

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: **BS 1146/20**

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**

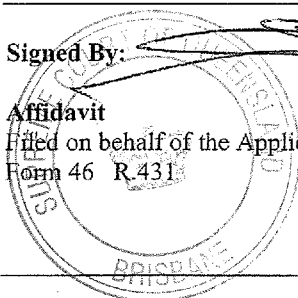
AFFIDAVIT

I, **DAVID WHYTE** of 12 Creek Street, Brisbane in the State of Queensland, Registered Liquidator, say on oath:

1. I am a Registered Liquidator and a Partner of the firm BDO. I am an affiliate member of the Chartered Accountants of Australia and New Zealand and a professional member of the Australian Restructuring, Insolvency and Turnaround Association (**ARITA**).
2. The purpose of this proceeding is to seek approval of pursuing an appeal of the decision of Justice Jackson made on 22 November 2019 in *LM Investment Management Ltd (receiver appt) (in liq) v Drake & Ors* [2019] QSC 281 pursuant to the Notice of Appeal number 14258 of 2019 dated 20 December 2019 which I caused to be lodged to preserve the Applicant's position.

Signed By: 

Affidavit
Filed on behalf of the Applicant
Form 46 R.431



Witnessed By: 

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

3. This affidavit is sworn in support of the Applicant's application for judicial advice in relation to a proposed appeal of the Decision and, in particular, the application for orders for substituted service on members of the LM First Mortgage Income Fund ARSN 089 343 288 (**FMIF**).

My appointment as receiver

4. By Orders of this Honourable Court made in proceeding 3383 of 2013 on 8 August 2013 I was appointed:
- a. pursuant to section 601NF(1) of the *Corporations Act 2001* (Cth) (the **Act**) to take responsibility for ensuring that the FMIF is wound up in accordance with its Constitution; and
 - b. pursuant to section 601NF(2) of the Act, as receiver of the property of FMIF.
5. The terms of my appointment were further articulated in the Order of the Honourable Justice Dalton dated 21 August 2013, and the orders of the Honourable Justice Jackson dated 17 December 2015 made in Supreme Court proceedings 3508 of 2015 (**the December 2015 Orders**). Exhibited hereto and marked "DW-1" is a copy of the Orders.
6. In the performance of my duties as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution, I have had and continue to have access to certain books and records of the FMIF. The statements made by me concerning the FMIF in this affidavit concern matters known to me on the basis of my inspection and knowledge of those books and records.

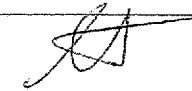
The FMIF and its membership

7. The FMIF was registered as a managed investment scheme on 28 September 1999.
8. LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) ACN 077 208 461 (**LMIM**) is and has been responsible entity of the FMIF since its inception.
9. The FMIF has over 4,500 members. Of these, about 700 are located in Queensland, about 3,000 are located in various other locations across Australia, and about 800 are located outside of Australia.

Existing arrangements for providing information to the members of the FMIF

10. Shortly after my appointment, I caused a website www.lmfimf.com (the **FMIF website**) to be established to enable me to provide members of the FMIF with information and updates as to the winding up of the FMIF.
11. A copy of the current content of the FMIF website is exhibited and marked "DW-2".
12. Since my appointment, I have posted various documents on the FMIF website including:
- (a) the orders referred to at paragraph 5 above, the reasons for judgment of the Honourable Justice Dalton delivered in this proceeding on 8 August 2013, and the reasons for judgment of the Honourable Justice Jackson delivered in 3508 of 2015 on 15 October 2015;

Signed By: 

Witnessed By:  CLAUDIA JANE DENNISON
SOLICITOR

- (b) quarterly reports to the members of the FMIF as to the progress of the winding up of the FMIF. Since my appointment, I have prepared 28 such reports, the most recent of which is dated 19 December 2019. Each report was posted to the FMIF website, and remains available there;
 - (c) financial information regarding the position of the FMIF, including half-yearly (unaudited) Financial Statements, Receipts and Payments accounts and updated Unit Price Estimates;
 - (d) details of and the supporting documents for my 12 separate remuneration applications to date. I obtained orders for substituted service of these applications and supporting material on the members of the FMIF. Now produced and shown to me marked "DW-3" is a true copy of the Orders of Her Honour Justice A Lyons dated 5 May 2014, the Orders of His Honour P Lyons dated 1 June 2015 and the recent Order of Her Honour Justice Mullins dated 17 December 2019;
 - (e) details of seven further court applications regarding various matters to do with the receivership of the FMIF.
13. In accordance with the December 2015 Orders, I am responsible for maintaining the register of members of the FMIF (**FMIF Register**).
14. The information in the FMIF Register includes the names and contact details of each member of the FMIF, and their preferred method for distribution of notices to them. Relevantly:
- (a) about 34% of members have nominated an email address as their preferred method for distribution of notices and about 66% of members have nominated a street or postal address as their preferred method of distribution of notices.
 - (b) some members have opted to receive notices care of their financial advisor, either by providing an email address or a postal address for their advisor.

Costs of service of application and supporting material

15. In order to serve this application on each of the approximately 4,500 members of the FMIF, I would need to outsource the task of printing and compiling the relevant material given the size of the material, and the numbers of members.
16. I estimate that the costs of outsourcing the printing of this application and supporting materials (including exhibits) and personally serving that material to be approximately \$300,000.00.
17. Given that there are approximately 4,500 members of the FMIF, it would in my assessment be impracticable, costly and time consuming to effect ordinary (personal) service of this application and all supporting material on each member of the FMIF in accordance with the manner of ordinary service prescribed by the *Uniform Civil Procedure Rules 1999 (Qld)*.

Service

18. I verily believe that the orders sought by this application as to service will bring the fact of this application and the relevant supporting materials to the attention of the members of the FMIF. That is because:
- (a) Notice of the application will be sent to each member of the FMIF in accordance with the preferred method of distribution of notices for that member as recorded in

Signed By:



Witnessed By:



CLAUDIA JANE DENNISON
SOLICITOR

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER:

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**

CERTIFICATE OF EXHIBIT

INDEX TO EXHIBITS

Exhibits "DW-1" to "DW-3" to the affidavit of **DAVID WHYTE** sworn at Brisbane on this 30th day of January 2020.

Exhibit	Description	Page No.
DW-1	Orders of Her Honour Justice Dalton dated 21 August 2013 and the Orders of His Honour Justice Jackson dated 17 December 2015	1-11
DW-2	Print out of the FMIF website as at 30 January 2020	12 - 20
DW-3	Orders of Her Honour Justice A Lyons dated 5 May 2014, the Orders of His Honour P Lyons dated 1 June 2015 and the Order of Her Honour Justice Mullins dated 17 December 2019	21 - 32

Deponent

Solicitor

CLAUDIA JANE DENNISON

Certificate of Exhibit
Filed on behalf of the 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
BNEDOCS 29569615_2.doc

"DW-1"

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383/13

Applicants: RAYMOND EDWARD BRUCE AND VICKI
PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
CAPACITY (IN LIQUIDATION) ACN 077 208 461 IN ITS
MORTGAGE AS RESPONSIBLE ENTITY OF THE LM FIRST
INCOME FUND

AND

Second Respondent: THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND ARSN 089 343 288

AND

Third Respondent: ROGER SHOTTON

AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

ORDER

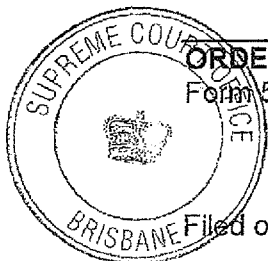
Before: Justice Dalton

Date: 21 August, 2013

Initiating document: Application filed 29 April, 2013 by Roger Shotton and
Application filed 3 May 2013 by Australian Securities
and Investments Commission ("Applications").

THE ORDER OF THE COURT IS THAT:

1. Pursuant to section 601ND(1)(a) of the Corporations Act 2001 (Cth)
("the Act") LM Investment Management Limited (Administrators



Form 59 R.661

Filed on behalf of the Third Respondent

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000.
Fax: (07) 300 300 33

Appointed) ACN 077 208 461 ("LMIM") in its capacity as Responsible Entity of the LM First Mortgage Income Fund is directed to wind up the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF") subject to the orders below.

