

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**

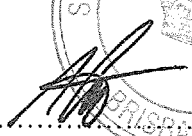
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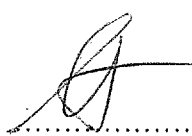
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SC-21	FMIF Compliance Plan dated 16 March 2011 (Exhibit 34)	968-1044


Deponent


Solicitor *CLAUDIA JANE DENNISON*

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

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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 & ors**

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Introduction

1. On 21 June 2011 there was good reason for the directors of LM Investment Management Limited (“LMIM”) to celebrate. A difficult and protracted piece of litigation had settled. Cheques for tens of millions of dollars were banked and cleared.
2. The litigation and negotiations had dragged on for nearly two years at a cost, so far, of over \$1.5 million. The litigation was risky and the outcomes were uncertain. It was a spectacular result. Or so the directors thought.
3. They could not have known that, years after LMIM went into administration (and ultimately liquidation), a receiver would rake over the coals of its earlier dealings in the hope of finding a solitary ember with which to kindle a fire.
4. LMIM was a fund manager. Two of the funds it managed – known respectively as the FMIF and the MPF - made large loans to a developer who went bust. The litigation was against an occupier of the proposed development land and was the last attempt to recover some of the value of the loans. The FMIF held first ranking security but had no money that it could use to fund the litigation. The MPF held second ranking security and LMIM was willing to use its money to fund the action. However, while possible, it was unlikely that the litigation, even if successful, would result in enough of a return to repay both loans and there was a real risk that even the FMIF’s loan alone would not be fully repaid. Nevertheless, as the only realistic way of potentially recovering some funds, LMIM decided that it was necessary to sue and, for that purpose, it was reasonable for the MPF to fund the litigation.
5. When a settlement looked likely, LMIM agreed that the expected settlement proceeds would be split between the funds. The MPF, which had paid for the litigation, would receive 35% of the proceeds, with the balance going to the FMIF. Before agreeing to the split, LMIM’s directors obtained accounting and legal advice to confirm that such an arrangement between the funds was commercially reasonable and legally permissible. Satisfied that the result was,

in the circumstances, in the best interests of both funds, the litigation settled and the proceeds were split as agreed.

6. The receiver acts on behalf of the FMIF, which paid nothing towards the cost of the action. He challenges the split. He says the FMIF should have been paid all the money from the settlement. He alleges that the agreement to split the fund was impermissible and seeks over \$15 million in compensation from LMIM's directors. He alleges that, by agreeing to the split, the directors were negligent towards, and did not have proper regard to the best interests of, the members of the FMIF.
7. Mr Tickner's defence to those propositions is simple. He says, that in agreeing to split the proceeds of the litigation between the funds:
 - (a) he took all reasonable steps that a director in his position would have taken, including obtaining and carefully considering professional accounting and legal advice;
 - (b) he acted in the best interests of the members of the FMIF because, if the split wasn't agreed, the litigation would not have settled and the FMIF would have received comparatively little or nothing; and
 - (c) there was no conflicting duty which would have required the whole settlement sum to be paid to the FMIF.
8. Further, Mr Tickner contends that, if he is found to have contravened a duty, he nevertheless acted honestly and, in all of the circumstances, he should be relieved of any liability to the plaintiff.
9. Details of the factual background to this proceeding are set out in Appendix A.

Uncontentious facts

10. The following matters are not contentious:
 - (a) On 10 March 2003, Permanent Trustee Australia Limited ("PTAL") entered into a loan agreement with Bellpac ("FMIF Bellpac Loan");

- (b) As security for the FMIF Bellpac Loan, Bellpac granted PTAL, among other things, a first registered mortgage over the relevant land (“Bellpac Property”) and a first registered charge over the assets of Bellpac;
- (c) On 14 July 2004, LMIM as trustee for the MPF entered into a loan agreement (“MPF GPC Loan”) with a company related to Bellpac, Great Pacific Capital Limited (“GPC”);
- (d) On 17 December 2004, the MPF GPC Loan was varied to provide LMIM as trustee of the MPF with additional security in the form of a second mortgage over the Bellpac Property;
- (e) On 23 June 2006, LMIM as trustee for the MPF entered into a loan agreement with Bellpac (“MPF Bellpac Loan”);
- (f) As security for the MPF Bellpac Loan, Bellpac granted LMIM as trustee for the MPF a second registered charge over the assets of Bellpac and a charge over the assets of GPC;
- (g) On 23 June 2006, LMIM, PTAL and others entered into a Priority Deed;¹
- (h) On 6 May 2009, PTAL appointed receivers and managers to Bellpac;
- (i) On 30 July 2009, voluntary administrators were appointed to Bellpac;
- (j) On 3 September 2009, Bellpac was placed into liquidation;
- (k) Between 2004 and 2009, Gujarat NRE Coking Coal Limited (“Gujarat”) and Bellpac became parties to agreements, and to subsequent litigation about those agreements;
- (l) In July 2009, LMIM as trustee for the MPF, and Bellpac, commenced proceedings against Gujarat (“Bellpac Proceedings”);
- (m) In February 2010, PTAL was added as a plaintiff to the Bellpac Proceedings;²

¹ Exhibit 2 (FMIF.009.003.0043).

- (n) LMIM as trustee of the MPF funded the Bellpac Proceedings for all plaintiffs;
- (o) In November 2010, the parties to the Bellpac Proceedings attended mediation;
- (p) At mediation, the parties signed a Non-Binding Heads of Agreement;³
- (q) Despite further negotiations, the parties were unable to finalise a binding agreement on the same or similar terms to those outlined in the Non-Binding Heads of Agreement;
- (r) On 6 December 2010, LMIM instructed WMS Chartered Accountants (“WMS”) to provide it with an opinion as to what would be a fair and reasonable split of any likely settlement proceeds from the Bellpac Proceedings;
- (s) On 7 March 2011, WMS provided LMIM with its report (“WMS Report”);⁴
- (t) On 14 March 2011, LMIM instructed Allens Arthur Robinson (“Allens”) to provide it with advice as to whether splitting any settlement proceeds from the Bellpac Proceedings was legally acceptable;
- (u) On 28 March 2011, Allens provided the advice to LMIM (“Allens Advice”);⁵
- (v) On or around 14 June 2011, LMIM’s directors executed a Deed Poll recording an agreement that LMIM as trustee of the MPF and PTAL and/or LMIM as RE of the FMIF would share the proceeds of any settlement of the Bellpac Proceedings;⁶
- (w) on 21 June 2011, the Bellpac Proceedings were settled by:

² The amended commercial list statement is Exhibit 119 (FMIF.005.006.0012). The amended list summons is Exhibit 144 (FMIF.005.006.0001).

³ Exhibit 84 (FMIF.020.005.0081).

⁴ Exhibit 101 (FMIF.100.002.9133).

⁵ Exhibit 35 (FMIF.100.003,6995).

⁶ Exhibit 36 (FMIF.008.001.0126).

- (i) Gujarat purchasing the Bellpac Property from PTAL as mortgagee in possession for \$10 million;
- (ii) Gujarat paying another \$35.5 million to PTAL and LMIM as trustee of the MPF; and
- (iii) all parties agreeing to releases and to consent orders dismissing the proceedings.

The plaintiff's contentions

11. In its Fifth Further Amended Statement of Claim ("5FASOC"), the plaintiff contends as follows:

(a) At the time that LMIM as trustee for the MPF agreed to fund the Bellpac Proceedings, the defendants:

- (i) did not hold the understanding that was expressed in the Deed Poll as to the splitting of any settlement proceeds;⁷
- (ii) had an expectation that, if LMIM as trustee of the MPF and PTAL were successful in the Bellpac Proceedings and developed the Bellpac Property, the FMIF Bellpac Loan would be repaid in full and the MPF Bellpac Loan would be repaid in part or in full.⁸

(b) In deciding to split any settlement proceeds between LMIM as RE of the FMIF and LMIM as trustee of the MPF, the defendants:

- (i) failed to adequately read or consider the Allens Advice;⁹
- (ii) failed to consider that:

1. PTAL was selling the Bellpac Property as mortgagee in possession;¹⁰

⁷ 5FASOC at [33(a)].
⁸ 5FASOC at [33(b)].
⁹ 5FASOC at [34(aa)].
¹⁰ 5FASOC at [34(a)(i)].

2. the FMIF Bellpac Loan had priority over the MPF Bellpac Loan;¹¹
 3. LMIM as trustee of the MPF could not have prevented the sale of the Bellpac Property to Gujarat;¹²
- (iii) failed to consider that it was unnecessary for LMIM as RE of the FMIF and LMIM as trustee for the MPF to reach agreement about sharing the proceeds of any settlement;¹³
- (iv) failed to consider that:
1. LMIM as trustee of the MPF was a subsequent mortgagee and charge holder;¹⁴
 2. LMIM as trustee of the MPF had originally funded the Bellpac Proceedings as second mortgagee and was drawing down that funding against the MPF Bellpac Loan;¹⁵
 3. PTAL was selling the Bellpac Property as mortgagee in possession;¹⁶
 4. as at 22 June 2011, PTAL was owed approximately \$52 million by Bellpac;¹⁷
- (v) failed to consider whether LMIM as trustee for the MPF could be treated as if it were an arm's length litigation funder;¹⁸
- (vi) failed to obtain independent legal advice as to whether:
1. LMIM as trustee for the MPF could be treated as if it were an arm's length litigation funder;¹⁹

¹¹ 5FASOC at [34(a)(ii)].

¹² 5FASOC at [34(a)(iii)].

¹³ 5FASOC at [34(b)].

¹⁴ 5FASOC at [34(c)(i)].

¹⁵ 5FASOC at [34(c)(iii)].

¹⁶ 5FASOC at [34(c)(iv)].

¹⁷ 5FASOC at [34(c)(v)].

¹⁸ 5FASOC at [34(d)].

2. it was reasonable for LMIM as trustee of the MPF to be paid in accordance with proceeds split;²⁰
 3. it was in the interests of the FMIF as RE of the FMIF to agree to the proceeds split;²¹
- (vii) took the Allens Advice and the WMS Report into consideration;²²
- (viii) failed to have proper regard to the different interests of the FMIF and the MPF.²³
- (c) The Settlement payment (being the sum paid to LMIM as trustee of the MPF on settlement) was scheme property.²⁴
- (d) Had the defendants properly considered the facts and acted with reasonable care and diligence they:
- (i) would not have concluded that:
 1. they needed to agree to the proceeds split;²⁵
 2. such a split was fair to the FMIF;²⁶
 3. the proceeds split was in the interests of the members of the FMIF;²⁷
 4. the proceeds split was not unreasonable;²⁸
 5. LMIM as trustee of the MPF was in an analogous position to a litigation funder;²⁹

¹⁹ 5FASOC at [34(e)(i)].

²⁰ 5FASOC at [34(e)(ii)].

²¹ 5FASOC at [34(e)(iii)].

²² 5FASOC at [34(f)].

²³ 5FASOC at [34(g)].

²⁴ 5FASOC at [37].

²⁵ 5FASOC at [37A(aa)(ii)].

²⁶ 5FASOC at [37A(aa)(iii)].

²⁷ 5FASOC at [37A(aa)(iv)].

²⁸ 5FASOC at [37A(aa)(v)].

²⁹ 5FASOC at [37A(aa)(v)].

6. the WMS Report or the Allens Advice justified the Settlement payment;³⁰
- (ii) would not have agreed to make the Settlement payment;³¹
- (iii) would have determined that:
1. LMIM as trustee of the MPF had no entitlement to be paid the Settlement payment;³²
 2. it was not in the interests of the members of the FMIF to make the Settlement payment;³³
 3. it would cause detriment to LMIM as RE of the FMIF if the Settlement payment was made;³⁴
- (iv) would not have made the Settlement payment at all and would have applied all of the settlement proceeds against the FMIF Bellpac Loan;³⁵
- (e) the defendants owed the relevant duties under ss 601FD(1)(b) and 601FD(1)(c) of the *Corporations Act 2001 (Cth)* (“the Act”);³⁶
- (f) by agreeing to the proceeds split, the defendants:
- (i) failed to exercise reasonable care and diligence;³⁷
 - (ii) did not act in the best interests of the members of the FMIF;³⁸
- (g) had the defendants complied with their duties, the settlement with Gujarat would have still occurred, but:

³⁰ 5FASOC at [37A(aa)(vi)].

³¹ 5FASOC at [37A(a)].

³² 5FASOC at [37A(a)(i)].

³³ 5FASOC at [37A(a)(ii)].

³⁴ 5FASOC at [37A(a)(iii)].

³⁵ 5FASOC at [37A(b)].

³⁶ 5FASOC at [44].

³⁷ 5FASOC at [45(a)].

³⁸ 5FASOC at [45(b)].

- (i) with no proceeds being paid to LMIM as trustee for the MPF;³⁹ or alternatively
 - (ii) with LMIM as trustee of the MPF only being reimbursed for its funding costs and interest on those costs;⁴⁰
- (h) as a result of the alleged breaches:
- (i) the defendants caused the Settlement payment to be made;⁴¹
 - (ii) the assets of LMIM as RE of the FMIF were depleted by that sum;⁴²
 - (iii) LMIM as RE of the FMIF suffered loss in the amount of the Settlement payment;⁴³ and
 - (iv) the defendants are liable to pay compensation under s.1317H of the Act.⁴⁴
12. In reply to Mr Tickner's defence, the plaintiff alleges further that:
- (a) LMIM as trustee of the MPF was subordinated to the interests of LMIM as RE of the FMIF in any settlement by reason of:
 - (i) s.601FC(1)(c) of the Act; and
 - (ii) FMIF's priority under the Priority Deed;⁴⁵
 - (b) (had the directors complied with their duties) LMIM would not have withheld its consent to settle the Bellpac Proceedings in a way which prioritised the interests of LMIM as trustee of the MPF over the interests of the members of the FMIF;⁴⁶

³⁹ 5FASOC at [45AA].

⁴⁰ 5FASOC at [45AB].

⁴¹ 5FASOC at [45A(a)].

⁴² 5FASOC at [45A(b)].

⁴³ 5FASOC at [45B].

⁴⁴ 5FASOC at [46].

⁴⁵ Reply to 6D at [13(k)(ii)(A)(3)].

⁴⁶ Reply to 6D at [13(k)(iii)(B)(2)], [18(ba)(v)(A)] and [18(ba)(v)(C)].

- (c) LMIM as trustee of the MPF could not have insisted on obtaining a reasonable share of the settlement proceeds;⁴⁷
- (d) the Bellpac Proceedings could have been funded by the FMIF by utilising funds from the Assigned Loans;⁴⁸
- (e) the Settlement payment should have been paid to LMIM as RE of the FMIF under the terms of the Priority Deed or because of LMIM's obligations under s.601FC(1)(c) of the Act;⁴⁹ and
- (f) even if causing LMIM as trustee of the MPF to settle the Bellpac Proceedings and give up its rights for no consideration would have been a breach of LMIM's duties as trustee of the MPF, then:
 - (i) ss 601FC(1)(c) and 601FC(3) of the Act required this to occur;⁵⁰ and
 - (ii) such a breach did not excuse or justify LMIM's non-compliance with the above provisions.⁵¹

Mr Tickner's contentions

13. The essence of Mr Tickner's defence is that:

- (a) he and, as he understood from talking with them, his co-directors, always had the understanding that LMIM as trustee for the MPF would be recompensed for funding the proceedings;
- (b) he raised that understanding with Mr Monaghan on a number of occasions, orally and in writing;
- (c) Mr Monaghan told him that the MPF was protected for its costs, as a proper expense of the MPF Bellpac Loan, given that it was suing in its capacity as second mortgagee, and that any proposal for splitting the

⁴⁷ Reply to 6D at [13(k)(iii)(B)(3)].

⁴⁸ Reply to 6D at [18(ba)(v)(B)(2)].

⁴⁹ Reply to 6D at [20(h)(ii)-(iii)].

⁵⁰ Reply to 6D at [23AB(b)(ii)(A)].

⁵¹ Reply to 6D at [23AB(b)(ii)(B)].

proceeds would have to await some idea of the amount of the proceeds before it could be agreed and documented;

- (d) when it came to making a decision, he was conscious that:
 - (i) the FMIF and MPF had differing interests;
 - (ii) he had to consider the proposed settlement from the separate perspectives of both funds;
 - (iii) both were parties to the Bellpac Proceedings and both had to agree to settle; and
 - (iv) the arrangement with Gujarat was probably the best possible commercial outcome for each fund;
- (e) he considered that it was in the best interests of the FMIF to agree to split the proceeds for several reasons (articulated in his second affidavit); and
- (f) he also considered that it was appropriate from the MPF's point of view.

14. Therefore, Mr Tickner contends that:

- (a) he was not negligent in undertaking his duties as a director of the RE of the FMIF; and
- (b) he acted in what he reasonably considered to be the best interests of the FMIF.

15. Mr Tickner further contends that the proceeds of settlement were not subject to the Priority Deed because they were the settlement of damages claims against Gujarat, rather than the recovery of a debt from the borrower or guarantor by execution on security.

16. Mr Tickner also contends that the Settlement payment to MPF was not part of the FMIF scheme property, because:

- (a) the split agreement between LMIM as RE of the FMIF and LMIM as trustee of the MPF was made before the settlement with Gujarat; and therefore

(b) LMIM as RE of the FMIF had no entitlement to retain the Settlement payment at the time of completion of the settlement with Gujarat.

17. As for the assigned loans, Mr Tickner contends that the proceeds payable and paid to FMIF for those loans were not available to be used for the litigation, as not only would the FMIF's banks not allow that use but also the FMIF had better uses for the money when it was received, given all its obligations from time to time. There were other good reasons why, in Mr Tickner's opinion, it was not in the best interests of the FMIF's members to demand repayment of the assigned loans on the original due dates.⁵²
18. Mr Tickner also contends that, if he did breach either of his duties, that breach did not cause loss to LMIM as RE of the FMIF because the only realistic alternative was not to settle with Gujarat and to continue the proceedings. The plaintiff has not demonstrated that the deal would have been done regardless, nor any other basis for loss. Indeed, FMIF did better than it otherwise would have, given that the only realistic buyer for the Bellpac Property was Gujarat and the litigation was highly speculative.
19. Finally, Mr Tickner contends that, if he did breach either of his duties, the circumstances in which that occurred ought lead to exoneration under s.1317S or s.1318 of the Act.

The issues

20. The issues fall to be determined against the complete history of the transaction, as outlined above and in further detail in Appendix A (page 69). Based on the allegations made in the 5FASOC, Mr Tickner's defence and the plaintiff's reply, the following issues need to be considered and determined:
- (a) Was the Settlement payment 'scheme property' within the meaning of the Act?
 - (b) Was there an understanding that a proceeds split would occur?

⁵² Tickner #1 (exhibit 324, SJT.LAY.001.0001) at [270].

- (c) In causing LMIM as RE of the FMIF to agree to the proceeds split, was Mr Tickner negligent?⁵³
 - (d) In causing LMIM as RE of the FMIF to agree to the proceeds split, and in directing that the Settlement payment be made to LMIM as trustee of the MPF, did Mr Tickner fail to act in the best interests of the members of the FMIF?
 - (e) Did the duties in s.601FD(1)(b) and (c) of the Act require Mr Tickner to cause LMIM as trustee of the MPF to agree to settle the Bellpac Proceedings for no consideration?
 - (f) If there was a breach by Mr Tickner, did it cause any loss to LMIM as RE of the FMIF?
 - (g) If Mr Tickner contravened s.601FD of the Act, causing a loss to LMIM as RE of the FMIF, should he be relieved, wholly or partly, from liability?
21. Before addressing the issues, it is necessary to outline the statutory provisions which govern managed investment schemes.

The statutory framework

Managed investment schemes and directors' duties

22. Managed investment schemes (defined in s.9 of the Act) are regulated by Part 5C of the *Corporations Act 2001* (Cth). Section 601EA of the Act provides that, in order to register a managed investment scheme, a person must lodge an application, together with a copy of the scheme's constitution and compliance plan. Section 601ED provides for when a managed investment scheme must be registered. The FMIF was a registered scheme with a constitution and a compliance plan.
23. Section 601FB(1) provides that the responsible entity of a registered scheme is to operate the scheme and perform the functions conferred on it by the scheme's constitution and the Act. Section 601FB(2) confers a power on the responsible

⁵³ As to which, see the summary of negligence allegations below in Appendix C at page 80.

entity to appoint an agent, or otherwise engage a person, to operate the scheme. An agent so appointed can hold scheme property on behalf of the responsible entity: s.601FB(4).

24. Section 601FB(2) operates as a grant of power to appoint an agent or other person to do a thing authorised to be done in connection with a scheme, and it defines, as between the responsible entity and the members, the responsible entity's responsibility for the agent or other person's acts or omissions.⁵⁴ Once appointed, a custodian is bound to deal with any scheme property as directed by the responsible entity, unless to do so would be a breach of trust or involve it in personal liability.⁵⁵
25. Section 601FC outlines the duties of responsible entities. The duties relevant to this proceeding are:
 - (a) a duty to exercise the degree of care and diligence that a reasonable person would exercise if they were in the responsible entity's position (s.601FC(1)(b)); and
 - (b) a duty to act in the best interests of the members and, if there is a conflict between the members' interests and its own interests, to give priority to the members' interests (s.601FC(1)(c)).
26. The duties of directors of responsible entities are outlined in s.601FD of the Act. The relevant duties are:
 - (a) a duty to exercise the degree of care and diligence that a reasonable person would exercise if they were in the officer's position (s.601FD(1)(b)); and
 - (b) a duty to act in the best interests of the members and, if there is a conflict between the members' interests and the interests of the responsible entity, to give priority to the members' interests (s.601FD(1)(c)).

⁵⁴ *Kern Consulting Group Pty Ltd v Opus Capital Ltd* [2014] 2 Qd R 379 at 387, [31]; [2014] QCA 111 per Jackson J (Fraser and Gotterson JJA agreeing).

⁵⁵ *Public Trustee of Queensland v Opus Capital Ltd* [2013] QSC 131 at [20]-[21].

27. The duties in s.601FD(1) override any conflicting duty a director has under Part 2D.1 of the Act (s.601FD(2)): that is, their duties as directors of the responsible entity itself.⁵⁶

The concept of scheme property

28. Section 9 of the Act defines “scheme property” and “property” respectively.
29. Section 601FC(2) provides that the responsible entity holds any scheme property on trust for scheme members. In *Re Investa Properties Ltd*,⁵⁷ Barrett J described the effect of s.601FC(2).
30. In *Mier v FN Management Pty Ltd*,⁵⁸ Keane JA (as his Honour then was) observed that not all property held by a responsible entity would necessarily be scheme property. His Honour said:⁵⁹

“if property is to be considered “scheme property”, the property in question must have been contributed to the scheme or must have been obtained in connection with such contributions. The absence of any such connection would make it doubtful that the property was really part of, or subject to, the scheme.

31. In *Treecorp Australia Ltd (in liq) v Dwyer*,⁶⁰ Gordon J (prior to her Honour’s appointment to the High Court) referred to Keane JA’s statement in *Mier* and said that s.601FC(2) ‘does not necessarily apply to all property held by a responsible entity or used in the operation of the scheme’. In *Re Investa Properties*,⁶¹ Barrett J noted that ‘the responsible entity could not appoint an agent to hold scheme property on its behalf unless it was, in a real sense, the legal owner of the property.’
32. The concept and identification of scheme property are therefore central to the duties of a responsible entity and its directors. Where property is not scheme

⁵⁶ ss 180-185 *Corporations Act 2001* (Cth).
⁵⁷ (2001) 187 ALR 462; 40 ACSR 124; [2001] NSWSC 1089, at [12]-[14].
⁵⁸ [2006] 1 Qd R 339.
⁵⁹ At 350, [27] (McMurdo P and Douglas J agreeing).
⁶⁰ (2009) 175 FCR 373 at 383, [42]; [2009] FCA 278.
⁶¹ (2001) 187 ALR 462; 40 ACSR 124; [2001] NSWSC 1089 at [13].

property, the provisions of the Act directed towards the preservation of scheme property (e.g. ss 601FC and 601FD) are not engaged.⁶²

The duty to exercise care and diligence

Nature of the duty

33. The duty of care and diligence owed by an officer of a responsible entity under s.601FD(1)(b) of the Act corresponds with the general duty of care and diligence owed by officers of all corporations under s.180(1) of the Act.⁶³ The duty of care and diligence in s.180(1) of the Act is akin to the common law duty of care and it reflects, and to some extent refines, corresponding obligations under the general law.⁶⁴ It involves an objective test of the degree of care that a reasonable person would exercise tailored to the circumstances of the director.⁶⁵
34. Whilst the test for the standard of care in s.180(1) of the Act is objective, it has some subjective elements. In determining whether a director or officer has exercised reasonable care and diligence, regard will generally be had to the company's circumstances and the director's position and responsibilities within the company. The relevant circumstances include:⁶⁶
- (a) the type of company involved;
 - (b) the provisions of the company's constitution;
 - (c) the size and nature of the company's business;
 - (d) the composition of the board of directors;
 - (e) the particular director's position and responsibilities within the company;

⁶² *Treecorp Australia Ltd (in liq) v Dwyer* (2009) 175 FCR 373 at 383, [45]; [2009] FCA 278.

⁶³ *Australian Securities and Investments Commission v Healey ("Healey")* (2011) 196 FCR 291 at [191].

⁶⁴ *Australian Securities and Investments Commission v Vines* (2005) 55 ACSR 617 at [1070]-[1077]; *Vines v Australian Securities and Investments Commission* (2007) 73 NSWLR 451 at [142]; *Australian Securities and Investments Commission v Maxwell ("Maxwell")* (2006) 59 ACSR 373 at [99]; *Australian Securities and Investments Commission v Rich ("Rich")* (2009) 236 FLR 1 at [7192]; *Australian Securities and Investments Commission v Australian Property Custodian Holdings Limited (Receivers and Managers appointed) (in liquidation) (Controllers appointed) (No 3) ("APCH")* [2013] FCA 1342 at [532].

⁶⁵ *Australian Securities and Investment Commission v Lewski ("Lewski")* [2018] HCA 63 at [68]; 93 ALJR 145; 362 ALR 286; 132 ACSR 403.

⁶⁶ *Australian Securities and Investments Commission v Adler ("Adler")* (2002) 168 FLR 253 at [372]; *Maxwell* at [100]; *Healey* at [165]; *APCH* at [533(b)].

- (f) the particular function the director was performing;
 - (g) the experience and skills of the particular director;
 - (h) the terms upon which he or she has undertaken to act as a director;
 - (i) the competence of the company's management;
 - (j) the competence of the company's advisors;
 - (k) the manner in which responsibility is distributed between the company's directors, officers and employees; and
 - (l) the circumstances of the particular case.
35. The Court is to consider what an ordinary person with the knowledge and experience of the director in question might be expected to have done in the circumstances if he or she were acting on his or her own behalf.⁶⁷
36. Directors are required to take reasonable steps to place themselves in a position to guide and monitor the management of the company. The directors must become familiar with the fundamentals of the business in which the corporation is engaged and are under a continuing obligation to keep informed about the activities of the corporation. Directorial management requires a general monitoring of corporate affairs and policies. The directors should maintain familiarity with the financial position of the corporation.⁶⁸
37. Directors are generally entitled to rely upon others, other than in circumstances where they know or, by the exercise of reasonable care, could or should have known, facts that would deny reliance.⁶⁹ In *Australian Securities and Investments Commission v Adler*,⁷⁰ Santow J listed some of the factors that might be important in considering the reasonableness of reliance or delegation. Those factors are:⁷¹
- (a) the function that has been delegated is such that it may properly be left to such officers;

⁶⁷ *Adler* at [372(4)]; *APCH* at [533(a)].

⁶⁸ *Trilogy Funds Management Limited v Sullivan (No 2) ("Trilogy")* [2015] FCA 1452 at [203]; *Healey* at [166]; *Adler* at [372(8)].

⁶⁹ *Maxwell* at [101]; *Healey* at [167]; *Adler* at [372(10)].

⁷⁰ (2002) 168 FLR 253.

⁷¹ At [372(11)]. His Honour set out authorities for each of those propositions.

- (b) the extent to which the director is put on inquiry or, given the facts of a case, should have been put on inquiry;
- (c) the relationship between the director and delegate must be such that the director honestly holds the belief that the delegate is trustworthy, competent and someone on whom reliance can be placed. Knowledge that the delegate is dishonest or incompetent will make reliance unreasonable;
- (d) the risk involved in the transaction and the nature of the transaction;
- (e) the extent of steps taken by the director, for example, inquiries made or other circumstances engendering "trust";
- (f) whether the position of the director is executive or non-executive, although, in *Daniels v Anderson*,⁷² the majority have moved away from this distinction.

38. In *Vines v Australian Securities and Investments Commission*,⁷³ Santow JA summarised the relevant principles in relation to permissible reliance as follows:

"The degree of an officer's permissible reliance on others will turn on similar considerations as those that determine the overall standard of care for an individual director. They focus particularly on the characteristics of the company, the skills and experience of the officer concerned and the delegate, and the reasonably anticipated risks entailed in so doing. What is expected here is a level of scrutiny as befits supervision, not the detailed direct involvement that is associated with operational responsibility. Where there is no cause for suspicion nor circumstances demanding critical and detailed attention, it is reasonable for an officer to rely on advice, without independently verifying the information or scrutinising the data or circumstances upon which that advice is based:"

The standard of care

39. Section 601FD(1)(b) of the Act reflects s.180(1) and is concerned with whether a director exercised due care and diligence. Merely making a mistake does not demonstrate that due care and diligence was wanting. The standard required of directors is reasonable care and skill and does not require perfection.⁷⁴ In *Australian Securities and Investments Commission v Rich*,⁷⁵ Austin J said:⁷⁶

⁷² (1995) 37 NSWLR 438.

⁷³ (2007) 73 NSWLR 451 at [731].

⁷⁴ *Healey* at [180].

⁷⁵ (2009) 236 FLR 1.

⁷⁶ At [7242].

“The statutory issue under s 180(1) is not whether the defendants made mistakes in the process of financial forecasting, and a fortiori, it is not whether they formed opinions different from the opinions of ASIC or even of the court. The statutory issue is whether they failed to meet the standard of care and diligence that the statute lays down. The statute requires the court to apply a standard defined in terms of the degree of care and diligence that a reasonable person would exercise, taking into account the corporation’s circumstances, the offices occupied by the defendants and their responsibilities within the corporation. That requires the defendants’ conduct to be assessed with close regard to the circumstances existing at the relevant time, without the benefit of hindsight, and with the distinction between negligence and mistakes or errors of judgment firmly in mind. If the impugned conduct is found to be a mere error of judgment, then the statutory standard under s 180(1) is not contravened and it is unnecessary to advert to the special business judgment rule in s 180(2).”

Is the standard higher for directors of responsible entities?

40. In *ASIC v APCH*,⁷⁷ Murphy J concluded that, whilst the duty in s.601FD(1)(b) of the Act corresponds with the duty in s.180(1), the standard of care under s.601FD(1)(b) will often be higher. His Honour reasoned that this flowed from the fact that the relevant director will be a director of a responsible entity which is acting as a trustee and holding itself out to the public, and being remunerated, as a professional trustee.
41. Murphy J’s conclusion was also based on the fact that scheme members are particularly vulnerable to potential conflicts of interest. His Honour reasoned (at [543]) that this consideration, together with the fact that the responsible entity was a professional trustee, meant that directors of the responsible entity will often be required to ‘exercise heightened care and caution and be scrupulous in dealing with any conflict of interests and conflict of interest and duty.’ Wigney J agreed with this approach in *Trilogy* at [212].

The test for breach – proof of available alternative action

42. The question whether the directors breached s.601FD(1)(b) of the Act can only be answered by balancing the foreseeable risk of harm against the potential benefits that could reasonably have been expected to accrue to the members

⁷⁷ See footnote 64 above, at [535]-[543].

from the conduct in question.⁷⁸ The balancing exercise was outlined by Mason J in *Wyong Shire Council v Shirt* as follows:⁷⁹

“[T]he tribunal of fact must first ask itself whether a reasonable man in the defendant's position would have foreseen that his conduct involved a risk of injury to the plaintiff or to a class of persons including the plaintiff. If the answer be in the affirmative, it is then for the tribunal of fact to determine what a reasonable man would do by way of response to the risk. The perception of the reasonable man's response calls for a consideration of the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have. It is only when these matters are balanced out that the tribunal of fact can confidently assert what is the standard of response to be ascribed to the reasonable man placed in the defendant's position.”

43. This passage has been applied to breaches of s.180(1) of the Act.⁸⁰ It can equally be applied to s.601FD(2), with due regard to the possibly higher standard of care and the possibly higher hurdle to demonstrate reasonableness of the director's conduct.
44. In order to prove negligence (that is, failure to exercise the necessary degree of care and diligence), it is necessary for the plaintiff to prove the action that would have been taken by a reasonable person.⁸¹ A duty of care is not formulated retrospectively as an obligation purely to avoid a particular act or omission said to have caused loss, or to avert the particular harm that in fact eventuated.⁸²
45. It is therefore incumbent upon the plaintiff to demonstrate that there was an alternative decision which was free of the risk of which it complains and which was available - not in a general or theoretical way, but in a practical sense.⁸³

⁷⁸ *Vrisakis v Australian Securities Commission* (1993) 9 WAR 395 at 450; *Australian Securities and Investments Commission v Cassimatis (No 8) (“Cassimatis”)* [2016] FCA 1023; (2016) 336 ALR 209 at [479]; *Re FAL Healthy Beverages Pty Ltd and FAL Retail Pty Ltd* [2017] NSWSC 476 at [55].

⁷⁹ [1980] HCA 12; (1980) 146 CLR 40 at 47-48.

⁸⁰ *Cassimatis* at [486]; *Australian Securities and Investments Commission v Drake (No 2) (“Drake”)* [2016] FCA 1552 at [395].

⁸¹ *Drake* at [400].

⁸² *Graham Barclay Oysters Pty Ltd v Ryan* [2002] HCA 54; (2012) 211 CLR 540, per Gummow and Hayne JJ at 611-612 [192].

⁸³ *Roman Catholic Church Trustees for the Diocese of Canberra and Goulburn v Hadba* [2005] HCA 31; (2005) 221 CLR 161 at 167, [13] per Gleeson CJ, Hayne, Callinan and Heydon JJ; *Drake* at [468].

Summary

46. The duty of directors of a responsible entity under s.601FD(1)(b) of the Act can be summarised as follows:
- (a) s.601FD(1)(b) is an objective test of the degree of care that a reasonable person would exercise, tailored to the circumstances of the responsible entity and the director;
 - (b) in determining whether a director has exercised reasonable care and diligence, regard will generally be had to the company's circumstances and the director's position and responsibilities within the company at the relevant time;
 - (c) directors are required to take reasonable steps to place themselves in a position to guide and monitor the management of the company;
 - (d) directors are generally entitled to rely upon others, provided that the function that has been delegated is such that it may properly be left to such officers;
 - (e) merely making a mistake does not demonstrate a breach of the duty;
 - (f) the standard required of a director of a responsible entity may be higher than that of a director of a company that is not a responsible entity; and
 - (g) in order to prove a breach, the plaintiff must prove the alternative action that would have been taken by a reasonable person in the company's and the director's circumstances.

The duty to act in the best interests of the scheme members

47. The duty requiring a director to act in the best interests of members is not purely subjective and therefore cannot be satisfied by a director merely acting honestly.⁸⁴ The duty is to act in the best interests of the members, not to secure the best outcome for members.⁸⁵ Key factors in ascertaining the best interests of

⁸⁴ *Lewski* at [70]-[71].

⁸⁵ *Lewski* at [71].

the members are the purpose and terms of the scheme, rather than the success or otherwise of a particular transaction or course of action.⁸⁶

48. As the plaintiff relies heavily on a breach of this duty in its case against the defendants, some further analysis of the duty is provided below.
49. Analogous duties to those under s.601FC(1)(c) of the Act are imposed on trustees of superannuation funds and their directors, under the *Superannuation Industry (Supervision) Act 1993* (Cth) (“SIS Act”). Section 52 of the SIS Act relevantly provides that the governing rules of a superannuation entity are taken to include a covenant by each trustee to perform the trustee’s duties and exercise the trustee’s powers in the best interests of the beneficiaries.
50. Section 52A of the SIS Act imposes duties on directors of a corporate superannuation trustee akin to those imposed under s.601FD of the Act. It relevantly provides that the governing rules are taken to include a covenant by each director to perform the director’s duties and exercise the director’s powers as director of the corporate trustee in the best interests of the beneficiaries.
51. In *Invensys Australia Superannuation Fund Pty Ltd v Austrac Investments Ltd*,⁸⁷ the trustees of a superannuation fund applied to the Court for advice on whether they could pay out a surplus from the fund to beneficiaries and non-beneficiaries.⁸⁸ The non-beneficiaries were employer companies who had made contributions to the fund over many years. They stood to receive almost \$50 million of the \$90 million surplus. One of the issues was whether it was in the best interests of the beneficiaries to make distributions to the employers.
52. Byrne J held that it was in the best interests of the beneficiaries to pay the employers, because the duty does not mean that the trustee might not confer a benefit on the employers if, in the opinion of the trustee, this would be of benefit to the members. His Honour said:⁸⁹

⁸⁶ *Lewski* at [71].

⁸⁷ (2006) 15 VR 87; [2006] VSC 112.

