquidator to act as a contradictor for any party to the Feeder Funds Proceeding. Mr Jahani, as the receiver of the scheme property of the CPAIF and the ICPAIF was the proper representative of LMIM as the responsible entity of the CPAIF and the ICPAIF. Under the terms of the deed of release and settlement, it was a condition precedent that Mr Jahani make a successful application to the court in the Feeder Funds Proceeding judicial advice applications that he was justified in entering into the deed of settlement and release. That has now occurred.¹⁷
- [20] Accordingly, I decline to make an order that the liquidator be directed to act as a contradictor in respect of the Feeder Funds Proceeding.

Clear Accounts Proceeding

- [21] The Clear Accounts Proceeding is a proceeding by which LMIM as responsible entity of the FMIF, by Mr Whyte, claims relief against LMIM in its own right, by the liquidator, for alleged breaches of trust by LMIM. On 25 July 2018, the court directed that the liquidator represent the interests of LMIM in its own right in the Clear Accounts Proceeding and ordered that the proceeding be stayed pending completion of the proof of debt process.
- [22] The relevant interests being represented in the Clear Accounts Proceeding must be kept in mind. Mr Whyte claims relief to vindicate alleged rights of the unit holders of the FMIF as beneficiaries of the trust of the scheme property of the FMIF to have LMIM as trustee restore trust assets of the FMIF. Accordingly, no question of the liquidator representing the interests of the unit holders of the FMIF as beneficiaries arises. There is no basis for LMIM to seek appointment as contradictor in the interest of the unit holders.
- [23] The basis of the liquidator applying to be appointed as a contradictor in the Clear Accounts Proceeding seems to be a suggestion that by doing so he may be entitled to receive payment of remuneration and legal expenses to oppose the proceeding from the scheme property of the FMIF. However, orders to that effect are not sought explicitly.
- [24] There are some circumstances where a defendant, including a trustee who has title to or possession of property to which an adverse proprietary claim is made by a plaintiff, may be authorised to utilise some of that property to defend the claim, either by an application for directions under trust legislation,¹⁸ or more generally.¹⁹ But the primary or usual rule is that a trustee who defends a claim for breach of trust brought by or on behalf of the beneficiaries is not entitled to indemnity for their costs when incurred, although if the trustee is successful the trustee's costs would ordinarily be ordered to be paid by the opposite party personally or from the trust estate.²⁰

¹⁷ *Bruce v LM Investment Management Limited (in liq) & Ors* [2019] QSC 126.

¹⁸ *Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar the Diocesan Bishop of Macedonian Orthodox Diocese of Australia and New Zealand* (2008) 237 CLR 66, 94 – 97 [74]-[88].

¹⁹ *Carl Zeiss Stiftung v Herbert Smith & Co (No 2)* [1969] 2 Ch 276, 283-285.

²⁰ *Frost v Bovaird* (2012) 203 FCR 95, 106-109 [69]-[79].

- [25] Thus, if LMIM in its own right, by the liquidator, successfully defends the Clear Accounts Proceeding, it and he might be entitled to an indemnity from the property of the FMIF for any costs and expenses reasonably incurred that are not compensated by an order for costs that might be made in its favour. But that does not, per se, justify making an order in advance to fund the alleged defaulting trustee's costs from the assets of the trust fund and does not justify an order for appointment of the liquidator as a contradictor so as to fund those costs from the trust estate of the scheme property of the FMIF.
- [26] In my view, no appointment of the liquidator as a contradictor for the Clear Accounts Proceeding should be made.

Liquidator's proposed remuneration and expenses regimes

- [27] The liquidator submits that the winding up of the FMIF has been a lengthy and expensive task. In particular, the remuneration of Mr Whyte up to the time of making the first application has exceeded \$14 million, to which must be added the remuneration of the liquidator (including whilst appointed voluntary administrator) and the external receivers.
- [28] The liquidator submits that since all the assets of the FMIF have been realised, apart from any that may be collected in the remaining litigation, any course which lessens the cost burden on the members of the FMIF is desirable and necessary.

Remuneration

- [29] To that end, the liquidator proposes²¹ that if he were appointed to continue the winding up of the FMIF, he would cap his remuneration for the work necessary to wind it up at \$180,000 per annum plus \$200,000 for identified one-off tasks that would need to be completed (both exclusive of GST).
- [30] The liquidator submits that the continued appointment of Mr Whyte apart from continuing the Feeder Funds Proceeding, the Clear Accounts Proceeding and the EY Proceeding (and I infer the Bellpac Proceeding) is unnecessary. As previously mentioned, there is a substantial issue between Mr Whyte as receiver of the FMIF and LMIM in its own right, by the liquidator, as to whether LMIM in its own right is entitled to recover costs or expenses by an indemnity of exoneration from the scheme property of the FMIF, which is the subject of the Clear Accounts Proceeding.
- [31] Notwithstanding this difficulty, the liquidator made submissions as to the differences between his proposals in relation to a number of different subject matters that would remain in the winding up of the FMIF, as matters that will attract remuneration for the insolvency practitioner carrying them out, on the basis that the comparison demonstrates that the liquidator would be more cost effective than Mr Whyte. Perhaps he would be on those matters, but it does not seem to me that is a strong factor in the circumstances viewed overall, because they are relatively minor matters of remuneration and expense in comparison to resolving the remaining litigation.
- [32] Another point that assumed some significance in oral argument was Mr Whyte's concern that if responsibility for the winding up of the FMIF were transferred to the liquidator, except for Mr Whyte's conduct of the remaining litigation matters, the cash funds that are presently under Mr Whyte's control would pass to the liquidator. Mr Whyte's

²¹ By an affidavit of Kelly-Anne Trenfield.

submissions expressed concern about both the practical need he would then have to involve the liquidator in seeking payment of sums on account of the remaining litigation and also that the liquidator has conflicts between LMIM's own interests and LMIM's duties as responsible entity of the other registered schemes on the one hand and the interests of the members of the FMIF. However, before reaching those matters there are a number of other points.

- [33] First, the fundamental purpose of the liquidator's proposal for orders for budgeting, approval and pre-payment of 50 percent of future remuneration is that the liquidator will receive a substantial sum by way of pre-payment of that remuneration from the scheme property of the FMIF for the responsibility of carrying out the remaining work of winding up the FMIF as a registered scheme.
- [34] I have previously decided that because the provisions of the CA require the liquidator of LMIM to call for and adjudicate on proofs of debt of LMIM in LMIM's winding up, and that some of the proofs will be in respect of debts which LMIM incurred as responsible entity and trustee of the FMIF for which LMIM might be entitled to an indemnity by way of exoneration from the property of the FMIF, for expenses properly incurred, the liquidator should call for relevant proofs, adjudicate upon them and notify them to Mr Whyte. That was the subject of the order made on 17 December 2015 and varied on 18 July 2018. Those orders specifically made provision for the liquidator to be reimbursed for his remuneration and expenses of any proofs that should be accepted as debts properly incurred on behalf of the FMIF, although not in advance.
- [35] However, by the Clear Accounts Proceeding, Mr Whyte alleges that the members of the FMIF are entitled to set up claims that they have against LMIM in its own right to restore the trust funds of the FMIF as scheme property, as a defaulting trustee, against any claim by LMIM for an indemnity from the scheme property of the FMIF for expenses properly incurred on behalf of the FMIF. Accordingly, Mr Whyte submits that to make the order for pre-payment of remuneration sought by the liquidator would be to require the members of the FMIF to fund the claims of the creditors, beyond the scope of the existing orders. In making submissions in support of the pre-payment of remuneration order, the liquidator did not deal with this difficulty.
- [36] Second, because the liquidator proposes that Mr Whyte continue to conduct both the Clear Accounts Proceeding on behalf of the unit holders of the FMIF against LMIM in its own right by the liquidator, as well as the Feeder Funds Proceeding and the EY Proceeding (and I infer the Bellpac Proceeding), it will be necessary for Mr Whyte to have access to the cash funds of the FMIF for that purpose and to report to unit holders as to the progress of those proceedings.
- [37] Given these points, there does not seem to be any logical reason why the functions of managing registry issues or general administration otherwise warrant an order generally handing over the conduct of the winding up of the FMIF, including its substantial cash funds, otherwise, to the liquidator. The point is illustrated by Kellie-Anne Trenfield's affidavit that proposes on the liquidator's behalf that for the ongoing litigation the most efficient structure would be for Mr Whyte to have conduct of the Feeder Funds Proceeding, the Clear Accounts Proceeding, the Bellpac Proceeding and the EY Proceeding and,²² on the basis that Mr Whyte should estimate his remuneration and

²² Supreme Court of Queensland, BSC 12317/14.

expenses through to the conclusion of the proceedings and if approved by the court retain the “sum” (50 percent of the approved budget) without having recourse to the remaining funds of the FMIF and on the basis that the liquidator would maintain a liaison with Mr Whyte. That proposal does not seem to me to be practical. I note that after that affidavit was sworn the Bellpac Proceeding went to a full trial in April 2019, but the EY Proceeding has not significantly progressed.

- [38] Even if those reasons were not enough, there are other potential difficulties associated with the liquidator’s proposed regime for budgeting, approving and pre-paying 50 percent of the approved amount of remuneration and expenses.
- [39] The court’s power in respect of the liquidator’s remuneration is that provided for by s 473(3) of the CA that a liquidator is entitled to receive such remuneration by way of percentage or otherwise as is determined under that section.²³ Under s 473, there is no provision for a maximum amount of remuneration where an external administrator is entitled to receive remuneration worked out on a time cost basis.²⁴ As well, in the body of cases developed as to the practices that relate to a liquidator’s remuneration, no case identified in submissions, or of which I am aware, supports an order for a budgeting process that would determine, in effect, that an amount of remuneration is approved by court order but is also subject to a right on the part of the liquidator to apply for further remuneration together with a right of pre-payment of 50 percent (or some other percentage) of the relevant amount, in aid of cash flow. It will be observed that the orders applied for do not propose to cap finally the amount of the liquidator’s remuneration in a way that transfers the risk of the amount proving to be too low to the liquidator, although on the hearing of the application it was proposed that there be a cap on some items of work.
- [40] The driving feature of the liquidator’s proposal in relation to his future remuneration is that he receive pre-payment of remuneration to the extent of 50 percent (or some other percentage) from the scheme property of the FMIF. In my view, for the reasons already mentioned, that is not an appropriate order in this case, assuming there is power to make it in the first place. There is little point in incurring the costs of budgeting and approval only to wait until the final determination of the appropriate remuneration which was not truly fixed.
- [41] As to the schemes other than the FMIF, namely the AIF and ASPF, there is some untidiness as to the precise orders sought by the liquidator. This was introduced by the liquidator apparently applying for an order that he prepare a single budget for more than one scheme. The liquidator’s submissions continued the difficulty by describing the schemes collectively as the “LMIM Estate”, a concept devoid of legal meaning. However, some of the orders applied for can only relate to the FMIF. So far as Mr Whyte is concerned, that is the only scheme in which he was interested. Some orders sought specifically referred to the winding up of the affairs of the FMIF. Yet others did not, yet they would have affected the FMIF. For example, the provision for Mr Whyte’s remuneration to be paid as to 50 percent until the “Conclusion”, a term defined to mean a date not before an affidavit by the liquidator that there is no impediment to the

²³ Although s 473 of the *Corporations Act 2001* (Cth) was repealed by the *Insolvency Law Reform Act 2016* (Cth), and the introduction under that Act of the *Insolvency Practice Schedule (Corporations)*, s 1581 of the CA provides that despite the repeal of s 473, the old Act continues to apply in relation to the remuneration of a liquidator of a company appointed before 1 March 2017.

²⁴ Compare s 60-10(4) of the *Insolvency Practice Schedule (Corporations)*.

distribution of funds to members of all schemes, would have had Mr Whyte's remuneration entitlement turn on the progress of the winding up of the AIF and ASPF.

- [42] However, it is unnecessary to separately consider the position of the schemes other than the FMIF, with a view to whether any separate order should be made concerning them. No particular or separate reason to warrant the budgeting, approval and pre-payment orders sought in relation to those schemes was relied upon by the liquidator. In any event, the liquidator submitted on the hearing of the first application that the AIF, ASPF and CPF were within weeks of completion of winding up (in December 2018) and the only property of the ACPAIF and CPAIF were cash and units in the FMIF.

Mr Whyte's remuneration

- [43] As to the liquidator's application for similar orders in relation to Mr Whyte's remuneration, in my view, the driving feature appears to be to make Mr Whyte take the risk of estimating his remuneration for the remaining litigation and to limit his cash flow to 50 percent of that estimate until the final determination of his remuneration.
- [44] The court's power, if any, to order that Mr Whyte's remuneration be determined and paid from the scheme property of the FMIF begins with s 601NF(1) of the CA, by which the court may, by order, appoint a person to take responsibility for ensuring that a registered scheme is wound up in accordance with its constitution and the power under s 601NF(2) to give directions about how the registered scheme is to be wound up. In addition, as in this case, it has been held that in making such an order or orders, the court may appoint the person as receiver of the scheme property of a registered scheme, including orders that confer on the person the powers of a receiver in relation to the property and the scheme, *mutatis mutandis*, to those provided for by s 420(1) and (2) of the CA in relation to a receiver of a company's property. In that context, the court has power, by order, to determine the amount to be paid by way of remuneration to a receiver, as it does in relation to court appointed receivers generally.²⁵
- [45] Accordingly, when Mr Whyte was appointed as a person to ensure that the FMIF was wound up in accordance with its constitution and any orders made under s 601NF(2) of the CA, and he was appointed receiver of the scheme property, an order was made that he be entitled to claim remuneration in respect of the time spent by him and by employees of his firm who performed work in carrying out the appointment at rates and in the sums, from time to time, approved by the court and he be indemnified out of the assets of the FMIF in respect of such remuneration. It is in accordance with that order that Mr Whyte's remuneration has been approved by the court from time to time, and he has indemnified himself from the scheme property of the FMIF.
- [46] Mr Whyte opposes the liquidator's proposed budgeting, approval and 50 percent pre-payment of remuneration regime to the extent that it might apply to him. He consented to appointment on the basis of the existing provisions in the court's order as to his remuneration. Having consulted with the other members of his firm, he does not consent to an arrangement whereby his remuneration is determined in advance by an estimate and paid only as to 50 percent from time to time until a final determination hearing at the completion of the winding up of the FMIF and the other schemes.

²⁵ *ASIC v Letten (No. 7)* (2010) 190 FCR 59, [118]-[119], [270]-[271]; *ASIC v Letten* [2010] FCA 140, [47]; *Ide v Ide* (2004) 184 FLR 44, 49-50; *ASIC v Atlantic 3-Financial (Aust) Pty Ltd* [2004] 1 Qd R 591, 597-598, [27]-[32].

- [47] That is not surprising, for a number of reasons. First, the liquidator's proposal would make Mr Whyte and his firm funders of 50 percent of his remuneration for the balance of the period of the winding up of the FMIF. Second, whereas the liquidator's remuneration for other remaining functions in respect of the FMIF would be relatively simple (leaving to one side any defence of the Clear Accounts Proceeding), Mr Whyte's remaining functions include the conduct of complex commercial litigation, including the EY Proceeding.
- [48] Third, the liquidator's proposal assumes that Mr Whyte's remaining work and remuneration is capable of being accurately estimated and budgeted in advance. That is an unlikely scenario in terms of the remuneration for the remaining litigation. The amount of that remuneration may be greater or lesser to a very significant degree depending on whether (and when) the litigation is compromised or whether it must be or should be fought to the end.
- [49] In support of this part of the application, the liquidator referred in submissions to the estimated remuneration to be incurred by Mr Whyte to 30 June 2019, being in the range between \$690,000 and \$925,000. The point appeared to be that the amount of the liquidator's proposed budget for remuneration was, in comparison, much less. However, the comparison was not of like with like. The remuneration incurred and to be incurred by Mr Whyte may not have included work of gathering other assets of the FMIF, but they included very substantial work of conducting the legal proceedings on foot during that year, including the Feeder Funds Proceeding, the Clear Accounts Proceeding, the Bellpac Proceeding and the EY Proceeding. These are not items covered by the liquidator's proposal for his remuneration.
- [50] Although the liquidator referred to the cost and delay of the winding up of the FMIF to date, Mr Whyte pointed out, first, that the remuneration he has sought and received has been approved by the court in ten successive six monthly applications without reduction, and that his ongoing remuneration is the subject of approval applications made to the same judge.
- [51] Second, as to delay, Mr Whyte pointed out that although delay is raised in the liquidator's written submissions, no example or instance of delay on Mr Whyte's part was referred to by the liquidator in written or oral argument.
- [52] ASIC has supported Mr Whyte's position by correspondence. It stated that it was concerned that the liquidator's motivation for filing the application might be to prevent Mr Whyte from seeking remuneration as might properly be incurred by him in his capacity as the person charged with the responsibility of winding up the FMIF and that having reviewed the application and the material filed in support of Mr Whyte's then most recent application for remuneration, ASIC did not seek to be heard on the application, consistent with ASIC's position in respect of each of the previous applications for remuneration made by Mr Whyte.
- [53] Neither Mr Jahani nor Trilogy support the liquidator's application on the proposed budget, approval and 50 percent pre-payment of remuneration proposal.
- [54] In my view, nearly all of the relevant circumstances point against the proposed orders for budgeting, approval and pre-payment of the future remuneration of Mr Whyte's remuneration and no order to that effect should be made in the circumstances of this case.