2. Pursuant to section 601NF(1) of the Act, David Whyte ("Mr Whyte"), Partner of BDO Australia Limited ("BDO"), is appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution ("the Appointment").
3. Pursuant to section 601NF(2), that Mr Whyte:-
 - (a) have access to the books and records of LMIM which concern the FMIF;
 - (b) be indemnified out of the assets of the FMIF in respect of any proper expenses incurred in carrying out the Appointment;
 - (c) be entitled to claim remuneration in respect of the time spent by him and by employees of BDO who perform work in carrying out the Appointment at rates and in the sums from time to time approved by the Court and indemnified out of the assets of the FMIF in respect of such remuneration.
4. Nothing in this Order prejudices the rights of:
 - (a) Deutsche Bank AG pursuant to any securities it holds over LMIM or the FMIF; or
 - (b) the receivers and managers appointed by Deutsche Bank AG, Joseph David Hayes and Anthony Norman Connelly.
5. Pursuant to sections 601NF (2) of the Act, Mr Whyte is appointed as the receiver of the property of the FMIF.
6. Pursuant to sections 601NF (2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to paragraph 5 above, the powers set out in section 420 of the Act.
7. Without derogating in any way from in any way from the Appointment or the Receiver's powers pursuant to these Orders, Mr Whyte is authorised to:
 - (a) take all steps necessary to ensure the realisation of property of FMIF held by LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as Responsible Entity of the FMIF by exercising any legal right of LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as Responsible Entity of the FMIF in relation to the property, including but not limited to:

- (i) providing instructions to solicitors, valuers, estate agents or other consultants as are necessary to negotiate and/or finalise the sale of the property;
 - (ii) providing a response as appropriate to matters raised by receivers of property of LMIM as Responsible Entity of the FMIF to which receivers have been appointed;
 - (iii) dealing with any creditors with security over the property of the FMIF including in order to obtain releases of security as is necessary to ensure the completion of the sale of property;
 - (iv) appointing receivers, entering into possession as mortgagee or exercising any power of sale; and
 - (v) executing contracts, transfers, releases, or any such other documents as are required to carry out any of the above; and
- (b) bring, defend or maintain any proceedings on behalf of FMIF in the name of LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as is necessary for the winding up of the FMIF in accordance with clause 16 of its constitution, including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions.
8. The First Respondent must, within 2 business days of the date of this Order:
- (a) send an email to all known email addresses held by the First Respondent for Members of the FMIF notifying of Mr Whyte's appointment, and a copy of this Order; and
 - (b) make a copy of this order available, in PDF form, on:
 - (i) its website www.lmaustralia.com, together with a link to the www.bdo.com.au website;
 - (ii) its website www.lminvestmentadministration.com, together with a link to the www.bdo.com.au website.
9. The costs of the Third Respondent, Roger Shotton, of and incidental to the Applications, including reserved costs, shall be assessed on the indemnity basis, and shall be paid from the FMIF.
10. All other questions of costs of or incidental to the Applications and the Application filed 15 April 2013 by Raymond and Vicki Bruce are adjourned to a date to be fixed by the Court.

IT IS DIRECTED THAT:

11. Any party wishing to contend that the First Respondent is not entitled to indemnity from the ~~FMP~~^{FMP} in relation to the Applications shall file an application to be heard and determined at the same time as the other issues as to costs.
12. Any application for the costs of complying with subpoenas issued in the proceedings are adjourned to a date to be fixed, and any time limitation imposed by rule 418 (5) of the UCPR is extended pursuant to rule 7 of the UCPR, to allow for the hearing of any such application at the date to be fixed.

Signed: *Neil*

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3508 of 2015

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

First Applicants: 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

AND

Second Applicant: 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

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

ORDER

Before: Jackson J
Date: 17 December 2015
Initiating document: Originating Application filed 8 April 2015; Amended Originating Application filed 20 July, 2015; Further Amended Originating Application filed 16 December, 2015

THE ORDER OF THE COURT IS THAT:-

1. In respect of the 60 members of the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF") to whom reference is made in paragraph 26 of the Affidavit of Murray Daniel sworn on 17 July 2015 and filed on 20 July 2015, the notice sent to those members in the manner described in paragraphs 27 to 30 of the Affidavit of Mr Daniel is taken to be sufficient notice for the purposes of Order 4(ii) of the Order of this Court made on 7 May 2015.

2. Subject to the matters expressly set out in this Order, nothing in this Order derogates from the powers and rights conferred upon David Whyte ("Mr Whyte") by Order of this Court dated 21 August 2013 in proceeding BS3383 of 2013 (the "existing Order") as the person appointed:
 - (a) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution ("the Appointment"); and
 - (b) as the receiver of the property of the FMIF.
3. Pursuant to section 601NF(2) of the *Corporations Act 2001* ("the Act") Mr Whyte is empowered to determine, in accordance with paragraphs 4 to 10 herein, whether, and if so to what extent, the Second Applicant ("LMIM") is entitled to be indemnified from the property of the FMIF in respect of any expense or liability of, or claim against, LMIM in acting as Responsible Entity of the FMIF.
4. The First Applicants ("the Liquidators") are directed to:-
 - (a) ascertain the debts payable by, and the claims against, LMIM in accordance with the Act;
 - (b) adjudicate upon those debts and claims in accordance with the provisions of the Act;
 - (c) identify whether LMIM has a claim for indemnity from the property of the FMIF in respect of any, or any part of any, debt payable by or claim against LMIM which is admitted by the Liquidators in the winding up of LMIM (each such claim for indemnity referred to below as a "Creditor Indemnity Claim");
 - (d) identify whether LMIM has (at the date of this Order and from time to time) a claim for indemnity from the property of the FMIF in respect of any, or any part of any, expense or liability incurred by John Richard Park and Ginette Dawn Muller in acting as administrators or liquidators of LMIM (whether incurred in their own name or in the name of LMIM) insofar as the expense or liability was or is incurred in connection with LMIM acting as Responsible Entity for the FMIF (each such claim for indemnity referred to below as an "Administration Indemnity Claim"); and
 - (e) identify whether LMIM has a claim for indemnity from the property of the FMIF in respect of any, or any part of any, other expense or liability incurred and paid by LMIM in its capacity as Responsible Entity for the FMIF or by John Richard Park and Ginette Dawn Muller in acting as administrators or liquidators of LMIM (whether incurred in their own name or in the name of LMIM) insofar as the expense or liability was or is incurred in connection with LMIM acting as Responsible Entity for the FMIF (being an expense or liability to which paragraphs 4(c) and 4(d) above do not apply) (each such claim for indemnity referred to below as a "Recoupment Indemnity Claim").

5. Within sixty days of the date of this Order the Liquidators must notify Mr Whyte in writing of any Administration Indemnity Claim and any Recoupment Indemnity Claim identified by the Liquidators as at the date of this Order.
6. Within 14 days after:-
 - (a) any debt or claim is admitted by the Liquidators in the winding up of LMIM and, in respect of such debt or claim, a Creditor Indemnity Claim is identified by the Liquidators;
 - (b) any Administration Indemnity Claim (being one to which paragraph 5 of this Order does not apply) is identified by the Liquidators; or
 - (c) any Recoupment Indemnity Claim (being one to which paragraph 5 of this Order does not apply) is identified by the Liquidators,the Liquidators must notify Mr Whyte in writing of such claim.
7. When notifying Mr Whyte of a claim in accordance with paragraphs 5 or 6 of this Order (each such claim for indemnity referred to below as an "**Eligible Claim**"), the Liquidators must:-
 - (a) Provide Mr Whyte with:-
 - (i) (if the Eligible Claim is a Creditor Indemnity Claim) a copy of the relevant proof of debt and supporting documentation relating to the Eligible Claim; and
 - (ii) Such other information the Liquidators consider relevant to LMIM's claim for indemnity from the property of the FMIF;
 - (b) Within 14 days of receipt of a request from Mr Whyte pursuant to paragraph 8(a) below for further information in respect of an Eligible Claim, provide such reasonably requested further information to Mr Whyte.
8. Mr Whyte is directed to:-
 - (a) Within 14 days of receipt of an Eligible Claim, request any further material or information he reasonably considers necessary to assess the Eligible Claim;
 - (b) Within 30 days of receipt of an Eligible Claim or of the information requested in accordance with paragraph 8(a) above (whichever is the later):-
 - (i) accept the Eligible Claim as one for which LMIM has a right to be indemnified from the property of the FMIF; or
 - (ii) reject the Eligible Claim; or
 - (iii) accept part of it and reject part of it;