⁸⁸ When this case was decided the SIS Act had not been amended to include s.52A. At that time s.52(8) of the SIS Act provided that the covenants in s.52(2) operated as a covenant by each of the directors of the trustee to exercise care and diligence to ensure that the trustee carries out the covenants, ‘and so operates as if the directors were parties to the governing rules.’

⁸⁹ At 109, [110]-[111].

“In the present case there is no certainty that the members might do better if less than \$49.8m were distributed to the employers. It may be that, if the proposal involved a reduction in this payment, the employers would withdraw their support, with the consequence that there would be no distribution of surplus to anybody or that there would be a lengthy and expensive and uncertain litigation to resolve the impasse. The evidence before me shows that the trustee has good grounds for such an apprehension. If only for this reason, I conclude that the trustee is entitled, consistent with its proper concern for the best interests of the beneficiaries, to make a payment of part of the surplus to the employers.”

[Footnotes omitted.]

53. His Honour concluded that the proposed payment was not inconsistent with the covenant to act in the best interests of the beneficiaries, saying:⁹⁰

“The payment is part of a package which, on the evidence, will produce a substantial benefit to members. This is a benefit with which they, through their representatives, have expressed themselves to be content. It is a benefit which is greater than their entitlement under the unamended trust deed. It is a benefit which, on the evidence, is greater than they might reasonably hope to extract by further negotiation with the employers. Finally, I accept that it is a benefit which the trustee in the circumstances and after due and proper consideration has concluded is a proper one for it to confer upon the members having regard to the nature and objectives of the trust.”

54. Notably, Byrne J also said:⁹¹

“If it be accepted that the Trustee might, in the circumstances of this case and consistent with its obligations under the s 52(2)(c) covenant, make some payment to the employers where this is, in the reasonable opinion of the Trustee, in the best interests of the members, the Court will not enter upon a consideration of the amount of such payment. This is a matter for the discretion of the Trustee.”

55. In *Manglicmot v Commonwealth Bank Officers Superannuation Corporation Pty Ltd*,⁹² Giles JA, with whom Young and Whealey JJA agreed, concluded that the trustees' covenant did not materially extend the general law duty to act in the best interests of members.⁹³ The authors of *Jacobs Law of Trusts in Australia*

⁹⁰ At 111, [118].

⁹¹ At 110-111, [118].

⁹² (2011) 282 ALR 167; [2011] NSWCA 204.

⁹³ At 191, [121].

also opine that the covenant corresponds with the general law.⁹⁴ These observations are consistent with the presumption that, where words used in a statute have already acquired a legal meaning, unless the contrary intention clearly appears from the context, *prima facie* the legislature is taken to have intended to use them with that meaning.⁹⁵

56. Consistent with the above, in *APCH Murphy J* held that:⁹⁶

“the imposition of a duty to act in the best interests of the members in ss 601FC(1)(c) and 601FD(1)(c) does not extend its content beyond previously understood general law boundaries.”

57. As to the general law duties, the starting point is *Armitage v Nurse*,⁹⁷ where Millett LJ said that a trustee, in administering the trust, must act honestly and in good faith and for the benefit of the beneficiaries. The ‘best interests’ of the beneficiaries are usually ‘their best financial interests’.⁹⁸ In *Cowan v Scargill*,⁹⁹ Megarry VC provided the following statement of the general law duty to act in the interests of the beneficiaries:

“The starting point is the duty of trustees to exercise their powers in the best interests of the present and future beneficiaries of the trust, holding the scales impartially between different classes of beneficiaries. This duty of the trustees towards their beneficiaries is paramount. They must, of course, obey the law; but subject to that, they must put the interests of their beneficiaries first. When the purpose of the trust is to provide financial benefits for the beneficiaries, as is usually the case, the best interests of the beneficiaries are normally their best financial interests. In the case of a power of investment, as in the present case, the power must be exercised so as to yield the best return for the beneficiaries, judged in relation to the risks of the investments in question; and the prospects of the yield of income and capital appreciation both have to be considered in judging the return from the investment.”

⁹⁴ JD Heydon and MJ Leeming *Jacobs’ Law of Trusts in Australia* (7th ed, Butterworths, 2006), [2922]. See also *SAS Trustee Corp v Cox* (2011) 285 ALR 623; [2011] NSWCA 408 at [95]-[96].

⁹⁵ *Attorney-General of NSW v Brewery Employees Union of NSW* (1908) 6 CLR 469 at 531 per O’Connor J.

⁹⁶ At [484].

⁹⁷ [1998] Ch 241 at 253–4.

⁹⁸ *Cowan v Scargill* [1985] Ch 270 at 287; *Willett v Fletcher* [2004] QCA 30 at [19].

⁹⁹ [1985] Ch 270, at 286-287.

58. The Vice Chancellor went on to say:¹⁰⁰

“I can see no reason for holding that different principles apply to pension fund trusts from those which apply to other trusts. Of course, there are many provisions in pension schemes which are not to be found in private trusts, and to these the general law of trusts will be subordinated. But subject to that, I think that the trusts of pension funds are subject to the same rules as other trusts.”

59. These statements have been applied in Australia.¹⁰¹ In *Asea Brown Boveri Superannuation Fund No 1 Pty Ltd v Asea Brown Boveri Pty Ltd*,¹⁰² Beach J adopted Megarry VC’s views and stated:¹⁰³

“In my opinion trustees of a superannuation fund owe a duty of loyalty exclusively to the members. It does not follow from that, however, that a trust deed can never be altered to meet the interest of the employer. Trustees are free to negotiate with an employer for a package of amendments that may include benefits to the employer if in the opinion of the trustees that would benefit the members.”

60. Company directors owe a duty to act in the best interests of the company. The content of that duty has been regularly stated by the Courts. The principles, as variously stated by the members of the Court of Appeal of Western Australia in *Westpac Banking Corp v Bell Group Ltd (in liq) (No 3)*,¹⁰⁴ are that:

(a) Usually the bona fide belief of a director that the conduct undertaken is in the best interests of the company will meet the requirements of the duty. However, that belief will not prevent a finding of breach of the duty where the conduct is plainly unreasonable or irrational or fails to have any regard to obligations the company must meet.¹⁰⁵

(b) It is irrelevant that the directors may have honestly believed they were acting in the company’s interests, if the court on an objective assessment

¹⁰⁰ Ibid at 290.

¹⁰¹ See for example, *Re S&D International Pty Ltd (No 4)* [2010] VSC 388; 79 ACSR 595 at 233; *Invensys Australia Superannuation Fund Pty Ltd v Austrac Investments Ltd* (2006) 15 VR 87, [107]; [2006] VSC 112; *Commissioner of Taxation v Interhealth Energies Pty Ltd as Trustee of the Interhealth Superannuation Fund* [2012] FCA 120 at [13]; *APCH* at [465].

¹⁰² [1999] 1 VR 144.

¹⁰³ At 161, [65].

¹⁰⁴ (2012) 44 WAR 1; [2012] WASCA 157.

¹⁰⁵ At [923], Lee AJA.

of all the circumstances, considers that their conduct is manifestly unreasonable.¹⁰⁶

- (c) The duty of directors to act bona fide in the interests of the company is subjective in that whether it has been fulfilled depends on the directors honestly believing that their actions were in the interests of the company. However, the test for determining whether the duty of directors to exercise their powers for proper purposes has been complied with is an objective one for the court, not the directors.¹⁰⁷
- (d) The authorities show that, in the absence of irrationality, the test is not whether the director's belief is based on reasonable grounds. It is a subjective test.¹⁰⁸
- (e) If the directors bona fide believe that a transaction is in the best interests of the company and will in fact improve its financial position and that is in fact their purpose, there will be no breach of fiduciary duty merely because there is a prospect of the directors being wrong and creditors suffering as a result.¹⁰⁹
62. English cases are to the same effect. For example, in *Regentcrest plc (in liq) v Cohen*,¹¹⁰ Jonathan Parker J said:

"The question is not whether, viewed objectively by the court, the particular act or omission which is challenged was in fact in the interests of the company; still less is the question whether the court, had it been in the position of the director at the relevant time, might have acted differently. Rather, the question is whether the director honestly believed that his act or omission was in the interests of the company. The issue is as to the director's state of mind."

63. The High Court of Australia has also spoken on the issue,¹¹¹ including recently, in the context of s.601FD(1)(c) of the Act.¹¹²

¹⁰⁶ At [1983], Drummond AJA.

¹⁰⁷ At [1988], Drummond AJA.

¹⁰⁸ At [2772], Carr AJA.

¹⁰⁹ At [2819], Carr AJA.

¹¹⁰ [2001] 2 BCLC 80, at [120].

¹¹¹ *Richard Brady Franks Ltd v Price* (1937) 58 CLR 112; [1937] HCA 42, at 135-136: "The onus is on the plaintiff who challenges the action of the directors to establish that they did not act bona fide for the benefit of the company."

64. The plaintiff contends that the duty in s.601FD(1)(c) of the Act compelled the directors to have regard *only* to the interests of the members of the FMIF. But this is not correct. The section creates no such priority for scheme members. In *Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd*, Palmer J said:¹¹³

“...beneficiaries of a group of trusts are, in law, entitled to insist that the common trustee, or common administrators or liquidators of a common trustee, treat each trust separately and act in the best interests of each trust. The general equitable right of fiduciary loyalty in such a situation is clearly and expressly recognised in CA s 601FC(1)(c), which provides that a Responsible Entity must act in the best interests of the members and, if there is a conflict between the members’ interests and its own interests, it must give priority to the members’ interests.”

64. The duty of directors of a responsible entity under s.601FD(1)(c) of the Act to act in the best interests of the members of the scheme can therefore be summarised thus:
- (a) the duty to act in the best interests of the members is paramount;
 - (b) the best interests of the members are usually their financial interests;
 - (c) the duty is to act in the best interests of the members rather than to secure the best outcome for members;
 - (d) the bona fide (subjective) belief of a director that the conduct undertaken is in the best interests of the members will ordinarily meet the requirements of the duty, whether or not the court agrees with it;¹¹⁴
 - (e) the test for determining whether the duty of directors to exercise their powers in the best interests of the members has been complied with is an objective one for the court, not the directors;

¹¹² *Australian Securities and Investment Commission v Lewski* [2018] HCA 63; 93 ALJR 145; 362 ALR 286; 132 ACSR 403, at [71] and [73].

¹¹³ 79 ACSR 425; [2010] NSWSC 941 at [33]. This reasoning was applied by Jackson J in *Park & Muller (liquidators of LM Investment Management Ltd) v Whyte No 2* [2017] QSC 229 at [95]; [2018] 2 Qd R 413, and by Burns J in *In the matter of Secured Mortgage Management Ltd (in liq)* [2017] QSC 254 at [27].

¹¹⁴ Subject to manifest unreasonableness: see (f) below.

- (f) if the court, on an objective assessment of all the circumstances, considers that the director's conduct is manifestly unreasonable, then this will warrant a finding that the director did not, in fact, hold the relevant belief.

Exoneration

65. Sections 1317S and 1318 provide a power to the court to relieve a director in breach of a relevant duty from liability for that breach.
66. Section 1317S applies in this case because the proceeding is for a contravention of a civil penalty provision, namely s.601FD(3).¹¹⁵
67. Section 1318 may also apply, because the proceeding is for a breach of duty in Mr Tickner's capacity as an officer of LMIM. However, as s.1317S specifically applies to liability for breach of a civil penalty provision, the more general s.1318 may not apply.¹¹⁶ However, neither section limits the other: s.1317S(7).
68. Neither section operates to remove the breach, but rather they operate as a dispensing power to excuse the contravenor.¹¹⁷
69. The weight of judicial opinion is that s.1317S does not exclude the operation of s.1318 from cases that would also fall within s.1317S.
70. In *Hall v Poolman*,¹¹⁸ Palmer J reviewed the authorities on whether s.1317S constituted an exclusive code for discretionary relief from liability under s.588M. His Honour concluded that it did not, saying that it was clear that s.1318 applies to relieve directors and officers against liability for all contraventions of the *Corporations Act* as well as under the general law. However, his Honour went on to say that, ultimately, it does not matter because, under both sections, the court will have regard to the same considerations.

¹¹⁵ See s.1317E, item 8.

¹¹⁶ *Deputy Commissioner of Taxation v Dick* (2007) 242 ALR 152 ("Dick"), per Basten JA at [151]-[152], citing *Deputy Commissioner of Taxation v Keck* (2006) 63 ATR 310 at [44] as an example of the specific defence excluding the operation of the general defence.

¹¹⁷ *Australian Securities and Investments Commission v Healey (No 2)* (2011) 196 FCR 430 ("Healey (No 2)") at [86], citing *Dick* per Santow JA at [78].

¹¹⁸ (2007) 65 ACSR 123, at [311]-[314].

71. The relevant inquiry under ss 1317S and 1318 of the Act involves three stages:¹¹⁹
- (a) whether the person acted honestly;
 - (b) whether, having regard to all the circumstances of the case, the person ought fairly to be excused for the contravention or breach of duty; and
 - (c) whether the person should be relieved wholly or partly from liability for the breach.

Honesty

72. The onus of demonstrating honesty rests on the applicant for relief.¹²⁰ The Court must be satisfied that the applicant has acted honestly. A mere absence of dishonesty will not suffice.¹²¹ To be satisfied that an applicant has acted honestly, the Court must be satisfied that the applicant acted without moral turpitude, including without deceit or conscious impropriety, without intent to gain an improper benefit or advantage and without carelessness or imprudence at a level that negates the performance of the duty in question.¹²²
73. In *Hall v Poolman*,¹²³ Palmer J said:

“In my view, when considering whether a person has acted honestly for the purposes of a defence under ss 1317S(2)(b)(i) or 1318 of the CA, the court should be concerned only with the question whether the person has acted honestly in the ordinary meaning of that term, that is, whether the person has acted without deceit or conscious impropriety, without intent to gain improper benefit or advantage for himself, herself or for another, and without carelessness or imprudence to such a degree as to demonstrate that no genuine attempt at all has been to carry out the duties and obligations of his or her office imposed by Corporations Act or the general law. A failure to consider the interests of the company as a whole, or more particularly the interests of creditors, may be of such a high degree as to demonstrate failure to act honestly in this sense. However, if failure to consider the interests of the company as a whole, including the interests of its creditors, does not rise to such a high

¹¹⁹ *Healey (No 2)* at [84].

¹²⁰ *Australian Securities and Investments Commission v Adler* (2002) 42 ACSR 80 at [166], [168].

¹²¹ *Australian Securities and Investments Commission v Healey (No 2)* (2011) 196 FCR 430 (“*Healey (No 2)*”) at [87].

¹²² *Australian Securities and Investments Commission v MacDonald (No 12)* (2009) 259 ALR 116; [2009] NSWSC 714 (“*MacDonald*”) at [22]; *Healey (No 2)* at [88].

¹²³ (2007) 65 ACSR 123, at [325].

degree but is the result of error of judgment, no finding of failure to act honestly should be made, but the failure must be taken into account as one of the circumstances of the case to which the court must have regard under section 1317S and 1318 of the CA.”

The circumstances of the case

74. The considerations that might be relevant to this stage of the inquiry are effectively unconstrained. Whilst both sections refer to the person’s “appointment”, that is plainly only one factor that might be relevant. The authorities suggest that the following additional considerations are likely to be relevant.

- (a) The nature of the applicant’s “appointment” or office.
- (b) The degree to which the applicant’s conduct fell short of the relevant statutory standards.¹²⁴ In the case of s 601FD(1)(b) contraventions, the relevant consideration is the extent to which the conduct fell short of the statutory standard of care and diligence for an officer of a responsible entity.¹²⁵
- (c) The seriousness of the relevant contravention and its potential or actual consequences.¹²⁶ This involves a consideration of the importance of the provision contravened in terms of public policy, the degree of flagrancy of the contravention, and the consequences of the contravention in terms of harm to others.¹²⁷
- (d) Whether the contravention involved any impropriety, such as deceptiveness.
- (e) Whether the director obtained and followed competent advice.¹²⁸
- (f) Whether the applicant for relief has shown any contrition.

¹²⁴ *Healey (No 2)* at [89]-[90]; *ASIC v Australian Securities and Investments Commission v Vines (“Vines”)* (2005) 65 NSWLR 281 at [38]; *Advance Bank Australia Ltd v FAI Insurances Ltd* (1987) 9 NSWLR 464 at 491.

¹²⁵ *Trilogy* at [870].

¹²⁶ *Healey (No 2)* at [89]-[90].

¹²⁷ *Vines* at [52].

¹²⁸ *Vines* at [57].

Relief in whole or in part

75. The third stage of the inquiry is whether the applicant for relief should be relieved from liability wholly or in part. To a certain extent, the considerations relevant to the second stage of inquiry merge with this third stage.¹²⁹
76. Section 1318 (and, it is submitted, s.1317S) is capable of providing something like the business judgment rule. For example,¹³⁰ in *Re Claridge's Patent Asphalte Co Ltd*,¹³¹ a director in good faith caused a company to engage in a joint venture beyond its objects. On the failure of the joint venture the company went into liquidation in insolvency. When the liquidator sued the director the court held that, assuming that the investment was ultra vires and a breach of trust on the part of the director, nevertheless the court should apply the equivalent section and, in the court's discretion, the director should be excused. The director had acted in good faith and reasonably by making due inquiry and taking appropriate legal advice. The director obtained no special personal benefit.
77. *Claridge* is referred to in *Vines*.¹³² Austin J also referred to the Court of Appeal's reference, in *Daniels v Anderson*,¹³³ to business judgment considerations. In the latter case, Clarke and Sheller JJA said of s.1318:
- "The purpose of the section is to excuse company officers from liability in situations where it would be unjust and oppressive not to do so, recognising that such officers are businessmen and women who act in an environment involving risk in commercial decision-making The courts have a wide discretion to relieve in whole or in part."*
78. Their Honours went on briefly to approve the view that s.1318 may, in appropriate circumstances, operate as a provision for the proper allocation of fault, as if it were a contribution section.¹³⁴ Thus the extent of any element of fault of each individual director may be relevant to the extent of relief granted to that director under s.1318 or s.1317S.

¹²⁹ *Vines* at [44]-[45], [73], [121]; *McLellan v Carroll* (2009) 76 ACSR 67 at [202]-[206].

¹³⁰ As pointed out in Ford, Austin & Ramsay's *Principles of Corporations Law* (LexisNexis) at [9.700.15].

¹³¹ [1921] 1 Ch 543.

¹³² *Vines* at [67].

¹³³ (1995) 37 NSWLR 438, at 525A; referred to in *Vines* at [68].

¹³⁴ *Daniels v Anderson* at 525D.

79. The business judgment rule in s180 and at common law is relevant to the Court's determination of whether directors have breached their duty of due care and diligence. The fact that, notwithstanding that rule, the court may find that a director has breached that duty does not, of itself, exclude that criterion from consideration under s.1317S. If the director honestly and bona fide made a judgment, even in circumstances where the court finds that the judgment was negligent, the nature of the circumstances in which the judgment was made is relevant to whether relief should be granted, wholly or in part.
80. This is even more so if the court finds that the duty breached is not that of due care and diligence, but is failure to act in the best interests of the scheme members. Such a finding does not exclude the application of business judgment and relief from liability when the judgment was made in circumstances justifying relief.
81. Examples of cases where a director has been partly or wholly exonerated from liability for breach of the Act are:
- (a) *Hall v Poolman* (2007) 65 ACSR 123 – a director was relieved of liability for allowing a company to trade while insolvent up to the date when it was obvious that it was clearly insolvent, because the director had acted as a reasonable commercially experienced director would have during the exonerated period;¹³⁵
 - (b) *ASIC v Adler* (2002) 42 ACSR 80 – no compensation order was made against one director, Mr Fodera, because, although Santow J did not consider that he should be exonerated, he considered in the exercise of his discretion that no compensation order was appropriate in his case, given his substantially lesser role in occasioning the loss in question;¹³⁶
 - (c) *McLellan v Carroll* (2009) 76 ACSR 67 – Carroll was wholly excused for his contravention of s.588G(2) in allowing his company to trade while insolvent where a reasonable person in his position would have been

¹³⁵ See the discussion at [308]-[340].

¹³⁶ At [124], [177]. A small pecuniary penalty was imposed on Mr Fodera, taking into account his role: [178]-[186].

aware that there were grounds for suspecting that it was insolvent. Carroll acted honestly, sought accounting advice and it was reasonable for him to rely on that advice (that the company was not insolvent), making it appropriate to relieve him from liability. Goldberg J placed considerable weight upon the retainer of the accountant, the work done and the advice given by the accountant.¹³⁷

Issue 1 – Was the Settlement payment scheme property?

82. PTAL's interests under the FMIF Bellpac Mortgage and the FMIF Bellpac Charge were scheme property.¹³⁸ At paragraph 37 of the 5FASOC, the plaintiff alleges that the Settlement payment was also scheme property.
83. To be scheme property, the Settlement payment at least had to answer the description of income or property derived, directly or indirectly, from contributions to the scheme.¹³⁹ It is therefore necessary to analyse carefully the nature of the Settlement payment.
84. This is how the Settlement payment came about:
- (a) between 2003 and 2006, the FMIF (through PTAL) and the MPF made loans to Bellpac and (in the case of the MPF) to a related company secured by Bellpac;¹⁴⁰
 - (b) each of PTAL and the MPF held registered fixed and floating charges over Bellpac, as security for its loan;
 - (c) on 6 May 2009, PTAL appointed receivers and managers to Bellpac pursuant to its charges;
 - (d) the MPF and Bellpac commenced the Bellpac Proceedings against Gujarat in July 2009. The relief sought was limited to declarations and damages;¹⁴¹

¹³⁷ At [189]-[206], especially at [202]-[206].

¹³⁸ *Ballandean Investments Pty Ltd v City Pacific Limited* [2011] 2 Qd R 400 at 406, [23]; 2010 [QCA] 113 per Holmes JA (McMurdo P and Chesterman JA agreeing).

¹³⁹ Paragraph (d) of the definition of "scheme property" in s.9.

¹⁴⁰ For simplicity, PTAL as custodian and LMIM as RE of the FMIF are referred to as either PTAL or the FMIF and LMIM as trustee of the MPF is referred to as the MPF. References to LMIM are to the company in both capacities.

- (e) in November 2009, PTAL was joined to the Bellpac Proceedings as a plaintiff;¹⁴²
- (f) an Amended Commercial List Statement was filed on 8 February 2010, pursuant to which the relief sought in the proceedings included:
- (i) a claim by Bellpac for damages by reason of Gujarat's failure to remediate the land;¹⁴³
 - (ii) a claim by Bellpac for an account of royalties payable by Gujarat;¹⁴⁴
 - (iii) claims by PTAL and the MPF for damages from Gujarat for inducing breach of contract¹⁴⁵ and being knowingly concerned in misleading or deceptive conduct;¹⁴⁶ and
 - (iv) claims by Bellpac for an indemnity from Gujarat.¹⁴⁷
- (g) the MPF funded the proceedings, and gave an undertaking by way of security for costs of the proceedings;¹⁴⁸
- (h) in November 2010 the parties attended mediation, where a Non-Binding Heads of Agreement was signed;¹⁴⁹
- (i) the parties continued to negotiate but no agreement in the terms of the Non-Binding Heads of Agreement was ever formalised;
- (j) on 8 March 2011, LMIM proposed a cash settlement to Gujarat, which would also include the sale of the Bellpac Land by PTAL to Gujarat;¹⁵⁰
- (k) negotiations then continued between LMIM and Gujarat over the final settlement figure;

¹⁴¹ Exhibit 130 (FMIF.009.004.0004).

¹⁴² Exhibit 144 (FMIF.005.006.0001).

¹⁴³ Paragraphs 18A1(d)(ii) and 18A2(d)(ii) of the Amended Commercial List Statement and Exhibit 119 (FMIF.005.006.0012).

¹⁴⁴ Paragraph 18L1.

¹⁴⁵ Paragraphs 48 and 49.

¹⁴⁶ Paragraphs 43 to 46.

¹⁴⁷ Paragraphs 51 and 54.

¹⁴⁸ Exhibit 152 (MPF.001.004.6243).

¹⁴⁹ Exhibit 84 (FMIF.020.005.0081). A second heads of agreement was signed with Coalfields (exhibit 83, FMIF.020.005.0079), but the obligation on LMIM to pay \$1.3M to Coalfields was also a condition of the heads of agreement with Gujarat.

¹⁵⁰ Exhibit 103 (FMIF.100.003.6829).

- (l) on 25 March 2011, LMIM and Gujarat reached in-principle terms for a cash settlement;¹⁵¹
- (m) Gujarat required that all parties involved be parties to and bound by a settlement, with mutual releases;¹⁵²
- (n) settlement with Gujarat was conditional upon deeds being signed, sealed and delivered at settlement;¹⁵³
- (o) on 10 June 2011, the directors executed the Deed Poll, effectively recording an agreement between the MPF and the FMIF to share the proceeds of any settlement with Gujarat;¹⁵⁴
- (p) on 21 June 2011, LMIM, PTAL, Bellpac and Gujarat resolved their disputes by executing and simultaneously completing various documents for the sale of the Bellpac Property and the compromise of the Bellpac Proceedings, including a Deed of Release and a Contract for Sale;
- (q) pursuant to the Contract for Sale, Gujarat purchased the Bellpac Land from PTAL as mortgagee in possession for \$10 million;¹⁵⁵
- (r) pursuant to cl.7 of the Deed of Release, Gujarat was to pay PTAL the sum of \$35.5 million simultaneously with the execution and delivery of the Deed;¹⁵⁶
- (s) PTAL, at FMIF's request, directed Gujarat to pay part of the consideration for the overall settlement to the MPF;¹⁵⁷
- (t) on 21 June 2011, LMIM as trustee for the MPF received a cheque from Gujarat for \$13,606,093.32;¹⁵⁸
- (u) on 28 June 2011, LMIM as trustee for the MPF repaid to Gujarat the sum of \$4,545.94, which Gujarat had inadvertently overpaid to the MPF;¹⁵⁹

¹⁵¹ Tickner #1 (exhibit 324 SJT.LAY.001.0001) at [228], [229] FMIF.100.003.6938.

¹⁵² Exhibit 316 (FMIF.200.012.7079).

¹⁵³ Exhibit 246 (FMIF.100.005.3235).

¹⁵⁴ Exhibit 36 (FMIF.008.001.0126).

¹⁵⁵ Exhibit 87 (FMIF.003.001.0001).

¹⁵⁶ Exhibit 85 (FMIF.003.003.0198).

¹⁵⁷ Tickner #1 (324 SJT.LAY.001.0001) at [263] FMIF.019.001.0060

¹⁵⁸ Exhibit 321 (FMIF.003.003.0053).

¹⁵⁹ Tickner #1 (exhibit 324, SJT.LAY.001.0001) at [264] FMIF.016.003.0024.

- (v) on 8 September 2011, LMIM as trustee for the MPF received a cheque from Gujarat in the sum of \$1,944,600.47;¹⁶⁰
- (w) thus, LMIM as trustee for the MPF received a total of \$15,546,147.85 from the total of \$45.5M paid by Gujarat in settlement of the proceedings.

85. In light of the above, the sixth defendant submits that the position was that:

- (a) LMIM as trustee of the MPF was a party to the Bellpac Proceedings;¹⁶¹
- (b) the consent of LMIM as trustee of the MPF was needed to settle the Bellpac Proceedings;¹⁶²
- (c) the settlement with Gujarat compromised all claims made in the Bellpac Proceedings, including claims for damages which could not be the subject of the FMIF and/or MPF charges;
- (d) the agreement between LMIM as trustee of the MPF and LMIM as RE of the FMIF, or PTAL, to share the settlement proceeds pre-dated the entry into the various settlement agreements with Gujarat;
- (e) the settlement proceeds were the fruits of litigation and were not attributable to any security held by PTAL in any event;
- (f) alternatively to (e) above, the agreement to share the settlement proceeds operated to vary the position recorded in the Priority Deed, as the parties were entitled to do if they reasonably considered that it was in the best interests of their respective beneficiaries and members to do so;
- (g) an offer of settlement by Gujarat, without more, did not amount to scheme property;
- (h) without the agreement of LMIM as trustee of the MPF to split the settlement proceeds and the consequent agreement to compromise the Bellpac Proceedings, there would have been no settlement with Gujarat;

¹⁶⁰ Exhibit 330 (FMIF.100.004.4598).

¹⁶¹ The plaintiff now admits this in paragraphs 7(aaa) and 13(k)(iii)(AA) of the reply, responding respectively to paragraphs 22(aaa)(vi) and 30C(m)(iii)(AA) of Mr Tickner's defence to the 5FASOC.

¹⁶² The plaintiff also admits this in paragraph 13(k)(iii)(A) of its reply, responding to paragraph 30C(m)(iii)(A) of Mr Tickner's defence to the 5FASOC, as well as in other places.

- (i) LMIM as trustee of the MPF was entitled to insist on a share of the proceeds of any settlement because its consent was required to settle the Bellpac Proceedings and because it was giving up valuable rights;
- (j) it is clear, and the court can infer, that, had LMIM as trustee for the MPF not consented to the dismissal of the Bellpac Proceedings, Gujarat would not have settled with PTAL either:
 - (i) at all; or
 - (ii) on terms at least as favourable to the members of the FMIF;
- (k) the Settlement payment, being the sum payable to LMIM as trustee for the MPF as agreed between it and LMIM as RE of the FMIF and/or PTAL, was not income or property derived, directly or indirectly, from contributions to the FMIF scheme; and
- (l) PTAL, or alternatively LMIM as RE of the FMIF, was never in any real sense the legal owner of the Settlement payment.

86. If the above analysis is correct, the Settlement payment was never scheme property. If this is correct the directors' conduct in causing LMIM to agree to split the settlement proceeds between the MPF and the FMIF is not a matter which attracts the operation of the duties prescribed in s.601FD. As the plaintiff does not claim to be entitled to relief on any other basis, it is submitted that the claim should be dismissed.

87. However, in case the court finds that the Settlement payment was scheme property, the remaining issues are addressed below.

Issue 2 – Did Mr Tickner have an understanding that a proceeds split would occur?

88. In cross-examination, the plaintiff's counsel put it to Mr Tickner that no such understanding existed. Before putting that proposition, the plaintiff's counsel took Mr Tickner to several emails where it was pointed out to Mr Tickner that no agreement had been documented. A review of those emails is informative.

89. On 16 August 2010, Adrien Armes emailed Mr Tickner that the council rates for the Bellpac Property could be paid by instalments.¹⁶³ On 17 April 2010, Mr Tickner forwarded that email to Grant Fischer, the CEO of LMIM. Mr Tickner said to Mr Fischer:

“Grant

This is for payment of outstanding rates for Bellpac

As MPF is funding the ongoing costs of the action against Gujarat I presume we should consider MPF funding this cost.

Have we documented an agreement between MIF and MPF for the litigation funding? If not I think we should formalise as soon as practical.

Simon”

90. Mr Fischer responded on 18 August 2010 as follows:

“I don't think we do have an agreement on lit funding.

I have copied David to see if we can draw up for the file.”

91. On 20 August 2010, Mr Monaghan responded to both Mr Tickner and Mr Fischer as follows:

“Grant and Simon

I am not sure that an agreement is necessary. As I understand it MPF is funding the various proceedings at present because as second mortgagee it has the most interest in achieving a good outcome. I think that is sufficient justification for it to continue to provide funding at this time.

92. The plaintiff's counsel put to Mr Tickner that:¹⁶⁴

“...when you read that email, you understood what he was saying to you was not only was there no agreement but there didn't need to be an agreement because in fact MPF was simply funding this litigation as a second mortgagee?”

93. Mr Tickner's response was:¹⁶⁵

“That's not how I interpreted it. My interpretation was that it was not documented.”

¹⁶³ That email and the chain which follows are Exhibit 14 (FMIF.100.004.9878).

¹⁶⁴ T3-67, line 44 to T3-68, line 1.

¹⁶⁵ T3-68, lines 1 to 2.

94. Subsequently, the plaintiff's counsel suggested that, upon reading Mr Monaghan's email, Mr Tickner should have responded to "correct" Mr Monaghan's understanding:¹⁶⁶

"Mr Tickner, can I suggest to you that in light of the understanding you had about how this litigation – about the MPF getting a share of the proceeds – if you had that understanding, the first thing that you would have done when you received this email from the company solicitor, Mr Monaghan, was to write back and say, "Mr Monaghan, there's more than that. MPF are actually getting a share of any proceeds from the proceedings"?---To the best of my recollection, I consider Mr Monaghan understood – had a knowledge of the understanding at this time.

Can I suggest to you that this email revealed the exact opposite; he didn't have that understanding at all?---My interpretation of the email was that he was describing what the documented position was.

Can I suggest to you that he was doing more than that. He was telling you not just that it wasn't documented, but in fact there didn't need to be a document, because all that was happening was MPF was funding a second mortgage?---I don't believe so."

95. In his affidavit, Mr Tickner explained the above email in these terms:¹⁶⁷

"Even though I was aware after Monaghan's email that there had been no agreement, I took that to be that there was no formal document in writing. However, I continued to hold the view that there was an understanding between the Directors that the MPF would be compensated in due course for providing the funding. It was also my understanding that the "understanding" would be reduced to writing once there was certainty about any resolution of the Bellpac Proceedings, including the terms of any settlement."

96. Mr Tickner also gave evidence of a conversation with Mr Monaghan around this time because he was concerned as to what may happen if LMIM was removed as trustee or RE of one of the funds and the understanding was not documented. Mr Monaghan responded that the MPF was entitled to advance litigation funding under its loan agreement and to record it as such. Following this discussion, Mr Tickner says:¹⁶⁸

"From this conversation with Monaghan I became more comfortable with there not being a written document recording our agreement or understanding about exactly what the MPF would receive on the conclusion of the Proceedings. I also felt a bit more comfortable

¹⁶⁶ T3-69, lines 9 to 23.

¹⁶⁷ Exhibit 324 at [144].

¹⁶⁸ Exhibit 324 at [147].

knowing that, even if LMIM was removed as a trustee of the MPF, the MPF would still have the right to recover its loan and interest and there would be no risk if a new trustee was appointed to the Funds regardless of there being no written document recording our agreement or understanding. I also understood from my conversation with Monaghan that, given the highly uncertain outcome of the Proceedings, it was difficult to document the agreement or understanding in a meaningful way."

97. It was next put to Mr Tickner, that in his discussion with Mr Monaghan, Mr Monaghan 'made no mention of any arrangement whereby MPF would get any share of the proceeds'.¹⁶⁹

"Now, so is your evidence that, as a result of that discussion, you thought that Mr Monaghan knew about this understanding whereby MPF would get a share of the proceeds?---At the time I had this discussion, yes.

98. That evidence was not the subject of any further challenge and should be accepted.
99. Mr Tickner was then taken to a further email he sent to Mr Monaghan on 30 August 2010 which was in the following terms :¹⁷⁰

"David

Can we amend any agreement we have in place for MPF to assist with litigation costs on Bellpac to also cover Statutory Charges as per payment to be made below."

100. On 31 August 2010, Mr Monaghan responded:

"Simon

There is no agreement in place. I do not believe that an agreement is necessary, as it is simply a situation of MPF as the second mortgagee, who has the most to lose, paying legal costs, and in this case council rates. I do not think it requires an agreement. It will be a proper cost for MPF to add to its debt. It will rank behind MIF's debt.

Let me know if you had any particular purpose in mind for an agreement."

101. The plaintiff's counsel suggested to Mr Tickner that, if he had the understanding, upon being told by Mr Monaghan that there was no agreement in

¹⁶⁹ T3-70, lines 32-4.

¹⁷⁰ Exhibit 17, (FMIF.100.003.2096).

place, he would have responded and told him that he was wrong.¹⁷¹ Mr Tickner explained this by saying:¹⁷²

“But my position to the funding of the – of the rates is a different position to the funding of the legal costs. I already had an understanding about the funding of the legal costs.”

102. Mr Tickner’s evidence should be accepted. It is not suggested that there was any certainty to the likely outcome of the Bellpac Proceedings at the time they were commenced. Mr Monaghan’s statement about the MPF funding as second mortgagee can (and should) be understood as a statement as to the legal basis on which those expenses could be recorded within the accounts of the MPF and charged to the MPF Bellpac Loan. Mr Monaghan would have known that the MPF was not suing Gujarat to enforce its rights as second mortgagee because Gujarat was not the owner of the mortgaged property. That was Bellpac.
103. Other evidence by Mr Tickner was not the subject of any challenge. For example, Mr Tickner stated:¹⁷³

“I always understood that the Proceedings were advanced for the benefit of both Funds because I recall conversations during informal meetings with certain other Directors during which it was discussed that the expenses of the Bellpac Proceedings were to be paid for by the MPF with an understanding that its contribution would be recompensed, in one way or another, once the Bellpac Proceedings concluded. These conversations occurred prior to July 2010 and although I cannot recall exactly when, I believe the first such conversation was at, or soon after, the commencement of funding of the Bellpac Proceedings by the MPF.”

104. It was later suggested to Mr Tickner that any such understanding was illogical in circumstances where the Assigned Loans could have been used to fund the litigation. Mr Tickner’s response to this suggestion was emphatic and unchallenged:¹⁷⁴

“the Draconian environment prevailing at that time with the Commonwealth Bank, my view would have been that I would have viewed it as highly unlikely they would have allowed the reduction of a receivable to the FMIF for another purpose other than to amortise their debt.”