Liquidator's expenses

- [55] In substance, the liquidator's proposal for his expenses is that, like remuneration, they be budgeted and pre-approved and then approved amounts be paid monthly in advance to meet expenses. In my view, in substance, this too, is a pre-payment regime based on forecasts of expenses, driven by the liquidator's lack of funds in the winding up of LMIM generally and in respect of the FMIF, and other insolvent schemes or funds, in particular.
- [56] Although the point is not as clear in relation to expenses other than legal expenses of conducting outstanding legal proceedings, in my view, there is no real justification for the budgeting, approval and pre-payment of the liquidator's expenses either, in the circumstances of this case. The amounts involved are relatively less than the expenses by way of legal expenses of the relevant proceedings, which the liquidator does not propose to conduct. Overall, it is difficult to see the attraction in the liquidator's proposal, in relation to the FMIF in particular.

Mr Whyte's expenses

- [57] In support of this part of the application, the liquidator referred to the financial statements for the FMIF for the year ended 30 June 2018, that show Mr Whyte's fees and outlays, for investigations, litigation and non-operating costs as \$1,0007,573 and operating costs of the FMIF as \$1,231,477. However, there was no evidence as to whether any of those amounts is excessive, or unjustified, or what was included in them beyond those descriptions.
- [58] Mr Whyte relied on the fact that his expenses were approved for payment by the secured creditor's receiver up to the point in time after the hearing of the application when they retired and they are subject to approval by the custodian of the FMIF.
- [59] I have previously summarised the source of the court's powers and the orders under which he was appointed in relation to Mr Whyte's remuneration. Similar points apply to his expenses.
- [60] Mr Whyte's expenses will be of a different order and complexity to those proposed by the liquidator, because he retains responsibility for the expenses associated with the remaining litigation that will be significant, in particular because of the likely amounts of legal fees.
- [61] Mr Whyte also estimated his expenses for the period to 30 June 2019. However, there is no point in setting the amounts out in these reasons, because they were estimated on the basis of assumptions as to settlement of the EY Proceeding at mediation during that six month period. That possibility did not come about. The EY Proceeding remains in the interlocutory stages of disputes about the pleadings. Inevitably, Mr Whyte will have incurred further expenses than those estimated at December 2018. The example illustrates the lack of utility in attempting to budget, approve and pre-pay 50 percent of the approved budgeted expenses on the footing that until the final determination for the winding up of the FMIF, Mr Whyte should be limited to the budgeted and approved amount.
- [62] In my view, the liquidator's proposed budgeting, approval and pre-payment of 50 percent mechanism should not be adopted in relation to Mr Whyte's expenses.

Members registry

- [63] Part of the orders sought by the liquidator would see control of and responsibility for the members' registry for the FMIF returned to the liquidator. Mr Whyte presently manages those functions for the FMIF and keeps unit holders informed of the progress of the winding up of the FMIF in regular reports. That he does so is a condition of the relief that ASIC has granted from the reporting requirements that would otherwise apply to the FMIF under Chapter 2M of the CA. To transfer the registry function to the liquidator would involve a transactional cost, although the amount may not be great (Ms Trenfield suggests \$10,000). It is suggested on the evidence that the liquidator would obtain ongoing registry services for a lower cost than Mr Whyte does, but the greatest expenses associated with this function are the costs of reports to unit holders from time to time. If Mr Whyte continues to manage the remaining litigation, he or his staff would have to provide reports to the liquidator or his staff who would then have to consider the content of the relevant reports before communicating them to unit holders. In my view, this is unlikely to lead to cost savings to the unit holders of the FMIF.

Audit of the FMIF

- [64] Although ASIC has, in effect, relieved the liquidator and Mr Whyte from any obligation to carry out ongoing periodical audits of the FMIF under Chapter 2M of the CA, at the end of the winding up of the FMIF it will be necessary for there to be a final audit. Ms Trenfield estimates the cost of doing so to be in the region of \$10,000 to \$20,000, so it is not a major cost. At present, Mr Whyte is not appointed to carry out that task. However, assuming it is to be carried out by one of the protagonists to this proceeding, it is not a major prospective saving of expense for the liquidator to carry out the function.
- [65] In substance, the point about the liquidator's expenses of winding up the FMIF (that do not include the expenses associated with the remaining litigation) is that those expenses are not likely to be significant in the overall scale of things and, so viewed, they are not a reason to adopt the liquidator's proposed budgeting, approval and pre-payment of 50 percent mechanism.

Limiting Mr Whyte's appointment

- [66] Leaving aside the liquidator's proposal for budgeting, approval and pre-payment of 50 percent of both his remuneration and expenses and Mr Whyte's remuneration and expenses, a shift in a number of the functions and responsibilities for some of the proposals previously discussed would follow from an order that limits the future functions of Mr Whyte to continuing and completion of the remaining litigation.
- [67] First, Mr Whyte apprehends that he would be required to transfer the cash balance in the accounts under his control to the liquidator. Second, Mr Whyte points out that the liquidator has a position of conflict in relation to LMIM's claims for indemnity from the scheme property of the FMIF arising out of the Clear Accounts Proceeding, as well as in respect of the apportionment or allocation as between the other registered schemes of which LMIM is the responsible entity and the FMIF for common items of remuneration and expenses. Third, in particular, Mr Whyte would no longer have the function to consider and, if he thinks appropriate on behalf of members of the FMIF, to oppose orders sought by the liquidator in respect of claims for indemnity from the scheme property of the FMIF for his remuneration or expenses.

- [68] In my view, these reasons remain as reasons why Mr Whyte's appointment to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution and the orders of the court made under s 601NF(2) of the CA should not be limited to continuing and completion of the remaining litigation. Subject to one consideration, the reasons why Mr Whyte was appointed in the first place continue and would suggest that he should take the winding up of the FMIF towards completion, to the extent that he can do so.
- [69] The exception is that, as I have previously decided, Mr Whyte cannot complete the process of the winding up to the extent that it remains the statutory function of the liquidator to call for proofs of debt, to consider whether LMIM has an entitlement to indemnity from the funds of the FMIF for debts admitted to proof and to apply for an order for indemnity in respect of those amounts in accordance with paragraphs 2 and 3 of the court's order made on 18 July 2018.
- [70] However, those functions are not, in my view, a reason why Mr Whyte's appointment should be limited.
- [71] Mr Jahani opposes any order that would limit Mr Whyte's functions or powers under the existing orders as endangering the performance of the terms of the settlement of the Feeder Funds Proceeding, which contemplate Mr Whyte making an interim distribution in accordance with the second application for an interim distribution order.
- [72] In the result, in my view, the liquidator's application should be dismissed in relation to the scope of Mr Whyte's appointment and functions in relation to the FMIF.

Second application - interim distribution

- [73] Mr Whyte makes the second application, for an interim distribution to members of the FMIF, under s 601NF(2) of the CA. First, he seeks an order that he is authorised to make an interim distribution from the property of the FMIF of up to \$40 million among the members of the FMIF pursuant to cl 16.7 of the constitution of the FMIF. Alternatively, if any of the conditions precedent to the deed of settlement and release of the Feeder Funds Proceeding have not been satisfied or will not be satisfied by making the interim distribution, Mr Whyte applies for an order that he is authorised to withhold payment of the interim distribution to the responsible entities or the custodians of the Feeder Funds.
- [74] Second, Mr Whyte seeks a declaration that each member holding Class C units in the FMIF, having invested in one of the non-Australian dollar currency hedged fixed term investment options for investment, is entitled to be paid amounts in the winding up of the FMIF calculated by reference to that member's unit balance recorded in the investor master register as adjusted for the foreign exchange spot rate between the investment currency recorded in the investor master register and the Australian dollar prevailing as at the time of each distribution or an alternative date.
- [75] On the hearing of the application, Mr Whyte and Trilogy appeared, both in support of the application. LMIM as responsible entity of the CPAIF and the ICPAIF by Mr Jahani did not appear but provided a letter from his solicitors supporting the application. No contradictor appeared.

- [76] Trilogy's position was that although it supported the application, no order should be made on it until after the Feeder Funds Proceeding judicial advice applications had been decided. That was also the position of Mr Jahani, in effect. On Mr Whyte's part, there was no opposition to the court hearing the application for an interim distribution, but deferring any decision until after the outcome of the Feeder Funds Proceeding judicial advice applications was known. Accordingly, I proceeded to hear the application and at the conclusion of the hearing adjourned it to a date to be fixed. Since the hearing and decision of the other applications no party or person has sought a further hearing.
- [77] Mr Whyte identified five issues which may have affected the orders to be made on the second application. First, he referred to the liquidator's application for directions, including to narrow the scope of Mr Whyte's functions which had then been heard but not determined. Mr Whyte's position was that the second application should be heard and determined at the same time as the liquidator's application. In making this decision, I have done so.
- [78] Second, Mr Whyte proposed to make one of the applications that formed the Feeder Funds Proceeding judicial advice applications. That concern was met by adjourning the determination of this application until the outcome of those applications was known, as it now is.²⁶
- [79] Third, Mr Whyte was concerned as to the timing of the decisions upon the second application and the Feeder Funds Proceeding judicial advice applications because of the time for performance of conditions precedent under the deed of settlement and release, but as previously discussed, that concern is met by this application being decided after the Feeder Funds Proceeding judicial advice applications.
- [80] Fourth, Mr Whyte identified that he is not specifically named as a relevant person or party who has standing to apply for an order under s 601NF(2) or s 601NF(3) of the CA. However, in my view, there is no difficulty of standing for him to make the interim distribution application. Mr Whyte was appointed as a person to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution and any orders under s 601NF(2). Clause 16.7(c) of the constitution of the FMIF provides for distributions of the net proceeds of realisations in the winding up. Given the breadth of the power of the court, by order, to give directions about how the registered scheme is to be wound up under s 601NF(2), it is implied that a person appointed under s 601NF(1) has the power to apply for directions about their appointment, particularly where the appointment is made as well to take possession of assets as a court appointed receiver. In any event, in this proceeding, prior directions were made by the order made on 17 December 2015 giving the parties liberty to apply, including Mr Whyte.
- [81] Fifth, in the event that an interim distribution is authorised by order, Mr Whyte points to a degree of uncertainty as to the entitlement of the Class C unit holders who made investments in the FMIF in foreign currencies. I deal with that question later in these reasons.
- [82] In *Park v Whyte*,²⁷ I found that LMIM's power as responsible entity to make distributions in the winding up of the FMIF under cl 16.7(c) of the constitution of the FMIF was

²⁶ *Bruce v LM Investment Management Limited (in liq) & Ors* [2019] QSC 126.

²⁷ [2015] QSC 283, [100] – [106].

suspended because as a result of the orders appointing Mr Whyte, LMIM was not in possession of the scheme property. I held further that Mr Whyte was under no obligation to return the property of the FMIF to the liquidator once he had completed collecting and realising the assets of the FMIF, without an order of the court, and that the orders previously made appointing him receiver did not authorise him to make distributions to the members of the FMIF, without an order of the court. By the order made on 17 December 2015, I directed that LMIM shall not be responsible for and was not required to discharge the functions, duties and responsibilities set out in cl 16.7(c) and that Mr Whyte was directed not to make any distribution to the members of the FMIF without the authority or further order of the court. By this second application, Mr Whyte seeks that authority.

- [83] The summary of the circumstances under which he does so is that the cash balance under his control exceeds the amount required to satisfy any of the actual and possible contingent liabilities of the FMIF, as estimated by Mr Whyte, by up to \$40 million. The amount of cash in bank was approximately \$65 million against which the actual liabilities were \$2,213,000, approximately, and possible contingent liabilities estimated on a realistic worst case scenario might amount to \$21,773,000, approximately. In addition to that assessment of liabilities, there is a further possible contingent liability in respect of a proof of debt lodged by Ernst & Young (“EY”) with the liquidator dated 20 December 2018. It will be necessary to explain how that possible alleged liability arises later. But the short of it is that Mr Whyte considers that it does not substantially affect whether the proposed interim distribution should be made because the amount of any liability in respect of that proof will be no more than the amount of a corresponding asset that will be payable by EY to LMIM by Mr Whyte as a judgment sum on LMIM’s claim against EY as auditors in the EY Proceeding. That is, Mr Whyte assesses the amount of the contingent liability to be a zero sum game when taken together with the corresponding possibility of an increase in the property of the FMIF by litigation recovery from EY.
- [84] There is a difficulty that was faced by Mr Whyte in the extent of the evidence that was filed in support of the second application. It is that the precise amount which Mr Whyte may be justified in distributing depends upon matters which are confidential and could not be placed before the court in open court where they may come to the attention of a possible trial judge of the Feeder Funds Proceeding or the other remaining litigation. Accordingly, those matters were dealt with by disclosure in Mr Whyte’s application made in the Feeder Funds Proceeding judicial advice applications before Mullins J.
- [85] As to the potential difficulty in making appropriate payments to the Class C unit holders under the proposed interim distribution, Mr Whyte identified two points. First, the rights of Class C unit holders are not defined in the constitution of the FMIF and they do not appear to have been defined in any deed or similar document executed by LMIM as the responsible entity. The only relevant documents appears to be a product disclosure statement dated 10 April 2008, as supplemented. Second, the product disclosure statement describes the rights of Class C unit holders in a manner that admits of more than one possible construction. It is clear enough, however, that Class C units were issued with the intention of protecting those unit holders from foreign exchange fluctuations as against the Australian dollar, as at the time of relevant distributions.

[87] It is appropriate to begin a more detailed exposition with the legal framework for making a distribution in the winding up of the FMIF. The winding up is governed by the constitution of the scheme and any directions made by the Court under s 601NF(2).²⁸ Clause 16.7 of the constitution of the FMIF is as follows:

“Subject to the provisions of this clause 16 upon winding up the scheme the RE must:

- (a) realise the assets of the scheme property;
- (b) pay all liabilities of the RE in its capacity as trustee of the scheme including, but not limited to, liabilities owed to any member who is a creditor of the scheme except where such liability is a unit holder liability;
- (c) subject to any special rights or restrictions attached to any unit, distribute the net proceeds of realisation among the members in the same proportion specified in cl 12.4;
- (d) the members must pay the costs and expenses of a distribution of assets under cl 16.7(c) in the same proportion;
- (e) the RE may postpone the realisation of the scheme property for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement;
- (f) the RE may retain for as long as it thinks fit any part of the scheme property which in its opinion may be required to meet any actual or contingent liability of the scheme;
- (g) the RE must distribute among the members in accordance with cl 16.7 anything retained under cl 16.7(f) which is subsequently not required.”

²⁸ *Re Stacks Managed Investments Ltd* (2005) 54 ACSR 466, [45] – [46].

- [89] In February and March 2019, the FMIF had cash at bank of approximately \$65 million. As at that time, there were actual and contingent liabilities. Mr Whyte's estimate of the actual and contingent liabilities²⁹ in March 2019 were as follows:

Description	\$ Amount
Actual liabilities	\$2,213,000.00
Contingent Liabilities	
Creditor indemnity claims	\$949,497.72
Exit entitlements relating to former retirement village assets (approximately)	\$5,000,000.00
Potential claims by the liquidator of LMIM	\$2,043,889.89
Non-litigation expenses and remuneration of Mr Whyte	\$1,800,000.00
The Feeder Funds Proceeding	\$1,100,000.00
EY Proceeding	\$2,450,000.00
Bellpac Proceeding	\$8,200,000.00
Lamb Bankruptcy Proceedings	\$230,000.00
Total:	\$23,986,387.61

- [90] Mr Whyte opined that these amounts are not his best estimate of the extent of the liabilities but are an assessment of a realistic worst case scenario in respect of those liabilities. Taking them into account, Mr Whyte opined that it is possible to distribute a sum of up to \$40 million to the unit holders of the FMIF, subject to his assessment of the appropriateness of the amount of contingent liabilities under his control relating to the remaining litigation to recover funds for the benefit of the FMIF. Mr Whyte provides further information as to the categories of contingent liabilities. They include the following matters.