and give to the Liquidators written notice of his determination; and

- (c) If Mr Whyte rejects an Eligible Claim, whether in whole or in part, provide the Liquidators with written reasons for his decision when, or within 7 days after, giving notice of his determination.
9. Within 28 days of receiving notification from Mr Whyte of the reasons for rejecting, in whole or in part, any Eligible Claim ("**Rejected Claim**"), the Liquidators:-
- (a) may make an application to this Honourable Court for directions as to whether or not the Eligible Claim is or is not one for which LMIM has a right of indemnity out of the scheme property of the FMIF; or
 - (b) must notify the relevant creditor for any Rejected Claim of:-
 - (i) Mr Whyte's decision;
 - (ii) any reasons provided by Mr Whyte for that decision;
 - (iii) any material provided pursuant to paragraphs 6, 7 or 8 hereof; and
 - (iv) whether they intend to make an application for directions in respect of the Rejected Claim pursuant to paragraph 9(a) hereof.
10. Mr Whyte has liberty to apply to the Court for direction in respect of any question arising in connection with his consideration or payment of an Eligible Claim.
11. Pursuant to section 601NF(2) of the Act, the parties are directed that for so long as the Appointment and the appointment of Mr Whyte as receiver of the property of the FMIF continue, LMIM shall not be responsible for, and is not required to discharge, the functions, duties and responsibilities set out in clauses 16.7(c), 16.7(f), 16.7(g) and 18.2 of the constitution of the FMIF.
12. Pursuant to section 601NF(2) of the Act, Mr Whyte is directed not to make any distribution to the members of the FMIF, without the authority of a further Order of the Court.
13. Pursuant to section 601NF(2) of the Act:-
- (a) the Liquidators are directed not to carry out the functions of LMIM pursuant to clauses 9, 10 and 22 of the constitution of the FMIF;
 - (b) LMIM is relieved of the obligations imposed by clauses 9, 10 and 22 of the constitution of the FMIF; and
 - (c) Mr Whyte is authorised and empowered to exercise the powers of, and is responsible for the functions of, the Responsible Entity as set out in Clauses 9, 10 and 22 of the constitution of the FMIF.

14. Pursuant to section 601NF(2) of the Act:
 - (a) Mr Whyte is directed to apply to ASIC to obtain relief from the financial reporting and audit obligations imposed by Part 2M.3 of the Act and section 601HG of the Act; and
 - (b) in the event that the parties are unable to obtain relief from those financial reporting and audit obligations, then Mr Whyte is directed to provide to LMIM all reasonably requested information as is necessary to enable LMIM to comply with the financial reporting obligations imposed on LMIM as responsible entity of the FMIF under Part 2M.3 of the Act and the constitution of the FMIF.
15. Pursuant to section 1322(4)(c) of the Act, Mr Park and Ms Muller are relieved in whole from any civil liability in respect of a contravention or failure to discharge LMIM's financial reporting obligations under Part 2M.3 of the Act for the period from 19 March 2013 to 31 December 2015.
16. Nothing in this Order prejudices the rights of:
 - (a) Deutsche Bank AG pursuant to any securities it holds over LMIM or the FMIF; or
 - (b) The receivers and managers appointed by Deutsche Bank AG, Joseph David Hayes and Anthony Norman Connelly.
17. The Liquidators are directed to notify any claim for the reasonable costs and expenses of LMIM of carrying out the work it is required to do by and under this order as an Administration Indemnity Claim under paragraph 4 and may make such a claim from time to time.
18. The Liquidators are entitled to claim reasonable remuneration in respect of the time spent by them and employees of FTI Consulting who perform work in carrying out the work they are required to do by and under this order in connection with the FMIF at rates and in the sums from time to time approved by the Court and to be indemnified out of the assets of the FMIF in respect of such remuneration.
19. Service of the Further Amended Originating Application dated 16 December, 2015 ("the Further Application") under s.96 of the Trusts Act be effected on the members of the LM Cash Performance Fund ARSN 087 304 032, the LM Currency Protected Australian Income Fund ARSN 110 247 875, the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868, the LM Australian Income Fund ARSN 133 497 917 and the LM Australian Structured Products Fund ARSN 149 875 669 ("Other Funds") and on the members of the FMIF as follows:-
 - (a) by the First Applicants uploading to the website www.lminvestmentadministration.com copies of this application, the statement of facts to be filed, the Notice to Members in the form of Schedule 7 to the Further Application ("the Notice"), any order made as to service and the substantive affidavits (including all the exhibits) that the First Applicants intend to rely upon in support of the Further Application;

- (b) by the Respondent sending by email to those members of the FMIF for whom an email address is recorded, the Notice and stating that they may view all substantive Court documents upon which the First Applicants intend to rely on the website www.lminvestmentadministration.com;
 - (c) by the First Applicants sending by email to those members of the Other Funds for whom an email address is recorded, the Notice and stating that they may view all substantive Court documents upon which the First Applicants intend to rely on the website www.lminvestmentadministration.com;
 - (d) where the First Applicants receive a response to an email that indicates the email was not received, or if the First Applicants do not hold an email address for any member, and the First Applicants have a postal address for those members, the First Applicants are to post the Notice to the postal address of those members; and
 - (e) where the Respondent receives a response to an email that indicates the email was not received, or if the Respondent does not hold an email address for any member, and the Respondent has a postal address for those members, the Respondent is to post the Notice to the postal address of those members.
20. That service of the Further Amended Originating Application under s.511 of the Act be effected on the creditors of the Second Applicant as follows:-
- (a) by the First Applicants uploading to the website www.lminvestmentadministration.com copies of this application, the statement of facts to be filed, the Notice to Creditors in the form of Schedule 8 to the Further Application (“**the Creditors’ Notice**”), any order made as to service and the substantive affidavits (including all the exhibits) that the First Applicants intend to rely upon in support of the Further Application;
 - (b) by sending by email to those creditors of the Second Applicant, for whom an email address is recorded, the Creditors’ Notice and stating that they may view all substantive Court documents upon which the First Applicants intend to rely in support of the Further Application on the website www.lminvestmentadministration.com; and
 - (c) where the First Applicants receive a response to an email that indicates the email was not received, or if the First Applicants do not hold an email address for any creditor, and the First Applicants have a postal address for those creditors, the First Applicants are to post the Creditors’ Notice to the postal address of those creditors.
21. That service of the Further Application in accordance with any orders made be deemed to be effective on each of the members of the FMIF and Other Funds and the creditors of the Second Applicant.
22. That, where the First Applicants propose to rely on further material in support of the Further Application, they may serve that material by uploading the material to the website and sending notice by email or, where the First Applicants do not hold a

valid email address, by post to those members or creditors, with such notice to direct the members or creditors to the further material which has been uploaded at the website www.lminvestmentadministration.com.

23. That the First Applicants and Respondent not be required to take further steps to serve the members of the FMIF, the Other Funds or creditors of the Second Applicant whose email addresses return permanent undeliverable receipts and for whom the First Applicants or the Respondent (as the case requires) do not have a postal address.
24. That the Respondent be at liberty to upload any material served by the Applicants on the website lmfmif.com.
25. Directions for the hearing of the relief sought by the Further Application as follows:-
 - (a) by no later than 27 January, 2016, the Applicants are to file any affidavit material in support of the Further Application;
 - (b) by no later than 27 January, 2016, the Applicants are to serve, pursuant to Part 4 of Chapter 4 of the Uniform Civil Procedure Rules 1999 (Qld), this Further Amended Originating Application and any supporting affidavit material on which the Applicants intend to rely, on the Respondent;
 - (c) by no later than 4 February, 2016, any party other than the Respondent who wishes to appear at the hearing of the Further Application shall file and serve, at the Applicants' address for service, a Notice of Appearance in Form 4;
 - (d) by no later than 18 February, 2016, the Respondent is to file and serve any affidavit upon which he intends to rely at the hearing of the Further Application;
 - (e) by no later than 18 February, 2016, any party other than the Respondent who has filed a Notice of Appearance in accordance with sub-paragraph (c) herein is to file any affidavit upon which it intends to rely at the hearing of the Further Application.
26. The parties' costs of and incidental to this application, including the costs reserved by Orders of this Court on 7 May 2015, be paid out of the assets of the FMIF on the indemnity basis.
27. Any person affected by these Orders has liberty to apply.
28. The Further Amended Originating Application filed 15 December, 2015 is otherwise adjourned to 10am on 22 February, 2016.