¹⁷¹ T3-73, lines 7-10.

¹⁷² T3-74, lines 18-20.

¹⁷³ Exhibit 324 at [149].

¹⁷⁴ T3-78, lines 24 to 27.

105. Mr Tickner's evidence is consistent with the objective evidence. Exhibit 1 notes that:¹⁷⁵

"Repayment of the facility will take priority over most other cashflow needs of the Fund, and will take priority over most withdrawal requests from members of the Fund."

106. Exhibit 1 also states that, as at 30 October 2009, the CBA facility was fully drawn and being repaid in priority over most other cashflow needs of the FMIF.¹⁷⁶
107. As for ongoing funding if the Gujarat settlement did not occur, the Assigned Loans were repaid in full by 24 June 2011, so it is not correct to suggest that those funds were available to be called upon by the FMIF from that time.¹⁷⁷
108. Mr Tickner was also taken in cross-examination to the Deed Poll,¹⁷⁸ but it was not suggested to him that any of the provisions or statements in the Deed Poll was untrue.
109. When the plaintiff's counsel opened his client's case, he said that the purpose of the directors obtaining the Allens Advice was 'to justify a decision that they'd already made'.¹⁷⁹ That is not the plaintiff's pleaded case. But in any event it was not put to Mr Tickner that the understanding itself, or the Deed Poll which recorded it, was a sham gotten up only for the purpose of justifying some earlier decision.
110. It is submitted that the Court should accept Mr Tickner's evidence that he held the understanding. The objective circumstances which assist in drawing this conclusion include:
- (a) the fact that four of LMIM's directors say that there was such an understanding;
 - (b) Allens and WMS were instructed that such an understanding existed;

¹⁷⁵ Exhibit 1 (FMIF.500.001.9688) at .0002, penultimate paragraph.

¹⁷⁶ Exhibit 1, (FMIF.500.001.9688) at .0008 under "Borrowings of the Fund".

¹⁷⁷ Exhibit 269 (FMIF.031.003.0033).

¹⁷⁸ T3-81, from line 36.

¹⁷⁹ T1-24, lines 28-9.

- (c) the Deed Poll records the understanding and was signed by each of the directors; and
- (d) the directors followed through on the understanding by causing LMIM to agree to the proceeds split.

111. By signing the Deed Poll, Mr Tickner confirmed that it was his understanding that it was appropriate for LMIM as trustee of the MPF's contribution to be recognised by providing it with a share of any proceeds recovered by the Bellpac Proceedings. Mr Tickner's evidence, both in his affidavit and in cross-examination, was that he and, he believed, his fellow directors, had that understanding from about the time that the Bellpac proceedings commenced and throughout the period up to the execution of the Deed Poll. It is submitted that Mr Tickner's evidence as to his understanding should be accepted.

Issue 3 - Was Mr Tickner negligent?

112. Mr Tickner adopts the six categories of negligence that have been identified by counsel for Ms Mulder and Mr van der Hoven. Those categories appear in Appendix C. We will address them in turn.

The independent experts' advice

113. These allegations essentially rely on the assertions, in paragraph 30H of the SFASOC, that the Allens advice was inadequate, internally inconsistent and wrong and, in paragraphs 34(aa), (e) and (f), that the directors did not adequately read and consider the advice and ought to have recognised those faults.
114. These essential assertions are astonishing, when one considers that the plaintiff and its lawyers do not appear to have recognised, and did not allege, the purported deficiencies in the advice until over four years after it commenced the proceeding, when it filed its fifth statement of claim (the third further amended statement of claim) in February 2018.
115. They are also astonishing because the plaintiff contends that directors with no legal qualifications ought to have second guessed detailed advice provided by a highly regarded and apparently competent law firm, where the advice was also

reviewed by LMIM's equally competent and highly regarded in house counsel, Mr Monaghan, who did not identify any deficiencies in the advice.

116. These propositions are akin to cases where a client suing a lawyer for negligent advice is accused of contributory negligence. While clients in such circumstances have had damages reduced for contributory negligence, it has been in limited circumstances, such as:
- (a) where the client failed to follow the advice;¹⁸⁰
 - (b) where the client was unaware of certain information but a reasonable person in the client's circumstances would have acted differently;¹⁸¹
 - (c) where the client delayed in obtaining finance and did not inform the solicitor of the situation;¹⁸²
 - (d) where the client had failed to make necessary and reasonable inquiries before making investments.¹⁸³
117. But in each of these cases, the client's negligence has not been a complete answer to the solicitor's negligence and in most the contributory negligence has resulted in only a small reduction in the solicitor's liability for damages.
118. In this case, Mr Tickner's evidence was that he read the Allens advice carefully, also receiving Mr Monaghan's assistance to understand it.¹⁸⁴ There is no evidence that Mr Monaghan ever informed Mr Tickner that the Allens advice (or the WMS advice) was inadequate or wrong or could not be relied on in informing Mr Tickner's decision on how to treat the proceeds of settlement.
119. In the circumstances, Mr Tickner adequately read and considered the advice. Even if the advice was, in any way, inadequate or wrong, those were not matters that a person such as Mr Tickner could be expected to identify. Items (a) to (c) of the allegations of negligence have not been made out.

¹⁸⁰ *Mouat v Clark Boyce* [1992] 2 NZLR 559.

¹⁸¹ *Westcoast Clothing Co Pty Ltd v Freehill Hollingdale & Page* [1999] VSC 266; [1999] Aust Torts Rep 81-518. In fact, the client was absolved of contributory negligence, but this proposition appears at [132].

¹⁸² *Cadoks Pty Ltd v Wallace Westley & Vigar Pty Ltd* (2000) 2 VR 569, especially at [154]-[155].

¹⁸³ *Astley v Austrust Ltd* (1999) 197 CLR 1, especially at [29]-[30], [33] (50% reduction)

¹⁸⁴ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [217], informed by Tickner #2 (Exhibit 325, SJT.LAY.002.0001) at [2.5].

120. The matters alleged at item (d) are likewise matters that, if the lawyers considered that their advice should deal with those things, one would expect (and a person acting reasonably in Mr Tickner's position could expect) that the lawyers (Allens, Mr Monaghan or both) would point that out to the directors. The directors were not negligent in understanding that the legal advice they had sought and obtained (and the questions asked on their behalf by Mr Monaghan) were sufficient for them to rely and act upon.
121. The last of the matters in item (d) is not in fact a matter about which advice might be properly sought. It was for the directors to decide whether it was in the best interests of the members of the FMIF to agree to split the proceeds of settlement with the MPF. It was not a matter for advice from lawyers, accountants or any other professionals although, in making their decision, it was appropriate for the directors to take into account the advice that they had received on the other matters that could inform their decision.
122. It is alleged that the instructions to Allens were deficient in that they did not include the matters alleged in the 5FASOC at paragraph 30C.
123. The instructions were given to Allens by Mr Monaghan on 14 March 2011.¹⁸⁵ They included a copy of the instructions to WMS, including the relevant documents, the WMS report, instructions about the broad terms of the settlement proposal as it then was, and the question about which advice was sought. Mr Monaghan also informed Mr Beckinsale of Allens that other persons in Allens were acting for LMIM in the negotiations. A copy of those instructions was given to the directors and it was reasonable for them to consider that Mr Monaghan, LMIM's highly competent lawyer, would provide sufficient instructions and ask the right question.
124. The plaintiff complains that the instructions:
- (a) did not includes copies of the final settlement documents – documents that were not produced for another three months;

¹⁸⁵ Exhibit 33 (FMIF.200.012.0633).

- (b) did not include a copy of the Priority Deed – but Allens had that deed in its possession¹⁸⁶ and, if the persons giving the advice considered that it was necessary to see it, they could have obtained it;
 - (c) did not state a number of facts about the arrangements between the two LMIM funds – but in fact it was clear from the instructions that there was no binding arrangement, merely an understanding, Allens knew that the MPF was the second mortgagee and was paying the costs, and that it was a party to the litigation; that it was not expressly stated that the MPF was drawing down the costs against the MPF Bellpac loan was immaterial or, if Allens thought it was material to know how the expenses were being treated by LMIM, one might expect them to ask.
125. There is no substance to the allegation that the instructions to Allens were deficient, let alone that the directors knew, or ought to have known, that.
126. The directors sought advice from WMS and Allens precisely because they recognised that LMIM had a conflict between its duties to the FMIF and the MPF and they wanted to ensure that they managed that conflict properly. The advice was sought and reviewed with the assistance of Mr Monaghan. The advice was that the proposal was both commercially reasonable and legally acceptable. There is no basis for the allegation that the directors ought not to have concluded that it was of assistance to them in determining whether they could properly cause a split of the proceeds of settlement between the two funds.

The priorities and mortgagee sale

127. Mr Tickner was fully aware that PTAL was selling the property to Gujarat, under the settlement, as first mortgagee and that it had first priority, under the Priority Deed, to proceeds recovered under its securities. He was also aware that the MPF was drawing down the funds under its loan to Bellpac. While these matters are not all expressly stated in the Deed Poll, they were notorious within LMIM and the directors must be taken to have known them.

¹⁸⁶ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [68.5, 68.6]

128. But in any event the proceeds of the settlement, other than the payment for the sale of the land, were not proceeds from the enforcement of securities, but were consideration in settlement of litigation against Gujarat over claims by PTAL and FMIF for damages.
129. The Deed Poll did understate the amount of indebtedness to the FMIF, as recital B said it was \$45.5M when it was in fact about \$52.5M.¹⁸⁷ But that misstatement had no bearing on the decision, which was in terms of percentages.
130. Mr Tickner took these matters into account, as reflected in his second affidavit.¹⁸⁸

The "non-essentiality" of MPF

131. These allegations are tied up with the question whether, in considering the best interests of the FMIF's members, the fact that LMIM also had obligations to the MPF was immaterial.
132. In this respect, Mr Tickner relies on the submissions under issue 5. Clearly the agreement of the MPF trustee was necessary for the settlement to occur, as it was both a party to the settlement documents (other than the Gujarat Contract) and a party to the litigation which was to be settled. Indeed, the plaintiff now concedes this.
133. Where the directors, conscious of the conflict, had obtained the WMS and Allens advices, as well as advice from Mr Monaghan, Mr Tickner acted reasonably in concluding that the MPF's agreement was required for the settlement to occur and therefore for the FMIF and PTAL to perform their obligations under the overall suite of settlement documents, and that it was appropriate to split the proceeds in order to justify the MPF's agreement to settle.

¹⁸⁷ Exhibit 38 (FMIF.400.001.0054).

¹⁸⁸ Exhibit 325 (SJT.LAY.002.0001).

The litigation funding analogy

134. It is correct that the MPF was not entirely in an analogous situation to a litigation funder, as a commercial funder is not usually a party to the litigation. Mr Tickner says that it was his idea that the analogy was apt. When he suggested it in a conversation with Mr Pappalardo of Allens, Ms Darcy and Mr Monaghan, none of them demurred from the suggestion.¹⁸⁹ On the contrary, Mr Monaghan then undertook to find out more information about litigation funding fees by asking Allens for advice on the subject.¹⁹⁰ The directors then obtained advice from WMS and Allens on that basis. Neither firm, nor Mr Monaghan, ever suggested that it was not an appropriate analogy. It was unnecessary to obtain separate legal advice on whether it was appropriate.
135. Mr Tickner also had the understanding about which he has given evidence. That understanding itself is indicative of an analogous situation to a litigation funder.
136. In the circumstances, Mr Tickner acted reasonably in considering that the analogy applied to the MPF.

The different interests of the FMIF and the MPF

137. Mr Tickner's evidence is that he was conscious of the different interests of the FMIF and the MPF and of LMIM's and his own conflict of duties. For those reasons he sought advice from WMS, Allens and Mr Monaghan. The settlement was negotiated principally by Mr Monaghan in the knowledge of the understanding of Mr Tickner and the other directors. The advice Mr Tickner saw satisfied him that it was appropriate and legally acceptable to split the proceeds of settlement.
138. In making his decision, Mr Tickner says he considered the settlement and the proceeds split from the separate points of view of each fund and concluded that it was in the best interests of both.¹⁹¹ Mr Tickner was not challenged about that evidence when he was cross-examined. His evidence should be accepted.

¹⁸⁹ Tickner #1 (exhibit 324, SJT.LAY.001.0001) at [191].

¹⁹⁰ Tickner #1 (exhibit 324, SJT.LAY.001.0001) at [192]; Exhibit 26 (FMIF.100.003.4665).

¹⁹¹ Tickner #2 (Exhibit 325, SJT.LAY.002.0001).

139. In those circumstances, Mr Tickner appropriately and adequately took into account both funds' differing interests. Even if the court were to find that he made an error of judgment in doing so, in all the circumstances his conduct was not negligent.

The central question

140. The central question is whether the directors failed to consider whether it was appropriate to split the proceeds.
141. This question is answered by all the evidence about the understanding, the advice sought, consideration of that advice and Mr Tickner's thought processes when he considered the Deed Poll.
142. In Mr Tickner's submission, his conduct was reasonable and he took great pains to act in his role as a director of LMIM as RE of the FMIF, with due care and attention.

The counter-factual

143. An essential question for the determination of whether s.601FD(1)(b) has been contravened is what a reasonable person, with the position and responsibilities of Mr Tickner and in LMIM's circumstances would have done if that person had acted with due care and diligence. It is submitted that there were only three realistic possibilities in relation to the proposed settlement with Gujarat. Mr Tickner could have:

- (a) refused to agree to the split, refused to settle the proceedings and thereafter denied any further funding by the MPF to the Bellpac Proceedings or continued those proceedings, but perhaps insisted that the FMIF fund them equally with the MPF (which it could not do);
- (b) done nothing and left PTAL to attempt to sell the Bellpac Property as mortgagee in possession, if it chose to (and if it could find a buyer other than Gujarat, which would not buy the land without settling all the associated claims); or
- (c) approved the split and the settlement (as he did).

144. At paragraph 37A of the 5FASOC the plaintiff pleads that, had Mr Tickner acted with the degree of care and diligence that a reasonable person would have exercised, he would not have concluded that the proceeds split was in the best interests of the members of the FMIF and would not have agreed to make the Settlement payment to the MPF. As to what Mr Tickner should have done, the plaintiff alleges only that Mr Tickner, acting reasonably, would have determined that:

(a) the MPF had no entitlement to the Settlement payment;

(b) it was not in the interests of the members of the FMIF to make the Settlement payment; and

(c) it would cause detriment to the FMIF if the payment was made

and would have agreed to the settlement proceeding with no funds being paid to the MPF.

145. Again, that allegation really relies on the legal obligations of the RE of the FMIF and its directors in circumstances where it was also the trustee of the MPF. This is addressed in dealing with issue 5.

146. Mr Tickner therefore submits that he acted with the necessary degree of care and diligence in the circumstances and this part of the claim should be dismissed.

Issue 4 - Did Mr Tickner fail to act in the best interests of the members of the FMIF?

147. To some extent, the matters which demonstrate that Mr Tickner was not negligent also go to show that he acted in the best interests of the members of the FMIF. Under this duty, his subjective belief that he was acting in the best interests of the members of the FMIF prevails unless it can be shown to be a belief that no reasonable person acting rationally could hold.

148. The onus is on the plaintiff to demonstrate that the directors did not honestly believe that agreeing to share the proceeds of the Gujarat settlement with the MPF was in the best interests of the members of the FMIF, or that their belief and conduct were, in all the circumstances, manifestly unreasonable.

149. In determining what was in the best interests of the members of the FMIF, regard must be had to the purpose and terms of the scheme. The investment objective of the FMIF was, among other things, 'to offer appropriate risk/return premium over cash rates on a range of different currencies'. To achieve this, the FMIF invested in a diversified portfolio of Australian first registered mortgages over commercial, residential, industrial, retail and vacant land, interest bearing cash investments and "at call" securities. The FMIF Constitution required LMIM as RE of the FMIF to invest member funds only in such investments.¹⁹² As at 30 September 2009, the asset allocation of the FMIF was 97.92% in registered first mortgage securities and 2.08% in cash.¹⁹³
150. It is not to the point to suggest that the directors might, in hindsight, have achieved a better outcome for the members of the FMIF. The only question is whether the directors reasonably believed that splitting the settlement proceeds was in the best interests of the members of the FMIF, having regard to the purpose of the scheme to make commercial loans from which it was expected to generate interest income. The members of the FMIF would have understood that they were investing in a fund which conducted commercial lending, as opposed to a capital guaranteed fund. They would therefore have expected LMIM in its role as RE of the FMIF to recover as much as possible from those loans, either as interest and principal repayments for complying loans, or by executing on security or taking legal action in respect of defaulting loans. It is uncontroversial that the FMIF Bellpac Loan was in the latter category.
151. The Bellpac Proceedings were proceedings against a non-borrower (Gujarat) for damages. Therefore it is of no moment that PTAL may have had priority under the Priority Deed, as the proceeds of any settlement with Gujarat (apart from the proceeds of sale of the Bellpac Property) were not obtained on execution of security. Further, the FMIF was not in the business of litigating in speculative action against non-borrowers and it was reasonable for the directors to consider that it was appropriate for it to settle that litigation on terms that they considered to be reasonable.

¹⁹² Exhibit 118 at cl.13.2; (FMIF.100.005.7639).

¹⁹³ Exhibit 1(FMIF.500.001.9688) at .0004.

152. In his second affidavit, about which he was not cross-examined, Mr Tickner gave evidence that:

- (a) he considered whether there were any commercially feasible options for recovery of the FMIF Bellpac Loan and concluded that there was not. He did not consider that the option of not settling with Gujarat would have been in the best interests of either the FMIF or the MPF;¹⁹⁴
- (b) he considered the potential exposure to costs orders if the Bellpac Proceedings did not settle;¹⁹⁵
- (c) he concluded that an agreement to split the settlement proceeds was in the interests of the members of the FMIF because:¹⁹⁶
 - (i) the Bellpac Proceedings were complex, risky, uncertain and expensive;
 - (ii) the consent of LMIM as trustee of the MPF was necessary to settle the Bellpac Proceedings;
 - (iii) the outcome would not have been possible without LMIM as trustee of the MPF's contribution;
 - (iv) he understood that LMIM as trustee of the MPF had funded the Bellpac Proceedings on the basis that it would share in the fruits of any litigation;
 - (v) FMIF was unable to continue funding the proceedings; and
 - (vi) there was a risk that, if the FMIF and MPF did not agree on a reasonable proceeds split, the FMIF may be at risk of further litigation;
- (d) further, Mr Tickner:

¹⁹⁴ Tickner #2(Exhibit 325, SJT.LAY.002.0001) at [1.1].

¹⁹⁵ Tickner #2 (Exhibit 325, SJT.LAY.002.0001) at [1.1].

¹⁹⁶ Tickner #2(Exhibit 325, SJT.LAY.002.0001) at [1.2].

- (i) reviewed the independent advice provided by WMS and Allens; and
- (ii) concluded that the proceeds split was legally acceptable.¹⁹⁷

153. It is submitted that, to act in the FMIF members' best interests, disregarding its own interests, does not require the RE to ignore the powers that it has to enter into related-party transactions in the permitted circumstances. The members' best interests take that power into account. The RE of the FMIF, in deciding whether to agree to a split of the proceeds of settlement, had to consider only the best interests of its members and not whether the split would benefit the MPF. It could do so if, knowing that the MPF's consent to the settlement was necessary and that it had duties, as trustee of the MPF, to act in the best interests of the MPF's members, it considered that it was in the best interests of the FMIF's members that the settlement proceed and that it recover a certain sum then rather than continue uncertain and expensive litigation. If that was considered to be in the FMIF's best interests, then taking the necessary steps to settle was necessary, including to pay the MPF a reasonable portion of the proceeds in order that the MPF's trustee, acting in the MPF's best interests, would also be entitled to agree to the settlement. (This is reflected in Allens' advice at [27].)

154. Even if there had not been an "understanding" and the MPF had been suing for the off-chance that it could get control of the development land and develop it in order to recover some of its loan, it was still in FMIF's interests to pay the Settlement payment to the MPF because the MPF could not allow a settlement that, by selling the land to Gujarat, would deprive it of any ability to develop the land and to recover its loan. For the FMIF it was prudent to take the money and run. It could only take the money if it could persuade the MPF to settle, as Gujarat would not buy the land without settling all the litigation.

155. The plaintiff has not demonstrated that Mr Tickner failed to have regard to the best interests of the members of the FMIF. To the contrary, the evidence shows the opposite. Mr Tickner was minded to achieve what he understood to be not only a fair result for both funds, but a result that accorded with the

¹⁹⁷ Tickner #2 (Exhibit 325, SJT.LAY.002.0001) at [1.3].

understanding he held from the time that proceedings against Gujarat were commenced; namely, that the funds would share the fruits of the litigation. Mr Tickner's subjective belief that agreeing to split the proceeds of settlement between the funds was in the best interests of the members of the FMIF must prevail unless it is shown by the plaintiff to be objectively unreasonable. It is submitted that the plaintiff has not discharged its burden of proof in this regard.

156. The situation facing Mr Tickner and the other directors of LMIM is analogous to that considered by the Supreme Court of Victoria in *Invensys*.¹⁹⁸ It was necessary and reasonable for the RE of the FMIF to agree to pay a proportion of the proceeds of settlement to the trustee of the MPF in order to persuade the latter to agree to settle all the disputes between the parties. Only by paying a sum to the trustee, which itself had to act in the interests of the beneficiaries of the MPF, could the RE receive funds which it otherwise would not receive, where the proposed settlement was clearly in the interests of the FMIF members.
157. Another way of looking at the situation that faced the parties is to consider the common sense and commercial prudence with which wholly arm's length parties in the respective positions of the RE of the FMIF and the trustee of the MPF might have dealt with the options before them. This court should consider the transaction terms that would result if, among other things, the parties were unrelated in any way and each party was concerned only to achieve the best available commercial result for itself in all the circumstances.
158. In *Australian Securities and Investments Commission v Australian Investors Forum Pty Ltd (No 2)*,¹⁹⁹ Palmer J considered the test in s.210: namely, whether it was unnecessary for a public company to obtain members' approval to give a financial benefit to a related party, because the transaction would be reasonable in the circumstances if it were between arm's length persons. That section is applied to managed investment schemes by s.601LA. Although s.210 is not in issue in this proceeding, considering the transaction from that point of view will assist the court in determining whether the directors acted in the best interests of the members of the FMIF.

¹⁹⁸ See in particular paragraphs 52 to 54 above.

¹⁹⁹ (2005) 53 ACSR 205.

159. In considering the transaction from this viewpoint, the matters set out in [84] and [85] above are relevant. Considering those matters in particular, and the full circumstances in general, the court, applying common sense and commercial prudence,²⁰⁰ can form its own view of whether the actual transaction was within the range of transactions that might result from the exercise of a judgment by a person with an honest and experienced commercial mind. Of course, it is not necessary that the court agree with the directors' decision. Their exercise of their discretion prevails unless their decision was manifestly unreasonable.²⁰¹
160. In all these circumstances, it can be seen that Mr Tickner acted in the best interests of the members of the FMIF when he approved payment of the Settlement payment to LMIM as trustee for the MPF. His conduct in making his decision and the decision itself were not manifestly (or at all) unreasonable.
161. This part of the plaintiff's claim should be dismissed.

Issue 5 - Did the duties in s.601FD(1) of the Act require Mr Tickner to cause LMIM as trustee of the MPF to agree to settle the Bellpac Proceedings for no consideration?

162. This issue appears to call into consideration whether any separate duties which Mr Tickner owed LMIM as trustee of the MPF were overridden by the duties in s.601FD(1) of the Act. It is not at all clear on the pleadings, but the sting of the array of allegations appears to be that Mr Tickner's appointment as a director of LMIM gave rise to a "conflict", because he is a director of the company that acts as trustee and responsible entity for the MPF and the FMIF respectively. However, the mere fact that there may be a potential conflict faced by Mr Tickner by virtue of his obligations to LMIM as trustee of the MPF on one hand, and his obligations to FMIF as RE of the FMIF (and the members of the FMIF) on the other, does not of itself give rise to any conflict.²⁰² Even a real conflict does not automatically require a director in Mr Tickner's position not to

²⁰⁰ Palmer J, (2005) 53 ACSR 205 at [458].

²⁰¹ *Invensys* at 110-111, [118]; *Westpac v Bell Group* – see paragraph [60] above.

²⁰² *Clarence Property Corporation Limited v Sentinel Robina Office Pty Ltd* [2018] QSC 95 at [108] and the authorities cited.

act, provided there is informed consent from each of the entities to whom the relevant duties are owed.²⁰³ But that is not the case here.

163. Any alleged conflict in the present case must arise by reason of the fact of the agreement between LMIM in its different capacities to split the settlement proceeds. Thus, it may be contended by the plaintiff that Mr Tickner's duties conflicted, and the terms of ss601FC(1) and 601FD(1) required him to prefer the interests of the members of the FMIF and, in doing so, to disregard his duties to LMIM as trustee of the MPF and LMIM's duties to the beneficiaries of that trust.
164. The overriding duty provisions in ss 601FC and 601FD are engaged where a director has a "conflicting duty".²⁰⁴ Given that the duties owed under Part 2D.1 of the Act are essentially the same as those owed under Part 5C, it is not at all clear whether a conflicting duty is intended to refer to (literally) a duty which of itself sits in conflict with a Part 5C duty, or is intended to mean a duty which, if observed, would give rise to a conflict with what a director would otherwise be obliged to do under Part 5C, such that there is a genuine conflict of incompatible duties. It is submitted that the latter construction should be preferred.
165. Part 2D.1 of the Act contains the general duties owed by directors and other officers of a corporation. Included among them are the duty to act with reasonable care and diligence (s.180), the duty of good faith (s.181), and the obligation not to use their position improperly to gain an advantage (s.182). Those duties are owed by directors to the company; in this case LMIM. LMIM in turn owes duties to the beneficiaries of the MPF. But those duties are not owed directly by the directors. In contrast, the duties owed by the directors under s.601FD(1) of the Act are owed to the members of the FMIF.
166. Therefore, the correct analysis of any conflicting duties is between:
- (a) the duties owed by the directors to LMIM; and

²⁰³ *Mantonella P/L v. Thompson* [2009] QCA 80 at [84]; [2009] 2 Qd R 524. Informed consent of the members of the FMIF and the beneficiaries of the MPF themselves was not required in circumstances set out in s.210.

²⁰⁴ ss 601FC(3) and 601FD(2) *Corporations Act 2001* (Cth).

(b) the duties owed by the directors to the members of the FMIF.

167. The test for the existence of conflicting duties to two or more principals is that stated in *Beach Petroleum NL v Kennedy*²⁰⁵ as follows:

“In a situation of alleged conflict of duty and duty, there must be ‘a real sensible possibility of conflict’. It is not enough to identify ‘some conceivable possibility’ which may result in a conflict ... [Counsel] submitted that in neither case – a retainer for restructuring or for the currency swap – did a ‘real sensible possibility of conflict’ arise in the circumstances of this case. We accept this submission in the case of the currency swap. The limited retainer for completion and delivery of documents to implement the transaction which had already been agreed, was restricted to clerical acts that gave rise to no conflict of the relevant character.”

168. In *Boardman v Phipps*,²⁰⁶ Lord Upjohn said:²⁰⁷

“The phrase ‘possibly may conflict’ requires consideration. In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict.”

169. In *Boulting v Association of Cinematograph, Television and Allied Technicians*,²⁰⁸ Upjohn LJ had earlier said:²⁰⁹

“... a broad rule like this must be applied with common sense and with an appreciation of the sort of circumstances in which over the last 200 years and more it has been applied and thrived. It must be applied realistically to a state of affairs which discloses a real conflict of duty and interest and not to some theoretical or rhetorical conflict.”

170. More recently, in *Bristol and West Building Society v Mothew*,²¹⁰ Millett LJ observed:²¹¹

“...[I]f a fiduciary is properly acting for two principals with potentially conflicting interests he must act in good faith in the interests of each and must not act with the intention of furthering the interests of one principal

²⁰⁵ [1999] NSWCA 408; 48 NSWLR 1, at [425]-[427].

²⁰⁶ [1967] 2 AC 46.

²⁰⁷ At 124.

²⁰⁸ [1963] 2 QB 606.

²⁰⁹ At 637-8.

²¹⁰ [1998] Ch 1.

²¹¹ At 19.

to the prejudice of those of the other ... I shall call this 'the duty of good faith'. But it goes further than this. He must not allow the performance of his obligations to one principal to be influenced by his relationship with the other. He must serve each as faithfully and loyally as if he were his only principal."

171. A director must not be inhibited by the existence of any duty owed to another and must take care not to find himself or herself in a position where there is an actual conflict of interest so that the obligation to one principal cannot be fulfilled without failing in his obligation to the other.²¹² A director must not engage in conduct intended to depreciate the value and progress of the company's business in favour of some other undertaking. For there to be a true conflict there must be an actual opposition of interests.²¹³
172. A director of a trustee company must act in the best interests of the company. The best interests of the trustee company will generally be to act properly in accordance with the trust deed and in the interests of the beneficiaries. In other words the director's duty is to ensure that the trustee exercises its powers honestly and in the best interests of the beneficiaries of the trust.²¹⁴
173. In his opening, counsel for the plaintiff said this:²¹⁵

"the members of the FMIF registered scheme were entitled under section 601FD – and entitled to think of the directors as well that they would act with undivided loyalty towards them in the interests of the scheme. That is, they were entitled to expect that LMIM and its directors would take all steps available to them to ensure the best results for the scheme and its members be pursued. The fact that such steps ... would not be in the best interests of LMIM personally or in its capacity as trustee for the MPF is of no consequence so far as the law [is] concerned. The fact that such steps might involve clear breaches of LMIM's obligations as trustee of MPF and to the beneficiaries of that trust is no answer or excuse or reason why anything other than the steps that were in the best interests of [FMIF] must be taken by LMIM and its directors."

174. Those statements suggest that, to the extent that there was any conflicting duty owed by the directors to LMIM, it was overridden by the duty in s.601FD. But

²¹² *Bristol and West Building Society v Mothew* [1998] Ch 1 at 19 per Millett LJ.

²¹³ *Farrington v Rowe McBride & Partners* [1985] 1 NZLR 83 at 92, cited with approval in *Lowy v Alexander* [2000] NSWSC 661 at [26].

²¹⁴ *Australasian Annuities Pty Ltd (in liq) v Rowley Super Fund Pty Ltd* [2015] VSCA 9 at [59]; *Re S & D International Pty Ltd (No 4)* [2010] ACSR 595.

²¹⁵ T1-17, lines 3 to 13.

it is the suggestion that there was some compulsion on LMIM's directors to cause the company to breach its duties to the beneficiaries of the MPF which is controversial. That is in stark contrast to the position at general law.

175. Section 601FD(1)(c) involves only a contest between the members and the RE. It has no impact on a director's fiduciary duties at general law.²¹⁶ Those duties will not be overridden by the operation of relevant legislation unless there is a clear intention to do so.²¹⁷ In the absence of an unambiguous contrary intention in the statute, a statute should be interpreted so that it is consonant with the principles of equity.²¹⁸ In *Timbercorp Securities Limited (in liq) v WA Chip & Pulp Co Pty Ltd*,²¹⁹ Finkelstein J said:²²⁰

"The Corporations Act also imposes duties upon an officer (which would include a liquidator) of a responsible entity: see s 601FD. The duties are similar to those owed by the responsible entity. Like the obligations of the responsible entity, the duties of an officer override any conflicting duty the officer has under Pt 2D.1: s 601FD(2).

The liquidators seem to be of the opinion that by reason of ss 601FC and 601FD they are required to look after the interests of investors even if that be at the expense of other creditors. In my view that is wrong. There is nothing in ss 601FC or 601FD that overrides the liquidator's duty to those interested in the winding up. It would be quite extraordinary were that to be the case. I think the liquidators should readjust their priorities."

176. His Honour's observations are clearly correct.²²¹ Superficially, the interests of creditors and the interests of scheme members are in conflict. If the liquidator refuses to pay creditors, that is in the interests of the scheme members. But that would be an absurd result. In fact, paying the creditors (and thereby having regard to their interests) is not in conflict with the interests of the scheme

²¹⁶ *Allco Funds Management Limited (Receivers and Managers Appointed) (In Liquidation) -v- Trust Company (RE Services) Limited (in its capacity as responsible entity and trustee of the Australian Wholesale Property Fund)* [2014] NSWSC 1251 at [189].

²¹⁷ *Commissioner of State Revenue v Can Barz Pty Ltd* [2016] QCA 323 at [17]; [2017] 2 Qd R 537; *Potter v Minehan* (1908) 7 CLR 277 at 304.

²¹⁸ *Minister for Lands and Forests v McPherson* (1991) 22 NSWLR 687 at 699-701 per Kirby P, with whom Mahoney and Meagher JJA agreed.
[2009] FCA 901.

²¹⁹ At [10]-[11].

²²⁰ However, in *Owen, in the matter of RiverCity Motorway Pty Limited (Administrators Appointed) (Receivers and Managers Appointed)* [2014] FCA 1008 at [79]; 225 FCR 541; 318 ALR 226; 102 ACSR 185, Greenwood J held that a liquidator of a responsible entity is not an officer of the corporation for the purposes of the Act. Even if that is correct, the present case does not involve a liquidator. The defendants were officers of LMIM as RE of the FMIF and it is submitted that Finkelstein J's observations would apply.

members because it discharges the responsible entity's liabilities and prevents it being sued. The interests of the members of the scheme are not limited to their immediate economic interests.

177. So, for example, in *Lewski*, by the directors amending the constitution to allow the RE to obtain additional fees with no benefit to the fund members, there was a clear conflict of interest between the RE on the one hand and the fund members on the other. The directors in *Lewski* could not act in the interests of the RE without causing a detriment to the members of the scheme. But that is not the case here.
178. On an objective and rational assessment, by entering into the split the FMIF was guaranteed \$30 million if Gujarat settled. By not entering into the split, it was likely to receive nothing. There was no possibility of a detriment to the members of the FMIF if a deal was done with LMIM as trustee of the MPF which would in turn allow the Bellpac Proceedings to settle. The alternative was not to settle with Gujarat, and to be left to sell the Bellpac Land, if a buyer could be found.
179. In the present case there is no evidence of any occasion when Mr Tickner had to choose between two or more ways in which the settlement with Gujarat could be framed or implemented where the interests of LMIM as trustee for the MPF and the members of the FMIF might have diverged. For that reason, it is submitted that there was in truth no real conflict. To the extent that a conflict arose about how much LMIM as trustee of the MPF should receive in any split, that conflict was appropriately managed by the directors first obtaining the WMS Report which helped them to affix a percentage that was objectively reasonable as between the funds.

Issue 6 – Did LMIM as RE of the FMIF suffer any loss as a result of any breach?

180. Section 1317H(1) of the Act relevantly provides that the court may order a person who has contravened a civil penalty provision to compensate the scheme for damages suffered if the damage resulted from the contravention.
181. The words “resulted from” in this section are words by which, in their natural meaning, only the damage which as a matter of fact was caused by the

contravention can be the subject of an order for compensation.²²² Damage will have “resulted from” a contravention if, as a matter of fact, there was a “causal connection between the damage and the contravening conduct”; or put simply, the damage was caused by the contravention.²²³ A comparison must therefore be made between the position which the party that has allegedly suffered loss is in, and the position it would have been in, had the defendants not breached their duties and had instead taken the required steps in relation to those duties.²²⁴

182. The question whether the FMIF suffered loss as a result of the directors’ decision to split the proceeds of the settlement and consequently to settle the disputes depends on what would or would not have happened in relation to the proposed Gujarat settlement if the defendants had not breached their duties and had instead taken the required steps, exercised care and diligence, and had regard to the best interests of the members of the FMIF, in relation to that settlement.
183. The plaintiff asserts that, had they not breached their duties, the directors would have ignored their duties to LMIM as trustee of the MPF and would have settled the proceedings on the basis that the MPF would receive no part of the settlement proceeds or, at most, would receive a reimbursement of the costs it had paid, together with interest on that sum.
184. But that contention does not take into account the fact that, in order to obtain a settlement with Gujarat, it was necessary for LMIM as trustee of the MPF to agree to give up its claims in the Bellpac Proceedings. So if LMIM as trustee of the MPF refused to settle, it is likely that Gujarat would not have settled with PTAL either at all, or for an amount greater than the purchase price of the land. In either case, the best that PTAL could have expected to achieve was the land value, assuming there was a buyer. The other alternative was to receive nothing from Gujarat, and the prospect of continuing the litigation, perhaps without funding from LMIM as trustee for the MPF.

²²² *Adler v Australian Securities and Investments Commission (“Adler v ASIC”)* [2003] NSWCA 131 at [709]; 21 ACLC 1810; 46 ACSR 504; 179 FLR 1 per Giles JA.

²²³ *Trilogy* at [662].

²²⁴ *Marks v GIO Australia Holdings Ltd* (1998) 196 CLR 494 at [42]; *Adler v ASIC* at [709]; *Trilogy* at [670].

185. It is therefore submitted that, if Mr Tickner did breach his duties, any such breach did not cause any loss to be suffered by LMIM as RE for the FMIF.

Issue 7 – Should Mr Tickner be exonerated?

186. If the court were to find that Mr Tickner's conduct did not satisfy the requirements of s.601FD, nevertheless it would be appropriate for the court to relieve him of liability, as it may do under either s.1317S(2) or s.1318 of the Act.