Creditor indemnity claims

- [91] Under the 17 December 2015 order, as varied on 18 July 2018, the liquidator was directed to ascertain the debts and claims against LMIM as responsible entity for which LMIM claimed indemnity from the FMIF and to notify the same to Mr Whyte. The liquidator called for proofs of debt in early September 2018, with a due date of 2 October 2018. The liquidator subsequently advised Mr Whyte that proofs of debt had been received from EY in the amount of \$158,896.51 and Norton Rose Fulbright Australia in the sum of \$315,601.21, totalling \$474,497.72, together with provision for interest at the rate of 8 percent under s 563B of the CA for the possible relevant period of \$300,000. Mr Whyte originally allowed \$774,497.72 in respect of the actual liabilities, but increased that allowance to \$949,497.72 as at March 2019.

²⁹ Excluding some possible contingent liabilities over which he had control.

Exit entitlements relating to retirement villages

- [92] The FMIF held securities over a number of retirement villages which were realised by sale by Mr Whyte and the externally appointed receiver of the secured creditor. There were five relevant retirement villages. Under each of the agreements for sale, the incoming owner and operator of the relevant retirement village provided an indemnity to LMIM as responsible entity of the FMIF for the potential obligation to pay any exit entitlement that may be due to a resident or the resident's estate on exit from the village. Under the legislation which applies, the liability to pay exit entitlements may in some circumstances be enforced against LMIM as the responsible entity (or the custodian) as the operator of the village at the time when the resident's contract was entered into. Accordingly, there is a possibility of liability of LMIM as responsible entity, in the event that the purchaser does not honour the indemnity. The liability is not a likely one, for the reasons that the retirement villages were sold to operators who Mr Whyte believed then and still believes are financially sound and that on average the residents of retirement villages stay for a period of approximately five years and any exit entitlements are met or repaid thereafter. To date, there has been no exit liability that LMIM as responsible entity by Mr Whyte (or the custodian) has been called upon to pay.
- [93] Mr Whyte has made an estimate of what is, in his view, a realistic worst case scenario that the amount of any such liability could be up to \$5 million on the assumption that there might be a shortfall payable for up to 50 percent of the exit entitlements that were contributed by residents.

Liquidator's remuneration and expenses

- [94] On 6 September 2018 and 3 October 2018, the court heard the liquidator's second application for remuneration to be paid from the property of the FMIF in the sum of \$743,889.89. Although Mr Whyte opposed the orders sought to determine the remuneration in the amounts applied for or that they should be payable from the assets of the FMIF, he has made a full allowance of the amounts claimed as an amount of the property of the FMIF that should be retained.
- [95] Mr Whyte also anticipates the possibility of further applications by the liquidator for payment of remuneration and expenses from the property of the FMIF, including an expressed intention by the liquidator to reallocate approximately \$1.6 million in unpaid "corporate" expenses of LMIM, consisting principally of unpaid legal costs and outlays, to the various funds of which it is the responsible entity and to make a claim for a proportion of those expenses from the FMIF. Mr Whyte has estimated that 25 percent of that amount should be retained on the assumption that the amount would reflect an equal apportionment between the various funds of which LMIM is the responsible entity.
- [96] Further, Mr Whyte proposes to retain an amount against the liquidator's remuneration and expenses of the first application for directions dealt with by these reasons as another potential liability to be met from the assets of the FMIF.
- [97] Lastly, Mr Whyte has estimated the liquidator's expenses of completing the process of ascertaining creditor indemnity claims against the FMIF under the order of 17 December 2015 as varied on 18 July 2017, maintaining LMIM's Australian Financial Services Licence, carrying out a final audit of the FMIF (assuming that function is not transferred to Mr Whyte) and making a further application or applications for recovery of

remuneration and expenses from the FMIF and proposes that amounts be retained for those items.

[98] The summary of the relevant amounts is as follows:

Description	\$ Amount
Liquidator's remuneration claim heard in September 2018	\$743,889.89
Liquidator's further legal expenses notified in the remuneration application but not yet claimed	\$400,000
Liquidator's other remuneration and expenses recoverable to the conclusion of the winding up of the FMIF	\$200,000
Liquidator's remuneration and legal costs of the September 2018 remuneration application	\$200,000
Liquidator's remuneration and legal costs of the Directions Application	\$200,000
Liquidator's remuneration and legal costs of further applications for recovery of remuneration and expenses from the FMIF	\$300,000.00
Total:	\$2,043,889.89

Mr Whyte's remuneration and expenses

[99] Mr Whyte's summary of his further remuneration and expenses to the end of the winding up of the FMIF is as follows:

Description	\$ Amount
Ongoing administration	\$1 million
Completing the Proof of Debt Process	\$50,000
Responding to further claims by the Liquidator for remuneration and expenses	\$100,000
Applying for authority to make a final distribution	\$50,000
Further applications for approval of remuneration	\$500,000
Finalising the appointment	\$100,000
Total:	\$1,800,000

Feeder Funds Proceeding

- [100] Although the Feeder Funds Proceeding has been compromised, and it is proposed that the deed of settlement and release be carried into effect, Mr Whyte has estimated the costs that may be associated with the Feeder Funds Proceeding on the assumption that the compromise is not carried into effect. The amount of the potential contingent liabilities in that event were estimated by him as follows:

Description	\$ Amount
Remuneration and legal expenses of the application to court for judicial advice	\$100,000
Liability under adverse costs orders for costs of Mr Jahani and Trilogy of the litigation	\$1 million
Total:	\$1,100,000

EY Proceeding

- [101] Mr Whyte made an estimate of the contingent liability in respect of the EY Proceeding as follows:

Description	\$ Amount
Remuneration and legal expenses up to and including mediation	\$350,000
Legal expenses and remuneration of an application for judicial advice	\$100,000
Liability under adverse costs order for costs of the EY Proceeding to date	\$2 million
Total:	\$2,450,000

Bellpac Proceeding

- [102] Mr Whyte estimated the contingent liabilities for the Bellpac proceeding as follows:

Description	\$ Amount
Mr Whyte's remuneration and legal expenses up to and including trial	\$700,000
Liability under an adverse costs order, if claim is unsuccessful	\$7.5 million
Total:	\$8,200,000

Bankrupt Estate of Ross Lamb

- [103] Mr Whyte estimated the contingent liabilities with respect to Mr Lamb's bankruptcy as follows:

Description	\$ Amount
Trustee's remuneration and legal expenses in relation to public examinations	\$200,000
Mr Whyte's remuneration and expenses	\$30,000
Total:	\$230,000

- [104] In my view, the amounts estimated for these contingent liabilities are reasonable.

Class C unit holders

- [105] From 2008, 171 unit holders invested in the FMIF in a foreign currency under a product disclosure statement issued on 10 April 2008 as supplemented on a later occasion. However, throughout the relevant time, units in the FMIF were valued for other investors in the FMIF upon subscription and redemption in Australian dollars ("AUD") at \$1. The financial statements of the FMIF identify the foreign currency investors as holding "Class C" units. They represent between 2 percent and 3 percent of units in the FMIF.
- [106] When a unit holder invested in the FMIF in a foreign currency, according to the product disclosure statement, the amount accepted was converted into AUD and units at the foreign exchange rate as at the date of the investment.
- [107] However, from 2011, a unit holder who invested in a foreign currency under the product disclosure statement was recorded in the register of unit holders as a unit holder in units of the foreign currency. The investments were not recorded as converted into AUD at the spot rate of foreign exchange as at the date of the investment, or reinvestment. Instead, by choosing an "Effective Date" of 29 November 2012, an "Effective Unit Price" was set using the spot rate of foreign currency exchange in AUD on that date. I was informed that the intention was that by multiplying the "Unit Balance" recorded in the foreign currency "units" in the register by the "Effective Unit Price" as at the "Effective Date", a "Balance in Currency" of the foreign currency was recorded and a "Balance in AUD" was also recorded as the amount required in AUD to pay the investor's "Balance in Currency". I confess that, having closely examined the copies of the sample records in evidence, the methodology employed in compiling the relevant entries did not make itself clear to me.
- [108] In any event, the purported effect of the arrangements, according to the product disclosure statement, was that if an investment in units in the FMIF was made in a foreign currency, a conversion into AUD from time to time would result in a fluctuation of the unit holdings of the foreign investor according to the exchange rate. Against this outcome, LMIM as the responsible entity of the FMIF agreed with the relevant investor under the terms of the product disclosure statement to enter into a forward foreign exchange contract between the foreign currency and the AUD, thereby hedging the investment made by the foreign currency investor. However, from about the time of the order to wind up the

FMIF made in August 2015, forward foreign exchange contracts have not been maintained during the winding up.

- [109] Turning to the terms of the constitution of the FMIF, cl 3.2 provides for different classes of units as follows:

“Different classes (and subclasses) with such rights and obligations as determined by the RE from time to time may be created and issued by the RE in its complete discretion. Such rights and obligations may, but need not be, referred to in the PDS. If the RE determines in relation to particular units, the terms of issue of those units may eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such units. Without limitation, the RE may distribute the distributable income for any period between different classes on a basis other than proportionately, provided that the RE treats the different classes fairly.”

- [110] Clause 3.4 provides:

“At any time, all the units in a Class are of equal value unless the units are issued under a Differential Fee Arrangement.”

- [111] There is no evidence that LMIM as responsible entity of the FMIF recorded a determination under cl 3.2 in respect of Class C units.

- [112] However, the product disclosure statement issued by LMIM as responsible entity of the FMIF on 10 April 2008 offered “non-AUD dollar currency hedged fixed term investment options” for investment in the FMIF. It stated:

- (a) “The fund currency hedges a non-Australian dollar investment through the use of foreign forward exchange contracts (“FFEC”).”
- (b) “On acceptance of investment funds and the completed application form, the relevant currency is converted at the prevailing spot market rate into Australian dollars and units in the fund issued. The fund simultaneously enters into a FFEC. The FFEC requires the fund to deliver an amount of AUD in exchange for an amount of the relevant foreign currency at a specific time in the future (the specific time is equivalent to the investment term) at a pre-determined exchange rate (forward rate). At the end of the investment period the fund converts the earnings of the investor into the relevant foreign currency at the forward foreign exchange rate”.
- (c) “Non-AUD investment terms for all currencies commence on the day the manager settles the FFEC”.
- (d) “At the end of the relevant investment term, the investor’s original investment amount and interest distribution (unless the investor elects to have the interest distribution paid direct to the account nominated on the application form), are automatically reinvested and re-hedged in the originally nominated currency for further 1 month investment terms until the investor provides the manager with longer investment term instructions or a written withdrawal notice.”
- (e) “For all non-AUD dollar investments the manager will continue to hedge (on a 1 monthly basis) the currency exposure of these investments (in the event of a delay in payment of a redemption or the suspension of redemptions).”

[113] On page 26 the product disclosure statement provided further:

“Investors should however, be aware that **any delay or shortfall in income or capital payments from the fund may result in a loss for the fund due to breaking a FFEC**. In such an event, the investment will not be currency hedged and income and/or capital may be impacted.” (emphasis added)

[114] The overall intention pursuant to the product disclosure statement, in my view, was that an investor who invested in the FMIF in a foreign currency would be protected against changes in the exchange rate from the prevailing spot market rate as at the date the units were issued by LMIM taking out a forward foreign exchange contract between the AUD and the foreign currency. Even so, by the terms of the product disclosure statement, the underlying assumption or provision was that the investment would be converted into units in the FMIF issued in AUD at the prevailing spot market rate at the time of investment.

[115] Accordingly, on maturity, it was intended that the foreign currency investor would be entitled to a distribution of an underlying amount in AUD at that date and an adjustment of that amount on conversion into the foreign currency by the net gain or loss made on the forward foreign exchange contract entered into as a hedge to cover the investment for the period of the investment. These arrangements, in my view, reflected the underlying intention that an investment in the FMIF was to be made in units issued in an AUD value and number, although made in a foreign currency. This conclusion is consistent with the contextual circumstances that the scheme property of the FMIF was invested in loans made to borrowers in AUD repayable with interest in AUD and secured by first mortgage over Australian assets. Investors in the scheme were necessarily exposed to the financial risk of it earning income and maintaining capital in AUD only.

[116] Mr Whyte submits that the arrangements disclosed by the product disclosure statement have the effect that at the end of the period of the investment, an investor in foreign currency would be entitled to an increased or decreased amount reflected in a different number of units measured in AUD than the initial investment. I do not agree. The number of units that an investor in a foreign currency received should have been the number of units into which the foreign currency converted as at the date of investment and issue of the units. The adjustment of the amount of the redemption value of those units in AUD under the arrangements provided for by the product disclosure statement was to be made by payment at redemption in the foreign currency of an amount that reflected the AUD amount of the value of the units to be redeemed at the date of redemption together with the adjustment, whether negative or positive, represented by the forward foreign exchange contract made to sell the AUD into the foreign currency.

[117] If those conclusions are correct, it follows logically that a change occurred in the rights of investors in foreign currency who were Class C unit holders when it was ordered that the FMIF be wound up on 8 and 21 August 2013. From that time, there was no reinvestment of the interests of any investor in foreign currency or redemption made under the arrangements provided for under the product disclosure statement. Any existing unexpired investment terms came and went without repayment and without any continuing hedging cover against the nominal value of those investments. I was not informed of the outcome for LMIM when the relevant hedge covers ceased.

[118] In my view, the relevant date at which a foreign investor's unit holding is to be ascertained is either the date at which they last invested in the FMIF at the conversion rate of the

foreign currency into AUD or the date on which it was ordered that the FMIF be wound up at the conversion rate of the foreign currency into AUD as at that date. The conversion of the foreign currency into AUD as at that date yields the number of units to which the investor is entitled and forms the basis of their rateable entitlement to receive distributions from the FMIF as against other members, including other Class C unit holders and unit holders who did not invest in a foreign currency.

- [119] Although arguments may be advanced in support of either of those alternatives, in my view, the date of the order that the FMIF be wound up is the better date. Until then, the terms of the product disclosure statement expressly required that the forward foreign exchange contracts be in place, notwithstanding that there was a suspension of redemptions from an earlier date. However, the effect of the order that the FMIF be wound up was to change the business of the FMIF, so that the assets were to be realised, the debts paid and the net proceeds of realisation are to be distributed to the unit holders in the rateable proportions that applied among them.
- [120] As between the AUD investors and the foreign currency investors, the calculation of the rateable proportions requires that a choice be made of the date at which the conversion of the foreign currency investor's investments should be made.
- [121] The complication lies in the circumstance that LMIM as responsible entity ceased to observe the contractual requirement to investors in Class C units that it would hedge the position of those unit holders against movements between the AUD and the foreign currency by forward foreign exchange contracts. However, LMIM's breach of contract in that respect does not alter the unit entitlement of the Class C members in comparison to the other classes of members under the terms of the constitution of the FMIF. Unless the constitutional arrangements expressly or impliedly provided that in the event of the winding up the investors in a foreign currency were to have an entitlement to a greater distribution based on the arrangements made under the product disclosure statement, the unit entitlements of the members should be treated as crystallised as at that date. The product disclosure statement did not contemplate a greater entitlement in the winding up. To the contrary, it expressly contemplated that a shortfall in income and capital might expose a foreign currency investor to the risk of a break in a forward foreign exchange contract, that the investment would not thereafter be currency hedged and that income and capital may be impacted.
- [122] Accordingly, in my view, distributions to Class C members should be made on the footing that their entitlements to units are to be ascertained by reference to the appropriate calculation of units in AUD utilising the spot exchange rate for the investment of foreign currency as at the date of order made for the winding up of the FMIF.