Signed:

Deputy Registrar

LM First Mortgage Income Fund

(Receiver Appointed)



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FMIF Receiver's Court Application for Remuneration Approval – Hearing Date 17 December 2019

On 21 November 2019, the Court Appointed Receiver made an application for the approval of his remuneration for the period 1 May 2019 to 31 October 2019. The Notice to the Members of the LM First Mortgage Income Fund (Receiver Appointed) with respect to that application together with a copy of the application and supporting material can be found below.

- Notice to Members of the Receiver's Court application for remuneration approval (0.3 MB)
- Application for approval of remuneration filed on 21 November 2019 (1.6 MB)
- Affidavit of David Whyte sworn and filed on 21 November 2019 (6.9 MB)
- Exhibit Volume 1 to the Affidavit of David Whyte filed 21 November 2019 (22.1 MB)
- Exhibit Volume 2 to the Affidavit of David Whyte filed 21 November 2019 (17.1 MB)

The hearing for the remuneration application of the Court Appointed Receiver took place on 17 December 2019. The court approved the remuneration sought of \$632,328.05 (inclusive of GST) in respect of work undertaken in dealing with FMIF during the period from 1 May 2019 to 31 October 2019. A copy of the order made on 17 December 2019 is available below:

- Order of the Supreme Court of Queensland dated 17 December 2019 (1.1 MB)

FMIF Receiver's Court Application for Remuneration Approval – Hearing Date 2 July 2019

On 6 June 2019, the Court Appointed Receiver made an application for the approval of his remuneration for the period 1 November 2018 to 30 April 2019. The Notice to the Members of the LM First Mortgage Income Fund (Receiver Appointed) with respect to that application together with a copy of the application and supporting material can be found below.

- Notice to Members of the Receiver's Court application for remuneration approval (0.1 MB)
- Application for approval of remuneration filed on 6 June 2019 (2.3 MB)
- Affidavit of David Whyte sworn and filed on 6 June 2019 (15.6 MB)
- Exhibit to the Affidavit of David Whyte filed 6 June 2019 (10.1 MB)
- Affidavit of Gerald Collins sworn on 17 June 2019 (4.1 MB)
- Notice to Members dated 18 June 2019 (0.1 MB)

The hearing for the remuneration application of the Court Appointed Receiver took place on 2 July 2019. The court approved the remuneration sought of \$1,248,853.10 (inclusive of GST) in respect of work undertaken in dealing with FMIF during the period from 1 November 2018 to 30 April 2019. A copy of the order made on 2 July 2019 is available below:

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remuneration sought of \$1,248,853.10 (inclusive of GST) in respect of work undertaken in dealing with FMIF during the period from 1 November 2018 to 30 April 2019. A copy of the order made on 2 July 2019 is available below:

- Order of the Supreme Court of Queensland dated 2 July 2019 (1.6 MB)

Application filed on 1 February 2019 for directions in relation to settling Supreme Court of Queensland Proceedings 13534 of 2016 ("the Feeder Fund Proceedings") on the terms set out in a Deed of Settlement and Release

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

- in settling Supreme Court of Queensland Proceedings 13534 of 2016 ("the Feeder Fund Proceedings") on the terms set out in a Deed of Settlement and Release as varied by a Deed of Variation ("the Deed of Settlement");
- in causing LM Investment Management Limited (in liquidation) (LMIHL) as responsible entity of the FMIF (receiver appointed) to enter into and perform the Deed of Settlement.

The application filed 1 February 2019 has been listed for hearing before Mullins J on the civil list on 2 May 2019.

The supporting material can be found below:

- Orders of Mullins J delivered 22 February 2019 (0.3 MB)

The Notice to the Members of the LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) in relation to that application together with a copy of the application and supporting material can be found below. [Access to the documents below requires a password which was emailed or posted to your preferred mailing address. If you require assistance, please contact BDO on \(67\) 3237 3999 or email \[enquiries@infmfif.com.au\]\(mailto:enquiries@infmfif.com.au\).](#)

- Notice to FMIF members dated 7 March 2019 (0.7 MB)
- Interlocutory Application dated 1 February 2019 (0.4 MB)
- Affidavit of David Whyte sworn 31 January 2019 (1.5 MB)
- Exhibit Volume 1 to the Affidavit of David Whyte (15.8 MB)
- Exhibit Volume 2 to the Affidavit of David Whyte (10.8 MB)
- Exhibit Volume 3 to the Affidavit of David Whyte (11.4 MB)
- Exhibit Volume 4 to the Affidavit of David Whyte (11.4 MB)
- Affidavit of David Whyte sworn 18 April 2019 - volume 1 of 3 (13.6 MB)
- Affidavit of David Whyte sworn 18 April 2019 - volume 2 of 3 (12.1 MB)
- Affidavit of David Whyte sworn 18 April 2019 - volume 3 of 3 (8.7 MB)
- Affidavit of David Whyte sworn 1 May 2019 (8.1 MB)
- Affidavit of David Whyte sworn 2 May 2019 (1.3 MB)
- Affidavit of Ryan John Whyte sworn 2 May 2019 (1.5 MB)
- Affidavit of Craig Russell Helrose sworn 2 May 2019 (5.0 MB)
- Written submissions of David Whyte dated 2 May 2019 (0.3 MB)

The decision was reserved following the hearing on 2 May 2019 with judgement subsequently delivered on 22 May 2019. A copy of the orders made and judgement are provided below:

- Orders of Mullins J delivered 22 May 2019 (0.1 MB)
- Judgement of Mullins J delivered 22 May 2019 (0.3 MB)

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- Orders of Writs delivered 22 May 2019 (0.4 MB)
- Judgement of Justice J delivered 22 May 2019 (0.3 MB)

Application filed on 1 February 2019 for directions in relation to making an interim distribution to the members of the FMIF and to determine the proper entitlements of members holding "Class C" Units in the FMIF

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

1. for authority to make an interim distribution from the property of the FMIF of up to \$40 million among the members of the FMIF;
2. to determine the proper entitlements of members holding "Class C" UNITS in the FMIF, having invested in one of the "Non-Australian Dollar Currency Hedged Fixed Term Investment Options".

This application is set down to be heard by the Supreme Court of Queensland at Brisbane on 13 March 2019 at 10:00 am.

The Notice, together with a copy of the application and supporting material can be found below:

- Notice to FMIF members dated 14 February 2019 (0.5 MB)
- Application Filed 1 February 2019 (1.8 MB)
- Affidavit of Alexander Philip Lyons sworn 6 February 2019 (0.8 MB)
- Orders of Justice J delivered 7 February 2019 (2.0 MB)
- Affidavit of David Whyte sworn 18 February 2019 (2.0 MB)
- Exhibit Volume 1 to the Affidavit of David Whyte (10.5 MB)
- Exhibit Volume 2 to the Affidavit of David Whyte (10.5 MB)
- Exhibit Volume 3 to the Affidavit of David Whyte (10.5 MB)
- Affidavit of David Whyte sworn on 5 March 2019 (4.2 MB)
- Written submissions for hearing 13 March 2019 on behalf of Receiver (0.4 MB)

FMIF Receiver's Court Application for Remuneration Approval – Hearing Date 29 November 2018

On 14 November 2018, the Court Appointed Receiver made an application for the approval of his remuneration for the period 1 May 2018 to 31 October 2018 together with his remuneration for work undertaken in respect of the Controllership appointments for the period 1 May 2018 to 31 October 2018. The Notice to the Members of the LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) with respect to that application together with a copy of the application and supporting material can be found below.