187. In making the decision to split the settlement proceeds between the FMIF and the MPF, Mr Tickner acted honestly, in good faith and in the belief that he was acting in the best interests of the members of the FMIF and also in the best interests of the beneficiaries of the MPF. He made the decision in very difficult circumstances - legally, factually and commercially.

188. Mr Tickner made that decision having been of the belief that the MPF had funded the proceedings, on behalf of all the plaintiffs, for the prospective benefit of both the FMIF and the MPF and so that they would both benefit from a successful conclusion to the litigation. Whether or not he was mistaken in that belief, it was his honest understanding.

189. In the ten months or so before making the decision, Mr Tickner had obtained professional advice from a number of sources that led him to understand that LMIM, as trustee of the MPF, was entitled to payment of part of any proceeds of the litigation. It was also Mr Tickner who suggested that independent advice be obtained from WMS and he readily concurred in obtaining Allens' advice.

190. First, he was advised by Mr Monaghan to the following effects:

- (a) the MPF was entitled to treat the costs of the litigation as part of the enforcement costs of its security and would therefore be entitled to recover them from any proceeds, and the MPF could protect its interests more broadly as it was a party to the litigation and would have to be a party to any settlement;²²⁵

²²⁵ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [146].

- (b) there had to be a fair split between the FMIF and the MPF of any proceeds of the litigation because the FMIF could not settle the proceedings without the MPF's consent;²²⁶
- (c) as at November 2010 (that is, shortly after the mediation), Mr Monaghan said that the LMIM was yet to determine how the proceeds of the expected settlement would be split between the two funds,²²⁷ suggesting that it was permissible for LMIM to do so;
- (d) when Mr Tickner suggested that the MPF was akin to a litigation funder, Mr Monaghan apparently agreed (and certainly did not demur), subject to making enquiries into normal litigation funding fees;²²⁸
- (e) Mr Monaghan then obtained information from Allens about such fees;²²⁹
- (f) when the draft WMS report was received, Mr Monaghan advised Mr Tickner that it was "fine", but it should be left in draft until the deal with Gujarat was finalised;²³⁰
- (g) when the Allens advice was received, Mr Monaghan advised that the advice, while complicated, concluded that the transaction was OK;²³¹
- (h) Mr Monaghan also assisted Mr Tickner to understand the Allens advice;²³²
- (i) there is no evidence that Mr Monaghan ever informed Mr Tickner that the Allens advice (or the WMS advice) was inadequate or wrong or could not be relied on in informing Mr Tickner's decision on how to treat the proceeds of settlement;
- (j) Mr Monaghan or Mr Fenwick of his firm also took Mr Tickner and the other directors through the Deed Poll and explained its provisions before they executed it.²³³

²²⁶ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [148].

²²⁷ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [174], Exhibit 24 (FMIF.100.002.9885). Similarly, at [179], FMIF.100.002.9820.

²²⁸ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [191].

²²⁹ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [192], exhibit 26 (FMIF.100.003.4665).

²³⁰ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [207], FMIF.200.013.8984.

²³¹ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [218], exhibit 91 (FMIF.200.011.5748).

²³² Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [217], informed by Tickner #2 (Exhibit 325, SJT.LAY.002.0001) at [2.5].

²³³ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [255].

191. Secondly, he obtained, read and considered the WMS advice, which advised that the proposed split of the proceeds in the ratio 65:35 was fair and reasonable having regard to comparable arm's length transactions.
192. Thirdly, he received, read and considered the Allens advice, which concluded that the proposed split of the proceeds was legally acceptable, subject to a number of matters. Of those qualifications:
- (a) items (c) and (f) were satisfied;
 - (b) Mr Tickner considered the issues from the different points of view identified in each of items (a), (b) and (d);²³⁴
 - (c) Allens advised that they were not aware of any reason why agreeing to the split of proceeds would be in breach of the directors' general law and statutory duties referred to in item (g);
 - (d) as to (e), the whole purpose of obtaining the advice from WMS, Allens and Mr Monaghan was to comply with the procedures in the compliance plan, with those advices standing in the position of a compliance report – a process that had been adopted by the board in February 2011 and with which Mr Monaghan did not disagree;²³⁵
 - (e) in any event, the plaintiff does not allege that any loss was suffered as a result of any non-compliance with the FMIF's compliance policy.
193. Mr Tickner also carefully considered all the ramifications of the proposed split, from the points of view of both the FMIF and the MPF and concluded that it was in the best interests of the members and beneficiaries, respectively, of both funds.²³⁶ He did so in the belief that he knew of the amounts then owed by Bellpac to the respective funds.²³⁷

²³⁴ Tickner #2 (Exhibit 325, SJT.LAY.002.0001).

²³⁵ Tickner #2 (Exhibit 325, SJT.LAY.002.0001), [3.1], FMIF.200.012.6490.

²³⁶ Tickner #2 (Exhibit 325, SJT.LAY.002.0001). See also the recitals to the Deed Poll, which Mr Tickner considered to be correct: Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [256.3].

²³⁷ Contrary to the implication from cross-examination of some defendants – to the effect that they did not enquire into how much was owed when they signed the Deed Poll – the Deed Poll itself stated the approximate amounts of the debts: Exhibit 36 (FMIF.008.001.0126), recital B (although the FMIF debt was understated by about \$7M, as the amount outstanding was in fact about \$52.5M: Exhibit 38).

194. Thus, even if the court concludes that Mr Tickner has breached his duties because the split was not legally acceptable and commercially reasonable, he acted carefully, honestly, in good faith, on the basis of independent accounting and legal advice, but applying his own mind in making his decision. Neither he nor LMIM obtained any personal benefit from the decision to split the proceeds. He honestly thought it was in the best interests of both funds in the circumstances.
195. If the court nevertheless holds that Mr Tickner breached one of the relevant duties, but particularly if the court finds that he breached only the duty to act in the best interests of the members of the FMIF (that is, he was not negligent), all of these matters justify the court relieving Mr Tickner of any liability to the plaintiff.

Conclusion

196. Mr Tickner acted honestly and reasonably in a difficult situation. Through his and the other directors' efforts, they realised over \$45 million in the settlement with Gujarat. Of this, over \$30 million was for the members of the FMIF. That was a far better result than the FMIF was likely to have achieved if it had not been a party to the Bellpac Proceedings and had instead attempted merely to sell the land to Gujarat in the absence of any other buyer, or if it had (if it could) continued the litigation to judgment and any appeals.
197. The agreement between the funds was one that would have been entirely reasonable and, indeed, likely if it had been made between arm's length trustees in the circumstances of the two funds. In reaching that agreement, Mr Tickner acted honestly, carefully and reasonably, having taken and considered expert advice and having directed his mind to the issues and the proposed resolution of the disputes. He considered the proposed transaction from the different points of view of the interests of both funds and concluded in each case that it was in the interests of the fund's members.
198. The MPF had effectively taken all the risk to achieve the settlement. Throughout the litigation, Mr Tickner took advice from and relied on Mr Monaghan. He was right in doing so. Before agreeing to split the proceeds,

he obtained and considered expert accounting and legal advice. He followed that advice in a considered manner, not just blindly accepting it.

199. In those circumstances, it could not be said that Mr Tickner acted unreasonably.
200. For the reasons outlined above, the claim against Mr Tickner should be dismissed.

K A Barlow and G Coveney
Counsel for the Sixth Defendant

7 April 2019

Appendix A - Background

LMIM and the directors

61. On 31 January 1997, LMIM was incorporated. The first defendant (“Mr Drake”) was appointed as director of LMIM at the time of incorporation. The second defendant (“Ms D’Arcy”) was appointed as a director of LMIM on 12 September 2003. In June 2006 and September 2006 respectively, the third defendant (“Mr van der Hoven”) and the fourth defendant (“Ms Mulder”) were also appointed as directors of LMIM. The sixth defendant (“Mr Tickner”) was appointed a director of LMIM on 18 September 2008.

The Custody Agreement

62. On 4 February 1999, LMIM entered into a Custody Agreement with Permanent Trustee Australia Limited (“PTAL”).²³⁸ PTAL was to hold the secured assets of each of LMIM’s registered managed investment schemes on trust²³⁹ for LMIM as responsible entity of that scheme. By cl.3.2(a) of the Custody Agreement, LMIM authorised PTAL to ‘purchase, acquire, issue, release sell or dispose of property ...on receipt of instructions from [LMIM] and to execute all transfers, releases, and assurances and other documents necessary for any such purpose.’ Clause 4.1 of the Custody Agreement outlines PTAL’s duty to act on LMIM’s instructions. It provides:

“The Client is responsible for taking all decisions in relation to the Portfolio and properly communicating to Permanent Instructions in relation to the assets of the Portfolio. Subject to this agreement, Permanent must act on the Client’s Instructions in relation to any assets of the Portfolio. If Permanent does not have Instructions, Permanent is not required, subject to this agreement, to make any payment or take any other action in relation to any matter concerning any asset in a Portfolio.”

The FMIF

63. The LM First Mortgage Income Fund (“FMIF”) was established in September

²³⁸ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [24] FMIF.0500.024.0227.

²³⁹ Although not a bare trust: See *Public Trustee of Qld v Opus Capital Ltd* [2013] QSC 131 at [20]; 96 ACSR 493; *ISPT Nominees Pty Ltd v Chief Commissioner of State Revenue* [2003] NSWSC 697 at [280]; 59 NSWLR 196.

1999. It had a constitution which was replaced on 10 April 2008 (“the Constitution”).²⁴⁰ The Constitution subsisted during the period the subject of these proceedings. The Constitution operated as a binding Deed between LMIM and the members of the FMIF.²⁴¹ The definition of “Mortgagee” in the Constitution notes that ‘in all mortgages held by the Scheme the Mortgagee will be the Custodian as agent for the RE.’ The “Custodian” is defined as PTAL. The RE is defined as LMIM.

64. Clause 2.1 of the Constitution states that the RE continues to act as trustee of the Scheme. Clause 2.2 is a statement recognising that the RE holds Scheme Property on trust for the members. By cl.2.3(a) of the Constitution, the RE appointed PTAL as agent to hold the Scheme Property on its behalf. Clause 13.7 required the RE to direct PTAL to deal with the Scheme Property in accordance with the Constitution.
65. Clause 13.1 of the Constitution provided that the RE had all the powers of a natural person to invest the Scheme Property, and to treat the Scheme Property as though it were the absolute owner and acting in its personal capacity. Clause 13.2 of the Constitution limited the types of investments in which the RE would invest members’ funds to (essentially) mortgages secured over property with a maximum Loan-to-Value ratio (“LVR”) of 75% and interest-bearing investments backed by banks. Clause 13.4 provided that, where the RE made a development loan, it was required to ensure that there were persons with relevant project management experience to manage the loan.
66. Clause 29 relevantly provided that:
- (a) nothing in the Constitution restricts the RE or its associates from:
 - (i) dealing with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity) (cl.29.1(a));
 - (ii) being interested in any contract or transaction with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity) (cl.29.1(b)); or

²⁴⁰ Exhibit 118 (FMIF.100.005.7639)

²⁴¹ Clause 4.

- (iii) acting in the same or similar capacity in relation to any other trust or managed investment scheme (cl.29.1(c)); and
- (b) all obligations of the RE which might otherwise be implied by law are expressly excluded to the extent permitted by law (cl.29.2).

The MPF

67. LMIM was also the trustee of the LM Managed Performance Fund (“the MPF”). The MPF had a much broader investment mandate than the FMIF and could take positions in higher risk investments. The MPF was only open to investment by wholesale or sophisticated investors and was only sold to investors via a network of financial advisers.

Mr Tickner’s roles within LMIM

68. Mr Tickner was employed by a related services company, LM Administration Pty Ltd (“LMA”), from June 2002, initially in the role of Business Development Manager. He held this role until about 2007, when he became Asset Manager. He became a director of LMIM in September 2008. By then he was the Head of Lending Distribution. Between 2002 and 2009 he worked at the Sydney office.
69. In 2009 Mr Tickner relocated from Sydney to the Gold Coast. In or about mid-2010 he became the head of the Property Asset Management (“PAM”) Team. He resigned as a director on 13 July 2012. He formally resigned as an employee of LMA on 1 August 2012, but returned as a contractor from September 2012.

David Monaghan

70. David Monaghan was initially employed by LMA as a commercial lending manager. Mr Monaghan went on to become the head of the Commercial Lending Team, which became the PAM Team. He was also the chair of the Credit Committee and the designated Risk Manager for the FMIF.²⁴²

²⁴² Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [30]-[31].

71. In or around March 2010, Mr Monaghan left the employ of LMA to establish Monaghan Lawyers.²⁴³ He thereafter provided legal services to LMIM through Monaghan Lawyers.

The FMIF Bellpac Loan

72. On 10 March 2003, PTAL as custodian for the FMIF entered into a loan agreement with GPC Bellambi Pty Ltd (subsequently known as Bellpac Pty Ltd) (“Bellpac”).²⁴⁴ The initial loan was for \$16 million, but further advances were made between 2003 and 2008 (“FMIF Bellpac Loan”). As security for the FMIF Bellpac Loan, PTAL held security, including:

- (a) a first registered mortgage over the relevant land (“the Bellpac Property”);²⁴⁵ and
- (b) a first registered Deed of Charge over the property, assets and undertakings of Bellpac.²⁴⁶

The MPF GPC Loan

73. On 14 July 2004, LMIM as trustee for the MPF entered into a loan agreement with Great Pacific Capital Limited (“GPC”).²⁴⁷ The loan amount was \$3 million (“MPF GPC Loan”). On 17 December 2004, the MPF GPC Loan was varied to provide LMIM as trustee of the MPF with additional security in the form of a second mortgage over the Bellpac Property.²⁴⁸ (Bellpac and GPC were related corporations controlled by the same people.) The GPC Loan came to be treated by LMIM as part of the amounts owed by Bellpac to LMIM as trustee of the MPF.

The MPF Bellpac Loan

74. On 23 June 2006, LMIM as trustee of the MPF entered into a loan agreement

²⁴³ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [35].

²⁴⁴ Exhibit 120 (MPF.001.004.4454)

²⁴⁵ Exhibit 50 (FMIF.013.003.0092).

²⁴⁶ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [48.4] FMIF.300.002.2033.

²⁴⁷ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [57] FMIF.300.002.1921.

²⁴⁸ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [59] MPF.001.004.4726.

with Bellpac (“MPF Bellpac Loan”).²⁴⁹ The loan amount was \$6 million. The MPF Bellpac Loan was secured by, among other things, a second registered Deed of Charge over the property, assets and undertakings of Bellpac.²⁵⁰

The Priority Deed

75. On 23 June 2006, PTAL, LMIM, Bellpac, GPC and others entered into a Priority Deed regulating the priority on their various securities.²⁵¹ Pursuant to cl.31 of the Priority Deed, PTAL had first priority to the extent of \$33.8 million (plus interest and enforcement expenses) and the MPF had second priority in the amount of \$11 million (plus interest and enforcement expenses). Clause 3.2 of the Priority Deed provided:

“Subject to any prior right in favour of any other person, all money received by the Mortgagor, a Mortgagee or any Receiver appointed by a Mortgagee in respect of the Security must be applied in the order of priority referred to in clause 3.1.”

Proceedings in respect of the Bellpac Property

76. In 2004, the Bellpac Property became subject to a grant of a mining lease to Gujarat NRE Coking Coal Limited (“Gujarat”). Pursuant to agreements entered into between Bellpac and Gujarat, Gujarat was required to remediate part of the Bellpac Property by December 2007 to allow that land to be developed by Bellpac.
77. In 2007, Bellpac brought proceedings against Gujarat to compel Gujarat to comply with its remediation obligations.²⁵² A settlement of those proceedings was recorded in a Deed of Settlement dated 12 September 2007²⁵³ and a Restated Deed of Settlement dated 23 July 2008.²⁵⁴

²⁴⁹ Exhibit 64 (FMIF.006.001.0031)

²⁵⁰ Exhibit 66 (FMIF.500.008.4491).

²⁵¹ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [67] FMIF.040.003.0036.

²⁵² Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [111] FMIF.036.001.0118.

²⁵³ Exhibit 80 (FMIF.007.001.0213).

²⁵⁴ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [114] FMIF.500.021.3978.

78. There were ongoing disputes between Bellpac and Gujarat that ultimately became the subject of further proceedings between them.²⁵⁵

Proceedings by the MPF and Bellpac against Gujarat

79. On 14 May 2009, PTAL appointed receivers and managers to Bellpac pursuant to its mortgage and charge.²⁵⁶ On 7 July 2009, LMIM as trustee of the MPF and Bellpac commenced proceedings against Gujarat (“the Bellpac Proceedings”).²⁵⁷ A statement of claim was filed on 22 July 2009.²⁵⁸ The relief sought was initially limited to declarations and damages.
80. Allens Arthur Robinson (“Allens”) were retained to act on LMIM’s behalf. Gujarat filed a defence on 7 September 2009.²⁵⁹ Mr Monaghan was the person who managed the litigation and the recovery actions against Bellpac. He provided regular updates to the directors.²⁶⁰
81. PTAL was not initially a party to the proceedings. It was added as a plaintiff upon the filing of an Amended List Summons²⁶¹ and Amended Commercial List Statement on 8 February 2010.²⁶²
82. On or about 31 August 2010, LMIM as the trustee of the MPF provided an undertaking as to damages in the Bellpac Proceedings.²⁶³
83. On 23 July 2010, Mr Monaghan informed Mr Tickner that the parties in the Bellpac Proceedings had been ordered to attend a private mediation.²⁶⁴ The mediation occurred on 9 November 2010.²⁶⁵ A Non-Binding Heads of Agreement was signed by the parties at the mediation.²⁶⁶ Despite lengthy

²⁵⁵ Exhibit 126 (FMIF.005.009.0050).

²⁵⁶ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [126] FMIF.050.003.0007.

²⁵⁷ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [130] FMIF.009.004.0004.

²⁵⁸ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [133] FMIF.028.001.0044.

²⁵⁹ Exhibit 139 (FMIF.200.007.1345).

²⁶⁰ See, for example, Exhibit 138 (FMIF.200.014.1489).

²⁶¹ Exhibit 144 (FMIF.005.006.0001).

²⁶² Exhibit 119 (FMIF.005.006.0012).

²⁶³ Defence of the sixth defendant [24(e)]; Reply [9(a)]; Exhibit 295 (MPF.001.004.6240); Exhibit 331 (FMIF.100.003.2112); Exhibit 152 (MPF.001.004.6243); Exhibit 296 (FMIF.100.003.2078); Exhibit 298 (FMIF.100.004.9888); Exhibit 332 (MPF.100.002.4225).

²⁶⁴ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [55] FMIF.100.003.2684.

²⁶⁵ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [164].

²⁶⁶ Exhibit 83 (FMIF.020.005.0079); Exhibit 84 (FMIF.020.005.0081)

negotiations, no agreement in terms of the Non-Binding Heads of Agreement was ever finalised between the parties.

84. On 8 March 2011, LMIM proposed a cash settlement of \$47.5 million to Gujarat, which would include the sale to it of the Bellpac Land.²⁶⁷ Negotiations then continued between LMIM and Gujarat over the final settlement figure. On 25 March 2011, LMIM and Gujarat reached in-principle terms for a cash settlement of \$45.5 million.²⁶⁸

The WMS Advice

85. On 1 December 2010, Mr Tickner was involved in a telephone conference with Mr Monaghan and others. In that meeting Mr Tickner stated that he was of the understanding that the MPF would receive something in return for taking on the risk associated with paying the costs of the Bellpac Proceedings.²⁶⁹ Mr Tickner says that Mr Monaghan told him that he would make some enquiries as to the usual percentages associated with litigation funding. Mr Monaghan emailed Mr Tickner later that day to advise that he had spoken to Allens and that they had indicated rates of between 30 and 35 percent of the recovered sum.²⁷⁰
86. On 2 December 2010, Mr Tickner contacted Aaron Lavell of WMS Chartered Accountants ("WMS") and asked him to provide a report about a reasonable split of the settlement funds between the FMIF and the MPF.²⁷¹ On 3 December 2010, Mr Monaghan emailed Mr Tickner with draft instructions to Mr Lavell.²⁷² Ms D'Arcy approved those instructions later that day.²⁷³
87. A draft report was provided by WMS on 15 December 2010.²⁷⁴ Mr Tickner read the draft.²⁷⁵ On 20 December 2010, Mr Monaghan emailed Mr Tickner and advised that the draft should not be finalised until any deal with Gujarat was

²⁶⁷ Exhibit 103 (FMIF.100.003.6829).
²⁶⁸ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [227,228] FMIF.100.003.6938.
²⁶⁹ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [191].
²⁷⁰ Exhibit 26 (FMIF.100.003.4665).
²⁷¹ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [196].
²⁷² Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [201] FMIF.200.014.0808.
²⁷³ Exhibit 30 (FMF.100.002.9213).
²⁷⁴ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [206] MPF.001.002.1907.
²⁷⁵ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [206].

finalised.²⁷⁶ The finalised report was provided to Mr Tickner from WMS by email on 7 March 2011.²⁷⁷ Mr Tickner also read the finalised report.²⁷⁸

The Allens Advice

88. On 14 March 2011, Mr Tickner received an email from Ms D'Arcy in which she advised that she had instructed Mr Monaghan to obtain legal advice about the proposed split of funds. On 17 March 2011, Mr Monaghan instructed John Beckinsale of Allens to prepare the advice.²⁷⁹
89. The Allens Advice was received by Mr Monaghan on 28 March 2011.²⁸⁰ Mr Tickner recalls receiving a copy of the Allens Advice in hard copy. He read the advice and understood it to be saying that splitting the settlement proceeds between the FMIF and the MPF was legally acceptable despite the conflict between those funds.²⁸¹

The Deed Poll

90. On 10 June 2011, Mr Tickner was handed a copy of a document entitled "Deed Poll".²⁸² Before he executed the Deed Poll, Mr Tickner had a meeting with Mr Monaghan or Mr Fenwick (a solicitor at Monaghan Lawyers) where each of the paragraphs of the document was explained to him to ensure that he understood them.²⁸³ Mr Tickner executed the Deed Poll on 10 or 11 June 2011.²⁸⁴
91. In the Deed Poll each of the directors confirmed that they gave consideration to the background matters outlined in the Deed including, with respect to the split of the anticipated settlement proceeds:

"The FMIF and the MPF did not enter into any formal agreement to split the proceeds recovered by the litigation however it was the

²⁷⁶ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [207] FMIF.200.013.8984.

²⁷⁷ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [210] FMIF.100.003.6806; Exhibit 32 (FMIF.100.003.6807).

²⁷⁸ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [211].

²⁷⁹ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [213] MPF.001.002.8263.

²⁸⁰ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [215] FMIF.100.003.6992.

²⁸¹ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [217].

²⁸² Exhibit 36 (FMIF.008.001.0126)

²⁸³ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [255].

²⁸⁴ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [256].

understanding of LM's Directors that it was appropriate for MPF's contribution to be recognised by providing MPF with a share of any proceeds recovered by the litigation."

The Bellpac Proceedings settle

92. On 20 June 2011, Mr Tickner executed the Deed of Release²⁸⁵ and the Deed of Settlement and Release²⁸⁶ on behalf of LMIM. On 21 June 2011, Mr Tickner received an email from Mr Monaghan informing him that the Bellpac Proceedings had settled.²⁸⁷
93. At settlement, the following cheques were received:²⁸⁸
- (a) a cheque payable to PTAL for \$25,268,459.01;
 - (b) a further cheque payable to PTAL for \$4,055,864.92; and
 - (c) a cheque payable to LMIM as trustee for the MPF for \$13,606,093.32.
94. There was an overpayment of \$12,988.42 by Gujarat at settlement. This amount was refunded in proportion with the split of proceeds: \$8,442.48 by the FMIF and \$4,545.94 by the MPF.²⁸⁹
95. On 8 September 2011, two further cheques were received as follows:²⁹⁰
- (a) a cheque payable to PTAL for \$3,611,405.51; and
 - (b) a cheque payable to LMIM as trustee for the MPF for \$1,944,600.47.
96. The total received by each fund was therefore:
- (a) PTAL - \$32,927,286.96; and
 - (b) LMIM as trustee of the MPF - \$15,546,147.85.
97. As at June 2011, the outstanding balances on the relevant loans were as follows:

²⁸⁵ Exhibit 85 (FMIF.003.003.0198).
²⁸⁶ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [257] FMIF.015.001.0314.
²⁸⁷ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [260] SJT.001.001.0279.
²⁸⁸ Exhibit 311 (FMIF.003.003.0053).
²⁸⁹ Tickner #1 (Exhibit 324, SJT.LAY.001.0001) at [264]; FMIF.016.003.0024.
²⁹⁰ Exhibit 330 (FMIF.100.004.4598).

- (a) FMIF Bellpac Loan - \$52,480,469.12;²⁹¹
 - (b) MPF GPC Loan - \$10,021,850.85;²⁹² and
 - (c) MPF Bellpac Loan - \$16,285,644.25.²⁹³
98. The amounts received from the settlement, after repayment to Gujarat of initial overpayments, were applied:
- (a) in reduction of the FMIF Bellpac loan - \$32,927,286.90;²⁹⁴
 - (b) in reduction of the MPF Bellpac loan - \$12,743,264.59;²⁹⁵
 - (c) in reduction of the MPF GPC loan - \$2,802,883.26.²⁹⁶
99. In round figures, the recovery rates (based on balances as at June 2011) in percentage terms were:
- (a) PTAL – 62.7%; and
 - (b) LMIM as trustee for the MPF – 59.8%.²⁹⁷

²⁹¹ Exhibit 111 (FMIF.017.001.1078).

²⁹² Exhibit 113 (FMIF.017.001.1086).

²⁹³ Exhibit 112 (FMIF.017.001.1082).

²⁹⁴ Exhibit 38 (FMIF.400.001.0054) at p4.

²⁹⁵ Exhibit 39 (FMIF.100.001.0891) at p9.

²⁹⁶ Exhibit 40 (FMIF.100.001.0900) at p5.

²⁹⁷ Details of the calculations are in appendix B. To say, as counsel for the plaintiff did, that the MPF recovered 97% of the amount owed to it by Bellpac, was incorrect, as it took into account only the MPF Bellpac loan and ignored Bellpac's liability under the MPF GPC loan.

Appendix B – Bellpac Loan calculations at settlement

(1) On Settlement of the Bellpac Proceedings, the Funds received the following amounts:

FMIF

21 June 2011 - \$25,268,459.01

21 June 2011 - \$4,055,864.92

(see FMIF.003.003.0053 and FMIF.019.001.0075)

8 September 2011 – \$3,611,405.51

(see FMIF. 008.002.0052)

TOTAL = \$32,935,729.40

MPF

21 June 2011 - \$13,606,093.32

(see FMIF. 003.003.0053 and FMIF.019.001.0075)

8 September 2011 - \$1,944,600.47

(see FMIF.008.002.0052)

TOTAL = \$15,550,693.70

(2) Due to an overpayment on Settlement of the Bellpac Proceedings, the Funds repaid Gujarat as follows on 29 June 2011:

FMIF - \$8,442.48

MPF – \$4,545.94

(FMIF.100.005.5437)

(3) After repayment, the total amounts received by the funds on Settlement of the Bellpac Proceedings is therefore as follows:

FMIF

\$32,935,729.40 – \$8,442.48 =

\$32,927,286.90

MPF

\$15,550,693.70 - \$4,545.94 =

\$15,546,147.70

(4) The balances of the Bellpac Loans as at the date of settlement were as follows:

FMIF

\$52,480,469.12 (FMIF.017.001.1109)

MPF

Bellpac - \$16,013,688.53 (FMIF.017.001.1113)

GPC - \$9,987,919.29 (FMIF.017.001.1117)

\$26,001,607.70

(5) Calculate percentage of Settlement Proceeds to Loan Balances

FMIF**Settlement Proceeds/Balance of FMIF Bellpac Loan**

$\$32,927,286.90 / \$52,480,469.12 \times 100$

62.74%

MPF**Settlement Proceeds/Balance of MPF Loans**

$\$15,546,147.70 / \$26,001,607.70 \times 100$

59.79%

Appendix C – The 6 Categories of Negligence Alleged by the Plaintiff

1. *The Independent Experts' Advice*

- (a) the directors failed to adequately read or consider the content of the Allens Advice,²⁹⁸
- (b) the directors failed to properly construe the Allens Advice as set out in paragraph 30H of the statement of claim;
- (c) the directors took into account the Allens Advice and the WMS Report which they ought to have known, did not constitute the advice identified above (i.e. independent advice as to whether, in the circumstances, MPF could be treated as if it were an arm's length litigation funder, as to whether the proceeds split was reasonable and whether it was in the interests of the FMIF to agree to the proceeds split);²⁹⁹
- (d) the directors failed to actually obtain independent legal advice, or other independent advice, as to whether, in the circumstances:
 - (i) the MPF could be treated as if it were an arm's-length litigation funder;
 - (ii) it was reasonable for the MPF to be paid in accordance with the split – an amount above the sum it had paid, or any amount at all; and
 - (iii) it was in the interests of the FMIF to agree that the MPF would be paid as per the split (an amount above what it had paid) or any amount at all;³⁰⁰
- (e) the instructions to Allens were deficient,³⁰¹

²⁹⁸ Statement of Claim, para 34(aa).

²⁹⁹ Statement of Claim, para 34(f).

³⁰⁰ Statement of Claim, para 34(e).

³⁰¹ Reply to Sixth Defendant at para 15(c).

- (f) the directors ought not to have concluded that the WMS Report or the Allens Advice justified the payment of any part of the settlement to the MPF;³⁰²

2. *The Priorities (and Mortgage Sale)*

- (a) the directors failed to have proper regard or give adequate consideration to the fact that PTAL sold the property to Gujarat as a mortgagee exercising power of sale,³⁰³ and that FMIF had priority;³⁰⁴
- (b) the directors failed to have proper regard or give adequate consideration to the fact that:
- (i) MPF was a subsequent mortgagee and a subsequent charge holder over the assets of Bellpac;³⁰⁵
- (ii) MPF had originally funded the Proceedings as registered mortgagee with second priority under the Deed of Priority and was drawing down the funding against the MPF Bellpac loan;³⁰⁶
- (iii) PTAL sold the Property as mortgagee in possession under the PTAL Mortgage,³⁰⁷ and
- (iv) PTAL was, as at 22 June 2011, owed \$52M by Bellpac.³⁰⁸

3. *The "Non-Essentiality" of MPF*

- (a) the directors failed to have proper regard or consideration to the (alleged) fact that there was no necessity for the FMIF to reach agreement with the MPF about sharing the amounts payable to PTAL because:
- (i) the MPF was not a party to the Deed of Release nor the Gujarat Contract;

³⁰² Statement of Claim, para 37A(aa)(vi).
³⁰³ Statement of Claim, para 34(a)(i).
³⁰⁴ Statement of Claim, para 34(a)(ii).
³⁰⁵ Statement of Claim, para 34(c)(i).
³⁰⁶ Statement of Claim, para 34(c)(iii).
³⁰⁷ Statement of Claim, para 34(c)(iv).
³⁰⁸ Statement of Claim, para 34(c)(v).

- (ii) there was no binding agreement to share the settlement proceeds; and
 - (iii) the agreement of the MPF was not required in order for the FMIF or PTAL to perform their obligations under the Deed of Release and the Gujarat Contract.³⁰⁹
- (b) the directors, acting reasonably, ought to have concluded that the settlement of the Deed of Release and Gujarat Contract could occur without the agreement of MPF.³¹⁰ [*Deleted: see note below*]
 - (c) the directors ought to have concluded that they need not reach agreement with MPF about the sharing of proceeds for the settlement to occur.³¹¹

[Note: the allegation in para (b) above (i.e. para 37(aa)(i) has now been deleted, along with the similar allegation in para 30C(b). However, two other, similar allegations listed above, namely paras 34(b) and 37A(aa)(ii) remain.]

4. *The Litigation Funding Analogy*

- (a) the directors failed to consider whether the MPF could be treated as if it was an arm's-length litigation funder when it was a second registered mortgagee with second priority;³¹²
- (b) the directors failed to obtain independent legal advice, or other independent advice, as to whether, in the circumstances, the MPF could be treated as if it were an arm's-length litigation funder;³¹³ and
- (c) the directors ought not to have concluded that the MPF was in an analogous position to a litigation funder and that the settlement proposals would not be reasonable on an arm's-length basis.³¹⁴

³⁰⁹ Statement of Claim, para 34(b)

³¹⁰ Statement of Claim, para 37A(aa)(i)

³¹¹ Statement of Claim, para 37A(aa)(ii)

³¹² Statement of Claim, para 34(d) (first line).

³¹³ Statement of Claim, para 34(e).

³¹⁴ Statement of Claim, para 37A(aa)(v) – second (v) [note problem with numbering].

5. *The Different Interests of FMIF and MPF*

- (a) the directors, in the circumstances, failed to have proper regard or give adequate consideration to the different interests of FMIF and MPF;³¹⁵
- (b) the directors ought not to have concluded that the proceeds split was in the best interests of FMIF's members;³¹⁶ and
- (c) the directors ought to have determined that the settlement payment was not in the interests of the members of the FMIF.³¹⁷

6. *The Central Question*

The directors **failed to consider** whether it was appropriate to split the Bellpac Settlement proceeds (\$45.5m) in accordance with the 'Proceeds Split' (i.e. 65/35).³¹⁸

³¹⁵ Statement of Claim, para 34(g).

³¹⁶ Statement of Claim, para 37A(aa)(iv).

³¹⁷ Statement of Claim, para 37A(a)(ii).

³¹⁸ Statement of Claim, para 34(d) (second line).

"SC-19"

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 & ORS**

FINDINGS SOUGHT BY THE PLAINTIFF

Scope of section 601FD(1)(c)

1. Section 601FD(1)(c) required LMIM to act in the best interests of the members of the FMIF. Further, it required that, where there was a conflict between the interests of the members of the FMIF and the interest of LMIM, including its interest in acting as trustee of another trust, LMIM had to give priority to the interest of the members of the FMIF.¹

Scheme property

2. The amount payable pursuant to clause 7 of the Deed of Release (Exhibit 85)² to PTAL was scheme property of the FMIF.³
3. The amount payable under the Gujarat Contract (Exhibit 87)⁴ to PTAL was scheme property of the FMIF.⁵

Understanding

4. LMIM as RE of the FMIF was not subject to any legal obligation to pay any part of the proceeds of settlement of the Bellpac Proceedings to LMIM as trustee of the MPF.⁶
5. The directors of LMIM did not, prior to November 2010, have any understanding that it was appropriate for MPF's contribution to funding the Bellpac Proceeding was to be recognised by

¹ 5FASOC para 44
² FMIF.003.003.0198
³ 5FASOC para 37
⁴ FMIF.003.001.0001
⁵ 5FASOC para 37
⁶ 5FASOC para 30C(d)(iii)

providing MPF with a share of any proceeds received in respect of the Bellpac Proceeding in the form of a “litigation funding fee” analogous to the amount which may be payable to an arms-length third-party litigation funder.⁷

6. To the extent that the directors of LMIM, prior to November 2010, had any understanding that MPF’s contribution to funding the Bellpac Proceeding would be recognised by it receiving a share of the proceeds received in respect of the Bellpac Proceeding, that was an understanding that the MPF may receive a surplus of any settlement proceeds after the FMIF Bellpac Loan had been repaid in full.