ASIC & Business Names**ORGANISATIONAL SEARCH ON LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND****Historical Extract**

This information was extracted from ASIC database on 07 May 2020 at 03:56PM

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

110 247 875	LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND	DOCUMENT NO.
	110 247 875	
ABN	Not available	
Date Registered	10-Aug-2004	
Review Date	10-Aug-2020	

Current Organisation Details

Name	LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND	028179828
Name Start	28-Jul-2004	
Status	WINDING UP - MANAGED INVESTMENT SCHEMES	
Type	MANAGED INVESTMENT SCHEME	
Disclosing Entity	NO	
Scheme category(s)	FAST	

Ceased/Former Organisation Details

Details Start	10-Aug-2004	020503133
Details End	17-Oct-2013	
Name	LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND	
Name Start	28-Jul-2004	
Status	REGISTERED	
Type	MANAGED INVESTMENT SCHEME	
Disclosing Entity	NO	
Scheme category(s)	FAST	
Details Start	Unknown	020503133
Details End	09-Aug-2004	
Name	LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND	
Name Start	28-Jul-2004	
Status	PENDING - SCHEMES	
Type	MANAGED INVESTMENT SCHEME	
Disclosing Entity	NO	
Scheme category(s)	FAST	

Current Responsible Entity

Officer Name LM INVESTMENT MANAGEMENT LIMITED 8E0071298
 ACN 077 208 461
 ABN Not available
 Address C/- FTI CONSULTING C/- FTI CONSULTING, LEVEL 20, 345
 QUEEN STREET, BRISBANE, QLD, 4000
 Appointment Date 10-Aug-2004

Current Compliance Plan Auditor

Officer Name MICHAEL JAMES REID 023038930
 ABN Not available
 Address Address Unknown
 Appointment Date 24-Jul-2006

Ceased/Former Compliance Plan Auditor

Officer Name PAUL MARTIN GLENNY 020503133
 ABN Not available
 Address Address Unknown
 Appointment Date 13-Aug-2004
 Cease Date 24-Jul-2006

Appointment of secretary is optional. In the event no secretary is appointed the director(s) assume the responsibilities under the Law.

Current Issued Capital

Type Current 022224609
 Class LMCP
 LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND
 Number of Shares/Interests issued 179555821900
 Total amount paid/taken to be paid \$17955582.19
 Total amount due and payable \$0.00

Note: For each class of interest issued, ASIC records the names and addresses of all interest holders (if the scheme has less than 20 interest holders) or the top 20 interest holders (if the scheme has more than 20 interest holders). The details of any other persons holding the same number of interests as the twentieth ranked interest holder will also be recorded by ASIC on the database. Where available, historical records show that a person has ceased to be ranked amongst the top 20 interest holders. This may, but does not necessarily mean, that they have ceased to hold interests in the scheme.

Document Details

Received	Form Type	Processed	No. Pages	Effective	
18-Oct-2013	5138	18-Oct-2013	1	18-Oct-2013	028179828
5138A	Notification of Commencement or Completion of Scheme				
	Windingup - Commencement of Winding Up				
29-Nov-2012	5111	07-Jan-2013	5	30-Jun-2012	028382968
5111	Audit Report on Compliance Plan				
19-Nov-2012	388	05-Dec-2012	46	30-Jun-2012	028335514

388B	Financial Report	Financial Report - Registered Scheme			(FR 2012)
26-Oct-2012	5101	26-Oct-2012	12	26-Oct-2012	028183018
5101B	Constitution For Managed Investment Scheme Modification Of Constitution				
14-Dec-2011	5102	14-Dec-2011	19	01-Dec-2011	025136451
5102C	Compliance Plan For Managed Investment Scheme Replacement Compliance Plan				
07-Oct-2011	388	14-Oct-2011	46	30-Jun-2011	027781591
388B	Financial Report Financial Report - Registered Scheme				(FR 2011)
07-Oct-2011	5111	24-Nov-2011	5	30-Jun-2011	027911270
5111	Audit Report on Compliance Plan				
28-Jun-2011	388	29-Jun-2011	46	30-Jun-2010	027577582
388B	Financial Report Financial Report - Registered Scheme				(FR 2010)
28-Jun-2011	5111	29-Jun-2011	5	30-Jun-2010	027577579
5111	Audit Report on Compliance Plan				
18-Jun-2010	5111	30-Jul-2010	5	30-Jun-2009	026643744
5111	Audit Report on Compliance Plan				
15-Jun-2010	388	17-Jun-2010	43	30-Jun-2009	026602058
388B	Financial Report Financial Report - Registered Scheme				(FR 2009)
11-Nov-2009	5120	12-Nov-2009	7	11-Nov-2009	020500491
5120	Notice of Exemption Re Managed Investment Scheme				
11-Nov-2009	5120	18-Nov-2009	0	11-Nov-2009	020500486
5120	Notice of Exemption Re Managed Investment Scheme				
15-May-2009	5111	29-May-2009	5	30-Jun-2008	025637395
5111	Audit Report on Compliance Plan				
14-Apr-2009	5122	08-May-2009	5	14-Apr-2009	024672204
5122	Notice of Declaration Re Managed Investment Scheme				
14-Apr-2009	5120	08-May-2009	5	14-Apr-2009	024672203
5120	Notice of Exemption Re Managed Investment Scheme				
26-Mar-2009	388	03-Apr-2009	43	30-Jun-2008	025509064
388B	Financial Report Financial Report - Registered Scheme				(FR 2008)
01-Dec-2008	5102	02-Dec-2008	24	28-Nov-2008	024506467
5102C	Compliance Plan For Managed Investment Scheme Replacement Compliance Plan				
12-Sep-2008	491	19-Sep-2008	3	11-Aug-2008	025048527
491	Change to Scheme Details				
11-Apr-2008	5101	11-Apr-2008	39	11-Apr-2008	020938297
5101C	Constitution For Managed Investment Scheme Replacement Constitution				
10-Apr-2008	5102	15-Apr-2008	26	10-Apr-2008	019981077

5102C	Compliance Plan For Managed Investment Scheme Replacement Compliance Plan					
14-Mar-2008 7051	7051	29-Apr-2008	17	31-Dec-2007	024664209	Half Yearly Reports
28-Sep-2007 5111	5111	10-Oct-2007	4	30-Jun-2007	024156729	Audit Report on Compliance Plan
28-Sep-2007 388B	388	10-Oct-2007	34	30-Jun-2007	024149815 (FR 2007)	Financial Report Financial Report - Registered Scheme
18-Jun-2007 5102C	5102	22-Jun-2007	21	18-Jun-2007	021672748	Compliance Plan For Managed Investment Scheme Replacement Compliance Plan
18-Jun-2007 5101C	5101	22-Jun-2007	40	18-Jun-2007	021672747	Constitution For Managed Investment Scheme Replacement Constitution
16-Mar-2007 7051	7051	23-Apr-2007	19	31-Dec-2006	023659001	Half Yearly Reports
02-Oct-2006 388J	388	09-Oct-2006	36	30-Jun-2006	022755827 (FR 2006)	Financial Report Financial Report - Small Pty Co./small Pub Co. Lmgmt That Is Requested By ASIC to Prepare & Lodge Statements And Reports
02-Oct-2006 5111	5111	11-Oct-2006	3	30-Jun-2006	023164846	Audit Report on Compliance Plan
11-Sep-2006 5114	5114	13-Sep-2006	1	11-Sep-2006	023038930	Notification of Request By Responsible Entity to Change Compliance Plan Auditor
15-Mar-2006 7051	7051	28-Mar-2006	20	31-Dec-2005	022837010	Half Yearly Reports
05-Dec-2005 5102C	5102	09-Jan-2006	18	05-Dec-2005	020699581	Compliance Plan For Managed Investment Scheme Replacement Compliance Plan
05-Dec-2005 5101C	5101	05-Dec-2005	38	05-Dec-2005	020699583	Constitution For Managed Investment Scheme Replacement Constitution
29-Sep-2005 388B	388	26-Oct-2005	32	30-Jun-2005	022360826 (FR 2005)	Financial Report Financial Report - Registered Scheme
29-Sep-2005 5111	5111	12-Oct-2005	3	30-Jun-2005	022360824	Audit Report on Compliance Plan
07-Sep-2005 491	491	09-Sep-2005	5	11-Aug-2005	022224609	Change to Scheme Details
06-Jun-2005 5101C	5101	07-Jun-2005	75	06-Jun-2005	020945600	Constitution For Managed Investment Scheme Replacement

Constitution

28-Jul-2004 5100A	5100	13-Aug-2004	1	28-Jul-2004	020503133
Application For Registration of Managed Investment Scheme - New Scheme					
28-Jul-2004 5101A	5101	28-Jul-2004	35	28-Jul-2004	020503134
Constitution For Managed Investment Scheme Initial Scheme Constitution					
28-Jul-2004 5103	5103	28-Jul-2004	1	28-Jul-2004	020503136
Directors Statement					
28-Jul-2004 5102A	5102	28-Jul-2004	18	28-Jul-2004	020503135
Compliance Plan For Managed Investment Scheme Initial Scheme Compliance Plan					

Financial Reports

Balance Date	Report Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding	
30-Jun-2005	30-Sep-2005	Unknown	Unknown	Unknown	N	022360826
30-Jun-2006	30-Sep-2006	Unknown	Unknown	Unknown	N	022755827
30-Jun-2007	30-Sep-2007	Unknown	Unknown	Unknown	N	024149815
30-Jun-2008	30-Sep-2008	Unknown	Unknown	Unknown	N	025509064
30-Jun-2009	30-Sep-2009	Unknown	Unknown	Unknown	N	026602058
30-Jun-2010	30-Sep-2010	Unknown	Unknown	Unknown	N	027577582
30-Jun-2011	30-Sep-2011	Unknown	Unknown	Unknown	N	027781591
30-Jun-2012	30-Sep-2012	Unknown	Unknown	Unknown	N	028335514

*** End of Extract ***

ASIC & Business Names

ORGANISATIONAL SEARCH ON LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND

Historical Extract

This information was extracted from ASIC database on 07 May 2020 at 03:51PM

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

122 052 868	LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND	DOCUMENT NO.
ABN	122 052 868 Not available	
Date Registered	12-Oct-2006	
Review Date	12-Oct-2020	

Current Organisation Details

Name	LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND	028179829
Name Start	04-Oct-2006	
Status	WINDING UP - MANAGED INVESTMENT SCHEMES	
Type	MANAGED INVESTMENT SCHEME	
Disclosing Entity	NO	
Scheme category(s)	FAST	

Ceased/Former Organisation Details

Details Start	12-Oct-2006	021674847
Details End	17-Oct-2013	
Name	LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND	
Name Start	04-Oct-2006	
Status	REGISTERED	
Type	MANAGED INVESTMENT SCHEME	
Disclosing Entity	NO	
Scheme category(s)	FAST	
Details Start	Unknown	021674847
Details End	11-Oct-2006	
Name	LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND	
Name Start	04-Oct-2006	
Status	PENDING - SCHEMES	
Type	MANAGED INVESTMENT SCHEME	
Disclosing Entity	NO	

Scheme category(s) FAST

Current Responsible Entity

Officer Name LM INVESTMENT MANAGEMENT LIMITED 8E0071298
ACN 077 208 461
ABN Not available
Address C/- FTI CONSULTING C/- FTI CONSULTING, LEVEL 20, 345
QUEEN STREET, BRISBANE, QLD, 4000
Appointment Date 12-Oct-2006

Current Compliance Plan Auditor

Officer Name MICHAEL JAMES REID 021674847
ABN Not available
Address Address Unknown
Appointment Date 12-Oct-2006

Appointment of secretary is optional. In the event no secretary is appointed the director(s) assume the responsibilities under the Law.

Document Details

Received	Form Type	Processed	No. Pages	Effective	
18-Oct-2013	5138	18-Oct-2013	1	18-Oct-2013	028179829
5138A	Notification of Commencement or Completion of Scheme Windingup - Commencement of Winding Up				
29-Nov-2012	5111	07-Jan-2013	5	30-Jun-2012	028382966
5111	Audit Report on Compliance Plan				
27-Nov-2012	388	05-Dec-2012	46	30-Jun-2012	028335515 (FR 2012)
388B	Financial Report Financial Report - Registered Scheme				
26-Oct-2012	5101	26-Oct-2012	12	26-Oct-2012	028183019
5101B	Constitution For Managed Investment Scheme Modification Of Constitution				
14-Dec-2011	5102	14-Dec-2011	16	01-Dec-2011	025136453
5102C	Compliance Plan For Managed Investment Scheme Replacement Compliance Plan				
07-Oct-2011	388	14-Oct-2011	47	30-Jun-2011	027781592 (FR 2011)
388B	Financial Report Financial Report - Registered Scheme				
07-Oct-2011	5111	24-Nov-2011	5	30-Jun-2011	027911271
5111	Audit Report on Compliance Plan				
28-Jun-2011	388	29-Jun-2011	47	30-Jun-2010	027577583 (FR 2010)
388B	Financial Report Financial Report - Registered Scheme				
28-Jun-2011	5111	29-Jun-2011	5	30-Jun-2010	027577580
5111	Audit Report on Compliance Plan				
18-Jun-2010	5111	30-Jul-2010	5	30-Jun-2009	026643745

5111	Audit Report on Compliance Plan				
15-Jun-2010	388	17-Jun-2010	42	30-Jun-2009	026602059
388B	Financial Report	Financial Report - Registered Scheme			(FR 2009)
11-Nov-2009	5120	12-Nov-2009	7	11-Nov-2009	020500491
5120	Notice of Exemption Re	Managed Investment Scheme			
11-Nov-2009	5120	18-Nov-2009	0	11-Nov-2009	020500486
5120	Notice of Exemption Re	Managed Investment Scheme			
15-May-2009	5111	29-May-2009	10	30-Jun-2008	025637394
5111	Audit Report on Compliance Plan				
14-Apr-2009	5120	08-May-2009	5	14-Apr-2009	024672203
5120	Notice of Exemption Re	Managed Investment Scheme			
14-Apr-2009	5122	08-May-2009	5	14-Apr-2009	024672204
5122	Notice of Declaration Re	Managed Investment Scheme			
26-Mar-2009	388	03-Apr-2009	42	30-Jun-2008	025509069
388B	Financial Report	Financial Report - Registered Scheme			(FR 2008)
01-Dec-2008	5102	02-Dec-2008	20	28-Nov-2008	024506464
5102C	Compliance Plan For Managed Investment Scheme Replacement	Compliance Plan			
06-Nov-2008	491	10-Nov-2008	3	14-Oct-2008	025081743
491	Change to Scheme Details				
11-Apr-2008	5101	11-Apr-2008	39	11-Apr-2008	020938293
5101C	Constitution For Managed Investment Scheme Replacement	Constitution			
10-Apr-2008	5102	15-Apr-2008	26	10-Apr-2008	019981078
5102C	Compliance Plan For Managed Investment Scheme Replacement	Compliance Plan			
14-Mar-2008	7051	29-Apr-2008	17	31-Dec-2007	024664206
7051	Half Yearly Reports				
17-Jan-2008	491	25-Jan-2008	3	13-Oct-2007	024462285
491	Change to Scheme Details				
28-Sep-2007	5111	10-Oct-2007	4	30-Jun-2007	024156730
5111	Audit Report on Compliance Plan				
28-Sep-2007	388	10-Oct-2007	34	30-Jun-2007	024149814
388B	Financial Report	Financial Report - Registered Scheme			(FR 2007)
29-Jun-2007	5102	03-Jul-2007	22	28-Jun-2007	021671970
5102C	Compliance Plan For Managed Investment Scheme Replacement	Compliance Plan			
29-Jun-2007	5101	03-Jul-2007	40	29-Jun-2007	021671971
5101B	Constitution For Managed Investment Scheme Modification Of	Constitution			

20-Dec-2006	5101	20-Dec-2006	37	20-Dec-2006	023071152
5101C	Constitution For Managed Investment Scheme Replacement Constitution				
04-Oct-2006	5101	12-Oct-2006	36	04-Oct-2006	021674848
5101A	Constitution For Managed Investment Scheme Initial Scheme Constitution				
04-Oct-2006	5103	12-Oct-2006	1	04-Oct-2006	021674850
5103	Directors Statement				
04-Oct-2006	5100	12-Oct-2006	3	04-Oct-2006	021674847
5100A	Application For Registration of Managed Investment Scheme - New Scheme				
04-Oct-2006	5102	12-Oct-2006	20	04-Oct-2006	021674849
5102A	Compliance Plan For Managed Investment Scheme Initial Scheme Compliance Plan				