- Notice to Members of the Receiver's Court application for remuneration approval (0.1 MB)
- Application for approval of remuneration filed on 14 November 2018 (1.1 MB)
- Affidavit of David Whyte sworn on 13 November 2018 and filed on 14 November 2018 (8.5 MB)
- Exhibit Volume 1 to the Affidavit of David Whyte filed 14 November 2018 (20.0 MB)
- Exhibit Volume 2 to the Affidavit of David Whyte filed 14 November 2018 (28.5 MB)
- Exhibit Volume 3 to the Affidavit of David Whyte filed 14 November 2018 (22.7 MB)
- Supplementary Affidavit of David Whyte sworn on 18 November 2018 and filed 18 November 2018 (1.5 MB)

The hearing for the remuneration application of the Court Appointed Receiver took place on 29 November 2018. The court approved the remuneration sought of \$1,946,535.35 (inclusive of GST) in respect of work undertaken in dealing with FMIF during the period from 1 May 2018 to 31 October 2018. In addition, the court approved the remuneration sought of \$20,902.75 (inclusive of GST) in respect of the work undertaken on the controllerships during the period 1 May 2018 to 31 October 2018. A copy of the order made on 29 November 2018 is available below:

undertaken on the controllerships during the period 1 May 2016 to 31 October 2018. A copy of the order made on 29 November 2018 is available below.

- Order of the Supreme Court of Queensland dated 29 November 2018 (0.9 MB)

Application by Mr Park for directions in relation to the dual appointments to wind up the FMIF ("the Application")

On 10 October 2018, Mr Park filed an application in Supreme Court of Queensland Proceeding 3508/15 seeking, among other things, orders or directions to the following general effect:

- Directions in relation to the dual appointments of Mr Park (the Liquidator) and myself (the Receiver) to wind up the FMIF, including that my appointment to supervise the winding up of the FMIF continue only in relation to certain specified legal proceedings and the Liquidator take responsibility for ensuring that the FMIF is wound up in accordance with its Constitution;
- That the Liquidator is directed to act as contradictor to the Breach of Trust Proceeding (Supreme Court of Queensland No 11560/2016) and the Feeder Fund Proceeding (Supreme Court of Queensland No 13534 of 2016);
- That the Liquidator and Receiver each submit a budget of remuneration and expenses to the conclusion of the winding up of the FMIF, that the remuneration of the Liquidator and the Receiver be fixed or determined on the hearing of the application in the amount of 50% of the amount stated in the relevant Budget, and paid during the course of the winding up, with all other remuneration and expenses of the Liquidator and the Receiver to be deferred and sought at the conclusion of the winding up at which time the amounts stated in the Budgets can be reduced, increased or stay the same;
- That the costs of the Application be paid from the FMIF and other funds in such proportions as may be just.

Copies of documents relevant to the above proceeding are below:

- Application Filed 10 October 2018 (1.3 MB)
- Notice to FMIF Members dated 8 November 2018 ("the Notice") (0.3 MB)
- Further notice to members of hearing date (0.1 MB)
- Affidavit of John Park sworn 12 November 2018 (4.1 MB)
 - Affidavit Exhibit Part 1 of 4 (11.5 MB)
 - Affidavit Exhibit Part 2 of 4 (6.2 MB)
 - Affidavit Exhibit Part 3 of 4 (8.0 MB)
 - Affidavit Exhibit Part 4 of 4 (6.2 MB)
- Affidavit of David Whyte sworn 16 November 2018 (5.8 MB)
- Orders of Jackson J called for 19 November 2018 (1.5 MB)
- Affidavit of Kelly-Anne Layme Trenfield sworn 29 November 2018 (10.5 MB)
- Affidavit of David Whyte sworn on 9 December 2018 (2.5 MB)
 - Affidavit Exhibit Part 1 of 3 (9.2 MB)
 - Affidavit Exhibit Part 2 of 3 (7.3 MB)
 - Affidavit Exhibit Part 3 of 3 (4.2 MB)
- Affidavit of Julian Thomson Walsh sworn on 6 December 2018. (12.5 MB)
- Affidavit of David Whyte sworn on 7 December 2018 (1.0 MB)
- Affidavit of Said Jahani sworn on 7 December 2018 (1.3 MB)
- Affidavit of David O Farrell sworn on 7 December 2018 (1.5 MB)
- Affidavit of Julian Thomson Walsh sworn on 7 December 2018 (2.3 MB)
- Affidavit of Phillip Ryan sworn on 7 December 2018 (0.2 MB)

The application is set down for a final hearing on 10 December 2018, in the Supreme Court of Queensland. The members of FMIF are not respondents to the application but any member is entitled to be heard in the application if they wish.

Members should read the Notice and the Application for full details of the orders or directions sought and the steps to be taken by any

Members should read the Notice and the Application for full details of the orders or directions sought and the steps to be taken by any member that wishes to appear.

Further information can be found at <https://www.lmfirstmortgageadministration.com>

Notice to Members

TAKE NOTICE that John Richard Park, the Liquidator of LMIF, has applied to the Supreme Court of Queensland for the determination and fixing of the Liquidators' remuneration. A copy of the application and notice issued to members of the FMIF is below:

- Application filed on 17 July 2018 (4.8 MB)
- Notice to Members dated 27 July 2018 (0.1 MB)

Please note that there is a typographical error in the fax number of Russells in the Notice to Members. The correct fax number for Russells is +61 7 3004 8899.

Further information can be found at <https://www.lmfirstmortgageadministration.com>.

To the members of the LM Currency Protected Australian Income Fund ARSN 110 247 875 (Receiver Appointed) ("CPAIF") and the members of the LM Institutional Currency Protected Australian Income Fund ARSN 111 052 868 (Receiver Appointed) ("ICPAIF")

TAKE NOTICE that David Whyte, the person appointed pursuant to section 501(MF1) of the Corporations Act 2001 (Cth) to take responsibility for ensuring that THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 258 (Receiver and Managers Appointed) (Receiver Appointed) ("FMIF") is wound up in accordance with its constitution, has applied to the Supreme Court of Queensland including for declarations that:

- would, depending on the amount ultimately available for distribution in the winding up of the FMIF, have the effect of reducing or eliminating any distribution to be paid to the CPAIF and the ICPAIF, to the extent of the value of redemptions that were allowed in favour of the Class B unitholders between 11 May 2009 and 31 January 2013 without power and in breach of trust, as adjusted for any overpayment or underpayment of capital distributions made in February and June 2013;
- would adjust the number of units held by the CPAIF and the ICPAIF in the FMIF to restate those units, but also to cancel further units in the FMIF issued to the CPAIF and the ICPAIF between 1 July 2011 and 1 November 2012 without power and in breach of trust.

Following the hearing of an application in the above proceedings on 29 May 2018, orders were made on 13 June 2018 (the 13 June 2018 Orders) that, inter alia, the parties to the proceedings engage in a mediation on a date to be agreed and to be completed by 28 September 2018.

In accordance with order 18 of his Honour Justice Jackson's Orders dated 13 June 2018, notice is hereby given to the members of the CPAIF and the ICPAIF of the Orders of his Honour Justice Jackson dated 4 September 2018 (the 4 September 2018 Orders).

The 4 September 2018 Orders amend the 13 June 2018 Orders by providing for mediation to take place on 5 and 6 November 2018.

Any member has a right to apply to the Court if they wish to be heard in the proceeding or to be represented in the mediation.

Any member who wishes to know more about the proceedings and the proposed mediation in the proceedings, including if the member wishes to request any material relating to the mediation, should contact the solicitors for the receiver of the CPAIF and the ICPAIF, Messrs. David O'Farrell of HWL Ebsworth, on +61 7 3169 4644.

Copies of documents relevant to the above are below:

Copies of documents relevant to the above are below:

- Orders of Jackson J delivered 4 September 2016 (Sealed) (0.18 MB)
- Orders of Jackson J delivered 13 June 2016 (Sealed) (0.8 MB)

Application by LMIM and its liquidators for indemnity for expenses from the assets of the FMIF

On 16 May 2016, LMIM as Responsible Entity of the FMIF and the Liquidators of LMIM (Mr Park and Ms Muller of FTI), filed an Application ("the Application") for orders concerning payment of certain costs and expenses for which LMIM claims indemnity from the assets of the FMIF.