Loyalty duty – section 601FD(1)(c)

7. Had the directors of LMIM complied with their duty under section 601FD(1)(c), in the absence of any legal obligation requiring LMIM as RE of the FMIF to pay any part of the proceeds of settlement of the Bellpac Proceedings to LMIM as trustee of the MPF, the directors would have caused the whole of the proceeds of settlement of the Bellpac Proceedings to be paid to LMIM as RE of the FMIF.
8. In the absence of any legal obligation requiring LMIM as RE of the FMIF to pay any part of the proceeds of settlement of the Bellpac Proceedings to LMIM as trustee of the MPF, the directors of LMIM breached section 601FD(1)(c) by causing the “Settlement payment” to be paid to LMIM as trustee of the MPF.⁸

Due care duty – section 601FD(1)(b)

9. The directors of LMIM were required to exercise a high degree of care and skill in considering the “proceeds split”, as LMIM was a professional funds manager undertaking a payment of \$15.5m in respect of which a registered managed investment scheme (the FMIF) had a claim. Any documentation surrounding the proceeds split needed to be carefully considered.⁹
10. The directors did not exercise care when considering and executing the Deed Poll, in that some of the considerations set out in the Deed Poll were clearly untrue, in particular the considerations at clauses 3.1(a)¹⁰ and (m).¹¹
11. The proceeds split was premised on an undocumented, unclear “understanding” which the directors should have realised was not a sufficient justification to pay \$15.5m away from a registered managed investment scheme. The directors could not have reasonably considered that “understanding” required something to be paid to the MPF, let alone an amount that was calculated by reference to an arms-length commercial litigation funder. The directors can

⁷ Denied in Replies

⁸ 5FASOC para 45

⁹ 5FASOC para 44(a)

¹⁰ 5FASOC para 31A(b)(i), 34(aa) and (g)

¹¹ 5FASOC para 31A(b)(i), 34(d), (e)

therefore be shown not to have reasonably considered the issue from the perspective of the FMIF.¹²

12. To the extent that the proceeds split was sought to be justified by the WMS Report, the directors ought to have realised that:
 - (a) LMIM as trustee of the MPF could not reasonably be considered to be, or to be equivalent to, an arms-length litigation funder.¹³ It was a party to the litigation which stood to benefit from the litigation and was also exposed to a costs order as a co-applicant; and
 - (b) the WMS Report did not provide advice about the management of conflicts or related party transactions.¹⁴
13. To the extent the proceeds split is sought to be justified by the Allens Advice, the directors ought to have realised that the Allens Advice did not provide unconditional endorsement, from a legal perspective, of the proposed proceeds split.¹⁵ It was highly qualified. The advice was clear that it assumed the two very things that were critical to any proceeds split from the perspective of the FMIF: that there was in fact a need to reach an agreement with the MPF for a payment equivalent to a litigation funder fee and that that payment of such a fee was in the best interests of the FMIF. The directors were right to seek advice, but the advice obtained was not a sufficient basis for a decision of this kind.
14. Further, the directors never considered, or caused advice to be obtained as to, whether LMIM as RE for the FMIF was entitled to pay all the monies expected to be received under the settlement contracts to itself, or all of those monies other than an amount sufficient to reimburse the MPF for the amount that it had advanced to fund the Bellpac litigation.¹⁶
15. LMIM operated in different capacities but it was one company with the same directors. LMIM had the ability to bind the MPF to a settlement of the Bellpac Proceeding without the MPF being paid any of the proceeds of settlement of the Bellpac Proceedings. The directors erroneously treated LMIM as two different entities where one such entity could force the other into a particular commercial compromise. In truth, LMIM was one entity acting in different capacities.¹⁷
16. The directors were dealing with a fund promoted and operated as a first mortgage fund (the FMIF) on the one hand, and a fund promoted and operated as a second mortgage fund (the MPF) on the other. They were parties to a Deed of Priority which regulated their priority.¹⁸ The Bellpac Proceeding was, in substance, a proceeding to enforce their securities in relation to

¹² 5FASOC para 34(g)
¹³ 5FASOC para 34(d), (e)(i)
¹⁴ 5FASOC para 34(f), (g)
¹⁵ 5FASOC para 34(aa), (g)
¹⁶ 5FASOC para 34(e)(iii), (g)
¹⁷ 5FASOC para 34(a)(iii), (b)
¹⁸ 5FASOC para 34(c)(i), (iv), (v)

the FMIF Bellpac Loan and the MPF Bellpac Loan. The position between the funds was that the FMIF had first priority over the MPF for any recoveries arising from the Bellpac Proceeding.

17. The directors were not able to rely on Mr Monaghan's summary of the Allens Advice and were required to consider it for themselves.¹⁹
18. In the circumstances identified above, each of the directors failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in the defendants' respective positions and thereby breached section 601FD(1)(b) of the Act.²⁰

Causation

19. Had the directors complied with their duties under sections 601FD(1)(b) and (c):
 - (a) LMIM as RE of the FMIF would have entered into the Deed of Release, the Deed of Release and Settlement and the Gujarat Contract on the terms provided therein;
 - (b) LMIM as trustee of the MPF would have entered into the Deed of Release and the Deed of Settlement and Release on the terms provided therein;
 - (c) the Deed Poll would not have been entered into;
 - (d) the first to sixth defendants would not have split the proceeds of settlement of the Proceedings;
 - (e) the Settlement payment would not have been made to LMIM as trustee of the MPF;
 - (f) all proceeds of the settlement of the Bellpac Proceedings would have been paid to LMIM as RE of the FMIF.²¹
20. In the alternative, in respect of the breach of subsection 601FD(1)(b), had the first to sixth defendants complied with that duty:
 - (a) LMIM as RE of the FMIF would have entered into the Deed of Release, the Deed of Release and Settlement and the Gujarat Contract on the terms provided therein;
 - (b) LMIM as trustee of the MPF would have entered into the Deed of Release and the Deed of Settlement and Release on the terms provided therein;
 - (c) the Deed Poll would not have been entered into;
 - (d) the first to sixth defendants would have caused LMIM as trustee of the MPF to be reimbursed for the contribution it made to the funding of the Bell Proceedings together with interest at a commercial rate upon that amount;
 - (e) otherwise, the proceeds of the settlement of the Bellpac Proceedings would have been paid to LMIM as RE of the FMIF.²²

¹⁹ Raised in Defences
²⁰ 5FASOC para 45(a)
²¹ 5FASOC para 45AA
²² 5FASOC para 45AB

Quantum

21. Had the whole of the proceeds of the settlement of the Bellpac Proceedings been paid to LMIM as RE of the FMIF, it would have received an additional amount of \$15,546,147.85 on 22 June 2011.²³
22. Had it been consistent with the directors' duties under sections 601FD(1)(b) to cause LMIM as trustee of the MPF to be repaid the amount which it had contributed to the costs of the Bellpac Proceeding, the amount of such costs up to 22 June 2011 which could have been reimbursed was \$1,535,835.98.²⁴
23. If an allowance is to be made for interest upon that sum, a reasonable commercial rate²⁵ in the circumstances of this case is the rate of 15% per annum referred to in the ASIC Benchmark Disclosure document at Exhibit 18,²⁶ being the rate charged by Deutsche Bank to LMIM as RE of the FMIF.
24. The plaintiff has suffered damage in the amount of \$15,546,147.85, or, in the alternative, in respect of the breach of subsection 601FD(1)(b), in the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse LMIM as trustee of the MPF for the contribution it made to the funding of the Bellpac Proceedings together with interest at a commercial rate upon that amount.²⁷
25. The first to sixth defendants are liable to pay to the plaintiff compensation under s 1317H of the Act in the amount of \$15,546,147.85 or, in the alternative, in respect of the breach of subsection 601FD(1)(b), in the amount paid to LMIM as trustee of the MPF in excess of that which was necessary to reimburse LMIM as trustee of the MPF for the contribution it made to the funding of the Bellpac Proceedings together with interest at a commercial rate upon that amount.²⁸

²³ 5FASOC para 35, 45A, 45B

²⁴ 5FASOC para 24(a), 45A, 45B

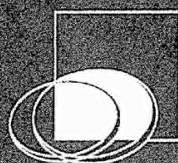
²⁵ 5FASOC para 45A, 45B, 46

²⁶ FMIF.500.009.8033

²⁷ 5FASOC para 45B

²⁸ 5FASOC para 46

"SC-20"



LM Investment Management Ltd

LM First Mortgage Income Fund

ARSN 089 343 288

Incorporating:-

- > Flexi Account and Fixed Term Investment
- > LM Savings Plan
- > Currency Hedged Fixed Term Investment

> Product Disclosure Statement &
Application Form
Issued 10 April 2008

Australia's Specialist Mortgage Trust Manager

ABN 65 077 208 461 Responsible Entity & AFSL No. 220281

LM First Mortgage Income Fund ARSN 089 343 288

Supplementary Product Disclosure Statement 30 October 2009

This is the Third Supplementary Product Disclosure Statement ("Third SPDS") that supplements the Product Disclosure Statement ("PDS"), the First Supplementary Product Disclosure Statement ("First SPDS") and the Second Supplementary Product Disclosure Statement ("Second SPDS") issued on 10 April 2008, 28 November 2008 and 3 March 2009 respectively for the LM First Mortgage Income Fund ARSN 089 343 288 (the "Fund"). Investors should read this Third SPDS together with the PDS, First SPDS and Second SPDS prior to investing in the LM First Mortgage Income Fund.

Purpose of this Third SPDS

To provide updated information in relation to:-

- ▶ The Fund's credit facility with the Commonwealth Bank of Australia ("CBA").
The Fund's borrowing has been renegotiated, with the financier granting an extension for repayment of the credit facility until 30 June 2010. The directors believe the Fund will be able to meet its remaining obligations under the repayment plan to the CBA through repayment of existing loans and/or refinancing of existing loans with alternative financing providers, the continued support from the CBA or the securing of alternate sources of finance.
The section below headed "Borrowings of Fund" provides the fully updated details to references on the Fund's borrowing as contained in the Second PDS;
- ▶ The Fund and ASIC's Regulatory Guide 45 - "Mortgage Schemes – Improving Disclosure for Retail Investors".
The Manager has updated the explanation of the Liquidity Benchmark and Withdrawals as these are affected by the priority position of the Fund's repayment to the CBA and the lack of credit liquidity available in the property sector. This Third SPDS also updates investors on how the Manager will communicate and provide ongoing access to investors for updated ASIC benchmarks and information on the Fund.

Borrowings of the Fund

The section headed "Borrowings of the Fund" on page 1 of the Second PDS is deleted and replaced as follows:-

"There have been changes made to the Fund's borrowing and the following paragraph replaces:-

- (i) the explanation of the Scheme Borrowing Benchmark on page 2 of the First SPDS;
- (ii) the second paragraph under the heading 'Borrowing Risk' on page 6 of the First SPDS; and
- (iii) the second paragraph under the heading "Borrowings of the Fund" on page 7 of the First SPDS:-

'Under the constitution the Manager may borrow against the Fund assets on terms and conditions acceptable to the Manager. The Manager has arranged a line of credit facility with the Commonwealth Bank of Australia ("CBA"). This facility was put into place in order to allow the Manager to take advantage of competitive commercial lending opportunities, or to assist the Fund with managing liquidity. As at 30 October 2009 the amount owing to the CBA was the fully drawn amount of \$115,313,554 and the interest rate of the facility is variable and is priced at 4.5% above the Bank Bill Swap Bid Rate (BBSY). The facility is secured by a fixed and floating charge over the assets of the Fund, providing the CBA as a secured lender with first priority over the assets and income of the Fund. The rights of investors to the income and assets of the Fund are secondary to the rights of the CBA. The facility expires on 30 June 2010. If the facility is not repaid by 30 June 2010, the Manager will seek a further extension of the facility from the CBA to enable any balance debt to be repaid. The facility will be repaid via cashflow generated in the Fund. Repayment of the facility will take priority over most other cashflow needs of the Fund, and will take priority over most withdrawal requests from members of the Fund. The facility may be varied from time to time in order to manage the Fund. Insufficient income generated by the Fund to service the debt under the facility, increases in the bank interest rate or a refusal of the financier to extend the term of the facility could cause the Fund to default on its loan.'

As the line of credit is fully drawn and being repaid in priority over most other cashflow needs of the Fund, the third paragraph under the heading "Liquidity Risk" on page 27 of the PDS is deleted."

Liquidity Benchmark

In the Second SPDS on page 1 under the heading "Liquidity Benchmark" both paragraphs are deleted and replaced with the following:

"The Fund still continues to meet the Liquidity Benchmark outlined in ASIC's Regulatory Guide 45 - "Mortgage Schemes – Improving Disclosure for Retail Investors" released in September 2008. Currently, the Fund is required to repay the credit facility as a priority over most other cashflow needs of the Fund, and withdrawals are suspended except for withdrawals under hardship provisions and feeder fund payments for investor distributions and fund expenses. Therefore, the Manager has updated the explanation of the Liquidity Benchmark. The following paragraph replaces the explanation of the Liquidity Benchmark on page 2 of the First SPDS:-

"The Manager has cash flow estimates for the Fund for the next 12 months and as such meets ASIC's liquidity benchmark guideline to have cashflow estimates for the next 3 months. The Fund has fixed investment terms of 12, 6, 3 and 1 months. As most withdrawals are suspended the Fund will have sufficient cash or cash equivalents (not including undrawn amounts under lending facilities) to meet projected cash needs over the next 3 months. The Manager's cash flow estimates for the Fund for the next 12 months contain a detailed schedule of managed loan repayments to the Fund from its existing loan portfolio. Refer to page 4 of the First SPDS under the heading "Liquidity Policy" for further details."

Withdrawals

In the Second SPDS under the heading "Withdrawals" on page 2, the second paragraph is deleted and replaced with:-

"The prevailing credit and liquidity constraints in the property and financial markets, and the Fund's obligation to repay its credit facility to the CBA in priority to most other cashflow needs of the Fund, call for caution in the management of the Fund's cashflow. In order to protect all investments, the Manager has, as it determines, suspended withdrawals, with the exception of those approved under hardship provisions and feeder fund payments for investor distributions and fund expenses, as the cashflow allows. A return of liquidity to the Australian property sector would positively assist with cash flow management and the repayment due to the CBA and would, over time, bring about a return to "normal" timeframes for investor redemption payments."

In light of the above matters, in the First SPDS on page 4 under the heading "Liquidity Policy" the last sentence is deleted as payment of most withdrawals is currently suspended.

Related Parties

In the "Related Parties" section on pages 7 and 8 of the First SPDS:-

- (i) The follow paragraph replaces the eighth paragraph:-

"On 30 June 2008, the Manager assigned to the LM First Mortgage Income Fund, the rights and benefits of a \$5,100,000 debt due to the Manager from the LM Managed Performance Fund. The date for the repayment of that debt to the LM First Mortgage Income Fund has been extended to 30 June 2010. The current interest rate payable on this amount is 10%pa and the debt equates to 0.84% of the total loan portfolio."

and

- (ii) The follow paragraph is added:-

"The Fund may, from time to time, sell or partially sell mortgage loans to other separate funds for which the Manager is also Responsible Entity. Any such transactions are reviewed and conducted in accordance with the Fund's Conflicts of Interest Policy. Currently there is one loan that the Fund has partly sold to the LM Australian Income Fund Currency Protected, with a current value of \$6,360,000."

Related Party Transactions

The paragraph below replaces the paragraph headed "Related Party Finance" on page 8 of the First SPDS.

"LM is the Manager of the LM Managed Performance Fund. The LM Managed Performance Fund, in its own right, has second mortgages behind loans that are first mortgages of the LM First Mortgage Income Fund. At 30 September 2009 the LM Managed Performance Fund has 9 such second mortgages in the total amount of \$48,876,841. In each instance, the LM First Mortgage Income Fund has entered into a Priority Deed to protect its own first mortgage position with the borrower as part of normal loan documentation procedures."

ASIC Benchmarks & Any Updated Information

Apart from the current financial report for the Fund, updated information in relation to the Fund that was previously provided on the Manager's website will now be provided to investors via direct communication from the Manager. Therefore, references contained:-

- (i) in the First SPDS
- a. Page 2 under the heading "ASIC Benchmark Disclosure for Investors" paragraphs 3 and 4; and
 - b. Under the "Portfolio Diversification" benchmark the second sentence; and
- (ii) in the PDS page 13 under the paragraph headed "Updated Financial and Other Information"

are updated as follows:-

The Manager will notify investors in the Fund of any material adverse information in relation to the Fund. This will include such information that relates to the ASIC benchmarks. Information relevant to the Fund that is not materially adverse and that is subject to change from time to time will also be updated by the Manager via direct communication to investors. This will include information that relates to the ASIC benchmarks such as information on the nature of the Fund's investment portfolio, including details of loans, whether the Fund invests in other unlisted mortgage schemes and the conditions of such investment. A paper copy of any updated information will be given to investors without charge on request.

PORTFOLIO UPDATE FOR THE LM FIRST MORTGAGE INCOME FUND

AS AT 30 SEPTEMBER 2009

Below is updated information in relation to the Fund's assets.

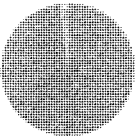
Consolidated Assets

Consolidated assets of the LM First Mortgage Income Fund, the LM Wholesale First Mortgage Income Fund, the LM Currency Protected Australian Income Fund and the LM Institutional Currency Protected Australian Income Fund are \$617,026,849

Assets of the LM First Mortgage Income Fund

- ▶ A diversified portfolio of Australian registered first mortgages over commercial, residential, industrial, retail and vacant land; and
- ▶ Interest bearing cash investments.

LM First Mortgage Income Fund Asset Allocation



- Registered First Mortgage Securities 97.92%
- Cash 2.08%

Asset Allocation Guidelines	No. of Loans	Value (\$)	Actual (%)
Registered First Mortgage Securities	48	604,195,441	97.92
Cash	N/A	12,831,409	2.08

Management costs for the financial year ended 30 June 2009: 3.78%pa of the net assets of the Fund¹.

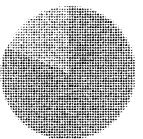
LM First Mortgage Income Fund Sector Diversification



- Commercial 26.55%
- Residential 51.52%
- Industrial 13.31%
- Pending Development Land 8.62%
- Retail 0.00%

Sector Guidelines	No. of Loans	Value (\$)	Actual (%)
Commercial	14	160,432,146	26.55
Residential	23	311,259,234	51.52
Industrial	3	80,430,990	13.31
Pending Development Land	8	52,075,071	8.62
Retail	0	0	0.00

LM First Mortgage Income Fund Construction, Development and Other Mortgage Securities



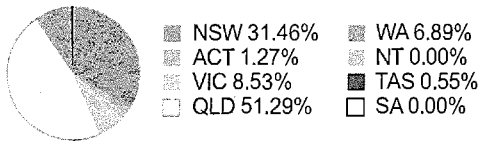
- Other Mortgage Securities 81.54%
- Construction and Development Mortgage Securities 18.46%

Construction, Development and Other Guidelines	No. of Loans	Value (\$)	Actual (%)
Construction and Development Mortgage Securities	7	111,517,860	18.46
Other Mortgage Securities*	41	492,677,580	81.54

* Other Mortgage Securities includes pending development land, completed developments and income generating commercial loans.

¹ The management costs include all current running costs and expenses of the Fund, i.e. custodian fees, audit fees, management fees, finance fees, legal fees, and adviser fees.

LM First Mortgage Income Fund Geographic Diversification



Geographic Guidelines	No. of Loans	Value
New South Wales	16	190,108,900
Victoria	7	51,525,601
Queensland	20	309,909,117
South Australia	0	0
Australian Capital Territory	1	7,669,590
Western Australia	3	41,656,465
Northern Territory	0	0
Tasmania	1	3,330,767

LM First Mortgage Income Fund Portfolio Details as at 30 September 2009

Mortgage Portfolio Details	Actual
Total value of mortgage securities	\$604,195,441
Number of mortgages	48
Average loan size	\$12,600,000
Average loan to valuation ratio	82.03%
Total value of loans with interest built into the facility and/or capitalised	\$523,130,529
Number of loans with interest built into the facility and/or capitalised	39
Total value of undrawn loan commitments over next 24 months (progressive loan draws) funded by cashflows of the Fund	\$6,000,000
Number of loans with undrawn loan commitments over next 24 months (progressive loan draws) funded by cashflows of the Fund	5
Average monthly undrawn loan commitments funded by cashflows of the Fund	\$1,300,000

The valuation policy for the Fund's first mortgage securities is written into the lending guidelines of the Fund, forms part of the compliance plan for the Fund, and is subject to independent audit.

The independent audit includes emphasis on asset valuation and loan recoverability. At 82.03% the average loan to valuation ratio of the Fund's mortgage portfolio is reflected against the value of the Fund's registered first mortgage assets. Ernst & Young finalised their independent financial year end audit, and as at 30 September, 2009 reports full fund value with investor unit price also retaining its full capital value.²

As at 30 September 2009 there were 32 borrowers. 8.04% of total monies was lent to the fund's largest borrower and 54.22% of total monies was lent to the fund's ten largest borrowers. The Fund does not have one single borrower that exceeds 10.00% of the fund's assets.

Loan to Valuation Ratio (LVR)

LVR	No. of Loans	Value (\$)
< 50.00%	7	38,903,052
50.01% - 60.00%	6	59,741,302
60.01% - 70.00%	1	7,669,590
70.01% - 80.00%	10	161,345,939
80.01% - 90.00%	10	111,894,655
90.01% - 100.00%	14	224,641,003
> 100%	0	0

The average LVR across the mortgage portfolio as at 30 September 2009 is 82.03%.

LM First Mortgage Income Fund Mortgage Securities by Maturity Profile as at 30 September 2009

Period Maturing	No. of Loans	Value
0 – 12 months	41	472,505,960
13 – 24 months	7	131,689,481
25 – 36 months	0	0
37 – 48 months	0	0
49 – 60 months	0	0

There remains a pervasive lack of credit/liquidity available within the property sector, as a result of the global credit crunch. This lack of credit curtails a borrower's ability to refinance his loan with another financial institution in order to repay his loan to the Fund by its maturity date. As a result, please note that whilst a large portion of the Fund's loans reach maturity over the forthcoming 12 months, it is likely that only some will repay the Fund at around their maturity date.

This is being monitored and managed to ensure sufficient liquidity within the Fund to meet its financial commitments including the repayment of its line of credit facility and the generation of investor income.

LM First Mortgage Income Fund Mortgage Securities by Interest Rate Profile as at 30 September 2009

Interest Rate	No. of Loans	Value
= or < 7.00%	2	4,422,037
7.01% - 7.50%	0	0
7.51% - 8.00%	1	12,438,425
8.01% - 8.50%	1	15,180,319
8.51% - 9.00%	0	0
9.01% - 9.50%	4	47,263,380
9.51% - 10.00%	2	22,969,899
10.01% - 10.50%	3	78,605,674
10.51% - 11.00%	13	172,571,246
11.01% - 11.50%	11	106,837,274
11.51% - 12.00%	6	83,093,726
12.01% - 12.50%	1	9,168,035
12.50% - 13.00%	0	0
13.01% - 13.50%	4	51,645,424

LM First Mortgage Income Fund Loans in Arrears as at 30 September 2009

Period	No. of Loans	Value
30 – 60 days	1	19,934,617
60 – 90 days	2	16,151,523
90 days and over	26	320,305,658

The Manager uses the terms "arrears" and "default" interchangeably. LM calculates its loan arrears statistic in accordance with the IFSA Standard No 18, "Best Practice Guidance for Disclosure in the Mortgage Trust Sector."

As at 30 September 2009, the audit verified the current valuation and recoverability of the loan assets and reported the fund retains full capital value for investors, with a unit price of \$1.00.³

The value of the property held by the LM First Mortgage Income Fund as its security for the arrears loans is \$422,744,400.

The Fund continues to repay its line of credit loan facility with the CBA in priority to normal investor redemptions and a pervasive lack of credit/liquidity continues to restrict movement within the commercial property sector. To protect its capital, the Fund remains closed with normal investor redemptions suspended. Currently, the cash within the Fund is driven by the conversion of loan assets from its mortgage portfolio back to cash.

³ Past performance is not a reliable indicator of future performance.

Consequently, LM is not rolling loans at maturity as it might in a normal market environment. As loans go past their maturity date, they become part of LM's formal "arrear" management program to ensure LM is in control of an exit that is in the best interests of the Fund.

The exit focus at this time is on those assets that it is reasonable to expect will return value to the Fund and to avoid "fire selling" of assets.

In managing optimal recoverability, some arrear assets have been identified for longer term holds for value in more favourable market conditions. Others are undergoing improvements to enhance marketability and secure appropriate sale price for the Fund over the medium term.

All assets are recorded at fair market value. The average loan to valuation ratio of the Fund's mortgage securities is 82.03%, and the unit price is \$1.00, as at 30 September 2009.⁴

The Directors of LM Investment Management Ltd have authorised and consented to the issue of this Third SPDS.

⁴ Past performance is not a reliable indicator of future performance.



LM First Mortgage Income Fund

Supplementary Product Disclosure Statement

3 March 2009

This is the Supplementary Product Disclosure Statement ("Second SPDS") that supplements the Product Disclosure Statement ("PDS") and the First Supplementary Product Disclosure Statement ("First SPDS") issued on 10 April 2008 and 28 November 2008 respectively for the LM First Mortgage Income Fund ARSN 089 343 288 (the "Fund"). Investors should read this Second SPDS together with the PDS and First SPDS prior to investing in the LM First Mortgage Income Fund.

The purpose of this Second SPDS is to provide updated information in relation to the Fund and ASIC's Regulatory Guide 45 - "Mortgage Schemes – Improving Disclosure for Retail Investors".

No Applications will be Accepted from New Members

LM Investment Management Limited (the "Manager") has determined that from the date of this Second SPDS it will not accept any applications for investment in the Fund from any person who is not an existing member in the Fund. Any application for investment in the Fund received by the Manager will therefore be returned to the applicant.

The Manager will still accept applications for investment in the Fund from any person who is an existing member in the Fund, and this will include deemed applications as part of any reinvestment of distributions.

The Manager may decide to change this decision at any time, and start accepting applications from non-members.

Borrowings of the Fund

There have been changes made in relation to the Fund's borrowing and the following paragraph replaces the explanation of the Scheme Borrowing Benchmark on page 2 of the First SPDS, the second paragraph under the heading "Borrowing Risk" on page 6 of the First SPDS, and the second paragraph under the heading "Borrowings of the Fund" on page 7 of the First SPDS:-

"Under the constitution the Manager may borrow against the Fund assets on terms and conditions acceptable to the Manager. The Manager has arranged a line of credit facility with the Commonwealth Bank of Australia ("CBA"). This facility was put into place in order to allow the Manager to take advantage of competitive commercial lending opportunities, or to assist the Fund with managing liquidity. As at 3 March 2009 the amount owing to the CBA was the fully drawn amount of \$150 million and the interest rate of the facility is variable and is priced between 4.0% to 9.5% above the respective Bank Bill Swap Bid Rate (BBSY). The facility is secured by a fixed and floating charge over the assets of the Fund, providing the CBA as a secured lender with first priority over the assets and income of the Fund. The rights of investors to the income and assets of the Fund are secondary to the rights of the CBA. The facility expires on 31 July 2009. If the facility is not repaid by 31 July 2009, the Manager will seek a further extension of the facility from the CBA to enable any balance debt to be repaid. The facility will be repaid via cashflow generated in the Fund. Repayment of the facility will take priority over most other cashflow needs of the Fund, and will take priority over most withdrawal requests from members of the Fund. The facility may be varied from time to time in order to manage the Fund. Insufficient income generated by the Fund to service the debt under the facility, increases in the bank interest rate or a refusal of the financier to extend the term of the facility could cause the Fund to default on its loan."

In light of the above matters, the third paragraph under the heading "Liquidity Risk" on page 27 of the PDS is deleted.

Liquidity Benchmark

The Fund still continues to meet the Liquidity Benchmark outlined in ASIC's Regulatory Guide 45 - "Mortgage Schemes – Improving Disclosure for Retail Investors" released in September 2008. However, in light of the recent change to the Fund's borrowing which requires repayment of the credit facility to take priority over most other cashflow needs of the Fund, and the fact that investors may expect timeframes of up to 365 days for withdrawals, the Manager has amended the explanation of the Liquidity Benchmark. The following paragraph therefore replaces the explanation of the Liquidity Benchmark on page 2 of the First SPDS:-

"The Manager has cash flow estimates for the Fund for the next 3 months. As the Fund has fixed investment terms of 12, 6, 3 and 1 months and will be paying any withdrawal requests up to 365 days after maturity, the Fund will have sufficient cash or cash equivalents (not including undrawn amounts under lending facilities) to meet projected cash needs over the next 3 months. Refer to page 4 of the First SPDS under the heading "Liquidity Policy" for further details, including the Manager's policy on balancing the maturity of the Fund's assets with the maturity of the Fund's liabilities."

Withdrawals

In the First SPDS under the heading "Withdrawals" on page 6, the second paragraph is deleted and replaced with:-

"Due to the current turmoil and unpredictability of the market, and the obligation on the Manager to repay the Fund's credit facility to the Commonwealth Bank of Australia in priority to most other cashflow needs of the Fund, the Manager is exercising caution with the Fund's cashflow management and utilising longer timeframes for withdrawals. In particular, payment of investor withdrawals is likely to take 365 days. The Manager may also suspend withdrawals for such periods as it determines".

Interest Distribution Payments

In accordance with the constitution the interest distributions are payable within 21 days after the end of the distribution period. The Manager had previously endeavoured to make such payments within a shorter period, but that is no longer the case. Consequently, the following changes are made to the PDS or First SPDS:-

- ▶ The second last paragraph under the heading "Interest Distribution Payments for the Flexi Account and Fixed Term Options" on page 6 of the PDS is deleted and replaced with the following - "Interest distributions are calculated daily. Interest distributions are payable within 21 days after the end of the month. Quarterly interest distributions are payable within 21 days of the quarterly anniversary of the investment date".
- ▶ The last sentence of the first paragraph under the heading "Interest Distribution Payments for Non-Australian Investments" on page 9 of the PDS is deleted and replaced with the following - "The interest distribution is paid within 21 days of maturity of the original and any subsequent investment term."
- ▶ In the First SPDS, under the heading "Monthly Distributions now Available for Non-Australian Dollar Currency Hedged Fixed Investment Terms as well as Australian Dollar Fixed Investment Terms" on page 1, the reference to "5 business days" in the third paragraph is deleted and replaced with "21 days" and the first two sentences of the second paragraph are deleted and replaced with – "Such distributions will be paid within 21 days of the monthly anniversary of the day the investment begins".

Currency Hedge for Non-Australian Dollar Investment Options

Providers of the Forward Foreign Exchange Contracts ("FFECs") are chosen by the Manager. The Manager has recently changed the providers of the FFECs for the Fund. Consequently, references in the PDS to FFECs being facilitated or settled by a global investment bank (on pages 2, 5 and 8) are amended by deleting the references to "global investment bank" and replacing them with "a FFEC provider chosen by the Manager".

The Directors of LM Investment Management Ltd have authorised and consented to the issue of this Second SPDS.



LM First Mortgage Income Fund

Supplementary Product Disclosure Statement 28 November 2008

This is the Supplementary Product Disclosure Statement ("First SPDS") that supplements the Product Disclosure Statement issued on 10 April 2008 ("PDS") for the LM First Mortgage Income Fund ARSN 089 343 288 (the "Fund"). Investors should read this First SPDS together with the PDS prior to investing in the LM First Mortgage Income Fund.

The purpose of this First SPDS is to update investors as follows:-

- ▶ New investors (or investors rolling over their existing investments) may now nominate monthly distributions for non-Australian dollar currency hedged fixed investment terms;
- ▶ This document contains updated information in relation to the Fund; and
- ▶ This document includes information to comply with the requirements of ASIC's Regulatory Guide 45 - "Mortgage Schemes – Improving Disclosure for Retail Investors" released in September 2008.

Monthly Distributions now Available for Non-Australian Dollar Currency Hedged Fixed Investment Terms as well as Australian Dollar Fixed Investment Terms

Non-Australian dollar currency hedged fixed term investors may elect to have their distributions electronically credited to the investor's nominated financial institution account on a monthly basis. If the distribution is electronically credited monthly to an investor's financial institution account the distribution is not hedged. The distribution is not hedged as the Fund pays the monthly distribution directly from the earnings of the Fund in Australian dollars. The distribution does not form part of the FFEC as it does for a non-AUD investment where the interest is paid at maturity.

Such distributions will be paid within 5 business days of the monthly anniversary of the day the investment begins. For example, if the investment commences on 15 June the distribution will be paid by 20 July. Investors should note that financial institutions may charge a remittance fee which will be deducted from the investor's distribution amount.

If an investor wants to change the distribution instructions it can only do so on rollover of the investment and written notice must be received by the Manager at least 5 business days prior to the maturity date.

Calculation of Monthly Distribution

The calculation of the value of the unhedged distribution will be as follows:-

- ▶ The simple rate of return in the relevant non-AUD currency will be converted to the AUD value at the spot rate as at the day of the initial trade date. For example-
 - ◆ Investor invests USD\$100K at an effective rate of 5.75%pa, the simple rate is 5.60%pa;
 - ◆ The USD\$100K investment will earn interest of USD\$5,600 calculated as follows:- $\text{USD\$100K} \times 5.60\% \text{pa for 12 months} = \text{USD\$5,600}$;
 - ◆ The total distribution amount of USD\$5,600 is converted to AUD at the spot rate of 0.93 = AUD\$6,022;
 - ◆ Investor will be paid monthly distributions of AUD\$501.83 calculated as follows:- $\text{AUD\$6,022}/12 = \text{AUD\$501.83}$.

Interest rates are variable and may change during the investment.

To Apply for Monthly Distributions for Non-Australian Dollar Currency Hedged Fixed Investment Terms

If a non-Australian dollar investor wants to elect to have their distributions paid monthly, when completing the Application Form they should write in Section 11 of the Application Form (Page 48 of the PDS) "Interest distributions are to be paid monthly to the bank account nominated in Section 15".

ASIC Benchmark Disclosure for Investors

The information in the table below is provided to comply with the requirements of ASIC's Regulatory Guide 45 - "Mortgage Schemes – Improving Disclosure for Retail Investors" released in September 2008. Regulatory Guide 45 refers to 8 benchmarks developed by ASIC. From 30 November 2008, all PDSs for unlisted mortgage schemes are required to include the following statements in respect of each benchmark:-

- ▶ that the Fund meets the benchmark; or
- ▶ that the Fund does not meet the benchmark, and an explanation of how and why the Fund deals with the business factor or issue underlying the benchmark in another way.

A full copy of Regulatory Guide 45 can be obtained from the ASIC website: www.asic.gov.au.

The Manager will notify investors in the Fund of any material adverse information in relation to the Fund. This will include such information that relates to the ASIC benchmarks. Information relevant to the Fund that is not materially adverse and that is subject to change from time to time (including information that relates to the ASIC benchmarks) will be updated by the Manager on its website at www.LMaustralia.com, and a paper copy of any updated information will be given to any person without charge on request.

The following information relevant to the ASIC benchmarks is available from the Manager's website at www.LMaustralia.com/downloads/FMIF_portfolio_update.pdf, in the document titled LM First Mortgage Income Fund - Portfolio Update, or a copy can be obtained free of charge by telephoning freecall 1800 062 919 (Australia only) or +617 5584 4500:-

- ▶ information on the nature of the Fund's investment portfolio, including details of loans and whether the Fund invests in other unlisted mortgage schemes and the conditions of such investment.

Set out below are the 8 ASIC benchmarks and a summary of how the Fund meets or does not meet the benchmarks. We encourage you to discuss the ASIC benchmarks with your financial adviser.

BENCHMARK	DOES LM MEET BENCHMARK	EXPLANATION
Liquidity (which for the purposes of this benchmark means the proportion of cash or cash equivalents in the Fund's assets)	Yes	The Manager has cash flow estimates for the Fund for the next 3 months and as the Fund has fixed investment terms of 12, 6, 3 and 1 months, the Fund will have sufficient cash or cash equivalents (not including undrawn amounts under lending facilities) to meet projected cash needs over the next 3 months. Refer to page 4 of this First SPDS under the heading "Liquidity Policy" for further details, including the Manager's policy on balancing the maturity of the Fund's assets with the maturity of the Fund's liabilities.
Scheme Borrowing	Yes	Under the constitution the Manager may borrow against the Fund assets on terms and conditions acceptable to the Manager. The Manager has arranged a line of credit facility with the Commonwealth Bank of Australia ("CBA"). This facility was put into place in order to allow the Manager to take advantage of competitive commercial lending opportunities, or to assist the Fund with managing liquidity. At the date of this First SPDS the amount owing to the CBA was \$150 million. The facility term is the subject of an annual review and the Manager is currently renegotiating the credit facility with CBA and expects these negotiations to be finalised by 31 December 2008. The Manager expects that negotiations with CBA will result in a continued line of credit facility for a total of \$150 million for a further 12 month term and will be subject to an annual review. The finance facility is secured by a fixed and floating charge over the assets of the Fund, providing the CBA as a secured lender with first priority over the assets and income of the Fund. The rights of investors to the income and assets of the Fund are secondary to the rights of the CBA. The facility will be repaid via investment inflows and inflows received from principal repayments from borrowers.
Portfolio Diversification	Yes	The Manager provides details in relation to number of loans and details of the mortgage portfolio diversification on the Portfolio Update and these details comply with the ASIC benchmark requirements. The Portfolio Update will be available from the Manager's website at www.LMaustralia.com/downloads/FMIF_portfolio_update.pdf in the document titled "LM First Mortgage Income Fund – Portfolio Update". The Manager's lending policies and procedures for the Fund provide further details in relation to maximum loan amount for any one borrower; the method of assessing borrowers' capacity to service loans; the Manager's approach to taking security; revaluing security properties on rollover and whether the security must be income producing. See the section headed "Lending Policies and Procedures of the Fund" on page 4 of this First SPDS. The Manager does not currently invest in other unlisted mortgage schemes, but has the power to do so in the Fund constitution. The Manager's policy on investing in such schemes is to ascertain whether such an investment is desirable for the Fund in light of the circumstances at that time. The Manager will not necessarily require such a scheme to satisfy the ASIC benchmarks before the Manager invests in the scheme.