Financial Reports

Balance Date	Report Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
30-Jun-2007	30-Sep-2007	Unknown	Unknown	Unknown	N 024149814
30-Jun-2008	30-Sep-2008	Unknown	Unknown	Unknown	N 025509069
30-Jun-2009	30-Sep-2009	Unknown	Unknown	Unknown	N 026602059
30-Jun-2010	30-Sep-2010	Unknown	Unknown	Unknown	N 027577583
30-Jun-2011	30-Sep-2011	Unknown	Unknown	Unknown	N 027781592
30-Jun-2012	30-Sep-2012	Unknown	Unknown	Unknown	N 028335515

*** End of Extract ***

ASIC & Business Names

ORGANISATIONAL SEARCH ON LM INVESTMENT MANAGEMENT LIMITED

Historical Extract

This information was extracted from ASIC database on 07 May 2020 at 04:04PM

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

077 208 461	LM INVESTMENT MANAGEMENT LIMITED	DOCUMENT NO.
ABN	077 208 461 68 077 208 461	
Registered in	QLD	
Date Registered	31-Jan-1997	
Review Date	31-Jan-2021	

Current Organisation Details

Name	LM INVESTMENT MANAGEMENT LIMITED	7E5097309
Name Start	06-Aug-1998	
Status	EXTERNALLY ADMINISTERED	
	For information about this status refer to the documents listed under the heading "External Administration and/or Appointment of Controller", below.	
Type	AUSTRALIAN PUBLIC COMPANY	
Class	LIMITED BY SHARES	
Subclass	UNLISTED PUBLIC COMPANY	
Disclosing Entity	NO	

Ceased/Former Organisation Details

Details Start	06-Aug-1998	014236975
Details End	18-Mar-2013	
Name	LM INVESTMENT MANAGEMENT LIMITED	
Name Start	06-Aug-1998	
Status	REGISTERED	
Type	AUSTRALIAN PUBLIC COMPANY	
Class	LIMITED BY SHARES	
Subclass	UNLISTED PUBLIC COMPANY	
Disclosing Entity	NO	
Details Start	26-Mar-1997	011876588
Details End	05-Aug-1998	
Name	PLANNED PROPERTY SYNDICATION LTD	
Name Start	26-Mar-1997	
Status	REGISTERED	

Type	AUSTRALIAN PUBLIC COMPANY	
Class	LIMITED BY SHARES	
Subclass	UNLISTED PUBLIC COMPANY	
Disclosing Entity	NO	
Details Start	31-Jan-1997	011664971
Details End	25-Mar-1997	
Name	PLANNED PROPERTY SYNDICATION PTY LTD	
Name Start	31-Jan-1997	
Status	REGISTERED	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	

Current Registered Office

Address	C/- FTI CONSULTING C/- FTI CONSULTING, LEVEL 20, 345 QUEEN STREET, BRISBANE, QLD, 4000	8E0071298
Start Date	17-Apr-2018	

Ceased/Former Registered Office

Address	22 MARKET STREET, BRISBANE, QLD, 4000.	7E8301918
Start Date	07-Sep-2016	
End Date	16-Apr-2018	
Address	FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT, BUNDALL, QLD, 4217	7E5105009
Start Date	29-Mar-2013	
End Date	06-Sep-2016	
Address	LEVEL 4 RSL CENTRE, 9 BEACH ROAD, SURFERS PARADISE, 010807638 QLD, 4217	
Start Date	10-Feb-1997	
End Date	28-Mar-2013	
Address	C/- TOP SHELF COMPANY SERVICES, SUITE 1, 31 CROMBIE AVENUE, BUNDALL, QLD, 4217	011664971
Start Date	31-Jan-1997	
End Date	09-Feb-1997	

Current Principal Place of Business

Address	LEVEL 4 RSL CENTRE, 9 BEACH ROAD, SURFERS PARADISE, QLD, 4217
Start Date	01-Jul-1998

Current Director

Officer Name	EGHARD VAN DER HOVEN	1F0109176
ABN	Not available	

Birth Details 21-Jan-1962 DURBAN SOUTH AFRICA
Address 10 ROWES COURT, SORRENTO, QLD, 4217
Appointment Date 22-Jun-2006

Officer Name FRANCENE MAREE MULDER 1F0069214
ABN Not available
Birth Details 24-Apr-1961 SOUTHPORT QLD
Address 109 STRAWBERRY ROAD, MUDGEERABA, QLD, 4213
Appointment Date 30-Sep-2006

Ceased/Former Director

Officer Name PETER CHARLES DRAKE 1E2914414
ABN Not available
Birth Details 23-Aug-1955 WHANGARA NEW ZEALAND
Address 13 ALBATROSS AVENUE, NOBBY BEACH, QLD, 4218
Appointment Date 31-Jan-1997
Cease Date 09-Jan-2015

Officer Name KATHERINE JANE PHILLIPS 7E4588883
ABN Not available
Birth Details 21-Mar-1980 SOUTHPORT QLD
Address UNIT 1, 93-95 BIRRIGA ROAD, BELLEVUE HILL, NSW, 2023
Appointment Date 13-Jul-2012
Cease Date 20-Jun-2013

Officer Name JOHN FRANCIS O'SULLIVAN 7E4048590
ABN Not available
Birth Details 30-Nov-1951 TIMARU NEW ZEALAND
Address APARTMENT 1110 AL HALAWI, 18 THE SHORELINE PALM
JUMERIAH, AL HALAWI DUBAI, UNITED ARAB EMIRATES
Appointment Date 27-Nov-2007
Cease Date 30-Sep-2012

Officer Name GRANT PETER FISCHER 7E4367220
ABN Not available
Birth Details 28-Nov-1968 SYDNEY NSW
Address UNIT 146, 1 MOORES CRESENT, VARSITY LAKES, QLD, 4227
Appointment Date 14-Mar-2012
Cease Date 12-Aug-2012

Officer Name SIMON JEREMY TICKNER 7E4097067
ABN Not available
Birth Details 05-Mar-1962 LONDON UNITED KINGDOM
Address 2016 THE CIRCLE, SANCTUARY COVE, QLD, 4212
Appointment Date 18-Sep-2008
Cease Date 13-Jul-2012

Officer Name LISA MAREE DARCY 019612584
ABN Not available

Birth Details	16-Sep-1964 BULLI NSW	
Address	22 ROUEN AVENUE, PARADISE POINT, QLD, 4216	
Appointment Date	12-Sep-2003	
Cease Date	21-Jun-2012	
Officer Name	JOHN DILLON	7E1014532
ABN	Not available	
Birth Details	09-May-1950 URMSTON UNITED KINGDOM	
Address	15 FRANCIS STREET, MERMAID BEACH, QLD, 4218	
Appointment Date	08-Jun-2005	
Cease Date	28-Aug-2008	
Officer Name	JOHN VALLANDER LLEWELLYN	7E1139324
ABN	Not available	
Birth Details	14-Dec-1949 TREDEGAR UNITED KINGDOM	
Address	140 HONEYEATER DRIVE, BURLEIGH WATERS, QLD, 4220	
Appointment Date	01-Jun-2007	
Cease Date	30-Jun-2008	
Officer Name	MARTYN ANDREW CARNE	07720846M
ABN	Not available	(AR 2002)
Birth Details	18-Sep-1963 SYDNEY NSW	
Address	11 TIPPERARY AVENUE, KILLARNEY HEIGHTS, NSW, 2087	
Appointment Date	19-Jul-2002	
Cease Date	06-Jun-2006	
Officer Name	BRETT SAMUEL MCMAHON	020670882
ABN	Not available	
Birth Details	03-Jul-1957 SYDNEY NSW	
Address	UNIT 125 DEEPWATER POINT, 326-342 MARINE PARADE, LABRADOR, QLD, 4215	
Appointment Date	20-Aug-2004	
Cease Date	27-May-2005	
Officer Name	GEOFFREY MURRAY BLACK	014874140
ABN	Not available	
Birth Details	04-Aug-1960 CHRISTCHURCH NEW ZEALAND	
Address	46 EARL STREET, ROSEVILLE, NSW, 2069	
Appointment Date	31-Mar-1999	
Cease Date	20-May-2005	
Officer Name	PETER AUBORT	07720846M
ABN	Not available	(AR 2002)
Birth Details	06-Sep-1967 DUBBO NSW	
Address	1263 CURRUMBIN CREEK ROAD, CURRUMBIN VALLEY, QLD, 4223	
Appointment Date	25-Mar-1997	
Cease Date	12-Sep-2003	
Officer Name	JOHN WATSON QUINN	015964420
ABN	Not available	

Birth Details	28-Feb-1953 AUCKLAND NEW ZEALAND	
Address	15 SEAFARER COURT, SURFERS PARADISE, QLD, 4217	
Appointment Date	17-Nov-2000	
Cease Date	12-Feb-2002	
Officer Name	MICHAEL PATRICK DWYER	010808222
ABN	Not available	
Birth Details	01-May-1955 WARWICK QLD	
Address	14 YACHT STREET, SOUTHPORT, QLD, 4215	
Appointment Date	31-Jan-1997	
Cease Date	14-Dec-2001	
Officer Name	GEORGE STEPHENSON GILLTRAP	010807643
ABN	Not available	
Birth Details	20-Feb-1949 ROTORUA NEW ZEALAND	
Address	16 DOUBLEVIEW DRIVE, ELANORA, QLD, 4221	
Appointment Date	31-Jan-1997	
Cease Date	31-Jan-1997	

Ceased/Former Secretary

Officer Name	CAROLYN ANNE HODGE	1F0093922
ABN	Not available	
Birth Details	14-Jun-1963 SYDNEY NSW	
Address	47 PINNAROO STREET, HOPE ISLAND, QLD, 4212	
Appointment Date	23-Sep-2004	
Cease Date	04-Jul-2013	
Officer Name	PETER CHARLES DRAKE	010808222
ABN	Not available	
Birth Details	23-Aug-1955 WHANGARA NEW ZEALAND	
Address	OCEANVIEW EASEMENT, NOBBY BEACH, QLD, 4218	
Appointment Date	31-Jan-1997	
Cease Date	23-Sep-2004	
Officer Name	LISA MAREE DARCY	07720846M (AR 2002)
ABN	Not available	
Birth Details	16-Sep-1964 BULLI NSW	
Address	22 ROUEN AVENUE, PARADISE POINT, QLD, 4216	
Appointment Date	24-Jan-2003	
Cease Date	23-Sep-2004	
Officer Name	JOHN WATSON QUINN	014874940
ABN	Not available	
Birth Details	28-Mar-1953 AUCKLAND NEW ZEALAND	
Address	64 THOMAS DRIVE, SURFERS PARADISE, QLD, 4217	
Appointment Date	10-May-1999	
Cease Date	14-May-1999	
Officer Name	GEORGE STEPHENSON GILLTRAP	010807643

ABN Not available
Birth Details 20-Feb-1949 ROTORUA NEW ZEALAND
Address 16 DOUBLEVIEW DRIVE, ELANORA, QLD, 4221
Appointment Date 31-Jan-1997
Cease Date 31-Jan-1997

Current Appointed Auditor

Officer Name ERNST & YOUNG 020698531
Number 024870595 (FR 2004)
ABN Not available
Address 'WATERFRONT PLACE' LEVEL 1, 1 EAGLE STREET,
BRISBANE, QLD, 4000
Appointment Date 01-Oct-2003

Ceased/Former Appointed Auditor

Officer Name KPMG 016010134
Number 024510530 (FR 1999)
ABN Not available
Address CORPORATE CENTRE ONE, CNR BUNDALL AND SLATER
AVENUE, BUNDALL, QLD, 4217
Appointment Date 21-Sep-1999
Cease Date 21-Nov-2003

Officer Name MICHAEL JOHN SHEEHY 07720846H
ABN Not available (AR 1997)
Address BUTLER MCMURTRIE, LEVEL 5 RSL CENTRE, 9 BEACH ROAD,
SURFERS PARADISE, QLD, 4217
Appointment Date 30-Nov-1997
Cease Date 21-Sep-1999

Current Receiver Manager

Officer Name SAID JAHANI 7E7499212
ABN Not available
Address GRANT THORNTON AUSTRALIA LIMITED, LEVEL 17, 383 KENT
STREET, SYDNEY, NSW, 2000
Appointment Date 16-Nov-2015

Officer Name SAID JAHANI 7E7499219
ABN Not available
Address GRANT THORNTON AUSTRALIA LIMITED, LEVEL 17, 383 KENT
STREET, SYDNEY, NSW, 2000
Appointment Date 16-Nov-2015

Ceased/Former Receiver Manager

Officer Name ANTHONY NORMAN CONNELLY 7E8533489
ABN Not available
Address MCGRATHNICOL, LEVEL 7, 175 EAGLE STREET, BRISBANE,
QLD, 4000

Appointment Date	11-Jul-2013	
Cease Date	10-Dec-2018	
Officer Name	JOSEPH DAVID HAYES	7E9540373
ABN	Not available	
Address	MCGRATHNICOL, LEVEL 12, 20 MARTIN PLACE, SYDNEY, NSW, 2000	
Appointment Date	11-Jul-2013	
Cease Date	10-Dec-2018	
Officer Name	GAYLE DICKERSON	7E7499212
ABN	Not available	
Address	LEVEL 17, 383 KENT STREET, SYDNEY, NSW, 2000	
Appointment Date	16-Nov-2015	
Cease Date	22-Mar-2017	
Officer Name	GAYLE DICKERSON	7E7499219
ABN	Not available	
Address	LEVEL 17, 383 KENT STREET, SYDNEY, NSW, 2000	
Appointment Date	16-Nov-2015	
Cease Date	22-Mar-2017	

Current Appointed Liquidator (Creditors Voluntary Winding up)

Officer Name	JOHN RICHARD PARK	8E0036963
ABN	Not available	
Address	FTI CONSULTING, 'FTI CONSULTING' LEVEL 20, 345 QUEEN STREET, BRISBANE, QLD, 4000	
Appointment Date	01-Aug-2013	
Officer Name	JOHN RICHARD PARK	8E0036963
ABN	Not available	
Address	FTI CONSULTING, 'FTI CONSULTING' LEVEL 20, 345 QUEEN STREET, BRISBANE, QLD, 4000	
Appointment Date	01-Aug-2013	

Ceased/Former Appointed Liquidator (Creditors Voluntary Winding up)

Officer Name	GINETTE DAWN MULLER	7E8296775
ABN	Not available	
Address	FTI CONSULTING, 22 MARKET STREET, BRISBANE, QLD, 4000	
Appointment Date	01-Aug-2013	
Cease Date	17-May-2017	
Officer Name	GINETTE DAWN MULLER	7E8296775
ABN	Not available	
Address	FTI CONSULTING, 22 MARKET STREET, BRISBANE, QLD, 4000	
Appointment Date	01-Aug-2013	
Cease Date	17-May-2017	

Ceased/Former Administrator of a Company Under Administration

Officer Name JOHN RICHARD PARK 7E5097309
 ABN Not available
 Address FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2
 CORPORATE COURT, BUNDALL, QLD, 4217
 Appointment Date 19-Mar-2013
 Cease Date 01-Aug-2013

Officer Name GINETTE DAWN MULLER 7E5097309
 ABN Not available
 Address FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2
 CORPORATE COURT, BUNDALL, QLD, 4217
 Appointment Date 19-Mar-2013
 Cease Date 01-Aug-2013

Current Issued Capital

Type Current 7E2830546
 Class ORD
 ORDINARY
 Number of Shares/Interests issued 35
 Total amount paid/taken to be paid \$1032012.56
 Total amount due and payable \$0.00

Ceased/Former Issued Capital

Type Ceased/Former 07720846H
 Class F (AR 1997)
 CLASS F SHARES
 Number of Shares/Interests issued 3
 Total amount paid/taken to be paid \$3.00
 Total amount due and payable \$0.00

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

Documents Relating to External Administration and/or Appointment

This extract may not list all documents relating to this status. State and territory records should be searched.