David Whyte applied to the Court for Directions as to whether he is justified in, amongst other things, responding to the Application by raising certain matters, including the 'clear accounts' rule. On 30 May 2017, Burns J directed that Mr Whyte is justified in raising the clear accounts rule, in response to the Application, in relation to certain identified claims against LMIM.

The Application was heard on 19 and 20 June 2017 and the decision was reserved. Judgement was delivered on 17 October 2017 and a copy of the judgement is included below.

The Application and supporting Affidavits, the orders of Burns J, the affidavits to be relied upon by Mr Whyte in response to the application and the judgement are below:

- Application filed 20 May 2016 (0.7 MB)
- Affidavit of John Park sworn 16 October 2016 (16.6 MB)
- Order of Jackson J 16.02.17 (0.2 MB)
- Affidavit of John Park with JRP-8 sworn 09.03.17 (2.4 MB)
- Application by Respondent D Whyte 09.03.2017 (0.3 MB)
- Notice to Members of the FMIF (0.1 MB)
- Affidavit of David Schwarz sworn 16 February 2017 with DHS-1 to DHS-22 (3.4 MB)
- Affidavit of David Whyte sworn 29 May 2017 with Exhibit volume 1 DW-62 to DW-41 (8.0 MB)
- Exhibit Volume 2 DW-42 to DW-46 to Affidavit of David Whyte 29 May 2017 (10.6 MB)
- Exhibit Volume 3 DW-49 to DW-62 to Affidavit of David Whyte 29 May 2017 (8.8 MB)
- Exhibit Volume 4 DW-63 to DW-73 to Affidavit of David Whyte 29 May 2017 (6.4 MB)
- Affidavit of Eric Leseuwendal sworn 29 May 2017 (12.1 MB)
- Orders of Burns J 30 May 2017 (0.0 MB)
- Affidavit of David Whyte sworn 7 June 2017 with DW-76 to DW-89 (5.8 MB)
- Affidavit of David Whyte sworn 7 June 2017 with DW-91 to DW-95 (16.6 MB)
- Affidavit of David Schwarz sworn 8 June 2017 with DHS-43 (9.8 MB)
- Judgement of Jackson J delivered 17 October 2017 [2017] Q3C 230 (0.4 MB)
- Orders of Justice Jackson dated 22 November 2017 - Indemnity (1.2 MB)

Important Notice to Members

On 15 March 2015, the Australian Securities and Investments Commission, on my application, issued instrument 18-0166 under subsections 111A(1) and 601QA(1) of the Corporations Act 2001 granting LM Investment Management Limited (in liquidation) (receivers and managers appointed), in its capacity as responsible entity of the LM First Mortgage Income Fund (receiver appointed) ("FMIF") an exemption from compliance with its obligations under:

- the disclosing entity provisions in Part 2M.3 of the Act in relation to a financial year or half year of the FMIF;
- section 601HG of the Act in relation to a financial year of the FMIF.

1. the disclosing entity provisions in part 24.2.3 of the Act in relation to a financial year or 18M year of the entity;
2. section 601HG of the Act in relation to a financial year of the FMIF.

The exemption applies during the period ending on 15 March 2020. A notice explaining the instrument of relief and a copy of the instrument can be found below.

- Notice Explaining Instrument of Relief (1.6 MB)
- ASIC Instrument (0.1 MB)

Court Application by the Liquidators of the Responsible Entity of the LM First Mortgage Income Fund ('LMIF') on residual powers and remuneration

TAKE NOTICE that John Richard Park and Ginevra Dawn Muller, the liquidators of LM Investment Management Limited (in liquidation) (receivers and managers appointed); (LMIM) ACN 077 205 461, the responsible entity of the FMIF, and LMIM have applied to the Supreme Court of Queensland in proceeding no. 3508 of 2015 for directions and orders in relation to the extent of their powers and responsibilities as such liquidators and in respect of their remuneration as such liquidators, in relation to the winding up of the FMIF and LMIM.

The Notice to the Members of the LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) with respect to that Application together with a copy of the application and supporting material can be found below.

- Notice to Members of Application by J Park & G Muller (per Annexure A to Order 7 May 2015) (117 KB)
- The Original Application filed 5 April, 2015 (170 KB)
 - Interimutory Application dated 29 April 2015 and Accompanying Statement (252 KB)
 - Sealed copy order of Justice Jackson 5 May 2015 regarding the Originating Application filed 5 April 2015 (125 KB)
- Affidavit of Stephen Charles Russell, filed on 8 April, 2015 (1.6 MB)
- Affidavit of John Richard Park, filed on 22 April, 2015 (332 KB)
 - Exhibit JRP-1 to Affidavit, filed on 22 April 2015 (9.4 MB)
- Affidavit of Sean Charles Russell, filed by leave on 17 May, 2015 (3.7 MB)
- Order dated 8 May 2015 regarding the original application filed 5 April, 2015 (115 KB)
 - Annexure A to Order dated 8 May, 2015 (117 KB)
- Affidavit of John Park, filed on 11 June 2015 (36 KB)
- Affidavit of David Whyte, filed on 12 June 2015 (3.4 MB)
 - Exhibit 'DW1' pages 1 – 192 to Affidavit filed 12 June 2015 (50.2 MB)
 - Exhibit 'DW1' pages 193 – 344 to Affidavit filed 12 June 2015 (25.0 MB)
 - Exhibit 'DW1' pages 345 – 479 to Affidavit filed 12 June 2015 (31.6 MB)
 - Exhibit 'DW1' pages 480 – 602 to Affidavit filed 12 June 2015 (25.9 MB)
- The Outline of the Submissions of David Whyte, Respondent, filed on 7 May 2015 (0.9 MB)
- Affidavit of Sean Charles Russell sworn 26 June 2015 and filed on 29 June 2015 (6.5 MB)
- Notice of Appearance of David Whyte, Respondent, filed on 30 June 2015 (0.3 MB)
- Affidavit of David Heiner Schwarz sworn on 29 June 2015 and filed on 30 June 2015 (11.4 MB)
- Applicants' outline of submissions 8 July 2015, filed 15 July 2015 (0.4 MB)
- Respondent's outline of submissions dated and filed 16 July 2015 (0.3 MB)
- Amended Originating Application dated 20 July 2015 (2.5 MB)
- Affidavits of:
 - a. Ashley Richardson dated 17 July 2015 (0.3 MB)
 - b. Nicole Jackson dated 17 July 2015 (0.3 MB)
 - c. Sophie Inchay dated 17 July 2015 (0.3 MB)
 - d. Derrin O'Brien dated 16 July 2015; and (0.2 MB)
 - e. John Somerville dated 20 July 2015 (0.3 MB)
- The reasons for judgment of Jackson J dated 15 October 2015 (0.4 MB)
- Order of Jackson J dated 12 November 2015 (unsealed) (0.1 MB)

- The reasons for judgment of Jackson J dated 13 October 2015 (0.4 MB)
- Order of Jackson J dated 12 November 2015 (unsealed) (0.1 MB)
- Order of Jackson J dated 2 December 2015 (unsealed) (0.1 MB)
- Applicants' outline of submissions dated 17 December 2015 (0.3 MB)
- Respondent's outline of submissions dated 17 December 2015 (0.2 MB)
- Affidavit of Sean Russell filed with leave on 17 December 2015 (5.1 MB)
- Order of Jackson J dated 17 December 2015 (2.5 MB)
- Orders of Justice Jackson Dated 22 November 2017 (3.5 MB)

A Further Amended Originating Application ("the Further Application") has been filed in the Supreme Court of Queensland proceeding 3508 of 2015, by LM Investment Management Limited (in Liquidation) ("LMIM"), and the liquidators of LMIM, John Park and Cinette Muller. The Further Application seeks orders concerning (among other things) the remuneration of Mr Park and Ms Muller.

The Further Application was heard on 22 February 2016 and 14 March 2016. The decision was reserved and judgement was delivered on 17 October 2017.

A copy of the Further Application and other material in relation to the proceedings, the Notice to members of the FIMF about the Further Application and a copy of the judgement are available below.