BENCHMARK	DOES LM MEET BENCHMARK	EXPLANATION
Related Party Transactions	Yes	The Fund may lend to related parties, but such loans are subject to review by the Board and can only be approved on commercial arms-length terms following approval by the Credit Committee. The Board's approval process is monitored by the Manager's Risk Manager and Business Standards and Compliance Manager. The Fund may also invest in other managed investment schemes which are operated by the Manager. All Fund investments follow the same stringent due diligence processes which are monitored by the Chief Financial Officer. For further details refer to the paragraph under the heading "Related Parties" on page 7 of this First SPDS. Also refer to the paragraph under the heading "Conflicts of Interest Management" on page 34 of the PDS for information in relation to how the Manager deals with conflicts of interest.
Valuation Policy	No	The Manager's valuation policies set out how real property assets over which the Fund has security will be valued (that is, on an "as is" basis, and for development loans, also on an "as if complete" basis) and how often valuations are obtained. The ASIC benchmark also requires that no one valuer conducts more than 1/3 of the valuation work for the Fund. The Fund complies with this requirement. Valuers selected to perform relevant valuations on the security property are chosen based on independence, specialist industry expertise and geographic location. The ASIC benchmark requires the disclosure of information about the valuation of a particular property for an unlisted mortgage scheme where a loan secured against the property accounts for 5% or more of the total value of the scheme's loan book. The Manager does not provide this information due to privacy reasons, the commercial sensitivity of valuation information and because the assets within the loan book change regularly. Further details in relation to the Manager's valuation policies are outlined on page 5 of this First SPDS under the paragraphs headed "Valuation Policies".
Lending Principles	No	It is the Manager's current policy to generally not exceed a loan to valuation ratio of 66.67% on construction and development loans and 75% on commercial loans (which ratios do both comply with the ASIC benchmark of 70% on property development - on the basis of the latest 'as if complete' valuation and in all other cases 80% on the basis of the latest market valuation). However, it is the Manager's current practice to exceed those ratios whenever necessary in the process of working through a repayment solution. The Fund's constitution allows the Manager to lend funds provided that all mortgages are secured over property and the amount which may be advanced to a borrower does not exceed an LVR of 75% of the value of the security property on initial settlement. After a loan has settled and where the Manager considers it is in the best interests of the members of the Fund, the Manager may approve an LVR not to exceed 85% of the value of the security property. The LVR of a loan that is in default may exceed 85%. Where the loan is a development loan, funds are advanced progressively in stages through the development on a "Cost to Complete" basis and the Manager engages an external consultant Quantity Surveyor for each development and receives periodic reports on the progress of the development including certification of construction claims based on work completed. Further details in relation to the Manager's lending policies and procedures are outlined on page 4 of this First SPDS under the heading "Lending Policies and Procedures for the Fund".
Distribution Practices	Yes	Distributions are sourced from income earned from the assets of the Fund. The interest distribution rates are variable depending on the income earned, expenses paid and other matters relevant to the Fund. If the income earned is not sufficient to pay all expenses and interest distributions the returns to investors will be lower. The lower return will be determined based on the amount available to pay interest distributions. Please refer to the Manager's website at www.LMaustralia.com for details of the most recent interest distribution rates. Past performance is not an indicator of future performance.
Withdrawal Arrangements	Yes	<p>Details in relation to how and when investors can withdraw from the Fund are set out on page 17 of the PDS headed "How to Withdraw" and updated with information in relation to payment of withdrawals on page 6 of this First SPDS. As noted in that section of the PDS, in certain circumstances the Manager may delay withdrawals from the Fund by up to 365 days or suspend withdrawals for such period as it determines in order to protect all investments.</p> <p>A delay in meeting an investor's withdrawal request is possible where there are a significant number of withdrawal requests received at the same time, which absorb the cash reserves of the Fund and if assets of the Fund are not sufficiently liquid. The Manager has a liquidity policy that is monitored by the Board to adequately manage payment of withdrawals within the time period specified.</p> <p>Investors should also note the automatic rollover provisions which apply to their investments, and the time periods for notice to be given to withdraw – see the heading "Fixed Term Investment Withdrawal Notice" on page 6 of the PDS and the heading "Automatic Reinvestment Default Position" on page 9 of the PDS.</p> <p>The amount payable to investors on withdrawal will be the issue price of their units at that time. This amount is subject to change depending on the net value of the assets of the Fund. See the heading "Unit Pricing" on page 13 of the PDS for further details.</p>

Assets of the Fund

Updated information in relation to assets of the Fund shown on page 12 of the PDS, including details in relation to number of loans, details of the mortgage portfolio diversification and arrears, is available from the Manager's website at www.LMAustralia.com/downloads/FMIF_portfolio_update.pdf, in the document titled LM First Mortgage Income Fund - Portfolio Update, or a copy can be obtained free of charge by telephoning the Manager's regional offices or by telephoning the Manager's head office on freecall 1800 062 919 (Australia only) or +617 5584 4500.

Liquidity Policy

The Manager monitors and balances the Fund's portfolio of assets between cash and Australian registered first mortgage securities as part of the Fund's liquidity management.

The liquidity policy of the Fund describes the methodology the Manager applies to ensure that the maturity of the assets and liabilities of the Fund do not negatively impact on the Fund. The Manager does this by continually monitoring and managing the four variables that impact on liquidity which are: investor inflows; investor redemptions; loan draws and loan repayments.

Since its inception in 1999, the Fund has settled approximately \$4 billion of first mortgages within the commercial, industrial, retail, residential, aged care and construction sectors of Australia's property market (past performance is not an indicator of future performance). The Manager's Commercial Lending Team is focused on growing its national mortgage broker and direct borrower network, with the intention of ensuring a continued supply of loans for the portfolio.

As required by the ASIC benchmark on liquidity, in estimating cash flows, the Manager can take into account a reasonable estimate of investor inflows and outflows based on previous experience. Withdrawals are considered with reference to the period within which investors would reasonably expect withdrawal requests to be processed, rather than the maximum period within which the Manager is able to process withdrawal requests. As noted under the heading "Withdrawals" on page 6 of this First SPDS, investors may expect timeframes of up to 365 days for withdrawals if the current market conditions remain.

Lending Policies and Procedures of the Fund

The information contained in the PDS on page 10 under the heading "Lending Policies and Procedures of the LM First Mortgage Income Fund", page 32 under the heading "Lending Criteria of the Fund", page 33 under the headings "Development Loans", "Credit Committee", "Valuations Policy", "Development Valuations", "As is' Valuation" and "On Completion' Valuation", is deleted and replaced with the following.

Credit Committee

The Credit Committee is integral to the compliance and risk management processes utilised by the Manager with respect to the selection of registered first mortgage assets for the Fund. The Credit Committee is an internal review committee for all mortgage investments and is independent from all other departments. The Credit Committee calls for collaboration of a broad base of expertise from the property, finance, legal and accounting sectors when evaluating mortgage assets for the Fund. The formal structure and collaborative decision making process provided by the Credit Committee ensures an informed assessment and objective decision is made when selecting the first mortgage assets of the Fund.

New mortgage investment proposals are put forward by the commercial lending department for consideration with a written summary. The Credit Committee is responsible for setting the primary terms and conditions upon which subsequent approval will be based.

When mortgage investment proposals are completed in accordance with the Manager's credit standards they are required to be finally approved by the Credit Committee.

Lending Criteria of the Fund

- ▶ The Manager has determined and documented lending policies for the approval and management of mortgages. Risk management is a priority, with mortgages diversified over a number of levels including geographic location, sector, loan size, interest rate and maturity profile.
- ▶ One of the tools the Manager employs to enhance income into the Fund is to balance the assets of the mortgage portfolio between commercial loans and selective development loans.
- ▶ The type of real estate offered for security must be acceptable to the Manager. Typical mortgage securities will include commercial, industrial and residential real estate (including development loans across these sectors) secured by a registered first mortgage. A first mortgage must be registered on the primary security property.
- ▶ The value of the security property must be established in accordance with the valuations policy of the Manager.
- ▶ The ability of the borrower to service the facility must be established to the satisfaction of the Manager.
- ▶ To the extent that they may affect the value or performance of an underlying investment the Manager may take into account labour standards, or environmental, social or ethical considerations when making, retaining or realising an investment in the Fund. The Manager has no predetermined view about how far such matters will be taken into account, and the Manager will make a determination on such issues on a case by case basis.

Lending Policies and Procedures

The Manager will be selective in its choice of mortgages and will adhere to prudent lending parameters. The Fund will follow strict lending policies and procedures as detailed below:-

- ▶ assessment of the borrower - the Manager endeavours to meet every borrower to assess character and business acumen;
- ▶ the maximum loan amount for any one borrower generally does not exceed 10% of the scheme assets;
- ▶ all mortgages are subject to the Manager's rigorous due diligence process including approval by the Manager's Credit Committee;
- ▶ the due diligence process includes assessment of the financial capacity of the borrower and any guarantors. The assessment is carried out by review and substantiation of assets, liabilities and income by reference to information provided by the borrower and independent searches and checks;

- ▶ a first mortgage is always registered on property held as the primary security;
 - ▶ commercial loans are loans secured by income producing property. Non-commercial loans (not secured by income producing property) include construction/development loans and pre-development land. The capacity to service commercial loans is assessed primarily by reference to income produced from the security property, however income from all sources is also considered. The capacity to service construction loans is primarily dependent on the viability of the project, the project cash flow (including interest commitments) and all factors relevant to the project including valuation of the completed product, product demand, pre-sales contracts, marketing strategies, certified project costings, credentials of the borrower, builder and key sub-contractors;
 - ▶ the Manager has every security property valued by one of the Manager's panel valuers or by a valuer meeting the Manager's standards for inclusion on its panel and adhering to the Manager's valuation policies. Further details in relation to the Manager's valuation policies are outlined below under the heading "Valuation Policies";
 - ▶ the Manager has a policy of diversifying mortgage securities geographically and by property type;
 - ▶ the Manager has a policy of generally not exceeding the following loan to valuation ratios:-
 - ⊗ 66.67% for construction and development loans; and
 - ⊗ 75% for commercial loans;
- The Credit Committee will consider the appropriate loan to valuation ratio based on all the factors surrounding the loan;
- ▶ the constitution of the Fund allows the Manager to lend funds provided that all mortgages are secured over property and the amount which may be advanced to a borrower does not exceed an LVR of 75% of the value of the security property on initial settlement. After a loan has settled and where the Manager considers it is in the best interests of the members of the Fund, the Manager may approve an LVR not to exceed 85% of the value of the security property. The LVR of a loan that is in default may exceed 85%. This could occur for example, where interest is being capitalised while the security property is being marketed and sold, or where the Manager determines that expenditure should be incurred to improve the security property prior to sale (the Manager considers a loan to be in default when interest payments have not been received in breach of the loan agreement, or the loan term has expired without repayment of principal);
 - ▶ the following additional requirements are imposed in the case of development loans:
 - ⊗ for development/construction loans the initial drawdown for the facility is arrived at after considering both the approved loan to valuation ratio on the "as is" valuation and the "cost to complete" formula. The initial drawdown must meet the loan to valuation ratio required and also allow sufficient funds to be available in the facility to complete the development. The project feasibility must reflect the "cost to complete" formula throughout the life of the project. The concept of a "cost to complete" formula is that the lender always retains sufficient funds within the loan facility to complete the development based on its assessment of the actual cost to complete the project. The Manager engages an external consultant Quantity Surveyor for each project and receives periodic reports on the progress of the project including certification of construction claims based on work completed;
 - ⊗ additional development loan procedures are required throughout the development stages of the loan to ensure the development is adequately monitored;
 - ⊗ where applicable a tripartite agreement is made between the Manager, the borrower and the builder. This enables the Manager, in the event of default by the borrower, to deal directly with the builder.

Valuation Policies

All real property assets of the Fund are required to be valued prior to settlement of each transaction. Valuations may only be carried out by the Manager's panel valuers or by a valuer meeting the Manager's standards for inclusion on its panel and must adhere to the Manager's valuation guidelines. The Manager has determined and documented valuation review procedures for guidance on each valuation.

Members of the valuation panel are appointed and removed in accordance with the Manager's valuation panel appointment guidelines. The Manager is responsible for approving the appointment or removal of a panel valuer.

The Manager, in accordance with its valuations review guidelines is responsible for the review of all valuations. Unresolved issues arising from a review must be referred to an executive director for discussion and determination.

As an internal checking mechanism, an independent property report is obtained (where appropriate) from two real estate agents or an alternate valuers report whose normal trade area encompasses the property being valued.

Valuers selected by the Manager to perform relevant valuations on the security property are chosen based on independence, specialist industry expertise and geographic location.

The Manager only uses valuers who, where possible, are registered under one of the state/territory valuer registration regimes and who include a statement in their valuation reports on whether the valuation complies with all relevant industry standards and codes.

The Manager does not accept valuations performed on the instruction of borrowers. The Manager requires that valuations be provided on the Manager's instructions, or that valuers confirm that their valuations adhere to the Manager's requirements.

The valuer must have appropriate professional indemnity insurance.

The valuer must certify that they are independent of both the borrower and security property.

At initial settlement, the valuation relied on must not be dated more than 3 months prior to settlement.

An updated valuation will generally be required where a loan term is extended or a loan is otherwise varied. An updated valuation will also generally be required for commercial loans at 24 month intervals and for construction loans at 12 month intervals. The requirement for an updated valuation may be waived where the Manager considers that an updated valuation would serve no useful purpose (e.g. where it is demonstrable that property values have increased or not changed in the locality of the property, where a property under construction is significantly presold, where a commercial property has long term leases in place, where a sale or refinance is imminent or where the loan to valuation ratio of the property is low).

Development Valuations

Separate valuations (may be within the one valuation report) are required in relation to "as is" and "on completion" valuations.

Appropriate instructions must be given to the valuer having regard to the type of valuation required. In particular the instructions indicate the type of valuation required eg. "as is" or "on completion".

"As is" Valuation

The "as is" valuation is the market valuation of the property at the time of the initial drawdown. A "feasibility analysis" is undertaken including demolition, subdivision, construction, and other development costs, allowances for sales and marketing expenses, interest and an allowance for profit and risk to arrive at a base value for the land. Any such analysis is based on the premise that the development approval has or will be obtained prior to settlement of the loan. Alternatively, the valuation must contain an adjustment for any uncertainty attaching to the development approval process. The requirement for a feasibility analysis may be satisfied, if appropriate, using alternate techniques such as discounted cash flows. Additionally a cross check valuation method is employed evaluating comparable sales evidence. The loan to valuation ratio in this case must fall within the Manager's lending criteria.

"On Completion" Valuation

The "on completion" value is the market value of the property at the completion of development. The valuation methodology required is a "gross realisation" valuation based on comparable sales and/or lease evidence for the individual components e.g. houses, units, allotments etc.

The Manager will reasonably assess the appropriateness of the feasibility analysis within the valuer's report by comparison with cost estimates provided by a competent external quantity surveyor selected from the Manager's panel.

The "on completion" value is the valuation figure used in the cost to complete calculations during the development phase. The "on completion" value may be revised during the term of development to reflect changes as approved by the Manager.

Withdrawals

From time to time dependent on market cycles, the Manager may pay withdrawals over longer timeframes than usual in a normal market environment. As currently stated in the PDS, in certain circumstances withdrawal payments may be extended to 365 days or the Manager may suspend withdrawals. This protective management mechanism can be utilised to manage liquidity, to protect Fund assets and stability and investor distributions.

Due to the current turmoil and unpredictability of the market, the Manager is exercising caution with the Fund's cashflow management and utilising longer timeframes for redemptions. The Fund is currently continuing to pay redemptions, with income being earned up to the date of payment, and non-Australian dollar investments continue to hedge the currency exposure of these investments. However, longer timeframes of up to 365 days can occur should the market dictate. The Manager may also suspend withdrawals for such periods as it determines.

In light of the above matters, the following changes are made to the PDS:

- ▶ On page 17 of the PDS titled "How to Withdraw", the normal market environment timeframes for payment of withdrawals of generally within 30 days after maturity for Australian dollar investments and generally within 5 business days after maturity date no longer occur at this time, and references to those time periods under the heading "Withdrawal Notice Period" are deleted from the PDS.
- ▶ In footnotes 8, 9, 11, 13, 16, 17 and 18 on pages 5, 6, 7, 8, 9, 10 and 12 respectively of the PDS, the words "While the Manager considers any delays unlikely" are deleted.
- ▶ On pages 5, 6, 7, 9 and 31 of the PDS, the references to "The Flexi Account option generally allows investors 30 day access to their funds" and "Payment of the withdrawal will generally occur within 30 days from receipt of the written notice" and "Payment of the withdrawal will generally be made within 30 days after the maturity date" and "Payment of the withdrawal will generally be made within 5 business days after the maturity date" and the paragraph beginning "Historically, the Fund has successfully met all withdrawal requests on time and in full" are deleted.

The Manager is managing the challenges of the current external factors to ensure the ongoing success of the Fund in terms of both income and stability.

Investment Risks

Currency Risk

Non-Australian dollar investors who elect to have their distributions electronically credited to the investor's nominated financial institution on a monthly basis should note there is a possible additional currency risk which relates to the unhedged distribution. These investors should take into account the paragraph below in addition to the "Currency Risk" paragraph on page 26 of the PDS.

- ▶ Investors with non-Australian dollar investments who have elected to have their distributions paid monthly should note the distribution is not hedged as the Fund pays the monthly distribution directly from the earnings of the Fund in Australian dollars. The distribution does not form part of the FFEC as it does for a non-Australian dollar investment where the interest is paid at maturity and as such the monthly unhedged distribution is subject to currency risk.

Borrowing Risk

As referred to in this First SPDS there have been changes made in relation to the Fund's borrowing and as such the Borrowing Risk on page 27 of the PDS is replaced with the following paragraph.

Under the constitution the Manager may borrow against the Fund assets on terms and conditions acceptable to the Manager. The Manager has arranged a line of credit facility with the Commonwealth Bank of Australia ("CBA"). This facility was put into place in order to allow the Manager to take advantage of competitive commercial lending opportunities, or to assist the Fund with managing liquidity. As at 28 November 2008 the amount owing to the CBA was \$150 million. As at 28 November 2008 the interest rate of the facility is variable and is priced between 0.50% to 1.10% above the respective BBSY bid rate. The facility term is the subject of an annual review. The Manager is currently renegotiating the credit facility with CBA and expects these negotiations to be finalised by 31 December 2008. The Manager expects that negotiations with CBA will result in a continued line of credit facility for a total of \$150 million for a further 12 month term and will be subject to an annual review.

The finance facility is secured by a fixed and floating charge over the assets of the Fund, providing the CBA as a secured lender with first priority over the assets and income of the Fund. The rights of investors to the income and assets of the Fund are secondary to the rights of the CBA. The facility will be repaid via investment inflows and inflows received from principal repayments from borrowers. This facility or a similar facility may be varied from time to time in order to manage the Fund. Insufficient income generated by the Fund to service the CBA debt, increases in the bank interest rate or an unforeseen refusal of the financier to extend the term of any facility could cause the Fund to default on its loan.

The Directors

By way of update to information about the Directors on page 29 of the PDS, Simon Tickner has been appointed as an executive director and John Dillon and Val Llewellyn are no longer non-executive directors. Information in relation to Simon's background and position with the Manager is outlined in the paragraph below.

Simon Tickner – Executive Director, Head of Lending

In 2001, Simon immigrated to Australia with his family after a 20 year career in trading and broking financial derivatives in London's money markets. Having established LM's Sydney office that year, Simon has since overseen its growth whilst managing LM's business development in the southern states of Australia. As Head of Lending, Simon travels throughout Australia to source and assess new lending opportunities for LM. As Executive Director, Simon's extensive 'on the ground' knowledge of Australia's many property markets provides valuable insight to LM's board, and statistical knowledge to LM's Property Research and Analysis Committee. Simon is a member of the Board of Directors, Credit Committee, Funds Management Committee and Property Research and Analysis Committee.

Borrowings of the Fund

The following paragraph replaces the information contained on page 32 of the PDS under the heading "Borrowings of the Fund".

Under the constitution the Manager may borrow against the Fund assets on terms and conditions acceptable to the Manager. The Manager has arranged a line of credit facility with the Commonwealth Bank of Australia ("CBA"). This facility was put into place in order to allow the Manager to take advantage of competitive commercial lending opportunities, or to assist the Fund with managing liquidity. As at 28 November 2008 the amount owing to the CBA was \$150 million. As at 28 November 2008 the interest rate of the facility is variable and is priced between 0.50% to 1.10% above the respective BBSY bid rate. The facility term is the subject of an annual review. The Manager is currently renegotiating the credit facility with CBA and expects these negotiations to be finalised by 31 December 2008. The Manager expects that negotiations with CBA will result in a continued line of credit facility for \$150 million for a further 12 month term. The finance facility is secured by a fixed and floating charge over the assets of the Fund, providing the CBA as a secured lender with first priority over the assets and income of the Fund. The rights of investors to the income and assets of the Fund are secondary to the rights of the CBA. The facility will be repaid via investment inflows and inflows received from principal repayments from borrowers. The Fund's credit facility may be varied from time to time in order to manage the Fund.

Complaints Procedure

The external industry complaints body approved by ASIC and of which the Manager is a member has changed from the Financial Industry Complaints Service ("FICS") to the Financial Ombudsman Service Limited ("FOS"). The paragraph below replaces the information under the heading "Complaints Procedure" on page 34 of the PDS.

If an investor has a complaint they should generally first contact their adviser. If the adviser is unavailable, unwilling, or unable to assist, or if the investor wishes to directly contact the Manager, and the complaint relates to the Fund or the Manager, then the investor should contact the Client Relations Department at the office of the Manager on free call 1800 062 919 (Australia only) or +617 5584 4500. Complaints may be made in writing or by telephone. The Manager will respond within 30 days of receiving the complaint. If a complaint cannot be resolved by the Manager it should be referred to the Financial Ombudsman Service Limited ("FOS"), an external industry complaints body which has been approved by ASIC and of which the Manager is a member.

Financial Ombudsman Service Limited
GPO Box 3
MELBOURNE VIC 3001
Telephone: 1300 78 08 08
Facsimile: (03) 9613 6399
email: info@fos.org.au
website: www.fos.org.au

Related Parties

The information contained on page 34 of the PDS under the heading "Related Parties" is replaced with the following statements:-

Peter Drake, a director of the Manager is the beneficial owner of LM Administration Pty Ltd, which has been engaged by LM Investment Management Ltd to provide administration services at a commercial arms-length fee. In addition to this LM Administration Pty Ltd provides administration and funds management services to the Fund and is paid a management fee direct from the Fund.

John O'Sullivan, a non-executive director of the Manager is the beneficial owner of O'Sullivan Capital Management Ltd. O'Sullivan Capital Management Ltd has been engaged by LM Investment Management Ltd to provide marketing services in New Zealand at a commercial arms-length fee. This fee is paid by the Fund.

The Fund may lend to related parties provided the loans are approved by the Credit Committee, are on commercial arms-length terms, and are subject to review by the Board.

The Board of the Manager is responsible for reviewing and approving the structure and probity of commercial dealings between the Manager and any related parties. Fees issued to the account of the Fund by related parties, which are recoverable from the Fund must be on commercial arms-length terms and are subject to review by the Board.

The Fund is owed \$33,513,345 in relation to assignment of 3 first registered mortgages from the Fund to the LM Managed Performance Fund (a related investment fund). This debt is secured by a fixed and floating charge over the assets of the LM Managed Performance Fund. The current interest rate payable by the LM Managed Performance Fund on this debt is 10%pa. This loan equates to 5.51% of the total loan portfolio.

The LM Managed Performance Fund has guaranteed part of a debt due by a borrower to the Fund in the amount of \$9,600,000, in exchange for the borrower making certain funds available to an associate of the LM Managed Performance Fund. The current interest rate is 10.5%pa. This loan equates to 1.58% of the total loan portfolio.

The Fund has received the benefit of assignment of a debt due by the LM Managed Performance Fund in the sum of \$5,100,000. The current interest rate payable on this amount is 10%pa. It is anticipated that this debt will be repaid by 30 June 2009. This debt equates to 0.84% of the total loan portfolio.

The Fund has made 3 loans to various related parties, which total \$12,678,275. The Manager has received establishment fees of not more than 1.5% of the total loan amount. The interest rates for these loans are commercial rates and range from 10.5% - 12%pa. These loans equate to 2.08% of the total loan portfolio.

Related Party Finance

The Manager is the Responsible Entity of the LM Managed Performance Fund. From time to time the LM Managed Performance Fund advances loans by way of second mortgages to borrowers who have first mortgage advances from the Fund. At 31 October 2008 there are 8 such loans by the LM Managed Performance Fund in the total amount of \$28,556,297. In these instances the Fund enters into Priority Deeds with the borrower as part of normal loan documentation procedures. The LM Managed Performance Fund generates fees, charges and interest rates all of which are paid by the borrower.

The Directors of LM Investment Management Ltd have authorised and consented to the issue of this First SPDS.



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How to use this Product Disclosure Statement

This Product Disclosure Statement ("PDS") is provided and issued by LM Investment Management Ltd as responsible entity for the **LM First Mortgage Income Fund** ("Fund"). Investors should read the entire PDS and any supplementary PDS before making a decision to invest.

This PDS describes the main features of the **LM First Mortgage Income Fund**, and the investment options in the Fund, which are the **Flexi Account**, the **Australian Dollar Fixed Term** options, the **Currency Hedged Fixed Term** options, and the regular savings plan option known as the **LM Savings Plan**, and contains the Application Form.

This PDS also provides general information in relation to LM Investment Management Ltd ("LM", "Manager", "we", "us", "our"), material documents and other relevant matters. It helps investors to decide whether the product offered will meet their needs and enables them to compare this product with others they may be considering.

Important information

No person is authorised to give any information or to make any representation in connection with the offer of investment described in this PDS which is not contained in this PDS. Any information or representation not so contained may not be relied on as having been authorised by the Manager in connection with this offer.

This PDS is an offer which is available to persons receiving the electronic PDS within Australia but does not constitute an offer in any jurisdiction where, or to any persons to whom, it would be unlawful to offer this PDS. It is the responsibility of any overseas applicant to ensure compliance with all laws of any country relevant to their application. The return of a duly completed Application Form will be taken to constitute a representation and warranty that there has been no breach of such laws and that all necessary approvals and consents have been obtained. An application may only be accepted on an Application Form which forms part of this PDS.

This PDS should be read in its entirety. In particular it is important that investors consider the risk factors that could affect the performance of the Fund. None of an investor's objectives, financial situation or needs has been taken into account in this PDS and investors should carefully consider their personal circumstances before deciding whether to invest in the Fund. If after reading the PDS an investor has any questions regarding its contents or the procedure for investing they should contact their financial or other professional adviser. Past performance should not be taken as an indicator of future performance. Neither the Manager nor the custodian gives any guarantee with respect to the performance of the Fund, the payment of income, or the repayment of capital by the Fund.

All monetary amounts in this PDS are references to Australian dollars, unless stated otherwise.

The Manager may change any of the terms and conditions in this PDS. Notice of material changes will be given to investors, normally in the form of a replacement or supplementary PDS.

From the Directors

LM Investment Management Ltd

LM Investment Management Ltd ("LM") is a privately owned, Australian funds management company with national and international operations. With a specialist focus on the mortgage trust sector, LM manages one of Australia's largest mortgage trusts, the LM First Mortgage Income Fund ("Fund"). Through its management of the Fund, LM enjoys active participation and recognition as a lender within Australia's business and property sectors.

The Australian Mortgage Trust Sector

The Australian managed funds industry is the 4th largest in the world, behind the United States, Luxemburg and France. Established in the 1960's the Australian mortgage trust sector is a significant sector within the financial services industry which has evolved as a mainstream income investment. It is in this sector that LM has focused its expertise to deliver the LM First Mortgage Income Fund, a competitive income product designed to outperform cash¹.

Distribution

Distribution of this income product is through a national and international network of financial advisers, wholesale platforms, private banks, superannuation funds, corporate and institutional investment. Designed specifically for these markets, the Fund offers tailored investment options including retail, wholesale, institutional and currency hedged. Product Disclosure Statements for these options are available from your financial adviser or the Manager.

The LM First Mortgage Income Fund

LM's management expertise, teamed with a well defined investment strategy of selecting only Australian registered first mortgage securities, cash and at call securities has allowed the Fund to deliver uninterrupted interest distributions and maintain the unit price of \$1.00 since inception in 1999².

With a niche product LM receives investments through adviser recommendations in 22 countries. It is pleasing to incorporate multiple currency investment options in this new PDS.

Compliance within the Regulated Financial Services Industry

LM is registered as an Australian Financial Services Licensee and a Responsible Entity under the Corporations Act 2001 and is therefore regulated by the Australian Securities and Investment Commission.

Australia enjoys a global reputation for having one of the most efficiently regulated finance sectors in the world. It provides security and integrity, through a sound, flexible and strong system of financial regulation designed to prevent systemic failure, and avoid unnecessary burdens on business.

¹ Since inception the returns paid to investors have outperformed cash rates. Past performance is not an indicator of future performance. Performance of the Fund is not guaranteed and the risks associated with an investment in the Fund are different to cash.

² Past performance is not an indicator of future performance.

About the LM First Mortgage Income Fund

This summary provides an overview of the key features of the Fund. The entire PDS should be read before investing in the Fund.

Investment Objective	<ul style="list-style-type: none"> ▶ To offer appropriate risk/return premium over cash rates on a range of different currencies³; ▶ To offer competitive interest distributions; and ▶ To allow investors a choice of investment currency and investment term. 		
Assets of the LM First Mortgage Income Fund	The assets of the LM First Mortgage Income Fund ("Fund"), a registered managed investment scheme, are a Manager diversifies the underlying mortgage portfolio by selecting mortgages spread across different sectors,		diversified "pool" of Australian registered first mortgages, ca geographic locations, terms and loan sizes.
Investment Choice	Australian Dollar Investments		Non-Australi
	There is a choice of Australian Dollar investment options available in the Fund, which are the Flexi Account, Fixed Term Investment Options and the LM Savings Plan. A summary of the features of these Australian Dollar investment options are set out below. An investment in Australian Dollars is not hedged.		Non-Australian dollar investments in the Fund are hedged in t Fund currency hedges a non-Australian dollar investment th FFECs are facilitated by a global investment bank. Investmen ▶ USD, ▶ GBP, ▶ EUR, ▶ CAD, ▶ HKD, ▶ SGD, ▶ For clarification on hedging a specific currency please contact
	Flexi Account and Fixed Term Investment Options	The LM Savings Plan Option	Currency Hedged Fi
	Investors can choose the term of their investment by selecting one or more of the investment options below:- ▶ Flexi Account; or ▶ Fixed Term investment of:- > 4 years > 3 years > 2 years > 13 months > 12 months > 6 months > 3 months > 1 month Investors may request different terms by applying to the Manager. An Australian Dollar investment commences on receipt of the cleared investment amount and completed Application Form and relevant supporting documentation.	A savings plan can be started with a minimum investment of \$100 and requires ongoing regular monthly investments of \$100 or more. The minimum investment term for the LM Savings Plan is 12 months. No withdrawals are allowed during the initial 12 month term.	Non-Australian Dollar investors can choose the term of their in > 12 Months > 6 Months > 3 Months > 1 Month Investors may request different terms by applying to the M. Manager settles the FFEC.
Interest Distribution Rates	Interest distribution rates are variable. Refer to the paragraph headed "Interest Distribution Rates" on page 5 of particular investment options from their adviser or by telephoning the Manager on +617 5584 4500 or from		of this PDS for further details. Investors can obtain details of the Manager's website at www.LMaustralia.com ⁴ .
Payment of Interest Distributions	Reinvested monthly into the investor's investment account. Investors may choose to have the interest distribution paid monthly or quarterly direct to the account nominated on the Application Form.	Reinvested monthly to the investor's investment account.	Reinvested at maturity of the chosen investment term into f interest distribution paid at maturity direct to the account nomir
Withdrawal Notice	<ul style="list-style-type: none"> ▶ Flexi Account – Written notice is required to withdraw; ▶ Fixed Term investments – At least 5 business days prior to maturity of the fixed term investors must notify the Manager in writing whether they wish to withdraw. If no withdrawal notice is received an investor's investment is automatically rolled over for a further term of the same length. Refer to page 17 of this PDS ("How to Withdraw"). 	No withdrawals are allowed during the first 12 month period. After the initial 12 month period investors can make up to 4 withdrawals annually by giving written notice to the Manager. Refer to page 17 of this PDS ("How to Withdraw").	At least 5 business days prior to maturity of the investment to withdraw. If no withdrawal notice is received or no rollov distribution is automatically reinvested in the original nominate the Manager of a longer reinvestment term or a withdrawal not
Minimum Investment	\$1,000 ⁵	Initial investment \$100 and minimum total monthly investment \$100	\$1,000 ⁵

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The LM First Mortgage Income Fund

Investment Objective

- ▶ To offer appropriate risk / return premium over cash rates on a range of different currencies⁶;
- ▶ To offer competitive interest distributions; and
- ▶ To allow investors a choice of investment currency and investment term.

The Manager achieves this by being selective with the investments of the LM First Mortgage Income Fund, which are a diversified "pool" of registered first mortgages, cash and "at call" securities.

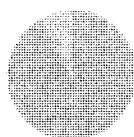
Benefits of Investing

- ▶ Choice of investment term;
- ▶ Choice of currencies with non-Australian dollar currencies hedged against movements in the Australian dollar;
- ▶ Australian registered first mortgage security;
- ▶ Appropriate risk premium relative to cash rates⁶;
- ▶ Funds management expertise – managed by specialist mortgage trust manager;
- ▶ Nine year management track record of uninterrupted income distributions⁷.

The LM First Mortgage Income Fund Investments

The Fund currently invests in a diversified portfolio of Australian registered first mortgages over commercial, residential, industrial, retail and vacant land, interest bearing cash investments and "at call" securities.

The assets of the LM First Mortgage Income Fund as at 29 February 2008 totalled \$718,403,075 and were made up as follows:



- Australian Registered First Mortgage Securities 96%
- Cash & "At Call" Securities 4%

Interest Distribution Rates

Interest distribution rates are variable, and will depend on income earned and expenses paid by the Fund from time to time, commission payable to advisers, and on the type of investment chosen. Investors can obtain details of the most recent interest distribution rates paid by the Fund in respect of particular investment options from their adviser, by telephoning the Manager on +617 5584 4500 or from the Manager's website at www.LMaustralia.com.⁷

Investment Options in the LM First Mortgage Income Fund

Financial advisers have the advantage of tailoring a client's portfolio for optimal liquidity and maximum return by blending investment through one or more of the Fund's Flexi Account or Fixed Term investments.

The investment options offered by the Fund provide flexibility of choice for investors. Investors can choose investment currency and term of their investment by selecting one or more of the investment options below:-

Australian Dollar Investment Options

- ▶ **Flexi Account**
The Flexi Account option generally allows investors 30 day access to their funds.⁸
- ▶ **Fixed Term Investment**
The Fixed Terms offered by the Fund are as follows⁸:-
> 4 years > 3 years > 2 years > 13 months
> 12 months > 6 months > 3 months > 1 month
Investors may request different terms by applying to the Manager.
- ▶ **LM Savings Plan**
The LM Savings Plan is a savings plan option that investors can start with a minimum investment of \$100 and ongoing regular monthly investments of \$100 or more for at least the first 12 months.

Non-Australian Dollar Currency Hedged Fixed Term Investment Options

Non-Australian dollar investments in the Fund are hedged in the respective currency against Australian dollar currency movements. The Fund currency hedges a non-Australian dollar investment through the use of Forward Foreign Exchange Contracts ("FFEC"). The FFEC's are facilitated by a global investment bank. Investments may be arranged for most currencies including:-

- > USD > GBP > EUR > CAD > HKD > SGD > JPY
- > NZD > THB > CHF and > SEK

Non-Australian Dollar investors can choose the term of their investment by selecting one or more of the investment terms below:⁸

- ▶ 12 Months
- ▶ 6 Months
- ▶ 3 Months
- ▶ 1 Month

The investor's investment term commences on the date the Manager settles the FFEC.

For clarification on hedging a specific currency or enquiries for other investment terms please contact the Manager.

Further details regarding each of the Fund's investment options are set out on pages 6 - 9 of this PDS.

⁶ Since inception the returns paid to investors have outperformed cash rates. Past performance is not an indicator of future performance. Performance of the Fund is not guaranteed and the risks associated with an investment in the Fund are different to cash.

⁷ Past performance is not an indicator of future performance.

⁸ While the Manager considers any delays unlikely, in certain circumstances the Manager may delay withdrawals from the Fund by up to 365 days or suspend withdrawals in order to protect all investments. Refer to page 17 of this PDS ("How to Withdraw").

LM First Mortgage Income Fund Australian Dollar Investment Options

LM Flexi Account and Fixed Term Options

- ▶ **Flexi Account**
The Flexi Account option generally allows investors 30 day access to their funds.⁹
 - ▶ **Fixed Term Investment**
The Fixed Terms offered by the Fund are as follows:⁹
 - > 4 years > 3 years > 2 years > 13 months
 - > 12 months > 6 months > 3 months > 1 month
- Investors may request different terms by applying to the Manager.

Interest Distribution Rates

Interest distributions are variable, and will depend on income earned and expenses paid by the Fund from time to time, commission payable to advisers, and on the type of investment chosen. The most recent interest distribution rates paid by the Fund in respect of the Fund's Flexi Account, Fixed Term Investment and LM Savings Plan options can be obtained from an investor's adviser, by telephoning the Manager on +617 5584 4500 or from the Manager's website at www.LMaustralia.com.¹⁰

Interest Distribution Payments for the Flexi Account and Fixed Term Options

Monthly interest distributions are automatically reinvested. However investors may choose to have their interest distribution:-

- ▶ paid by direct credit monthly or quarterly to the nominated financial institution account on the Application Form;
- ▶ paid to an investor's LM Cash Performance Fund investment account; or
- ▶ paid as a split interest distribution, which means that part of the interest distribution is paid to an investor's financial institution account and the balance reinvested. Further details are set out below.

If no instructions are given, interest distributions are automatically reinvested.

Interest distributions are calculated daily. Interest distributions are paid within 14 days after the end of the month. Quarterly interest distributions are paid within 10 business days of the quarterly anniversary of the investment date.

Interest distributions are paid by direct credit to the account nominated on the investor's Application Form.