Received	Form Type	Processed	No. Pages	Effective	
07-Feb-2020 5602F	ANNUAL ADMINISTRATION RETURN	07-Feb-2020	6	15-Nov-2019	7EAT61557
	RETURN OF RECEIVER & MANAGER				
07-Feb-2020 5602F	ANNUAL ADMINISTRATION RETURN	07-Feb-2020	6	15-Nov-2019	7EAT61549
	RETURN OF RECEIVER & MANAGER				
31-Oct-2019 5602D	ANNUAL ADMINISTRATION RETURN	31-Oct-2019	8	31-Jul-2019	7EAQ83835
	'VOLUNTARY WINDING UP				
	RETURN OF CREDITORS'				

12-Feb-2019 5602F	5602	12-Feb-2019	6	15-Nov-2018	7EAI50497
ANNUAL ADMINISTRATION RETURN RETURN OF RECEIVER & MANAGER					
12-Feb-2019 5602F	5602	12-Feb-2019	6	15-Nov-2018	7EAI50467
ANNUAL ADMINISTRATION RETURN RETURN OF RECEIVER & MANAGER					
10-Jan-2019 5603F	5603	10-Jan-2019	11	10-Dec-2018	7EAH62024
END OF ADMINISTRATION RETURN END RETURN OF RECEIVER & MANAGER Altered by 030 535 045					
13-Dec-2018 505L	505	13-Dec-2018	2	10-Dec-2018	7EAH07906
NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE RECEIVER MANAGER CEASING TO ACT					
28-Aug-2018 524J	524	28-Aug-2018	6	31-Jul-2018	7EAD55571
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
28-Aug-2018 1500	1500	28-Aug-2018	7	31-Jul-2018	7EAD55548
ANNUAL REPORT TO CREDITORS					
10-Aug-2018 524N	524	10-Aug-2018	8	10-Jul-2018	7EAD01030
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					
27-Mar-2018 506L	506	27-Mar-2018	3	27-Mar-2018	8E0036963
NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR					
27-Mar-2018 506L	506	27-Mar-2018	3	27-Mar-2018	8E0036963
NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR					
21-Feb-2018 524J	524	21-Feb-2018	7	31-Jan-2018	7E9924425
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
07-Feb-2018 524N	524	07-Feb-2018	10	10-Jan-2018	7E9879600
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					
14-Dec-2017 524N	524	14-Dec-2017	4	15-Nov-2017	7E9748006
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					
14-Dec-2017 524N	524	14-Dec-2017	4	15-Nov-2017	7E9748001
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					

31-Oct-2017 1500	1500	31-Oct-2017	9	31-Jul-2017	7E9596480
	ANNUAL REPORT TO CREDITORS				
13-Oct-2017 506L	506	13-Oct-2017	4	13-Oct-2017	7E9540373
	NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR				
13-Oct-2017 506L	506	13-Oct-2017	4	13-Oct-2017	7E9540329
	NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR SCHEME ADMINISTRATOR				
07-Aug-2017 524J	524	07-Aug-2017	7	31-Jul-2017	7E9326646
	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
04-Aug-2017 524N	524	04-Aug-2017	12	10-Jul-2017	7E9323009
	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
31-May-2017 524N	524	31-May-2017	4	15-May-2017	7E9105252
	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
31-May-2017 524N	524	31-May-2017	4	15-May-2017	7E9105153
	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
17-May-2017 505R	505	17-May-2017	2	17-May-2017	7E9059324
	NOTIFICATION OF RESIGNATION OR REMOVAL OF LIQUIDATOR/PROVISIONAL LIQUIDATOR				
23-Mar-2017 505L	505	23-Mar-2017	2	22-Mar-2017	7E8903471
	NOTIFICATION OF RECEIVER MANAGER CEASING TO ACT				
10-Feb-2017 524N	524	10-Feb-2017	13	10-Jan-2017	7E8758304
	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
01-Feb-2017 524J	524	01-Feb-2017	8	31-Jan-2017	7E8729133
	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
14-Dec-2016 524N	524	14-Dec-2016	5	15-Nov-2016	7E8619169
	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER Altered by 030 037 264				
14-Dec-2016	524	14-Dec-2016	5	15-Nov-2016	7E8619155

524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
	Altered by 030 037 263				
17-Nov-2016	506	17-Nov-2016	3	17-Nov-2016	7E8533489
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
19-Oct-2016	1500	19-Oct-2016	7	31-Jul-2016	7E8444965
1500	ANNUAL REPORT TO CREDITORS				
31-Aug-2016	506	31-Aug-2016	2	31-Aug-2016	7E8301988
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
31-Aug-2016	506	31-Aug-2016	2	31-Aug-2016	7E8301988
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
31-Aug-2016	524	31-Aug-2016	8	31-Jul-2016	7E8299488
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
30-Aug-2016	506	30-Aug-2016	2	30-Aug-2016	7E8296775
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
30-Aug-2016	506	30-Aug-2016	2	30-Aug-2016	7E8296775
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				
01-Aug-2016	524	01-Aug-2016	13	10-Jul-2016	7E8208403
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
01-Aug-2016	524	01-Aug-2016	13	10-Jul-2016	7E8208238
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
	Cancelled by 7E8 208 339				
14-Jun-2016	524	14-Jun-2016	5	15-May-2016	7E8048351
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
14-Jun-2016	524	14-Jun-2016	5	15-May-2016	7E8048329
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
06-Jun-2016	506	06-Jun-2016	5	06-Jun-2016	7E8028043
506L	NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)				

25-Feb-2016 524J	524	25-Feb-2016	12	31-Jan-2016	7E7732426
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
08-Feb-2016 524N	524	08-Feb-2016	14	10-Jan-2016	7E7680279
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					
22-Dec-2015 507G	507	22-Dec-2015	19	16-Nov-2015	7E7581574
REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER					
22-Dec-2015 507G	507	22-Dec-2015	19	16-Nov-2015	7E7581556
REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER					
21-Dec-2015 507F	507	21-Dec-2015	13	17-Dec-2015	7E7576501
REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)					
21-Dec-2015 507F	507	21-Dec-2015	13	17-Dec-2015	7E7576493
REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)					
18-Dec-2015 507F	507	18-Dec-2015	13	11-Dec-2015	7E7569104
REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)					
18-Dec-2015 507F	507	18-Dec-2015	13	11-Dec-2015	7E7569099
REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)					
25-Nov-2015 504C	504	11-Dec-2015	4	16-Nov-2015	029448783
NOTIFICATION OF APPOINTMENT OF A BY APPOINTEE RE APPT OF CONTROLLER (OTHER THAN A RECEIVER)					
25-Nov-2015 504C	504	11-Dec-2015	4	16-Nov-2015	029448782
NOTIFICATION OF APPOINTMENT OF A BY APPOINTEE RE APPT OF CONTROLLER (OTHER THAN A RECEIVER)					
25-Nov-2015 505B	505	25-Nov-2015	14	16-Nov-2015	7E7499219
NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER					
25-Nov-2015 505B	505	25-Nov-2015	13	16-Nov-2015	7E7499212
NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER					
22-Oct-2015 1500	1500	22-Oct-2015	7	31-Jul-2015	7E7405798
ANNUAL REPORT TO CREDITORS					
19-Aug-2015 524J	524	19-Aug-2015	13	31-Jul-2015	7E7226815
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
10-Aug-2015 524N	524	10-Aug-2015	16	10-Jul-2015	7E7202909
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					

Altered by 029 296 876

26-Feb-2015 524J	524	26-Feb-2015	11	31-Jan-2015	7E6754368
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
10-Feb-2015 524N	524	10-Feb-2015	15	10-Jan-2015	7E6712227
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					
23-Jan-2015 506L	506	23-Jan-2015	2	23-Jan-2015	7E6673956
NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)					
30-Oct-2014 1500	1500	30-Oct-2014	9	31-Jul-2014	7E6483251
ANNUAL REPORT TO CREDITORS					
25-Aug-2014 524J	524	25-Aug-2014	13	31-Jul-2014	7E6312669
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
11-Aug-2014 524N	524	11-Aug-2014	13	10-Jul-2014	7E6278230
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					
26-Feb-2014 524J	524	26-Feb-2014	13	31-Jan-2014	7E5867779
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
10-Feb-2014 524N	524	10-Feb-2014	12	10-Jan-2014	7E5824920
PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER					
30-Sep-2013 507F	507	30-Sep-2013	62	26-Sep-2013	7E5546426
REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)					
06-Sep-2013 507G	507	06-Sep-2013	21	11-Jul-2013	7E5494220
REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER					
02-Sep-2013 524Z	524	02-Sep-2013	14	31-Jul-2013	7E5481607
PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF FINAL ACCOUNTS OF ADMINISTRATOR					
23-Aug-2013 5011A	5011	23-Aug-2013	6	31-Jul-2013	7E5462841
COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A					
13-Aug-2013 5011B	5011	13-Aug-2013	43	01-Aug-2013	7E5436451
COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,					

CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR
S.439A

02-Aug-2013	505	02-Aug-2013	2	01-Aug-2013	7E5415403
505J	NOTIFICATION OF APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)				
02-Aug-2013	509D	02-Aug-2013	2	01-Aug-2013	7E5415398
509DA	NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)				
12-Jul-2013	505	12-Jul-2013	2	11-Jul-2013	7E5366580
505B	NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER				
11-Jul-2013	504	25-Jul-2013	4	11-Jul-2013	028593214
504B	NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER				
13-May-2013	5011	13-May-2013	4	26-Apr-2013	7E5211783
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
12-Apr-2013	5011	12-Apr-2013	45	02-Apr-2013	7E5149299
5011B	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A Altered by 028 521 226				
19-Mar-2013	505	19-Mar-2013	2	19-Mar-2013	7E5097309
505U	NOTIFICATION OF APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)				

Charges

ASIC Charge Number	692552	Charge status	Satisfied
Date registered	23-Apr-1999	Time registered	15:11:00
Charge type	Both Fixed & Floating		
Date Created	15-Mar-1999		

Chargee **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**
005 357 522

Lodged	Form Type	Processed	No. Pages	
01-Mar-2006	312	07-Apr-2006	1	021213391
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	732456	Charge status	Satisfied
Date registered	13-Jan-2000	Time registered	14:48:00
Charge type	Both Fixed & Floating		
Date Created	07-Dec-1999		

Chargee **EQUITY TRUSTEES LIMITED**
004 031 298

Lodged	Form Type	Processed	No. Pages	
07-Oct-2002	312	07-Oct-2002	1	018185734
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	734408	Charge status	Satisfied
Date registered	31-Jan-2000	Time registered	10:30:00
Charge type	Both Fixed & Floating		
Date Created	19-Jan-2000		

Chargee **COMMONWEALTH BANK OF AUSTRALIA**
123 123 124

Lodged	Form Type	Processed	No. Pages	
14-Jan-2005	312	14-Jan-2005	2	020952408
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	770158	Charge status	Satisfied
Date registered	12-Oct-2000	Time registered	10:55:00
Charge type	Both Fixed & Floating		
Date Created	02-Oct-2000		

Chargee **COMMONWEALTH BANK OF AUSTRALIA**
123 123 124

Lodged	Form Type	Processed	No. Pages	
15-Oct-2003	312	15-Oct-2003	2	019255683
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	867148	Charge status	Satisfied
Date registered	06-Jun-2002	Time registered	11:16:00
Charge type	Both Fixed & Floating		
Date Created	29-Apr-2002		

Chargee **COMMONWEALTH BANK OF AUSTRALIA**
123 123 124

Lodged	Form Type	Processed	No. Pages	
09-Mar-2007	312	09-Mar-2007	1	023342173
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	872087	Charge status	Satisfied
Date registered	01-Jul-2002	Time registered	10:17:00
Charge type	Both Fixed & Floating		
Date Created	12-Jun-2002		

Chargee **COMMONWEALTH BANK OF AUSTRALIA**
123 123 124

Lodged	Form Type	Processed	No. Pages	
04-Jun-2003	312	04-Jun-2003	1	017905730

312 NOTIFICATION OF
 312A DISCHARGE

ASIC Charge Number 892854 Charge status Satisfied
 Date registered 30-Sep-2002 Time registered 11:25:00
 Charge type Both Fixed & Floating
 Date Created 13-Sep-2002

Chargee ATLAS TRUST COMPANY JERSEY LIMITED
 102 363 637

Chargee FAIRBAIRN TRUST COMPANY LIMITED
 102 363 655

Chargee THE CHRISTINA LEE TRUST
 102 363 673

Chargee CRISP, PATSY FAY

Chargee REX, GM

Chargee MCGREGOR, MARGOT MG

Chargee MERSON, BRIAN

Chargee SCALLAN, GARY ANTON LISHER

Chargee SCALLAN, ROY

Chargee SCALLAN, PAULINE ANN

Chargee SAUNDERS, PYLLIS BEULAH

Lodged	Form Type	Processed	No. Pages	
10-Oct-2003	312	10-Oct-2003	1	019255598
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number 1055857 Charge status Satisfied
 Date registered 29-Jun-2004 Time registered 11:22:00
 Charge type Both Fixed & Floating
 Date Created 17-Jun-2004

Chargee COMMONWEALTH BANK OF AUSTRALIA
 123 123 124

Lodged	Form Type	Processed	No. Pages	
30-Nov-2005	312	13-Dec-2005	2	022578527
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number 1253327 Charge status Satisfied
 Date registered 12-Jan-2006 Time registered 11:33:00
 Charge type Both Fixed & Floating
 Date Created 02-Sep-2005

Chargee COMMONWEALTH BANK OF AUSTRALIA
 123 123 124

Lodged	Form Type	Processed	No. Pages	
13-Jul-2010	312	03-Aug-2010	2	025130507
312	NOTIFICATION OF			

312A DISCHARGE

ASIC Charge Number 1489699 Charge status Satisfied
 Date registered 27-Jul-2007 Time registered 11:20:00
 Charge type Both Fixed & Floating
 Date Created 12-Jul-2007

Chargee THE TRUST COMPANY (PTAL) LIMITED
 008 412 913

Lodged	Form Type	Processed	No. Pages	
28-Jul-2011	312	22-Aug-2011	2	027617168
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number 1710979 Charge status Satisfied
 Date registered 27-Oct-2008 Time registered 12:10:00
 Charge type Both Fixed & Floating
 Date Created 22-Oct-2008

Chargee THE TRUST COMPANY (PTAL) LIMITED
 008 412 913

Lodged	Form Type	Processed	No. Pages	
24-Feb-2009	312	25-Feb-2009	2	025382062
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number 1759452 Charge status Satisfied
 Date registered 24-Feb-2009 Time registered 13:15:00
 Charge type Fixed
 Date Created 16-Feb-2009

Chargee THE TRUST COMPANY (PTAL) LIMITED
 008 412 913

Lodged	Form Type	Processed	No. Pages	
23-Mar-2009	312	24-Mar-2009	2	025477873
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number 1768753 Charge status Satisfied
 Date registered 23-Mar-2009 Time registered 14:45:00
 Charge type Both Fixed & Floating
 Date Created 20-Mar-2009

Chargee THE TRUST COMPANY (PTAL) LIMITED
 008 412 913

Lodged	Form Type	Processed	No. Pages	
11-Jul-2011	312	25-Jul-2011	2	027651856
312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number 1850770 Charge status Satisfied

Date registered 10-Sep-2009 Time registered 12:39:00
 Charge type Both Fixed & Floating
 Date Created 07-Sep-2009

Chargee COMMONWEALTH BANK OF AUSTRALIA
 123 123 124

Lodged	Form Type	Processed	No. Pages	
13-Jul-2010	312	03-Aug-2010	2	025130506
312	NOTIFICATION OF			
312A	DISCHARGE			

Document Details

Received	Form Type	Processed	No. Pages	Effective	
25-Mar-2020	FS67	01-Apr-2020	1	25-Mar-2020	030726532
FS67	Order Suspending Afs Licence				
12-Feb-2019	902	14-Feb-2019	3	10-Dec-2018	030535045
902	Supplementary Document				
	Alters 7EA H62 024				
03-Oct-2018	FS67	03-Oct-2018	1	03-Oct-2018	030378956
FS67	Order Suspending Afs Licence				
10-Apr-2018	484	10-Apr-2018	2	10-Apr-2018	8E0071298
484B	Change to Company Details Change of Registered Address				
15-Mar-2018	126	15-Mar-2018	2	15-Mar-2018	501518061
126	Instrument of Exemption From Disclosing Entity Provisions				
15-Mar-2018	5120	15-Mar-2018	2	15-Mar-2018	501518062
5120	Notice of Exemption Re Managed Investment Scheme				
31-May-2017	902	06-Jun-2017	11	15-Nov-2016	030037263
902	Supplementary Document				
	Alters 7E8 619 155				
31-May-2017	902	06-Jun-2017	11	15-Nov-2016	030037264
902	SUPPLEMENTARY DOCUMENT				
	Alters 7E8 619 169				
03-Apr-2017	FS67	03-Apr-2017	1	03-Apr-2017	029944919
FS67	ORDER SUSPENDING AFS LICENCE				
31-Aug-2016	484	31-Aug-2016	2	31-Aug-2016	7E8301918
484B	CHANGE TO COMPANY DETAILS CHANGE OF REGISTERED ADDRESS				
01-Aug-2016	106	01-Aug-2016	2	01-Aug-2016	7E8208339
106	NOTICE OF CANCELLATION OR REVOCATION OF A LODGED DOCUMENT				
	Cancels 7E8 208 238				
17-Aug-2015	902	28-Aug-2015	15	10-Jul-2015	029296876
902	SUPPLEMENTARY DOCUMENT				
	Alters 7E7 202 909				