- Further Amended Originating Application dated 16 December 2015 (0.6 MB)
- Notice to Members in respect of Further Amended Originating Application dated 15 January 2016 (0.2 MB)
- Affidavit of John Park sworn 28 January 2015 (11.9 MB)
- Affidavit of John Park Volume 1 – Pages 1 to 279 (4.5 MB)
- Affidavit of John Park Volume 2 – pages 280 to 519 (4.9 MB)
- Affidavit of John Park Volume 3 – pages 520 to 928 (10.3 MB)
- Affidavit of John Park Volume 4 – pages 929 to 1102 (12.4 MB)
- Notice to Members in respect of the Affidavit of John Park sworn 28 January 2015 (0.1 MB)
- Affidavit of David Whyte sworn 19 February 2016 (2.5 MB)
- Affidavit of David Whyte Exhibits DW-2 to DW-11 (10.0 MB)
- Affidavit of David Whyte Exhibits DW-12 to DW-34 (5.9 MB)
- Affidavit of John Park sworn 22 February 2016 (9.3 MB)
- Applicants' Statement of Facts dated 12 February 2016 (0.5 MB)
- Affidavit of John Park sworn 6 March 2016 (0.5 MB)
 - Exhibit JRP-3 (part 1 of 2) (3.4 MB)
 - Exhibit JRP-3 (part 2 of 2) (5.6 MB)
- Affidavit of David Whyte sworn 11 March 2016 (2.8 MB)
- Judgement of Jackson J delivered 17 October 2017 (2017) QSC 228 (0.6 MB)

Further documentation will be uploaded to this website as it becomes available.

Appointment of Court Appointed Receiver

Pursuant to an Order of the Supreme Court of Queensland on 8 August 2013, David Whyte of BDO was appointed Receiver of the LM First Mortgage Income Fund ("FIMF") and to take responsibility for the winding-up of FIMF in accordance with its constitution. A copy of the Court Order and Judgement is available below.

Sealed order of the Supreme Court of Queensland on 21 August 2013 (381 KB)
Judgement of Justice Dalton delivered on 8 August 2013 (2.6 MB)

On 20 December 2013 the Queensland Supreme Court made orders in relation to the costs of these proceedings. It ordered that:
1. Trilogy Funds Management Ltd pay 75% of LM Investment Management Ltd (in Liquidation) (Receivers and Managers Appointed)

- Affidavit of John Park sworn 8 March 2016 (0.8 MB)
 - Exhibit JRP-3 (part 1 of 2) (3.4 MB)
 - Exhibit JRP-3 (part 2 of 2) (6.6 MB)
- Affidavit of David Whyte sworn 11 March 2016 (2.8 MB)
- Judgement of Jackson J delivered 17 October 2017 (2017) QSC 220 (0.6 MB)

Further documentation will be uploaded to this website as it becomes available.

Appointment of Court Appointed Receiver

Pursuant to an Order of the Supreme Court of Queensland on 8 August 2013, David Whyte of BDO was appointed Receiver of the LM First Mortgage Income Fund ("FMIF") and to take responsibility for the winding-up of FMIF in accordance with its constitution. A copy of the Court Order and Judgement is available below.

Sealed order of the Supreme Court of Queensland on 21 August 2013 (381 kB)

Judgement of Justice Dalton delivered on 8 August 2013 (2.6 MB)

On 20 December 2013 the Queensland Supreme Court made orders in relation to the costs of these proceedings. It ordered that:

1. Trilogy Funds Management Ltd pay 7% of LM Investment Management Ltd (in Liquidation) (Receivers and Managers Appointed) ("LMIM") costs of the proceeding; and
2. LMIM is to be indemnified from the FMIF only to the extent of 20% of its costs of the proceeding.

LMIM also gave an undertaking that it would not seek from the FMIF any costs of or incidental to the investor meeting convened by notice dated 26 April 2013.

A copy of the order is available below:

- Order of the Supreme Court of Queensland dated 20 December 2013 (unsealed) (1.46 MB)

As advised in our reports to investors, FTI appealed the above decision. This matter was heard by the Court of Appeal on 28 November 2013 with the decision to dismiss the appeal being handed down on 6 June 2014. A copy of the judgement in this respect is available below:

Judgment of Justice Fraser & Justice Gantmen & Justice Downey delivered on 6 June 2014 (7.1 MB)

Recent Updates

- 25th report to investors dated 19 December 2019 (0.4 MB)
- FMIF Receiver's Court Application for Remuneration Approval – Hearing Date 17 December 2019
- LMFMIF Estimated Unit Price as at 30 June 2019 (0.1 MB)
- 27th report to investors dated 30 September 2019 (0.2 MB)
- FMIF Financial Statements for the year ending 30 June 2019 (1.3 MB)
- Order of the Supreme Court of Queensland dated 2 July 2019 (1.6 MB)
- 28th report to investors dated 01 July 2019 (0.2 MB)
- FMIF Receiver's Court Application for Remuneration Approval – Hearing Date 2 July 2019
- Affidavit of David Whyte sworn 11 May 2019 (8.1 MB)
- Affidavits of David Whyte sworn 18 April 2019 (volumes 1 to 3)

"DW-3"

3/20/14

SUPREME COURT OF QUEENSLAND

REGISTRY:

Brisbane
NUMBER: 3383
of 2013

Applicants: RAYMOND EDWARD BRUCE AND VICKI
PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461 IN
ITS CAPACITY
AS RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE
INCOME FUND

AND

Second Respondent: THE MEMBERS OF THE LM FIRST MORTGAGE
INCOME FUND ARSN 089 343 288

AND

Third Respondent: ROGER SHOTTON

AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

ORDER

Before: A Lyons J

Date: 5 May 2014

Initiating document: Application filed 2 May 2014

THE ORDER OF THE COURT IS THAT:

ORDER

Form 59 R.661

TUCKER & COWEN

Solicitors

Level 15

15 Adelaide Street

Brisbane, Qld, 4000.

Filed on behalf of the Applicant, Mr David Whyte Tele:

(07) 300 300 00

Fax: (07) 300 300 33

C:\Documents and Settings\SiekAx\Local Settings\Temporary Internet Files\OLK76\Order
(TCS00811676) (2).docx

1. Service on the members of the FMIF of the application filed on 2 May 2014 for approval of Mr Whyte's remuneration ("**the Application**") and the supporting affidavit of Mr Whyte sworn on 2 May 2014 ("**the Affidavit**") be effected by:
 - (a) posting in a prominent place on the website "lmfmif.com" ("**the Website**");
 - (i) a notice substantially in the form of Annexure A to this application ("**the Notice**");
 - (ii) the Application and the Affidavit; and
 - (b) sending a copy of the Notice to all members of the FMIF by each member's preferred method for distribution of notices recorded on the FMIF's register of members.
2. Service of the Application and the Affidavit be deemed effected on each of the members of the FMIF ten (10) days after those documents are posted in a prominent place on the Website.
3. Service on the members of the FMIF of any further affidavits filed in the Court on Mr Whyte's behalf in support of the Application be effected by the method in subparagraph 1(a) above.
4. Service of any affidavits referred to in paragraph 3 above be deemed effected on each of the members of the FMIF ten (10) days after those documents are posted in a prominent place on the Website.
5. Costs reserved.
6. All further applications for approval of the remuneration of Mr Whyte be served in accordance with these orders.

Signed:


A Deputy Registrar

ANNEXURE A

TO THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN
089 343 288 (Receivers and Managers Appointed) (Receiver
Appointed) ("FMIF")

TAKE NOTICE that David Whyte, the person appointed pursuant to section 601NF(1) of the *Corporations Act* 2001 (Cth) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution, has applied to the Supreme Court of Queensland for an order that the amount that Mr Whyte is entitled to claim as remuneration in respect of time spent by him and by any servants or agents of BDO who have performed work in the winding up of the FMIF for the period 8 August 2013 to 31 March 2014 be fixed in the amount of \$702,480.35 (inclusive of GST).

This application is set down to be heard by the Supreme Court at Brisbane on 26 May 2014 at 10 am.

Copies of the court documents in respect of this application will be available on the website www.lmfmif.com.

Any member who reasonably requires a hard copy of the application and supporting material should call Investor Relations on +61 7 5584 4500 or BDO on +61 7 3237 5999.