Split Interest Distributions for the Flexi Account and Fixed Term Options

Investors can elect to have a fixed portion of their monthly interest distribution amount paid monthly or quarterly to their nominated financial institution account with the balance interest distribution amount reinvested to their investment account.

This optional feature allows investors to properly plan and budget their financial affairs and is particularly useful for investors who are relying on investments to provide regular payments to meet everyday expenses.

To use the "Split Interest Distributions" feature please complete the appropriate section of the Application Form attached to this PDS.

Additional Investments for the Flexi Account and Fixed Term Options

Investors can choose to make an additional investment or regular monthly, quarterly or semi-annual additional investments to their Flexi Account or Fixed Term investment account. See the heading "Adding to an Investment for Australian Dollar Investments Only" on page 16 of this PDS.

LM First Mortgage Income Fund Fixed Term Commencement

An investment term generally commences on the day that the investor's properly completed Application Form (and relevant supporting documentation) and investment money are received and processed by the Manager. For example, if a properly completed Application Form, supporting documentation, and investment money are received and processed for a 12 month term on 15 January, then the investment term commences on 15 January and ends on 15 January of the following year.

Flexi Account Withdrawal Notice

To withdraw all or part of a Flexi Account investors must give the Manager written notice. Payment of the withdrawal will generally occur within 30 days from receipt of the written notice.⁹ Whilst the withdrawal is processed the investment continues to earn interest. The withdrawal is paid by direct credit to the investor's account nominated on the Application Form.

Fixed Term Investment Withdrawal Notice

To withdraw all or part of a Fixed Term investment, investors must notify the Manager in writing at least 5 business days prior to the maturity date of the Fixed Term investment. Payment of the withdrawal will generally be made within 30 days after the maturity date.⁹ Whilst the withdrawal is processed the investment continues to earn interest. The withdrawal is paid by direct credit to the investor's account nominated on the Application Form.

If no withdrawal notice or written notice to change the term, is received at least 5 business days prior to the maturity date the investment will automatically roll over for a further investment term of the same length.

⁹ While the Manager considers any delays unlikely, in certain circumstances the Manager may delay withdrawals from the Fund by up to 365 days or suspend withdrawals in order to protect all investments. Refer to page 17 of this PDS ("How to Withdraw").

¹⁰ Past performance is not an indicator of future performance.

LM First Mortgage Income Fund Australian Dollar Investment Options

LM Savings Plan Option

LM Savings Plan investors can start their savings plan with a minimum investment of \$100 and ongoing regular monthly investments of \$100 or more for at least the first 12 months.

Investors can choose to have their ongoing investments paid by direct debit on a weekly, fortnightly or monthly basis. The direct debit will be paid from the account nominated on the Application Form.

The minimum investment term for the LM Savings Plan is 12 months. To ensure that savings are maximised no withdrawals are allowed during the initial 12 month term.

After the initial 12 month period investors can make up to 4 withdrawals annually.

Interest Distribution Payments for the LM Savings Plan

Interest distributions are calculated daily and reinvested monthly to an investor's LM Savings Plan investment account.

LM Savings Plan Additional Investments

Investors can choose to make additional investments to their savings plan at any time. The minimum additional investment amount is \$100.

LM Savings Plan Withdrawal Notice

Following the initial 12 month investment period investors can make up to 4 withdrawals annually by giving written notice to the Manager. Payment of the withdrawal will generally occur within 30 days from receipt of the written notice.¹¹ The withdrawal is by direct credit to the account nominated on the Application Form.

LM Savings Plan Commencement

An investment term generally commences on the day that the investor's properly completed Application Form (and relevant supporting documentation) and investment money are received and processed by the Manager. For example, if a properly completed Application Form, supporting documentation, and investment money are received and processed for a 12 month term on 15 January, then the investment term commences on 15 January and ends on 15 January of the following year.

Performance

The historical returns of the Fund to 29 February 2008 are set out below. Performance figures are calculated net of fees and assume all interest distributions are reinvested. The performance figures assume a fee of 1.1% pa (including GST) of net assets is paid to advisers. No performance figures are provided for the 1 Month Fixed Term option as it commenced at the date of this PDS, nor for the 13 Month Fixed Term option as it commenced on 20 March 2008. Investors can obtain updated details of the most recent interest distribution rates paid by the Fund in respect of particular investment options from their adviser, by telephoning the Manager on +617 5584 4500 or from the Manager's website at www.LMaustralia.com.¹²

Investment	6 mths	1 yr*	3 yrs*	5 yrs*	7 yrs*	8 yrs*
4 Years	3.83%	7.78%	N/A	N/A	N/A	N/A
3 Years	3.83%	7.78%	N/A	N/A	N/A	N/A
2 Years	3.83%	7.78%	7.75%	N/A	N/A	N/A
12 Month Term	3.70%	7.52%	7.50%	7.60%	7.92%	7.89%
6 Month Term	2.96%	6.00%	6.00%	6.05%	6.32%	6.49%
3 Month Term	2.47%	5.00%	5.00%	5.02%	5.30%	5.46%
LM Flexi Account	3.29%	N/A	N/A	N/A	N/A	N/A
LM Savings Plan	3.27%	6.52%	6.50%	N/A	N/A	N/A

*Effective annual interest distributions to 29 February 2008. Interest distribution rates may vary. Past performance is not an indicator of future performance.

¹¹ While the Manager considers any delays unlikely, in certain circumstances the Manager may delay withdrawals from the Fund by up to 365 days or suspend withdrawals in order to protect all investments. Refer to page 17 of this PDS ("How to Withdraw").

¹² Past performance is not an indicator of future performance.

LM First Mortgage Income Fund Non-Australian Dollar Currency Hedged Fixed Term Investment Options

Non-Australian Dollar Currency Hedged Fixed Term Investment Options

Non-Australian dollar investments in the Fund are hedged in the respective currency against Australian dollar currency movements. The Fund currency hedges a non-Australian dollar investment through the use of Forward Foreign Exchange Contracts ("FFEC"). The FFEC's are facilitated by a global investment bank. Investments may be arranged for most currencies including:-

- > USD > GBP > EUR > CAD > HKD > SGD > JPY
- > NZD > THB > CHF and > SEK

Non-Australian Dollar investors can choose the term of their investment by selecting one or more of the investment terms below:¹³

- ▶ 12 Months
- ▶ 6 Months
- ▶ 3 Months
- ▶ 1 Month

The investor's investment terms commences on the date the Manager settles the FFEC.

Extended Investment Terms

Investors may apply to the Manager to invest in the Fund for an extended investment period for multiple 12 month investment terms e.g. if an investor wants to invest for a 2 year investment term the 2 year investment term will be conducted as 2 rolling 12 month investment terms. In this case the second investment term is dealt with in the same manner as an initial investment. If the Manager allows the extended investment term, the terms and conditions of the extended investment term will be the same as the Fund's investment terms outlined in the PDS in force at the time the extended term commences. Investors will need to contact their adviser or access our website at www.LMAustralia.com or telephone us on +617 5584 4500 prior to the reinvestment term to obtain details of the most recent interest distribution rates and a copy of the PDS that will apply for the purpose of the reinvestment.¹⁴

Non-Australian Dollar Currency Hedged Interest Rates

Interest distribution rates are variable, and will depend on income earned and expenses paid by the Fund from time to time, commission payable to advisers, and on the type of investment chosen. Investors can obtain details of the most recent interest distribution rates paid by the Fund in respect of particular currency investment options from their adviser, by telephoning the Manager on +617 5584 4500 or from the Manager's website at www.LMAustralia.com.¹⁴

Currency Hedge

The Fund hedges a non-Australian dollar investment through the use of FFECs. Each FFEC requires agreement between the user (the Fund) and the provider (financial institution) on the following:-

- ▶ currencies to be exchanged;
- ▶ the value of each of the currencies to be exchanged;
- ▶ the maturity date of the contract; and
- ▶ the rate at which the exchange between currencies will occur.

The forward rate is determined by the spot rate (current market rate) and the interest rates of the relevant currencies and will change as these variables alter.

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 Australian dollars 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 predetermined 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.

Both the spot and forward transactions are facilitated by a global investment bank.

This process allows the Fund to offer investors the opportunity to invest in the LM First Mortgage Income Fund and hedge their investment against currency movements.

Currency Hedged Initial Investment

On receipt of the investment amount and the completed Application Form (including relevant supporting documentation) the Manager will confirm receipt with the investor's adviser.

The non-AUD investment amount is held in the subscription account until the Manager exchanges the foreign currency into Australian dollars and simultaneously hedges the relevant currency using FFECs.

Non-AUD investment terms for all currencies commence on the day the Manager settles the FFEC. For example, if the properly completed Application Form and supporting documentation for a 12 month term investment and investment monies are received by the Manager on 20 March and the FFEC settles on 22 March the commencement date will be 22 March and the maturity date will be 12 months later. The investment commences to earn interest from 22 March.

FFECs are settled on a daily basis with the global investment bank.

Investors will be notified by the Manager of the commencement date of their investment in writing.

¹³ While the Manager considers any delays unlikely, in certain circumstances the Manager may delay withdrawals from the Fund by up to 365 days or suspend withdrawals in order to protect all investments. Refer to page 17 of this PDS ("How to Withdraw").

¹⁴ Past performance is not an indicator of future performance.

LM First Mortgage Income Fund Non-Australian Dollar Currency Hedged Fixed Term Investment Option

Interest Distribution Payments for Non-Australian Investments

Interest distributions are calculated for the term of the investment and are reinvested at the end of the investment term unless the investor elects to have the interest distribution paid direct to the investor account nominated on the Application Form. The interest distribution is paid within 5 business days of maturity of the original and any subsequent investment term.

Investors should note that if they elect to have the interest distribution paid to the investor account nominated on the Application Form, financial institutions charge a remittance fee which will be deducted from their interest distribution.

Automatic Reinvestment Default Position

If the investor has not ticked one of the boxes in Section 12 of the Application Form to either redeem or to rollover the investment for subsequent investment terms, the following default process will apply. 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 rehedged 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.

Investors should complete the Maturity/Rollover Instructions in Section 12 of the Application Form to ensure that correct rollover/withdrawal instructions are provided to the Manager.

Investors should consult with their adviser to obtain details of the current PDS and most recent interest distribution rates prior to reinvestment.¹⁵ The current PDS and most recent interest distribution rates are also available from the office of the Manager by telephoning +617 5585 4500 or by visiting the Manager's website at www.LMaustralia.com.¹⁵

Changing Rollover Investment Terms

Investors can change the term of their investment by giving the Manager written notice at least 5 business days prior to the existing maturity date.

Investors should consult with their adviser to obtain details of the current PDS and most recent interest distribution rates prior to reinvestment.¹⁵ The current PDS and most recent interest distribution rates are also available from the office of the Manager by telephoning +617 5585 4500 or by visiting the Manager's website at www.LMaustralia.com.¹⁵

Notice of Withdrawal

To withdraw all or part of a currency hedged fixed term investment, investors must notify the Manager in writing at least 5 business days prior to the maturity date of the current investment term. Payment of the withdrawal will generally be made within 5 business days after the maturity date.¹⁶ The withdrawal is by direct credit to the account nominated on the Application Form.

Please refer to the paragraph on this page headed "Automatic Reinvestment Default Position" for further details of the consequences of not providing the notice in writing at least 5 business days prior to the relevant maturity date.

¹⁵ Past performance is not an indicator of future performance.

¹⁶ While the Manager considers any delays unlikely, in certain circumstances the Manager may delay withdrawals from the Fund by up to 365 days or suspend withdrawals to protect all investments. Refer to page 17 of this PDS ("How to Withdraw").

LM First Mortgage Income Fund Investments

Assets of the LM First Mortgage Income Fund

The assets of the Fund are a diversified portfolio of Australian registered first mortgages over commercial, residential, industrial, retail, vacant land, interest bearing cash investments and "at call" securities.

The assets of the Fund as at 29 February 2008 totalled \$718,403,075 and were made up as follows:



- Australian Registered First Mortgage Securities 96%
- Cash & "At Call" Securities 4%

Investment Strategy and Structure

The Manager's investment strategy is to provide competitive investment returns from Australian registered first mortgage securities, cash and "at call" securities. Risk management is a priority and the Manager follows a disciplined research driven approach to investment.

The Manager's Property Research and Analysis Committee ("PRAC"), specifically targets locations offering property growth opportunities and property sectors which are expected to perform. The Manager utilises the information provided by PRAC to review and assess its asset allocation strategy for the mortgage securities. As part of its asset allocation strategy the Manager diversifies the mortgage portfolio at a number of levels including, sector, geographic location, term and loan size.

All decision making in relation to the assets of the Fund is handled through a collaborative discussion forum of committee structures, rather than resting with one person. Both the broad base of expertise involved in committee discussions together with the objectivity offered by voting members of the committees is designed for the ultimate protection of investor funds. The Credit Committee is integral to the compliance and risk management processes utilised by the Manager with respect to the selection of registered first mortgage assets for the Fund. The Credit Committee calls for collaboration of a broad base of expertise from the property, finance, legal and accounting sectors when evaluating mortgage assets for the Fund. The formal structure and collaborative decision making process provided by the Credit Committee ensures an informed assessment and objective decision is made when selecting the first mortgage assets of the Fund. For more information in relation to the Credit Committee and the Manager's lending policies and procedures refer to the section headed "Lending Policies and Procedures of the LM First Mortgage Income Fund" on this page of the PDS.

To enhance investment returns from cash investments the Manager may, from time to time, invest a proportion of Fund's cash assets with other fund managers who specialise in income bearing cash investments, long and short term securities (including equity securities and derivatives on securities) or mortgage securities. Specialist fund managers are chosen following an extensive and rigorous research process that examines their investment style, expertise of their investment team and a range of other factors. The Manager reviews each specialist fund manager's performance on an ongoing basis, ensuring that they operate within the mandated expectations and guidelines. As at the date of this PDS, the Manager has a policy limiting the proportion of Fund assets invested with other specialist fund managers to 10%.

The Manager monitors and balances the Fund's portfolio of assets between cash, "at call" securities and Australian registered first mortgage securities, to ensure:-

- ▶ the delivery of consistent performance for investors;
- ▶ sufficient liquidity is available for investors redeeming their investment in the Fund¹⁷. The Manager has a liquidity policy that is monitored by the Board to adequately manage payment of withdrawals within the time period specified; and
- ▶ liquidity is available to service the requirements of both existing and new mortgage securities.

Since its inception in 1999, the Fund has settled approximately \$3.5 billion of first mortgages. To ensure a continued supply of loans for the portfolio, the Manager's Commercial Lending Department markets its property related expertise, experience and lending services throughout a network of Australian loan originators.

Lending Policies and Procedures of the LM First Mortgage Income Fund

The Manager is selective in its choice of mortgages and adheres to prudent lending parameters. The Fund follows strict lending policies and procedures as detailed below:

- ▶ Assessment of the borrower - the Manager endeavours to meet every borrower to assess character and business acumen;
- ▶ All mortgages are subject to the Manager's rigorous due diligence process including approval by the Manager's Credit Committee;
- ▶ A first mortgage is always registered on property held as the primary security;
- ▶ The Manager has every security property valued by one of the Manager's panel valuers or by a valuer meeting the Manager's standards for inclusion on its panel and adhering to the Manager's valuation guidelines;
- ▶ The Manager does not accept valuations performed on the instruction of borrowers. The Manager requires that valuations be provided on the Manager's instructions, or that valuers confirm that their valuations adhere to the Manager's requirements;
- ▶ The valuer must have appropriate professional indemnity insurance;
- ▶ The valuer must certify that they are independent of both the borrower and security property;
- ▶ An updated valuation will generally be required where a loan term is extended or a loan is otherwise varied. An updated valuation will also generally be required for commercial loans at 24 month intervals and for construction loans at 12 month intervals. The requirement for an updated valuation may be waived where the Manager considers that an updated valuation would serve no useful purpose (eg where it is demonstrable that property values have increased or not changed in the locality of the property, where a property under construction is significantly presold, where a commercial property has long term leases in place, where a sale or refinancing is imminent or where the loan to valuation ratio of the property is low);
- ▶ The Manager has a policy of diversifying mortgage securities geographically and by property type;
- ▶ The Manager has a policy of generally not exceeding the

¹⁷ While the Manager considers any delays unlikely, in certain circumstances the Manager may delay withdrawals from the Fund by up to 365 days or suspend withdrawals in order to protect all investments. Refer to page 17 of this PDS ("How to Withdraw").

following loan to valuation ratios:-

- 66.67% for construction and development loans; and
- 75% for commercial loans;
- ▶ The constitution of the Fund does not allow the Manager to exceed a loan to valuation ratio of 85% for any one loan except in the event of default. This could occur for example, where interest is being capitalised while the security property is being marketed and sold, or where the Manager determines that expenditure should be incurred to improve the security property prior to sale (the Manager considers a loan to be in default when interest payments have not been received in breach of the loan agreement, or the loan term has expired without repayment of principal);
- ▶ One of the tools the Manager employs to enhance income into the Fund is to balance the assets of the mortgage portfolio between commercial loans and selective development loans;
- ▶ A serviceability analysis is performed to evaluate the financial capacity of each applicant borrower including checking the credit history of each borrower through a credit bureau.

Further information in relation to investment policies and lending criteria is outlined on page 31 of this PDS ("Additional Information").

To the extent that they may affect the value or performance of an underlying investment the Manager may take into account labour standards, or environmental, social or ethical considerations when making, retaining or realising an investment in the Fund. The Manager has no predetermined view about how far such matters will be taken into account, and the Manager will make a determination on such issues on a case by case basis.

LM First Mortgage Income Fund Arrears Management

The Manager has documented arrears management processes which are implemented in the event that a mortgage loan goes into default. Arrears loans are managed by a team of experienced personnel. The documented processes include the following:

- ▶ Dishonoured payments or other defaults are referred to the Arrears Manager for actioning. The Arrears Manager immediately contacts the borrower to ascertain the circumstances of the default;
- ▶ If the default is short term, arrangements are made with the borrower to remedy the default;
- ▶ If the default is long term, a summary of the nature of the default is emailed to the Arrears Committee with recommendations;
- ▶ The Arrears Committee is comprised of the Executive Directors, the Portfolio Manager, the Risk Manager, the Arrears Manager and members of the Commercial Lending Department as appropriate;
- ▶ The Arrears Committee meets at least weekly. The Arrears Committee considers the recommendations for arrears loans and supervises the preparation of an arrears management plan for each arrears loan. Given the nature of loans within the loan portfolio, the Manager adopts a case by case approach to arrears management, reflected in the individual management plans for each arrears loan;
- ▶ Management plans are implemented by the Arrears Manager who maintains a separate arrears file for each

arrears loan;

- ▶ Reports on arrears loans are prepared and presented at Arrears Committee meetings. Management plans are considered and updated as necessary;
- ▶ In the formulation of a management plan the Arrears Committee considers the following factors:
 - Current value of the security property;
 - Whether an updated valuation ought to be obtained;
 - Current loan amount;
 - Current loan to valuation ratio;
 - A review of securities held;
 - A review of insurances held;
 - Issue of default notices;
 - For commercial loans:-
 - > tenancy status;
 - For construction loans:-
 - > status of construction;
 - > cost to complete;
 - > sales achieved;
 - > review of presales;
 - Current marketing and/or sales programs;
 - Credit assessment of the borrower and any guarantors;
 - Whether demands ought to be issued to any guarantors;
 - Any proposal by the borrower to remedy the default;
 - Status of any second or subsequent mortgages and status of priority arrangements;
 - Desirability of taking possession or appointing a receiver or agent for the mortgagee;
 - Compliance with statutory requirements (eg lodgement of notices, maintenance of controller accounts);
 - Any site-specific issues (eg planning, subdivision, contamination or heritage status);
 - Potential sales avenues;
 - Whether sales agent ought to be appointed/selection of agent;
- ▶ For all arrears loans, a detailed recoverability analysis is prepared and updated on a weekly basis as part of the arrears management plan;
- ▶ External consultants (valuers, lawyers, insolvency practitioners, sales consultants etc) are engaged where appropriate throughout the arrears management process;
- ▶ The Manager may from time to time foreclose on a security property as part of a realisation strategy. Foreclosure is a remedy available to a registered mortgagee by which the mortgagee becomes the absolute legal owner of the property free of any interest of the mortgagor. In the event of foreclosure, the Manager may hold, improve and/or sell the security property in order to achieve the best result for the Fund. The Manager may sell a property on which it has foreclosed to a related entity, in which case the sale price will be determined by valuation.

Arrears loans are managed in this way until the security is sold and/or all possible recovery action has been completed.

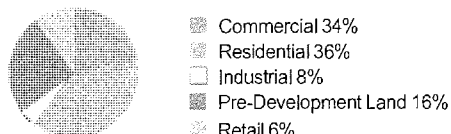
Assets of the LM First Mortgage Income Fund

The assets of the Fund as at 29 February 2008 totalled \$718,403,075 and were made up as follows:

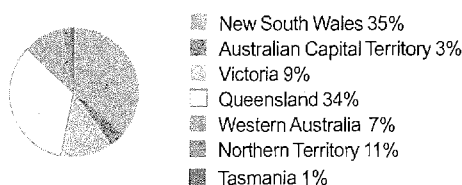


As at 29 February 2008 the mortgage allocation was as follows:

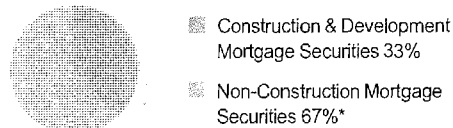
Security Property Type Allocation



Geographic Distribution of Security Property



Construction and Development Mortgage Securities



*Non-Construction Mortgage Securities includes pre-development land, completed developments and income generating commercial loans.

Mortgage portfolio details as at 29 February 2008

Total amount of mortgage securities	\$687,494,654
Number of mortgages	74
% of mortgages with fixed interest rates	100%
Average loan to valuation ratio	63.89%
Smallest loan	\$94,672
Largest loan	\$85,523,929
Average loan size	\$9,290,468
Undrawn loan commitments over next 24 months	\$362,375,790
Average monthly undrawn loan commitments	\$15,098,991

The Manager maintains a detailed cash flow model which assesses the total Fund inflows and outflows including programmed loan repayments from borrowers and progressive loan draws. This model allows the Fund's Portfolio Manager to accurately assess Fund cash requirements to ensure sufficient liquidity for the Fund to meet its commitments at all times.¹⁸

As at 29 February 2008 there were 52 borrowers. Two borrowers had a mortgage that exceeded 5% of the mortgage portfolio. The Manager generally ensures that no single mortgage exceeds 10% of the Fund's assets.

One borrower may have an interest in several loan facilities by way of different entities. The Manager assesses the total

exposure to one borrower as including those related entities with different loan facilities.

Mortgage securities by maturity profile as at 29 February 2008

Period maturing	% of Total	Value \$
0-6 months	38.42%	\$264,114,682
6-12 months	32.65%	\$224,434,036
12-18 months	17.19%	\$118,182,830
18-24 months	5.70%	\$39,203,830
24-36 months	3.37%	\$23,164,303
36-48 months	0%	\$0
48-60 months	2.67%	\$18,321,927

Mortgage securities by interest rate profile as at 29 February 2008

For the month ended 29 February 2008 the average interest rate of the mortgage portfolio was 9.69%.

Interest rate %	% of Total	Value \$
= or < 7.00%	0.12%	\$816,519
7.01-7.50	1.57%	\$10,812,275
7.51-8.00	7.78%	\$53,467,988
8.01-8.50	11.13%	\$76,515,263
8.51-9.00	10.51%	\$72,213,890
9.01-9.50	15.67%	\$107,696,936
9.51-10.00	1.98%	\$13,630,474
10.01-10.50	5.45%	\$37,435,117
10.51-11.00	30.59%	\$210,310,344
11.01-11.50	9.66%	\$66,433,970
11.51-12.00	5.54%	\$38,088,833

Status of Mortgage Loans

The Manager considers a loan to be in default when interest payments have not been received in breach of a loan agreement, or the loan term has expired without repayment of principal. Set out in the table below are details of Fund loans falling into the former category.

LM First Mortgage Income Fund Loans in Arrears

Period	Principal	Unpaid Interest	No. of loans
60-90 days	\$10,436,287	\$609,953	1
90 days and over	\$34,685,533	\$6,165,154	7
Total	\$45,121,820	\$6,775,107	8

As at 29 February 2008 the percentage of mortgage securities in arrears was 7.49%.

All of the loans except for one in arrears were past their maturity date. As at 29 February 2008 one other loan was past its maturity date and it represents 0.6% of the mortgage portfolio.

The Manager utilises its property expertise and its Arrears Management Policies and Procedures to secure realisation and exit strategies for all arrears loans.

As at the date of this PDS the directors do not consider the arrears above will result in a capital loss for the Fund.

¹⁸ While the Manager considers any delays unlikely, in certain circumstances the Manager may delay withdrawals from the Fund by up to 365 days or suspend withdrawals in order to protect all investments. Refer to page 17 of this PDS ("How to Withdraw").

Unit Pricing

The price of units in the Fund has remained at \$1.00 since the inception of the Fund in October 1999. As per the Fund's constitution, the unit price is calculated monthly and determined by dividing the value of the adjusted net assets of the Fund by the number of units on issue on the last day of each month. The unit price may vary and may increase or decrease depending on the performance of the assets of the Fund.

The Manager has a Unit Pricing Policy which provides that Fund assets will be valued at cost or fair value, depending on the type of asset. The Manager will revalue an investment asset if the Manager determines that a particular investment has increased or decreased in value. A copy of the Unit Pricing Policy with any assessment provisions exercised by the Manager is available free of charge upon request.

Updated Financial and Other Information

The current financial report for the Fund is available at www.LMAustralia.com or by telephoning freecall 1800 062 919 (Australia only) or +617 5584 4500. The Manager will notify investors of any material adverse information in relation to the Fund. Information relevant to the Fund that is not materially adverse and that is subject to change from time to time (including information in relation to Fund's fund size, asset allocation, mortgage securities allocation e.g. geographic and property type allocation, average loan to valuation ratio, performance and arrears, including information contained in this PDS) will be updated by the Manager on its website and a paper copy of any updated information will be given to any person without charge on request.

How to Invest

If a properly completed Application Form, investment funds and investor/s verification documentation and information (as required) arrive before 12 noon Queensland time on a business day at the Gold Coast, Queensland, the application will generally be accepted that day; if they arrive after that time, then that application will be accepted on the next business day.

1. Complete and sign the Application Form attached to this PDS.
2. Remit funds directly to the Fund by one of the methods outlined on pages 14 and 15.
3. Mail the Application Form plus the Direct Debit Request Form / Bpay Receipt / Electronic Direct Credit Receipt / copy of Telegraphic Transfer or Cheque, to the Manager at LM Investment Management Ltd, PO Box 485 Surfers Paradise Qld 4217.

How to Remit Funds for Australian Dollar Investments

There are a number of ways to remit funds for the Australian dollar investment options in the Fund. Australian Dollar investors can:-

complete the **Direct Debit** Request Form attached to this PDS (for investors with Australian bank accounts only);

or

make a **cheque** payable to the custodian (for Australian bank account holders only):- **PTAL acf LM First Mortgage Income Fund;**

or

remit funds directly by **BPay** (for Australian bank account holders only). In this instance an investor must fax the Application Form to the Manager then telephone the Manager on freecall 1800 062 919 (Australia only) or +617 5584 4500 to receive their account number. On receipt of an account number the investor can proceed to BPay by using:

Biller Code	Reference No
53363	Your Account No

The Bpay receipt must be attached to the Application Form when mailed to the Manager;

or

remit funds directly by **electronic direct credit or telegraphic transfer**. In this instance once an investor has forwarded the electronic direct credit or telegraphic transfer to the Fund's bank account (details below) the investor must fax the completed Application Form and a copy of the electronic direct credit receipt or telegraphic transfer to the Manager and forward the original by mail;

LM First Mortgage income Fund

Name of Account:	PTAL acf LM First Mortgage Income Fund
Bank:	Suncorp Metway Ltd
Swift Code:	METWAU4B
Branch:	Wickham Terrace, Brisbane
BSB:	484 799
Account No:	045 450 110

When remitting funds by electronic direct credit or telegraphic transfer please provide the electronic direct credit or telegraphic transfer reference code on the Application Form in Section 13 and attach a copy of the electronic direct credit receipt or telegraphic transfer to the Application Form. Investors making additional investments must complete the Additional Investment Form available from the Manager's website at www.LMaustralia.com. Investors should note that financial institutions may charge a remittance fee which will be deducted from their investment. We endeavour to ensure inter-financier transfer processes are effected promptly, but cannot be held accountable for any delays within the banking system;

or to make payment by **credit card** please complete the Credit Card Payment Form attached to this PDS and forward it with the Application Form to the Manager. The merchant fees charged by the credit card provider are deducted from the investment funds. The merchant service fee may vary from time to time, but as at the date of this PDS the merchant fees were 1.54% of the investment funds.

How to Remit Funds for Non-Australian Dollar Currency Hedged Investments

Remit funds directly by **telegraphic transfer**. Telegraphic transfers can be arranged with an investor's overseas financial institution by providing it with the following details of the bank account to be credited (which is in the name of the custodian). Please provide the telegraphic transfer reference code on the Application Form in Section 13 and attach a copy of the telegraphic transfer to the Application Form.

New Zealand investors should note the alternative payment options referred to below under the heading "New Zealand Investors".

For currencies other than those shown on this page please contact the Manager to obtain bank account details for telegraphic transfers.

Please ensure that funds are remitted in the currency to be invested.

Telegraphically transfer USD, GBP, EUR, CAD, JPY, SGD, HKD, CHF, THB, SEK, and other currencies (excluding NZD) to the account below:-

Name of Account:	PTAL acf LM First Mortgage Income Fund
Bank:	Commonwealth Bank of Australia
Address:	48 Martin Street, Sydney
Swift Code:	CTBAU2S
Branch:	Sydney
Account No.	100642778 (plus the currency code for the currency you are sending e.g. 100642778 USD)

New Zealand Investors

Telegraphically transfer NZD to the account below:-

Name of Account:	PTAL acf LM First Mortgage Income Fund
Bank:	ANZ
Address:	203 Queen Street, Auckland, New Zealand
Swift Code:	ANZBNZ22
Branch:	Auckland
Account No.	0102 0987918 00

As well as making **NZD investments by telegraphic transfer**, investors living in New Zealand can:-

- ▶ Arrange for **NZD investments to be direct debited** from their bank account. Please complete the Direct Debit Form in this PDS; or
- ▶ make a **deposit in person at an ANZ bank or electronically direct credit** investment funds to the ANZ NZD account referred to above. When remitting funds by direct credit please supply a copy of the direct credit receipt and banking reference number provided by the remitting bank in Section 13 of the Application Form.

After receipt of funds, currency hedged non-Australian dollar applications are processed in the manner detailed in the paragraph headed "Currency Hedged Initial Investment" on page 8 of this PDS.

Investors should note that financial institutions may charge a remittance fee which will be deducted from their investment. The Manager endeavours to ensure inter financier transfer processes are effected promptly, but cannot be held accountable for any delays within the banking system.

Minimum Investment Amount:

Investment Option	Minimum Investment	Minimum Additional Investment/Monthly Contribution
LM First Mortgage Income Fund		
Flexi Account	\$1,000	Multiples of \$1,000
Fixed Terms	\$1,000	Multiples of \$1,000
LM Savings Plan	\$100	Minimum monthly contribution & additional investments \$100
Currency Hedged Non-Australian Dollar Fixed Terms	\$1,000	Multiples of \$1000

The Manager will, at its discretion, accept investments of amounts different to those set out above.

Monthly Contributions to an LM Savings Plan Account

Investment In	When Debited	You can stop/restart
LM Savings Plan	Debited from the nominated account on the 24th of each month or next business day if the 24th falls on a weekend or public holiday unless a specific date is nominated on the Application Form.	After the minimum initial 12 month period an investor can stop and restart their LM Savings Plan at any time without incurring fees by simply contacting the Manager in writing.

If an investor has not made a monthly contribution in 12 months a new Direct Debit Request Form will have to be completed and forwarded to the Manager.

Adding to an Investment for Australian Dollar Investments Only

When adding to an investment, please remember to:

- ▶ complete the Additional Investment Form available from the Manager's website at www.LMaustralia.com;
- ▶ provide the account number - if an investor is unsure of the account number please contact the Manager;
- ▶ state the full account name;
- ▶ stipulate the amount to be added – payment can be made by the methods outlined under "How to Remit Funds" on pages 14 and 15 of this PDS. Any queries please contact the Manager on +617 5584 4500 or freecall 1800 062 919 (Australia only);
- ▶ include a daytime telephone number;
- ▶ mail the Additional Investment Form plus the Direct Debit Request Form / Electronic Direct Credit Receipt / copy of Telegraphic Transfer or Cheque, to the Manager at LM Investment Management Ltd, PO Box 485 Surfers Paradise Qld 4217.

Please note that additional investments can be made at any time to existing Australian dollar investments however additional investments can only be added to existing currency hedged non-Australian dollar investments on rollover of the current investment term.

If you add to an existing fixed term investment (instead of starting a new fixed term investment) the new application moneys will be added to, and from that date will be treated as part of, the existing investment. For example, if a 12 month term investor makes an original investment of \$100,000 on 12 March and then in 6 months time adds another \$50,000 to the existing investment, the entire \$150,000 investment will mature 12 months after the initial \$100,000 investment was made.

If you are adding to an existing investment you should first obtain a copy of the current PDS for the Fund, as the additional investment will be made on the terms of that PDS. Investors can obtain a current copy of the PDS at any time from their adviser, our website at www.LMaustralia.com or by calling us on freecall 1800 062 919 (Australia only).

Cooling Off Period

A 14 day cooling off period generally applies to investments in the Fund. The cooling off period does not apply to additional investments or reinvestments of distributions.

During the 14 day cooling off period investors have the right to change their mind and withdraw their investment. This 14 day period commences on the earlier of 5 days from the date of issue of units in the Fund to the investor, or the investor receiving confirmation that their investment has been accepted and processed.

Investors wishing to withdraw must contact the Manager in writing at LM Investment Management Limited, PO Box 485, Surfers Paradise, Queensland 4217, by fax +617 5592 4116, or by email to mail@LMaustralia.com. If the Manager receives a withdrawal request within the 14 day cooling off period, it will withdraw and refund the investment. The refund may be adjusted to reflect any changes in unit price (positively or negatively), any taxation incurred, and if the investment is a currency hedged fixed term investment, any fees incurred in relation to breaking the FFEC.

These cooling off rights do not apply to wholesale investors (as defined in the Corporations Act 2001) or if the Fund is not liquid for the purposes of Chapter 5C of the Corporations Act. Investors should contact their adviser or the Manager by telephoning +617 5584 4500 or by email to mail@LMaustralia.com if they have any questions about cooling off rights.

How to Withdraw

When requesting a withdrawal, investors please remember to:-

- ▶ provide the name of the Fund and the investment account number. If you are unsure of the account number please contact the Manager;
- ▶ state the full investment account name;
- ▶ stipulate the amount to be withdrawn and how it is to be paid;
- ▶ include a daytime telephone number; and
- ▶ sign the request –
 - if it is a joint account both investors must sign the request;
 - if it is a company account either 2 directors, 1 director and company secretary, or sole director who is also the sole secretary must sign the request;
- ▶ You can send your signed withdrawal request by the following options:-
 - Faxing the signed withdrawal request to the Manager at +617 5592 4116 or
 - Scanning the signed withdrawal request and emailing it to the Manager at investmentservices@LMAustralia.com or
 - Mailing the original signed withdrawal request to the Manager at PO Box 485, Surfers Paradise, Qld 4217 Australia.

If an investor requires withdrawal proceeds to be paid to an account other than the account nominated on the Application Form, then we may require further documentary evidence.

Fax & Scanned Images - Terms and Conditions

You should understand that a person without your authority could send the Manager a fax or scanned image, and by pretending to be you, transfer or withdraw funds from your account for their own benefit or request any other changes to your account.

In using fax or scan facilities, you agree that the Manager is not responsible to you for any fraudulently completed communications and that the Manager will not compensate you for any losses.

You agree that should such a fraud take place you release and indemnify the Manager against any liabilities whatsoever arising from the Manager acting on any communication received by fax or scanned image in respect of your investment, to the extent permitted by law.

The Manager will not be liable for any loss or delay resulting from the non-receipt of any transmission. These terms and conditions are in addition to any other requirements that may form part of your giving instructions relating to the completion of a particular authority.

By sending the Manager a fax or scanned image you signify your acceptance of these conditions.

Withdrawal Notice Period

Investment Option	Withdrawal request received by the Manager	Withdrawal is paid by the Manager*
LM First Mortgage Income Fund		
Flexi Account Option	Prior to 12 noon on any Gold Coast business day	Generally within 30 days from receipt of notice and is credited to the investor's financial institution account nominated on the Application Form
Australian Dollar Fixed Term Investment	5 business days prior to expiration of the fixed term	Generally within 30 days after maturity date by direct credit to the investor's financial institution account nominated on the Application Form.
Currency Hedged Non-Australian Dollar Fixed Term Investment	5 business days prior to expiration of the fixed term	Generally within 5 business days after maturity date by direct credit to the investor's financial institution account nominated on the Application Form.
LM Savings Plan Option	Following the initial 12 month investment period investors can make up to 4 withdrawals annually by giving written notice to the Manager.	Generally within 30 days after the Manager receives written notice of the withdrawal by direct credit to the account nominated on the Application Form.