10-Apr-2015	FS67	10-Apr-2015	1	10-Apr-2015	028731665
FS67	ORDER SUSPENDING AFS LICENCE				
05-Aug-2013	484		0	05-Aug-2013	1F0478329
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
Document under requisition					
02-Aug-2013	484		0	02-Aug-2013	028687053
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
Document under requisition					
08-Jul-2013	484	29-Jul-2013	3	08-Jul-2013	1F0336384
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
20-Jun-2013	484	20-Jun-2013	2	20-Jun-2013	7E5304606
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
15-May-2013	FS90	15-May-2013	1	19-Mar-2013	7E5217844
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
01-May-2013	902	05-Jun-2013	47	02-Apr-2013	028521226
902	SUPPLEMENTARY DOCUMENT				
Alters 7E5 149 299					
10-Apr-2013	FS67	10-Apr-2013	1	10-Apr-2013	028227992
FS67	ORDER SUSPENDING AFS LICENCE				
22-Mar-2013	484	22-Mar-2013	2	22-Mar-2013	7E5105009
484B	CHANGE TO COMPANY DETAILS CHANGE OF REGISTERED ADDRESS				
28-Feb-2013	5122	01-Mar-2013	1	28-Feb-2013	020500750
5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME				
17-Jan-2013	FS90	17-Jan-2013	1	16-Jan-2013	7E4965053
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
03-Dec-2012	FS90	03-Dec-2012	2	04-Oct-2012	7E4885393
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
28-Nov-2012	878	28-Nov-2012	1	28-Nov-2012	027957724
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
07-Nov-2012	FS88	07-Nov-2012	3	07-Nov-2012	7E4833611
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
02-Nov-2012	878	02-Nov-2012	2	02-Nov-2012	7E4824597
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				

02-Nov-2012	FS88	02-Nov-2012	3	02-Nov-2012	7E4824598
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
22-Oct-2012	484	22-Oct-2012	2	22-Oct-2012	7E4797015
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
05-Oct-2012	388	09-Nov-2012	44	30-Jun-2012	028208422
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2012)
07-Sep-2012	484	07-Sep-2012	2	07-Sep-2012	7E4705266
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
07-Sep-2012	FS02	07-Sep-2012	26	07-Sep-2012	0L0310250
FS02	COPY OF AFS LICENCE				
06-Sep-2012	FS90	06-Sep-2012	2	31-Aug-2012	7E4701411
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	18-Jul-2012	7E4678949
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	16-Aug-2012	7E4678937
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	21-Jun-2012	7E4678920
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE -				
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	21-Jun-2012	7E4678906
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	18-Apr-2012	7E4678887
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	26-Apr-2012	7E4678876
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	15-Feb-2012	7E4678848
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	05-Dec-2011	7E4678833
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				

27-Aug-2012	FS90	27-Aug-2012	2	04-Oct-2011	7E4677637
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS88	27-Aug-2012	3	27-Aug-2012	7E4677593
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
09-Aug-2012	484	09-Aug-2012	2	09-Aug-2012	7E4644566
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
13-Jul-2012	484	13-Jul-2012	2	13-Jul-2012	7E4588883
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
05-Jul-2012	878	05-Jul-2012	1	05-Jul-2012	027956096
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
29-Jun-2012	878	29-Jun-2012	2	29-Jun-2012	7E4554303
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
29-Jun-2012	FS88	29-Jun-2012	3	29-Jun-2012	7E4554304
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
15-Jun-2012	FS02	15-Jun-2012	26	15-Jun-2012	0L0310084
FS02	COPY OF AFS LICENCE				
04-Jun-2012	878	04-Jun-2012	1	04-Jun-2012	027954654
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
04-Jun-2012	878	04-Jun-2012	1	04-Jun-2012	027954653
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
01-Jun-2012	FS88	01-Jun-2012	3	01-Jun-2012	7E4492354
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
01-Jun-2012	878	01-Jun-2012	2	01-Jun-2012	7E4492353
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
01-Jun-2012	878	01-Jun-2012	2	01-Jun-2012	7E4492327
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
01-Jun-2012	FS88	01-Jun-2012	3	01-Jun-2012	7E4492328
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
30-May-2012	878	30-May-2012	1	30-May-2012	027954594
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
28-May-2012	878	28-May-2012	2	28-May-2012	7E4479732
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
28-May-2012	FS88	28-May-2012	3	28-May-2012	7E4479733

FS88A PDS IN-USE NOTICE - BY AFS LICENSEE					
30-Mar-2012	878	30-Mar-2012	2	30-Mar-2012	7E4369372
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
30-Mar-2012	FS88	30-Mar-2012	3	30-Mar-2012	7E4369373
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
30-Mar-2012	878	30-Mar-2012	2	30-Mar-2012	7E4369336
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
30-Mar-2012	FS88	30-Mar-2012	3	30-Mar-2012	7E4369337
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
29-Mar-2012	484	29-Mar-2012	2	29-Mar-2012	7E4367220
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
27-Jan-2012	878	27-Jan-2012	2	27-Jan-2012	7E4240824
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
27-Jan-2012	FS88	27-Jan-2012	3	27-Jan-2012	7E4240825
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
27-Jan-2012	878	27-Jan-2012	2	27-Jan-2012	7E4240743
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
27-Jan-2012	FS88	27-Jan-2012	3	27-Jan-2012	7E4240744
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
17-Nov-2011	484	17-Nov-2011	2	17-Nov-2011	7E4097067
484A1	CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS				
15-Nov-2011	878	15-Nov-2011	2	15-Nov-2011	7E4091788
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
15-Nov-2011	FS88	15-Nov-2011	3	15-Nov-2011	7E4091789
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
27-Oct-2011	484	27-Oct-2011	2	27-Oct-2011	7E4048590
484A1	CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS				
30-Sep-2011	388	13-Oct-2011	54	30-Jun-2011	026442958
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2011)
16-Sep-2011	878	16-Sep-2011	2	16-Sep-2011	7E3954068
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
16-Sep-2011	FS88	16-Sep-2011	3	16-Sep-2011	7E3954069
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				

01-Sep-2011 878	878 NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	01-Sep-2011 2	01-Sep-2011	7E3920691
01-Sep-2011 FS88A	FS88 PDS IN-USE NOTICE - BY AFS LICENSEE	01-Sep-2011 3	01-Sep-2011	7E3920692
18-Jul-2011 878	878 NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME	18-Jul-2011 2	18-Jul-2011	7E3819934
18-Jul-2011 FS88A	FS88 PDS IN-USE NOTICE - BY AFS LICENSEE	18-Jul-2011 3	18-Jul-2011	7E3819935
20-May-2011 FS89A	FS89 NOTICE OF CHANGE TO FEES AND CHARGES IN A PDS - BY AFS LICENSEE	20-May-2011 1	20-May-2011	7E3682315
30-Mar-2011 5122	5122 NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME	31-Mar-2011 1	30-Mar-2011	020500654
30-Mar-2011 FS02	FS02 COPY OF AFS LICENCE	30-Mar-2011 26	30-Mar-2011	0L0309025
10-Nov-2010 309A	309 NOTIFICATION OF DETAILS OF A CHARGE	11-Nov-2010 33	22-Oct-2010	027320265
10-Nov-2010 309A	309 NOTIFICATION OF DETAILS OF A CHARGE	11-Nov-2010 33	22-Oct-2010	027320264
01-Oct-2010 388A	388 FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY	08-Nov-2010 63	30-Jun-2010	027353763 (FR 2010)
30-Jul-2010 350	350 CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 025 130 504	03-Aug-2010 3	30-Jul-2010	026641595
13-Jul-2010 309A	309 NOTIFICATION OF DETAILS OF A CHARGE Altered by 026 641 595	13-Jul-2010 36	01-Jul-2010	025130504
02-Jul-2010 312C	312 NOTIFICATION OF RELEASE OF PROPERTY	05-Jul-2010 6	02-Jul-2010	026600340
02-Jul-2010 312C	312 NOTIFICATION OF RELEASE OF PROPERTY	05-Jul-2010 6	02-Jul-2010	026600337
02-Jul-2010 312C	312 NOTIFICATION OF RELEASE OF PROPERTY	05-Jul-2010 3	02-Jul-2010	026600336
15-Apr-2010 FS88A	FS88 PDS IN-USE NOTICE - BY AFS LICENSEE	15-Apr-2010 3	15-Apr-2010	7E2831759
15-Apr-2010 484	484 CHANGE TO COMPANY DETAILS	15-Apr-2010 2	15-Apr-2010	7E2830546

4840	CHANGES TO SHARE STRUCTURE					
484G	NOTIFICATION OF SHARE ISSUE					
25-Mar-2010	484	26-Mar-2010	3	25-Mar-2010		1F0292823
484A1	CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS					
23-Mar-2010	FS02	23-Mar-2010	25	23-Mar-2010		0L0307664
FS02	COPY OF AFS LICENCE					
17-Mar-2010	2205	19-Mar-2010	7	30-Sep-2009		026421806
2205B	NOTIFICATION OF RESOLUTION RELATING TO SHARES CONVERT SHARES INTO LARGER OR SMALLER NUMBER					
12-Mar-2010	FS90	12-Mar-2010	2	12-Mar-2010		7E2762221
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE -					
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE					
11-Nov-2009	5120	12-Nov-2009	7	11-Nov-2009		020500491
5120	NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME					
11-Nov-2009	5120	18-Nov-2009	0	11-Nov-2009		020500486
5120	NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME					
28-Oct-2009	350	29-Oct-2009	2	28-Oct-2009		024981690
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE Alters 025 004 000					
30-Sep-2009	388	27-Oct-2009	59	30-Jun-2009		023417762
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY			(FR 2009)		
10-Sep-2009	312	11-Sep-2009	3	10-Sep-2009		025003997
312C	NOTIFICATION OF RELEASE OF PROPERTY					

THERE ARE FURTHER DOCUMENTS LODGED BY THIS COMPANY. SELECT THE 'ORDER COMPANY DOCUMENTS' OPTION FROM THE ORGANISATIONAL SEARCH SUMMARY SCREEN TO OBTAIN A COMPLETE LIST OF COMPANY DOCUMENTS.

Annual Returns

Year	Return Due Date	Extended Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
1997	31-Jan-1998		31-Dec-1997			N
1998	31-Jan-1999					N
1999	31-Jan-2000					N
2000	31-Jan-2001					N
2001	31-Jan-2002					N
2002	31-Jan-2003					N

Financial Reports

Balance Date	Report Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
30-Jun-1999	31-Oct-1999	Unknown	Unknown	Unknown	N 016010134
30-Jun-2000	31-Oct-2000	Unknown	Unknown	Unknown	N 015964651
30-Jun-2001	31-Oct-2001	Unknown	Unknown	Unknown	N 017705919
30-Jun-2002	31-Oct-2002	Unknown	Unknown	Unknown	N 019168593
30-Jun-2003	31-Oct-2003	Unknown	Unknown	Unknown	N 019791166
30-Jun-2004	31-Oct-2004	Unknown	Unknown	Unknown	N 020698531
30-Jun-2005	30-Nov-2005	Unknown	Unknown	Unknown	N 022718227
30-Jun-2006	31-Oct-2006	Unknown	Unknown	Unknown	N 022755830
30-Jun-2007	31-Oct-2007	Unknown	Unknown	Unknown	N 024088738
30-Jun-2008	31-Oct-2008	Unknown	Unknown	Unknown	N 025509063
30-Jun-2009	31-Oct-2009	Unknown	Unknown	Unknown	N 023417762
30-Jun-2010	31-Oct-2010	Unknown	Unknown	Unknown	N 027353763
30-Jun-2011	31-Oct-2011	Unknown	Unknown	Unknown	N 026442958
30-Jun-2012	31-Oct-2012	Unknown	Unknown	Unknown	N 028208422

Section 146A of the *Corporations Act 2001* states 'A contact address is the address to which communications and notices are sent from ASIC to the company.'

Address	PO BOX 588, SURFERS PARADISE, QLD, 4217
Start Date	28-Jun-2003
End Date	02-Aug-2013

*** End of Extract ***

Our Reference Scott Couper 201401822 "SC-20"
Direct Line 3231 1688
Email claudia.dennison@gadens.com
Partner Responsible Scott Couper

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ABN 30 326 150 968

12 March 2020

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By email: MRussell@RussellsLaw.com.au

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Dear Colleagues,

**LM Investment Management Ltd as Responsible Entity of the LM First Mortgage Income Fund
Supreme Court of Queensland Proceeding No 1146 of 2020**

We refer to your letter dated 3 March 2020.

Our client's position remains unchanged.

It is not necessary for your client to review the confidential and privileged advices to form a view about the appropriateness of the proposed appeal. Your client has available to it the judgment, the notice of appeal and the affidavit material which includes the first instance submissions and key evidence. That affidavit material also addresses the other relevant considerations such as the cost of the appeal and the anticipated financial effect of the proceeding on the assets of the FMIF.

As Edelman J (as His Honour then was) pointed out in *Plan B Trustees Ltd v Parker [No 2]* 2013 WASC 216 at [46] to [48], the main significance of providing the advices to the court is to show that Mr Whyte sought to properly inform himself of the issues before seeking judicial advice. The views of counsel for Mr Whyte are not evidence. Your client has ample material before it to form a considered position about the proposed appeal. Further, prior to the hearing, you will receive our client's written submissions on the question of judicial advice.

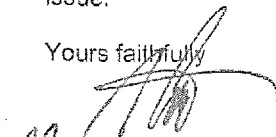
Mr Whyte deposes on an open basis to having formed the view that the appeal has reasonable prospects of success. Your client does not need to read the confidential and privileged advices to understand what conclusion Mr Whyte drew from the advice.

There is also a matter of practicality. If our client entered into a confidentiality agreement with your client and provided the advices, that may be seen as unfair to the other beneficiaries of the FMIF. If the advices were also made available to all other beneficiaries, there is a real risk that the advices would enter the public domain and the legal professional privilege would be lost.

It is wrong to say that Mr Whyte is bringing the appeal primarily for the benefit of your client and Trilogy. Mr Whyte proposes advancing the appeal for the benefit of the members of the FMIF as a whole. Mr Whyte represents a different interest to your firm.

Your letter indicates your client has no interest in litigating the point. We trust that this letter resolves this issue.

Yours faithfully


Claudia Dennison
Senior Associate

RUSSELLS

21 April 2020

Our Ref: SCR:MKR:20200035

Gadens Lawyers
GPO Box 129
BRISBANE 4001

By Email: scott.couper@gadens.com

Dear Colleagues

LM Investment Management Limited as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") v Drake & Ors – Supreme Court of Queensland Proceeding No. 1146 of 2020

We refer to:

1. your letter dated 16 April 2020; and
2. the affidavit of John Richard Park filed 17 April 2020.

For the reasons set out in Mr Park's affidavit, please provide to us copies of the following documents:

1. any memoranda or document prepared by Mr Whyte (or under his direction) which record, evidence or summarise his assessment of the likely commercial result of proceeding number 12317 of 2014 ("**the Bellpac Proceeding**"), prepared by him prior to commencing the same;
2. any memoranda or document prepared by Mr Whyte (or under his direction) which record, evidence or summarise his assessment of the following matters:
 - (a) the costs of the further proceedings for the section 1317S defence; and
 - (b) whether the respondents to the Appeal Proceeding are able to pay the judgment that LM Investment Management Limited ("**LMIM**") seeks in the Notice of Appeal;
3. any memoranda or document prepared by Mr Whyte (or under his direction) which record, evidence or summarise:
 - (a) the remuneration claimed by and/or paid to or likely to be incurred by Mr Whyte (or BDO (QLD) Pty Ltd) in relation to:
 - (i) the investigation of the Bellpac Proceeding including public examinations of persons for that purpose;
 - (ii) the institution and conduct to trial, including trial of the Bellpac Proceeding;

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- (iii) the present application;
 - (iv) the appeal number 14258 of 2019 (“**Appeal Proceeding**”); and
 - (v) the further conduct of the trial and in particular the s 1317S defence;
- (b) the legal costs incurred or to be incurred by LMIM or Mr Whyte in relation to:-
- (i) the investigation of the Bellpac Proceeding including public examinations of persons for that purpose;
 - (ii) the present application; and
 - (iii) the further conduct of the trial and in particular the s 1317S defence;

4. any policy of professional indemnity insurance held by Mr Whyte in respect of any civil liability arising from Mr Whyte’s conduct of the Bellpac Proceeding and / or the Appeal Proceeding.