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

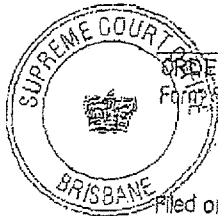
Applicants: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE
AND
First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY
AS RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE
INCOME FUND
AND
Second Respondent: THE MEMBERS OF THE LM FIRST MORTGAGE
INCOME FUND ARSN 089 343 288
AND
Third Respondent: ROGER SHOTTON
AND
Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

ORDER

Before: Peter Lyons J
Date: 1 June 2015
Initiating document: Application filed 29 May 2015

THE ORDER OF THE COURT IS THAT:

1. Order 6 of the Honourable Justice Ann Lyons made on 5 May 2014 be vacated.



ORDER
Form 99 R.661

Filed on behalf of the Applicant, Mr David Whyte

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000.
Tele: (07) 300 300 00
Fax: (07) 300 300 33

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(TCS6096529-002).docx

2. That service on the members of the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF"), the companies listed in order 2(b)(i) to 2(b)(vi) below and LM Administration Pty Ltd (in Liquidation) ("LMA") of an application (including without limitation, the application filed on 29 May 2015) for approval of:-

(a) remuneration of David Whyte, as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution; and/or

(b) remuneration of David Whyte and Andrew Fielding, as the persons appointed as agents of The Trust Company (PTAL) Ltd, in lieu of LMIM, in respect of the securities held by the following companies:-

(i) Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296;

(ii) Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 787;

(iii) OVST Pty Ltd (In Liquidation) (Controllers Appointed) ACN 103 216 771;

(iv) Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916;

(v) Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383; and

(vi) Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 115 192 780.

together, "a Remuneration Application", and any supporting affidavit of Mr Whyte ("a Remuneration Affidavit") be effected by:-

(c) posting in a prominent place on the website "lmif.com" ("the Website):-

(i) a notice substantially in the form of Annexure A to this Order ("the Notice") adapted as necessary to the relevant Remuneration Application;

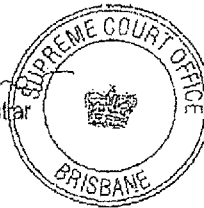
- (ii) the relevant Remuneration Application and Remuneration Affidavit;
and
 - (d) sending a copy of the Notice to all members of the FMIF by each member's preferred method for distribution of notices recorded on the FMIF's register of members maintained by BDO;
 - (e) in relation to any member of the FMIF whose preferred method of distribution is by forwarding it to the email address of a financial advisor, service is to be effected by sending to the financial advisor, the notice by email and identifying in the email the member to whom the notice is directed;
 - (f) in relation to any member of the FMIF whose preferred method of distribution is by forwarding it to the postal address of a financial advisor, service is to be effected by sending it to the member "care of" the postal address of a financial advisor
 - (g) sending a copy of the Notice to the companies listed in order 2(b)(i) to 2(b)(vi) by forwarding it to the address of the company's Receiver and Manager or Liquidator (as the case may be) recorded in the company searches exhibited to the affidavit of David Schwarz sworn 1 June 2015;
 - (h) sending a copy of the Notice to LMA at the office of Mr David Clout, the Liquidator of LMA.
3. That service of a Remuneration Application and a Remuneration Affidavit be deemed to have been effected on each of the members of the FMIF ten (10) days after all of those documents are sent pursuant to orders 2(d) to 2(h) above.
4. That service on the members of the FMIF of any further documents filed in this proceeding in support of a Remuneration Application be effected by:
- (a) causing such documents to be posted to the website www.lmfmf.com;
and

(b) sending a notice to each of the members and entities referred to in paragraph 2(f) to 2(h) above directing their attention to the further documents posted on the website www.fmif.com.

5. That service of any documents referred to in paragraph 4 above be deemed effected on each of the members of the FMIF ten (10) days after all of the notices are sent pursuant to order 4(b) above.
6. That Mr Whyte's costs of and incidental to this application be reserved.
7. That all further Remuneration Applications and Remuneration Affidavits be served on the members of the FMIF in accordance with these orders.

Signed:

Burton
Deputy Registrar



ANNEXURE A

TO THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 088 343 288
(RECEIVERS AND MANAGERS APPOINTED)(RECEIVER APPOINTED) ("FMIF")

TAKE NOTICE that David Whyte, the person appointed:-

- a) pursuant to section 601NF(1) of the *Corporations Act 2001* (Cth) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution; and
- b) pursuant to clause 2.1, 2.2 and 3 of Deeds of Appointment signed 24 September 2014, together with Mr Andrew Fielding, as agent of The Trust Company (PTAL) Ltd in respect of the securities it holds from Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 965 296, Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 786, OVST Pty Ltd (In Liquidation) (Controllers Appointed) ACN 103 216 771, Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916, Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383, and Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780,

has applied to the Supreme Court of Queensland for orders that:-

8. the amount that Mr Whyte, as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution, is entitled to claim as remuneration in respect of time spent by him and by any servants or agents of BDO who have performed work in the winding up of the FMIF for the period [date] to [date], be fixed in the amount of \$[amount] (inclusive of GST); and
9. the amount that Mr Whyte and Mr Andrew Fielding, as agents of The Trust Company (PTAL) Ltd in respect of the securities held from the companies named at paragraph b) above, are entitled to claim as remuneration in respect of time spent by them and by any servants or agents of BDO who have performed work in connection with the appointment as agents for the period [date] to [date], be approved in the amount of \$[amount] (inclusive of GST).

This application is set down to be heard by the Supreme Court of Queensland at Brisbane on [date] at [time].

Copies of the court documents in respect of the application will be available on the website www.lmfimf.com.

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

Dated: [date]
David Whyte
Court Appointed Receiver

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND VICKI
PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461 IN ITS
CAPACITY AS RESPONSIBLE ENTITY OF THE
LM FIRST MORTGAGE INCOME FUND

AND

Second Respondent: THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND ARSN 089 343 288

AND

Third Respondent: ROGER SHOTTON

AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

ORDER

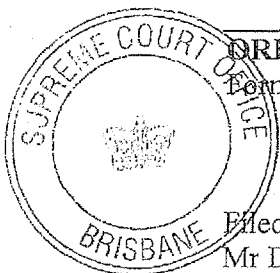
Before: Justice Mullins

Date: 17 December 2019

Initiating document: Application filed 16 December 2019

THE ORDER OF THE COURT IS THAT:-

1. On and from the date of these Orders, the Orders made by P Lyons J on 1 June 2015, with respect to the application for substituted service orders filed 29 May 2015, be amended as follows:



ORDER
Form 59 R.661

Filed on behalf of the Applicant,
Mr David Whyte

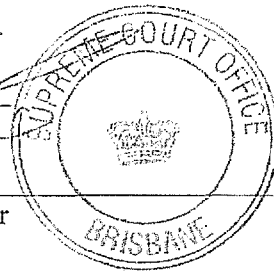
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service (TCS01775210-001).docx

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000.
Tele: (07) 300 300 00
Fax: (07) 300 300 33

- (a) By deleting the following from order 2:
 - (i) “the companies listed in order 2 (b)(i) to 2(b)(vi) below”, where those words appear in the second line;
 - (ii) “and/or” from subparagraph (a);
 - (iii) subparagraph (b);
 - (iv) “together”, where that word appears immediately after subparagraph (b); and
 - (v) subparagraph (g).
- (b) By amending Annexure A, so that it is as per Annexure A to these Orders.

Signed: _____

Deputy Registrar



ANNEXURE A

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

TAKE NOTICE that David Whyte, the person appointed pursuant to section 601NF(1) of the *Corporations Act 2001* (Cth) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution has applied to the Supreme Court of Queensland for orders that the amount that Mr Whyte, as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution, is entitled to claim as remuneration in respect of time spent by him and by any servants or agents of BDO who have performed work in the winding up of the FMIF for the period [date] to [date] be fixed in the amount of \$[amount] (inclusive of GST).

This application is set down to be heard by the Supreme Court of Queensland at Brisbane on [date] at [time].

Copies of the court documents in respect of the application will be available on the website www.lmfmif.com.

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

Dated:

David Whyte

Court Appointed Receiver