The last document is of course relevant to the exercise of the court’s discretion to give or withhold judicial advice to a professional (and exceedingly well paid) trustee. In very short summary, it is difficult to see that the present application has any real point – the appeal has been instituted and Mr Whyte has sworn that he thinks it is reasonable to proceed. The only apparent point of the exercise seems to be for him and LMIM to secure immunity from suit by the beneficiaries for the appeal (and for exposing the FMIF to substantial adverse costs orders).

Given that our client expects that Mr Whyte and BDO have ample insurance, the beneficiaries should not be deprived of potentially valuable rights by the Court giving judicial advice. Mr Whyte has not disclosed the insurance policy to the Court; it is directly relevant to the exercise of the Court’s discretion.

In addition, as you know, we have sought on behalf of LMIM various documents that may be privileged from production on the ground of legal professional privilege. We have explained that our instructors take the view that LMIM, both on its own account and as RE of the Feeder Funds, have a common interest in the advice which renders the documents privileged. Further, these are the advices on which LMIM intends to rely on the hearing of its application for judicial advice. We repeat, for the reasons explained by Mr Park, LMIM’s requests for provision of the following documents, subject to whatever undertaking as to confidentiality Mr Whyte reasonably requires, in terms to be drafted by you.

1. Any legal advice obtained by LMIM or Mr Whyte on its behalf in relation to:
- (a) the prospects of success of the Bellpac Proceeding;
 - (b) the evidence required to succeed in the Bellpac Proceeding;
 - (c) the prospects of the defendants in their application under section 1317S of the Corporations Act 2001; and
 - (d) the commercial viability or likely commercial outcome of the Bellpac Proceeding, obtained prior to commencing that proceeding;
 - (e) the prospects of success of the Appeal Proceeding; and
 - (f) the prospects of the defendants succeeding in their defence under section 1317S.

In answer to your recent enquiry, we are instructed that none of the investors of the Feeder Funds have approached our client or our firm with any concerns regarding the Appeal Proceeding or the

application for judicial advice filed in proceeding number 1146 of 2020. This is hardly surprising given that neither our clients, nor the investors of the Feeder Funds have been consulted by Mr Whyte regarding those proceedings; and that many of the beneficiaries must by now be completely bewildered and demoralised.

Our client emphasises that as a general proposition, it wishes the Appeal Proceedings to proceed and succeed; that the liquidator is seeking information to assist him in the deliberations which are his responsibility as liquidator of the largest beneficiaries of the FMIF; and that our client trusts that it will not be necessary to seek these documents by compulsory process.

We look forward to hearing from you as soon as convenient – by, say, Monday 27 April 2020?

Yours faithfully



Stephen Russell
Managing Partner

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20200035/2725812

Our Reference Scott Couper 201401822 "SC-22"
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Partner Responsible Scott Couper

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27 April 2020

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Dear Colleagues

**LM Investment Management Ltd as Responsible Entity of the LM First Mortgage Income Fund v
Drake & Ors - Supreme Court of Queensland Proceeding No 1146 of 2020**

We refer to your letter dated 21 April 2020 and to the affidavit of John Richard Park filed on 17 April 2020.

Your letter repeats previous requests for copies of advices which Mr Whyte has obtained in relation to the proceeding at first instance and the proposed appeal. We have already set out Mr Whyte's position in relation to this issue.

The affidavit of Mr Park and your letter of 21 April 2020 foreshadowed potential complaints about Mr Whyte, and others, in relation to the conduct of the first instance proceeding. Complaints of that sort are not relevant to the question of judicial advice in relation to the (future) appeal.

In light of those complaints (and implicit threats of potential future action against Mr Whyte) it is difficult to see how common interest privilege could apply here.

There is no basis upon which to compel Mr Whyte to disclose his legal advices to your client. If there is a proper legal basis for the threatened "compulsory process", please identify that.

Your client does not require further material to assist him in his deliberations about the prospects of the proposed appeal. Your client was party to the first instance proceeding for a period of time. Your client's costs in respect of that proceeding totalled some \$250,000. Your client consented to our client's application for leave to proceed in the first instance proceeding. The nature of the proceeding at first instance is therefore well-known to your client. Further, our client delivered comprehensive material, including submissions and evidence, relevant to the claim at first instance a number of weeks ago pursuant to the orders made on 14 February 2020.

No other person has raised any objection to the application for judicial advice or complained about the adequacy of the material put before the court.

Our client intends to deliver material in reply to the affidavit of Mr Park, including in relation to your client's previous involvement in the proceeding at first instance.

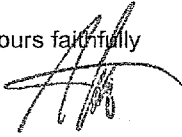

We note that your letter again states that your client wishes for the proposed appeal to proceed and succeed. Your client's enquiries seem to be directed to a different issue, namely the prospects of a potential claim by your client against ours in respect of historical conduct. If that is the case, we respectfully invite your client to withdraw their opposition to the application for judicial advice.

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Any suggestion of wrongdoing by our client, or others, is strenuously denied.

Yours faithfully

Claudia Dennison
Senior Associate

RUSSELLS

6 May 2020

Our Ref: SCR:MKR:20200035

Gadens Lawyers
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By Email: scott.couper@gadens.com
claudia.dennison@gadens.com

Dear Colleagues

LM Investment Management Limited as Responsible Entity of the LM First Mortgage Income Fund v Drake & Ors – Supreme Court of Queensland Proceeding No. 1146 of 2020

We refer to the hearing of the Originating Application filed on 31 January 2020, set down for 2 June 2020; and in particular to paragraphs 5 and 6 thereof.

The Originating Application describes the applicant as LM Investment Management Limited, as RE of the LM First Mortgage Income Fund, both in the heading and in the Particulars of the Applicant at the end of the document; and relief is sought by "the applicant" (singular).

Mr Whyte is not the applicant.

Passing over the procedural relief sought in paragraphs 1 to 4, paragraph 5 then invokes s 96 of the *Trusts Act 1973* and s 601NF(2) of the *Corporations Act 2001*. The reliance on these sections is consistent with the nomination of LMIM as the applicant.

The subject matter of the application is advice as to the institution and conduct (or, more accurately, the "making and pursuing") of the appeal in which the company, LMIM is the appellant, it being the unsuccessful plaintiff in the proceedings mentioned in paragraph 5.

However, substantial confusion is introduced by the substance of the relief sought in paragraph 5, namely:-

"... an order that *Mr Whyte is and was justified* in making and pursuing the Notice of Appeal ... on behalf of the Applicant in this proceeding" (emphasis added)

Since the company LMIM is the applicant, it is difficult to understand how or why that company could be used as the vehicle through which to seek relief on behalf of and for the benefit of Mr Whyte.

Paragraph 6 of the Originating Application compounds the confusion. No order is sought in respect of the applicant's costs of the application; the only order as to costs sought was that "Mr Whyte's costs of and incidental" to the application be paid out of the assets of the FMIF. Mr Whyte is not a party to the proceeding; how he, as distinct from the applicant, LMIM, will be entitled to "costs" is unclear.

Next, in (purported) compliance with UCPR 18, the following endorsement appears on the Originating Application:-

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“The application is brought by Mr Whyte in his representative capacity, namely as receiver appointed pursuant to the order of Justice Dalton made on 8 August 2013.”

Yet, as we have mentioned and as is clear from paragraph 5 of the Originating Application, Mr Whyte is not the applicant; it is LMIM which is the applicant. Mr Whyte is not bringing the application at all, either on his own account or in his representative capacity.

We would add that we do not see that Mr Whyte would be acting in any representative capacity, had he been named as applicant. He is an officer of LMIM (a receiver), appointed by the court to ensure that the winding up of the FMIF is carried out in accordance with its Constitution. He was authorised by the order of Justice Dalton to bring proceedings in the name of LMIM; but that does not make him its representative. But, for present purposes, this is a digression, since he is not the applicant.

Returning to the substantive relief claimed – in paragraph 5 of the Originating Application, the reliance on s 96 of the *Trusts Act 1973* is consistent only with the trustee company, LMIM, being the moving party. It is trustee (and responsible entity), not Mr Whyte.

Section 96 authorises it to apply for judicial advice in the form of directions concerning, relevantly, the management or administration of trust property or the exercise of any power or discretion vested in the trustee. The section does not authorise a trustee to apply for relief in favour of one of its officers; yet the direction sought is evidently only intended to benefit Mr Whyte and not the trustee itself.

Mr Whyte appears to have deliberately refrained both from being the applicant, from being named as the applicant and from applying to the court under (for example) the order of Justice Dalton.

Whilst one can appreciate a trustee company in the position of this particular appellant wishing to secure judicial advice in relation to court proceedings (and leaving aside the question of whether this should have been done earlier in respect of the primary proceedings), neither the form or substance of the relief sought in paragraph 5 of the Originating Application appears to be directed to the trustee’s administration of the trust or the exercise of its powers; nor, consequently, if a direction was to be given in the form sought would the trustee secure the benefit of the immunity from suit under s 97 of the *Trusts Act*.

Nor is Mr Whyte qualified to make an application under s 601NF(2) of the *Corporations Act* – he does not come within any of the four categories authorised by s 601NF(3)(a) to (d). Again, the resort to this statutory provision is consistent only with LMIM being the Applicant. We do not see that it is within the purview of s 601NF(2) for the court to give judicial advice or directions as to the conduct of litigation. We are not aware of any authority in which this provision has been used in that way. The inclusory words in parenthesis fortify us in that view. Nonetheless, if there are cases in which the provision has been used as conferring a power to give judicial advice to a responsible entity conducting appellant litigation involving scheme property, would you please let us have the reference(s)?

We would be grateful if you would clarify the matters to which we have referred in this letter and let us know whether any amendment of the Originating Application will be sought and if so in what terms.

Would you kindly reply within, say, seven days?

Yours faithfully



Stephen Russell
Managing Partner

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RUSSELLS

6 May 2020

Our Ref: SCR:MKR:20200035

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Dear Colleagues

LM Investment Management Limited as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") v Drake & Ors – Supreme Court of Queensland Proceeding No. 1146 of 2020

We refer to your letter dated 27 April 2020. We are writing to attempt to dispel any possible misunderstanding on the part of the trustee (and Mr Whyte) about our clients' requests for information and documents. The application for judicial advice is not, and should not become, an adversarial one.

Our clients have sought the documents and information that we have requested to assist LMIM in formulating its attitude to the trustee's application for judicial advice, including whether any advice should be given at all.

Your client has declined to provide the information and documents requested on the basis that the communications are privileged. In addition to those previously mentioned, there are a number of cases which are authority for the proposition that a beneficiary is entitled to access legal opinions obtained for a trust estate. See for example *Talbot v Marshfield* (1865) 2 Drew & Sm [549], [551], 62 ER 728, 729 (Sir RT Kindersley VC), *Hawkesley v May* [1956] 1 QB 304, 323 (Havers J); *In re Londonderry's Settlement* [1965] Ch 918, 938 (Salmon LJ) and *Blades v Isaac* [2016] EWHC 601 (Ch), [51] (Master Matthews). See also the discussion of privilege in the trustee/beneficiary context in *Schreuder v Murray (No 2)* [2009] WASCA 145, (2009) ALR 139.

We accept that there are some authorities to the contrary effect. However, we trust that you will, likewise, accept that there is a respectable body of authority which supports the proposition that a trustee such as LMIM should, on an application for judicial advice in circumstances such as these, share with the beneficiaries the information our client has sought. These cases show that your client's refusal to disclose the information in fact weighs against the court giving judicial advice condoning the appeal.

Paragraph 6 of the order made by Justice Callaghan on 14 February 2020, requires your client to file and serve, by this Friday, 8 May 2020, any affidavits in reply to our clients' affidavits.

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In order, we hope, to defuse any substantial factual controversy subsisting when the matter comes before the Court, we invite your client to address the following matters in its affidavit material in reply:

1. Did Mr Whyte or LMIM obtain any judicial advice (whether under s96 of the *Trusts Act 1973*, s601NF(2) of the *Corporations Act 2001* or otherwise) as to whether to commence or proceed with the claim the subject of Supreme Court of Queensland proceeding number 12317 of 2014 (“**the proceeding**”)?
2. What total sum (approximately) has Mr Whyte (and other members of his firm) charged to the FMIF as remuneration for investigation of and participation in the proceeding and institution of the Appeal Court proceeding number 14528 of 2019 (“**appeal**”)?
3. Prior to instituting the proceeding, did Mr Whyte or LMIM obtain a written legal opinion about the prospects of its success? If so, please identify the counsel and/or solicitors who provided that advice.
4. Prior to or after instituting the appeal (and if so when), did Mr Whyte or LMIM obtain a written legal opinion about:
 - (a) the prospects of the appeal?
 - (b) the prospects of the s 1317S defences?

If so, in each case, please identify the counsel and/or solicitors who provided that advice.

5. What amount of insurance (approximately) or other assets will be available to the defendant directors to meet a judgment, if the appeal succeeds and the defences under s 1317S fail?
6. If Mr Whyte does not know an approximate amount, what estimate has he relied on to decide that it is in the best interests of the beneficiaries of the FMIF that the trustee proceed with the appeal?

We have, in framing these questions, carefully avoided seeking any information that might be the subject of any claim of legal professional privilege. You will also appreciate that to answer these questions the Applicant would not need to produce any documents – although our client would respectfully encourage the trustee to be fulsome in its response and to exhibit any relevant documents.

We are happy to entertain any reasonable request for an extension of time for the service of affidavits containing this evidence. Our client would also accede to an application that the affidavit(s) containing this evidence be sealed up. We understand that our client is the only person who has appeared; so that the affidavit(s) need not be filed; merely served.

If your client maintains its current attitude, it seems to us that our clients will be left with only three alternatives; namely to issue a subpoena compelling Mr Whyte and/or LMIM to produce the relevant documents; or to cross examine Mr Whyte at the hearing; or for our clients to file further supplementary (and potentially voluminous) material.

None of these alternatives is particularly appealing to our client. Firstly, any of these steps will increase costs; and, secondly, we imagine that there may be the prospect of an adjournment if there is a substantial dispute on an application to inspect documents produced in compliance with a subpoena. Moreover, it is unseemly that the same company is in dispute through two professional colleagues (Messrs Park and Whyte); and that a beneficiary should be put in the position of having to resort to such processes to compel the provision of such information and documents.

Moreover, our client takes the view that, if there are substantial issues of fact to be determined at the hearing of an application of the present kind, then the application lacks utility and that, in such

circumstances, the Court will, conventionally and at least as a general proposition, decline to entertain the application and to give the advice sought.

Finally, we are instructed to advise that if the material in reply fails satisfactorily to address those points, our client may invite the Court to infer that the answers would not advance your client's case and that, in those circumstances, the court should accept our client's submission that the trustee has not disclosed substantial matters of fact, which are relevant to the advice it seeks. Further, if it becomes apparent in the course of the hearing that your client should have provided that information to enable the Court to determine whether it is proper to exercise its discretion to provide judicial advice, we reserve our clients' rights to apply to adjourn the matter and seek an appropriate order for costs.

Yours faithfully



Millie Russell
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8 May 2020

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Dear Colleagues

LM Investment Management Ltd as Responsible Entity of the LM First Mortgage Income Fund v Drake & Ors - Supreme Court of Queensland Proceeding No 1146 of 2020

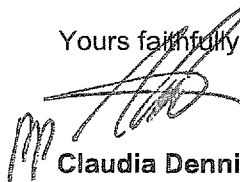
We refer to your letter dated 6 May 2020 sent via email at 6:24pm.

We note that the matters raised in your letter repeat those about which we have previously corresponded. They also relate to matters referred to in the affidavit of John Park of 17 April 2020.

We confirm we are currently preparing our evidence in reply to Mr Park's affidavit of 17 April 2020. This will be filed today 8 May 2020 pursuant to the order of Justice Callaghan of 14 February 2020. We will serve you with a copy of that evidence once filed.

We are otherwise considering the matters raised in your letter and will respond further shortly.

Yours faithfully



Claudia Dennison
Senior Associate