*LM First Mortgage Income Fund - Withdrawal Delays

The Manager is generally required by the constitution to satisfy withdrawal requests within 180 days. In certain circumstances, that period may be extended to 365 days or the Manager may be entitled to suspend withdrawals. This facility allows for protection of investment funds. The Manager has a liquidity policy that is monitored by the Board to adequately manage payment of withdrawals within the time specified. For all non-Australian dollar investments, the Manager will continue to hedge (on a 1 monthly basis) the currency exposure of these investments. The time periods for withdrawals referred to above are the periods within which the Manager expects to be able to satisfy withdrawal requests, based on the withdrawal requests previously made in respect of the Fund. However, past experience is not an indicator of future circumstances, and there could be delays in meeting withdrawal requests, or a suspension of withdrawals. Refer to the paragraph headed "Withdrawal from the Fund" on page 31 of this PDS.

The withdrawal notice period commences from the time the notice is received by the Manager. Where a request for withdrawal is received on any day that is not a business day on the Gold Coast, Queensland, the request is deemed to have been received by us on the next business day.

Minimum Withdrawal Amounts

Investment Option	Withdraw in multiples of	Minimum balance
- Flexi Account Option	\$1,000	\$1,000
- Fixed Term Options	\$1,000	\$1,000
- LM Savings Plan Option	\$100	\$100

If the investment amount remaining after a withdrawal is less than the minimum balance set out above, then the Manager may direct the withdrawal of the entire balance. The Manager has discretion to allow withdrawal amounts other than those set out above.

Breaking a LM First Mortgage Income Fund Fixed Term Investment or LM Savings Plan

Partial or full withdrawals are NOT permitted:-

- ▶ during a fixed term investment;
- ▶ during the initial 12 month term of an LM Savings Plan investment or more than 4 withdrawals are not permitted in any 12 month period thereafter.

The Manager has complete discretion to allow a partial or full withdrawal during a fixed term investment or LM Savings Plan and generally only allows early withdrawal in the event of death or in cases of medical or financial hardship. If the Manager allows an early withdrawal, the Fund will charge:-

- ▶ a fee equal to the last three months' interest distributions paid or payable on the amount being withdrawn; and
- ▶ where an adviser is paid an upfront commission the Fund will charge an additional fee equal to the upfront commission paid, calculated on a pro-rata basis for the length of time remaining to maturity.

The above fees will be deducted from the investment amount.

Currency hedged fixed term investors should note that the above fees do not necessarily reflect the only impact of an early withdrawal. Other impacts (including fees and charges that may be payable to the financial institution which provides the FFEC) can only be calculated at the time the request for early withdrawal is made, because there are a number of variable factors, including currency market rates and length of time to maturity. Investors will need to contact the Manager if they want to withdraw early, and the Manager can at that time provide details of the total withdrawal costs, fees and other possible financial impacts.

Investors should note that the financial impacts on an investor who breaks a currency hedged fixed investment term with an early withdrawal are likely to result in the investor receiving less than the original amount invested.

Overseas Remittance

Investors should note that financial institutions may charge a remittance fee which will be deducted from their investment. We endeavour to ensure inter-financier transfer processes are effected promptly, but are not responsible for any delays within the banking system.

Adviser Access to Investment Information

Advisers can Monitor an Investor's Investment

Advisers are provided with online access to full investment details and reporting on their clients' investments. For example, to check maturity dates for investments advisers can access the Maturing Investment Reports for their clients by logging on to the LM Information Exchange which is accessed from the home page on our website at www.LMaustralia.com. For access to the LM Information Exchange the adviser can contact the Manager on freecall 1800 162 919 (Australia only) or +617 5584 4500.

Correspondence & Information from the Manager

To assist investors to keep track of their investment the Manager will send:-

- ▶ **On Receipt of Investment Funds and Application Form:**
The Manager will email the adviser to confirm receipt of investment funds and Application Form.
- ▶ **On Investment:**
On initial investment a Contract Note will be forwarded as requested by the investor on the Application Form (refer to Section 8 of the Application Form – which provides for correspondence to investor/s by email or post, or for correspondence to only be sent to the adviser).
- ▶ **Interest Distributions:**
No correspondence is sent by the Manager. Interest distributions are reinvested unless the investor elects to have the interest distributions paid to their financial institution account. **Advisers can access Transaction Statements and Distribution Statements from the LM Information Exchange.**
- ▶ **LM First Mortgage Income Fund Fixed Investment Terms Maturity Notice**
The Manager provides advisers access to the Maturing Investments Report for their clients from the LM Information Exchange. A notice of maturity is emailed to advisers prior to the maturity date for fixed investment terms.
For Australian Dollar Fixed Term Investments - on the maturity date the investment will automatically rollover for a further investment term of the same length unless the Manager receives written notice of withdrawal or of a change to the investment term at least 5 business days prior to the maturity date.
For Currency Hedged Non-Australian Dollar Fixed Term Investments – on the maturity date the investor's original investment amount and interest distribution (unless the investor has nominated for the interest distribution to be paid to their bank account) is automatically reinvested and rehedged in the originally nominated currency for the rollover term selected on the Application Form. If no rollover term is selected the investment will automatically rollover for further 1 month investment terms until the investor provides the Manager with longer investment term instructions or a written withdrawal notice.
Investors and their advisers will need to access the Manager's website or telephone us prior to the reinvestment term to access the most recent interest distribution rates and the current PDS that will apply for the purpose of the reinvestment.¹⁹
- ▶ **Rollover Confirmation**
Within 5 business days following rollover of the investment a Rollover Confirmation Notice/Contract Note will be forwarded to advisers.
- ▶ **Transaction Statement is available to investors:**
 - from their financial adviser via the LM Information Exchange; or
 - by request to the Manager.
- ▶ **Exit Statement** with details of the investor's investment account will be sent to the investor within 6 months of withdrawal from the Fund.
- ▶ **Annual Periodic Statement** with details of the investor's investment account will be sent to the investor once a year by 31 December for the preceding financial year.
- ▶ **Annual Taxation Summary** will be sent to an investor or made available to their adviser on the LM Information Exchange by the end of September each year for the preceding financial year.
- ▶ **Annual Financial Statements of the Fund** will be available on the Manager's website at www.LMaustralia.com by the end of September each year for the preceding financial year. Investors can choose to receive the annual statements free of charge by mail or email by marking the appropriate box in Section 8 of the Application Form.

Changing Details

Investors can advise the Manager of their change of address, email or telephone number/s by telephoning the Manager on 1800 062 919 (Australia only) or +617 5584 4500 or emailing the Manager at mail@LMaustralia.com.

All other changes including bank account details must be made by written request signed by the investor/s and sent to the Manager by:-

- **Faxing** the signed request to +617 5592 4116; or
- **Scanning** the signed request **and emailing** it to the Manager at investmentservices@LMaustralia.com or
- **Mailing** the original signed request to the Manager at PO Box 485, Surfers Paradise, QLD, 4217 Australia..

Change of Details Forms can be obtained from the offices of the Manager or online at www.LMaustralia.com.

¹⁹ Past performance is not an indicator of future performance.

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Fees & Other Costs

Government regulations require all financial product issuers to include the standard consumer advisory warning set out below. The warning below is standardised across all product issuers and does not provide specific information on fees and charges for the LM First Mortgage Income Fund.

CONSUMER ADVISORY WARNING

DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your Fund balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example, reduce it from \$100,000 to \$80,000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You may be able to negotiate to pay lower contribution fees and managements costs where applicable. Ask the Fund or your financial adviser.

TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the Australian Securities and Investments Commission (ASIC) website (www.fido.asic.gov.au) has a managed investment fee calculator to help you check out different fee options.

Refer to the table on page 22 of this PDS for information on the specific fees and charges that apply to the LM First Mortgage Income Fund.

This table shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the Fund's assets as a whole. Taxes are set out on page 25 of this PDS.

You should read all of the information about fees and costs, because it is important to understand their impact on your investment.

TYPE OF FEE OR COST	AMOUNT	HOW AND WHEN PAID
FEES WHEN YOUR MONEY MOVES IN OR OUT OF THE FUND.		
Establishment Fee : The fee to open your investment.	Nil	Not applicable.
Contribution Fee : The fee on each amount contributed to your investment by you.	Nil	Not applicable.
Withdrawal Fee : The fee on each amount you take out of your investment.	Nil for the Flexi Account, or where you take out your investment at the end of its Fixed Term, or in accordance with the terms of the LM Savings Plan, after giving the required notice. The Fund may charge a fee for early withdrawal equal to the last 3 months' interest distributions paid or payable on the amount withdrawn plus any upfront adviser commission paid in relation to the amount withdrawn, on a pro rata basis for the length of time remaining to maturity of the investment. For Currency Hedged Non-Australian dollar fixed investment terms there will be other financial impacts on you which can only be calculated at the time of the request for early withdrawal (due to a number of variable factors including currency market rates and the length of time to maturity). Further details are referred to under the heading "Dollar Fee Example for Early Withdrawal Fee Charged by the Fund" on page 24 of this PDS.	LM First Mortgage Income Fund Fixed Term investments and LM Savings Plan only - Fees for early withdrawal are deducted from the amount withdrawn at the time of withdrawal.
Termination Fee : The fee to close your investment.	Nil	Not applicable.
MANAGEMENT COSTS		
Fees and costs for managing your investment. ²⁰	An amount estimated to be 3.5% pa of the net assets of the Fund (this comprises estimated Management Fees of 2.3% pa, estimated Fund expenses of 0.10% pa, and an estimated adviser fee of 1.1% pa). ²¹	That part of the Fund's Management Costs which comprises the Manager's Management Fee is accrued daily and is currently paid monthly by being deducted from the assets of the Fund. That part of the Fund's Management Costs which comprises expenses of the Fund (other than the Management Fee) will be payable from the income or capital of the Fund, either monthly or as the expenses are incurred. That part of the Fund's Management Costs which comprises the Management Fee may be able to be negotiated with the Manager by a wholesale client as a differential fee. Further information is detailed under the heading "Additional Explanation of Fees and Costs" on page 23 of this PDS.
SERVICE FEES		
Switching Fee : The fee for changing investment options.	Nil	Not applicable.

²⁰ All amounts include GST (if applicable) and take into account any input tax credits or reduced tax credits that may be available to the Fund.

²¹ The **adviser fee** may be negotiable, but that will depend on what arrangements you may have in place with your adviser. See the paragraph "adviser fees" under the heading "Additional Explanation of Fees and Costs" on page 23 of this PDS. Further information on the Management Costs is also detailed under that heading.

ADDITIONAL EXPLANATION OF FEES AND COSTS

Management Costs for the LM First Mortgage Income Fund

The Management Costs can only be estimated, as the actual costs are not yet known. However, the Management Costs for the Fund for the financial year ended 30 June 2007 were 1.55% pa of the net assets of the Fund, and based on current financial information the Manager considers 3.5% pa to be a reasonable estimate of the annual Management Costs. The Management Costs are made up of the following different fees and costs (and note that the following fees and costs are explanations of the components which make up the estimated 3.5% pa Management Costs, and are not additional fees or costs):-

- ▶ The **Management Fee** component of the Management Costs accrues daily and is paid monthly from the assets of the Fund. The constitution of the Fund allows the Manager to recover a Management Fee of up to 5.5% pa of the net assets of the Fund. At the date of this PDS, it is estimated that the Manager will only receive a Management Fee of 2.3% pa of the net assets of the Fund, and that the Manager will waive its entitlement to the higher fee. Note however the section "Changes to Fees and Costs" on this page of this PDS.
- ▶ The **custodian fees** for the Fund are currently the greater of 0.02% pa of the assets of the Fund and \$20,000 pa.
- ▶ **Adviser fees** are fees paid to your adviser for professional financial advice. They are negotiated between you and your adviser. These fees may be paid from the Fund as a lump sum and/or trail commission. If you choose not to use an adviser, your individual distribution rate will still be calculated as if a fee of 1.1% pa (including GST) of your investment amount was payable to an adviser. Any such amount not paid to an adviser will be used to meet Management Costs.

The individual distribution rates payable to investors will vary dependent on the adviser fees paid by the Fund. This adviser fee is an expense of the Fund. The Manager's reasonable expectation is that such fees would be up to 1.1% pa (including GST) of your investment amount, but they could be higher. You should discuss the payment of this fee directly with your adviser.
- ▶ The Manager is reimbursed for all **expenses** properly and reasonably incurred in managing the Fund. This includes any bank and government fees, charges and duties levied in connection with payments to and by the Fund. The estimate of Management Costs referred to above is based on current financial information, but the actual expenses will depend on the amount incurred during each particular year.

Bank and Government Fees and Charges

Some bank or government fees, charges and duties may be charged directly to you, rather than to the relevant Fund. For example, cheque dishonour fees, and processing or remittance fees charged by banks. These amounts have not been taken into account in the estimate of Management Costs referred to above, but are not expected to be significant amounts.

Merchant Service Fees for the LM First Mortgage Income Fund

If you invest by credit card a merchant service fee may be charged by the credit card provider. That fee will vary from time to time, but at the date of this PDS is 1.54% of the investment funds. This amount is deducted from your investment funds at the time of investment. This amount has not been taken into account in the estimate of Management Costs referred to above.

Tax (including Goods and Services Tax)

The fees quoted in this PDS are inclusive of GST where applicable. See the heading "Tax" on page 25 of this PDS for further details of tax that may be relevant to your investment.

Differential Fees for the LM First Mortgage Income Fund

The Manager may negotiate differential fees with certain wholesale clients or employees of the Manager or of a related body corporate of the Manager, or relatives of those employees. Such differential fees will depend on individual negotiation, compliance with legal requirements, and any applicable ASIC policy. Where the differential fee arrangements involve the Manager paying rebates, the rebates will be paid from the Manager's own funds and will not affect other investors.

Changes to Fees and Costs

As noted above, the constitution of the Fund allows the Manager to recover a Management Fee of up to 5.5% p.a. of the net assets of the Fund. The constitution also allows the Manager to waive all or part of its fee. The Manager's current intention is to waive its entitlement to part of its fee each month. The Manager will decide each month how much of the maximum 5.5% pa Management Fee it will be paid, but at the date of this PDS, it is estimated that the Manager will only be paid a Management Fee of 2.3% pa of the net assets of the Fund.

The Manager may decide to vary the amount of Management Fee it recovers, the amount of the other Management Costs, or the methods of payment of those amounts, in its absolute discretion, and without your consent (but subject to the limits in the constitution). The Manager will give investors notice of any such change which is material. In particular, the Manager will give 30 days written notice of any change to the Management Fees under this PDS. Any immaterial change can occur without notice.

Marketing Fees

The Manager may pay properly authorised advisers a marketing reimbursement from time to time out of its own funds.

LM First Mortgage Income Fund Fixed Term Investment and LM Savings Plan Early Withdrawal Fees Charged by the Fund

Partial or full withdrawals are NOT permitted during a fixed term investment, or during the initial 12 month term of an LM Savings Plan investment (and more than 4 withdrawals from an LM Savings Plan are not permitted in any 12 month period thereafter). The Manager has complete discretion to allow a partial or full withdrawal during a fixed term investment or LM Savings Plan and generally only allows early withdrawal in the event of death or in cases of medical or financial hardship. If the Manager allows:-

- ▶ an early withdrawal from a **fixed term investment**; or
- ▶ an **LM Savings Plan** investor to withdraw during the initial 12 month term or allows more than 4 withdrawals in any 12 month period thereafter;

the Fund may charge a fee equal to the last 3 months' interest distributions paid or payable on the amount being withdrawn, and where an adviser is paid an upfront commission the Fund will charge an additional fee equal to the upfront commission paid calculated on a pro-rata basis for the length of time remaining to maturity.

Dollar Fee Example for Early Withdrawal Fee Charged by the Fund*

Below is an example of the early withdrawal fees charged by the Fund if you are allowed to break an investment term. It assumes the investment term is 12 months, you withdraw \$50,000 6 months after the investment date, you make no other transactions during the year, the Fund paid total effective interest distributions of 8.00% pa, and the adviser is paid a 1.1% pa commission (including GST) upfront. This is not a forecast.

LM First Mortgage Income Fund Early Withdrawal Fee Example	Fee Calculation	Total Fee Paid to the Fund	How and When Paid
Assuming 12 month investment term and you withdraw \$50,000 prior to the maturity date and the adviser was paid an upfront commission of 1.1%	3 months interest distribution calculation – \$50,000 x (8.00%/12 x 3) Plus 1.1% pa for length of time remaining until maturity of the 12 month term calculation – \$50,000 x (1.1%/12 x 6)	\$1,000.00 Plus \$550.00	Total fees of \$1,550.00 deducted from your investment at the time of withdrawal.

- * **For Currency Hedged Non-Australian Dollar Fixed Term Investments** you should note that the example of withdrawal fees outlined above does not necessarily reflect the only impact of an early withdrawal. Other impacts (including fees and charges that may be payable to the financial institution which provides the FFEC) can only be calculated at the time the request for early withdrawal is made, because there are a number of variable factors including currency market rates and length of time to maturity. You should note that the financial impacts on an investor who breaks an investment term with an early withdrawal are likely to result in the investor receiving less than the original amount invested.

EXAMPLE OF LM FIRST MORTGAGE INCOME FUND ANNUAL FEES AND COSTS

This table gives an example of how the fees and costs of the Fund can affect your investment over a one year period. You should use this table to compare this product with other managed investment products.

Example of Annual Fees and Costs

Example – Balance of \$50,000 with a contribution of \$5,000 during the year

Contribution Fee	Nil	Not applicable
Plus: Management Costs	3.5% pa* (including GST)	For every \$50,000 you have in the Fund you will be charged \$1,750 each year.
Equals: Cost of Fund		If you had an investment of \$50,000 at the beginning of the year and you put in an additional \$5,000 during that year, you would be charged fees of \$1,750** What it costs will depend on the investment term option you choose and the fees you negotiate with the Fund or with your financial adviser.

* This is an estimate only and not the actual Management Costs for your investment. Further information on the Management Costs is detailed under the heading "Additional Explanation of Fees and Costs" on page 23 of this PDS. This amount includes an estimated fee of 1.1% pa (including GST) of net assets payable to your adviser. (See the paragraph "adviser fees" under the heading "Additional Explanation of Fees and Costs" on page 23 of this PDS). The table above is just an example. In practice your investment balance and the value of the Fund will vary daily.

**Additional fees may apply – if the Manager allows you to withdraw early you may also be charged early withdrawal fees as set out on page 24 of this PDS. Early withdrawal fees are deducted from your investment amount.

If the \$5,000 was invested for a full 12 months, you would be charged \$175 for that extra \$5,000.

Tax

Summary

Taxation law is constantly under review and changing. The comments below are accurate for Australian resident tax payers at the date of this PDS. Tax law is complex and each investor's circumstances are different. The Manager recommends all investors seek professional independent taxation advice on their investment before investing in the Fund.

Taxable Interest Distributions

The Manager's policy is to distribute all net taxable income of the Fund to investors each financial year. Under the current income tax legislation, a trust operates as a flow through vehicle such that the income of the trust when distributed, retains its character as it 'flows through' the trust to the investor, and the Manager as trustee is not generally liable to pay tax with respect to the Fund.

This has the consequence for investors that they will be required to include their entitlement to the net income of the Fund in their income tax returns and this income should be included in the investors' taxation return when the investors' entitlement to that income arises. This entitlement arises irrespective of whether the investor receives the income during the year, after the end of the year, or if the income is reinvested as additional units in the Fund.

Disclosure of Tax File Number

The Manager recommends Australian resident investors disclose their Tax File Number on the Application Form. The Manager will be required to withhold tax at the highest marginal rate (plus Medicare Levy) from interest distributions payable to all investors who have not advised the Manager of their Tax File Number or exemption details. It is not, however, against the law for an investor to choose not to quote their Tax File Number or exemption details. The collection of Tax File Numbers is authorised, and the use of such information is regulated by the tax laws and the Privacy Act.

Capital Gains Tax

If the Fund disposes of an asset, any capital gain on the disposal must be included in the Fund's calculation of net capital gain. The net capital gain of the Fund will be distributed to investors as part of the investor's share of the Fund's taxable income for the year (in proportion to the investor's investment in the Fund).

Where the disposal of an asset results in a capital loss, the loss will be retained by the Fund and not distributed to investors. The capital loss will generally be available to the Fund to offset any future capital gains of the Fund.

If an asset of the Fund is disposed of after it has been owned by the Fund for more than 12 months, any capital gain derived by the Fund as a result of the disposal will potentially be reduced by 50% for the purposes of calculating the net capital gain of the Fund.

The Manager will send to each investor their annual taxation statement by the end of September each year. Investors should not complete their taxation returns until they receive this statement.

Non-Resident Investors

If an investor is not an Australian resident for taxation purposes, the investor must (when completing the Application Form) provide their overseas residential address. Withholding tax will then be deducted from distributions before they are paid to investors. The tax rate will depend on which country the investor resides in*. Non-resident investors may be entitled to claim a credit for withholding tax deducted in their country of residence. Investors should consult their taxation adviser for further specific advice.

*Withholding tax is generally deducted at a rate of 10% from interest distributions for most countries, however some exceptions do apply. Please refer to the relevant Australian Double Taxation Treaty for further information. Investors should consult their taxation adviser for further specific advice.

Entities such as charities that hold tax exempt status will not incur any Australian tax, including withholding tax.

Social Security

An investor's investment in the Fund will be classified as a financial investment by the Department of Veteran Affairs ("DVA") and Centrelink and therefore be included in the Income and Assets Tests by the DVA and Centrelink. Government policy in this area can often change and the Manager recommends investors consult with their financial adviser, the DVA or Centrelink for any further information on how their investment in the Fund may affect them.

Goods and Services Tax

Goods and services tax ("GST") is not directly applicable to an investor's investment in the Fund when they invest or redeem their investment. The Fund may incur GST in respect to various expenses and the Fund may not be entitled to input tax credits with respect to all the GST the Fund incurs.

Investment Risks

Risk Management

All investments are subject to varying risks and the Manager actively manages the Fund with a view to balancing returns with security.

This is achieved by:

- ▶ employing experienced, professional personnel;
- ▶ maintaining a long term vision for the Funds;
- ▶ complying rigidly with its compliance program;
- ▶ actively monitoring and managing the assets of the Funds;
- ▶ continuing to set high performance benchmarks.

For any investor the key to managing their investment is to understand and be comfortable with:-

- ▶ the investment term;
- ▶ the level of risk; and
- ▶ potential volatility,

that accompanies an investment in the Fund. The Manager actively manages risk under its risk management program. These comments are intended as a guide only and we recommend that investors seek professional financial advice.

Capital Risk	The value of the investment might decline. Investments are not capital guaranteed. Should the Fund not achieve appropriate rates of return or suffer a capital loss then there is the possibility that the investor could suffer a loss. No losses of capital have occurred in the Fund since its inception in 1999, or are expected to occur as at the date of this PDS. Past performance is not an indicator of future performance.
Unit Price	The unit price is variable and may increase or decrease depending upon the performance of the investment portfolio of the Fund. The Manager is constantly assessing various investment sectors in order to determine which sectors have the best potential in terms of income and/or capital security depending on the investment objective of the Fund.
Interest Distribution Rate Risk	This risk relates to the volatility of returns to investors. The Manager stabilises interest distribution rate risk as follows: The Manager stabilises interest distributions risk as follows:- <ul style="list-style-type: none"> ▶ cash assets of the Fund are proactively monitored to ensure that investments at least move in line with market movements – investors should note that returns may not keep pace with inflation; and ▶ mortgage securities in the Fund utilise a combination of fixed interest rate lending and short lending terms and the Manager utilises a policy of annual interest rate reviews on the anniversary of each of the mortgage securities.
Currency Risk	Non-Australian dollar investments in the Fund are hedged in the relevant currency against Australian dollar currency movements. The Fund currency hedges a non-Australian dollar investment through the use of Forward Foreign Exchange Contracts ("FFEC"). 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.
Property Market Risk	Property market risk is the risk that negative movements in the property market may impact on the capacity to fully recover the amount owing on a mortgage. The Manager manages this risk by strictly complying with its lending guidelines, loan to valuation ratio policies, compliance program and the efficiency of its collections systems. The average loan to valuation ratio as at 29 February 2008 was 63.89%. It is the Manager's policy not to exceed a loan to valuation ratio of 85% for any one loan. However in the event of a default the loan to valuation ratio of 85% may be exceeded. Mortgage securities are reviewed on an ongoing basis with updated valuations obtained in accordance with the Manager's valuations policies.
Development or Construction Risk	In development or construction mortgages held by the Fund there could be delays in payment of interest or repayment of capital due to the timing, completion and sale of the development. The Manager's personnel have considerable experience in dealing with construction and development loans. For each loan an "as is" and an "on completion" valuation is obtained. Funding of the loan is controlled by the Manager on a "cost to complete basis". The Manager has specific procedures in place that are adhered to both prior to and during a project to ensure that the security is maintained and risks minimised. Investors should also refer to the paragraph headed "Interest Capitalisation Risk" below as construction and development loans may have capitalised interest.
Interest Capitalisation Risk	Loans made from the Fund may require the interest to be paid periodically during the term of the loan or in the case of a construction and development loan a provision for interest may be built into the facility within the approved loan to valuation ratio. (Loan to valuation ratio is generally 66.67% for construction and development

loans). As a risk management measure, this provision for interest is built into the loan facility along with a contingency. This enables the Manager to control the interest payments and ensure that they are met within the approved loan to valuation ratio limit. In addition to this, a detailed financial analysis is conducted on each borrower to ensure that the borrower has sufficient resources to cover interest commitments if required.

There is a risk that interest payments may not be recoverable because of:-

- ▶ changed circumstances of the borrower;
- ▶ changed circumstances of the security property; or
- ▶ other economic conditions.

Where this occurs there may be insufficient cashflow in the Fund to meet interest distributions or redemption requests.

All loans are monitored by experienced personnel employed by the Manager in its mortgage management division.

As at 29 February 2008 the percentage of mortgage loans in the Fund where interest payments were built into the loan facilities was 52.71 % of the mortgage portfolio.

Credit Risk	<p>This is the risk that a borrower may not meet its obligations in full and/or on time to pay interest and repay capital financial obligations. The Manager mitigates this risk by utilising a conservative lending strategy in relation to the mortgages and following strict lending guidelines.</p>
Liquidity Risk	<p>A delay in meeting an investor's withdrawal request is possible where there are a significant number of withdrawal requests received at the same time, which absorb the cash reserves of the Fund and if assets of the Fund are not sufficiently liquid.</p> <p>Generally the Manager is required by the constitution to satisfy redemption requests within 180 days. In certain circumstances, that period may be extended to 365 days or the Manager may be entitled to suspend redemptions. The Manager has a liquidity policy that is monitored by the Board to adequately manage payment of withdrawals within the time period specified. Refer to the paragraph headed "Withdrawal from the Fund" on page 31 of this PDS for further details.</p> <p>The Manager has arranged a line of credit facility with the Commonwealth Bank of Australia for \$215 million which can be utilised in liquidity management or to allow the Manager to take advantage of competitive commercial lending opportunities for the Fund.</p>
Arrears of the Fund's Mortgage Portfolio	<p>The Manager utilises its property expertise and its Arrears Management Policies and Procedures to secure realisation and exit strategies for all arrears loans.</p> <p>Further details of the arrears management processes are outlined on page 11 of this PDS.</p>
Share Market Risks	<p>The Fund may invest in specialist managed funds which in turn hold income bearing cash investments, long and short term securities (including equity securities and derivatives on securities) which may be quoted on recognised stock exchanges. The value of these investments might decline for reasons including domestic and international economic conditions, changes in government fiscal, monetary and regulatory policies, changes in interest rates and currency exchange rates, the rate of inflation or changes in the circumstances of the companies or funds in which the specialist managed funds invest. A return on investments in the specialist managed funds or repayment of capital invested is not guaranteed. As at the date of this PDS, the Manager has a policy limiting the proportion of Fund's assets invested with other specialist fund managers to 10%.</p> <p>The Manager mitigates this risk by utilising specialist fund managers to invest the Fund's assets held in this sector. Each specialist is chosen following an extensive and rigorous research process that examines their investment style, the expertise of their investment team and a range of other factors. The Manager reviews each specialist fund manager's performance on an ongoing basis, ensuring that they operate within the mandated expectations and guidelines.</p>
Borrowing risk	<p>Under the constitution the Manager may borrow against the Fund assets on terms and conditions acceptable to the Manager. The Manager has arranged a line of credit facility with the Commonwealth Bank of Australia ("CBA") for \$215 million. This facility was put into place in order to allow the Manager to take advantage of competitive commercial lending opportunities, or to assist the Fund with managing liquidity, interest distributions or funding loan commitments. At the date of this PDS the amount owing to the CBA was \$155 million. As at the date of this PDS the interest rate of the facility is variable and is priced between 0.50% to 1.10% above the respective BBSY bid rate. The facility term is the subject of an annual review. The finance facility is secured by a fixed and floating charge over the assets of the Fund, providing the CBA as a secured lender with first priority over the assets and income of the Fund. The rights of investors to the income and assets of the Fund are secondary to the rights of the CBA. The facility will be repaid via investment inflows and inflows received from principal repayments from borrowers. This facility or a similar facility may be varied from time to time in order to manage the Fund. Insufficient income generated by the Fund to service the CBA debt, increases in the bank interest rate or an unforeseen refusal of the financier to extend the term of any facility could cause the Fund to default on its loan.</p>
Government Policies	<p>Investment performance may be affected by changes to government policy in relation to taxes, exchange rates, legislative changes, land tax, income tax and other government factors. These factors are generally beyond the control of the Manager.</p>

About LM Investment Management Ltd

LM Investment Management Ltd ("the Manager") is an Australian funds manager operating internationally from offices on the Gold Coast, in Sydney, Hong Kong, New Zealand and London. In conjunction with its network of authorised financial adviser groups domestically and abroad, LM provides an established investment product with a range of flexible options, focused on achieving income and flexibility to the investing public.

Since inception in 1998, the Manager has become a growing presence in the financial services markets throughout Australia, Hong Kong, Asia, the Middle East, United Kingdom and New Zealand.

Recognised as a specialist funds manager within the AUD\$22 billion mainstream mortgage trust sector, LM Investment Management Ltd manages one of Australia's largest mortgage trusts, the LM First Mortgage Income Fund. The Manager's other funds under management include the LM Wholesale First Mortgage Income Fund, the LM Institutional Currency Protected Australian Income Fund, the LM Currency Protected Australian Income Fund and the LM Cash Performance Fund.

The Manager is licensed with the Australian Securities and Investments Commission ("ASIC") as a Responsible Entity and Australian Financial Services Licensee. Independent audits of its registered funds, their compliance plans and the Manager are conducted at least annually.

The Manager specialises in professional and responsive financial services, and is a highly regarded lending institution within Australia's business and property sectors.

Management Principles

The Manager's corporate vision is to be recognised as a leading, innovative and prudential funds manager. The management team has a common understanding of business principles to ensure the vision is upheld. These principles include:-

- ▶ delivering a high level of service with clear communication and genuine empathy for clients;
- ▶ offering qualitative investment and lending products;
- ▶ using a research driven approach to anticipate market changes and seek new opportunities:-
 - to protect the delivery of income; and
 - to protect the delivery of a stable unit price.

The Manager's commitment to offering clients a competitive advantage with service is demonstrated by its use of information technology delivering 24 hour access to online investment reporting.

Key Personnel

The Directors of the Manager collectively offer considerable years of experience and specialist knowledge from the finance, insurance, legal and property sectors. The Manager also carries a vast depth of professional property and business related experience across all business units.

The Manager's personnel are strategic thinkers with the foresight to identify quality investment opportunities, while keeping their fingers on the pulse of Australia's property and finance markets. The Manager blends this foresight with a sound investment philosophy to seek optimum results for investors.

The Directors encourage the key decision makers at LM Investment Management Ltd to take a 'hands-on' approach when seeking new investment opportunities and anticipating market changes.

Financial intermediaries and investors have direct access to a staff which provides prompt professional assistance. Our relationships are built on honest and open communication and a genuine appreciation of our clients' needs.

Corporate Governance

The Board of LM Investment Management Ltd generally meets quarterly to discuss the strategic direction of LM and the monitoring of its funds. The Manager has a strong commitment to corporate governance, compliance and risk management. The Manager has a committee based structure for all major decision making processes to ensure ultimate protection of investor funds.

Executives and a representative of the Board meet weekly to discuss issues pertinent to the Manager and its funds. Each executive is responsible to the Board for the operation of their own business unit. The Funds Management Committee meets monthly to analyse and review performance of the funds. The Compliance Committee generally meets quarterly to monitor and review compliance systems and processes to ensure that they are in accordance with the Compliance Program and registered funds' compliance plans.

The Manager follows a disciplined research driven approach to investment. The Manager's Property Research and Analysis Committee ("PRAC"), specifically targets locations offering property growth opportunities and property sectors which are expected to perform.

The Board and management also have access to a range of independent and expert advisers to assist on particular technical issues.

As an unlisted public company, the Manager is the subject of yearly financial audits. The audits are a requirement under the Corporations Act 2001. These audits are performed by Ernst & Young, an international accounting firm. Ernst & Young also perform financial and compliance audits on the Manager's registered funds on a bi-annual and/or annual basis dependent on the relevant fund's compliance requirements.

The Directors



Peter Charles Drake, Chairman and Chief Executive Officer

As CEO Peter is principally responsible for the strategic vision, direction and the structured growth of LM Investment Management Ltd ("LM"). Peter has been involved in the financial services industry since 1978, and is particularly active in investment product design. Working closely with LM's Portfolio Manager to manage the growth of funds under management, Peter also plays an integral role in LM's Funds Management Committee, and Credit Committee. Peter's vision of an innovative and prudential funds manager holds true as LM continues its dynamic growth in the Australian financial services sector.



Lisa Maree Darcy, Executive Director

Lisa joined LM Investment Management Ltd in 1998 and was appointed Executive Director in September 2003. Lisa is principally responsible for all accounting functions of both LM Investment Management Ltd and its registered schemes. She works closely with LM's Portfolio Manager, to manage the growth of funds under management. Lisa plays an integral role in LM's Funds Management Committee and Credit Committee. With more than 20 years experience in the banking and financial planning industry, including financial accounting and funds management, Lisa makes a valuable contribution to LM's ongoing management of investment funds and financial services. Lisa holds a Bachelor of Business from Griffith University.



Eghard van der Hoven, Executive Director, Portfolio Manager

In 2003 Eghard joined LM Investment Management Ltd as Portfolio Manager, responsible for the monitoring and ongoing performance of LM's various funds. As Executive Director, Eghard's sound understanding of the investment industry spanning almost 20 years includes extensive experience in stock broking, auditing, investment analysis, business strategy and policy planning. As the Chair of LM's Funds Management Committee, Eghard is responsible for joint decisions in relation to the asset allocation, geographic spread allocation, cash flow, delivery rate forecasting and budgeting of LM's funds. Eghard also sits on the Credit Committee and the Arrears Management Committee. He holds a Master of Commerce, majoring in Economics, and a Bachelor of Commerce (Hons) in Economics, from University of Pretoria, South Africa.



Francene Maree Mulder, Executive Director, General Manager Distribution/Product

Francene commenced with LM Investment Management Ltd in 1999, following a 20 year career in the commercial, legal and securities sectors. Prior to joining LM Investment Management Ltd, Francene held managerial positions focused on the areas of commercial mortgages, conveyancing and the property sector. Specific experience in mortgage securities and the marketing of financial products provided a solid background for Francene to successfully undertake her role within LM. As Executive Director, Francene is primarily responsible for the marketing and expansion of distribution of LM's products on a wholesale and retail basis, throughout Australia and international markets. Francene takes an active role in the direction of all client communication, company communication and service. Francene is also a member of the Property Research and Analysis Committee, Funds Management Committee, Credit Committee and Arrears Committee.



John Dillon, Non-Executive Director

John holds more than 30 years strategic and managerial expertise in the business and development sectors domestically and abroad. As Non-Executive Director, John's experience complements the continued strategic growth of LM Investment Management Ltd as an Australian funds manager with international operations. John's previous managerial experience includes the strategic and financial growth of Vision Cabinets Pty Ltd, a specialist cabinetry business that services a range of residential and commercial clients nationally. Prior to Vision, John was Managing Director ASEAN of Occidental Chemicals, responsible for the administration, manufacture and distribution to the Association of South East Asian Nations (ASEAN). He also holds a Bachelor of Commerce from the University of New South Wales.



Val Llewellyn, Non-Executive Director

Val holds over 30 years' management experience in the engineering, manufacturing, labour hire and training sectors in Australia, London and Wales. In 1982, Val emigrated with his family to Australia, establishing Axial Engineers, then later established Axial HR, an industrial labour hire operation to operate alongside Axial Engineers. In 1996, Val became sole shareholder and Director of the Axial group of companies, and in 1997 established Axial Training to train new apprentices, supervisors and managers in the manufacturing, engineering, mining, warehousing, food processing (butchery), retail and business sectors. The Axial Group currently operates from six locations throughout Queensland and also in Perth. Val is a qualified Chartered Accountant, admitted as a Member of the Institute of Chartered Accountants in England and Wales in 1972.



John O'Sullivan, Non-Executive Director

John has over 20 years experience in funds management and investment advice in Europe, Asia and Australia. His previous roles have included CEO and Partner of a large advisory business in New Zealand, General Manager of Oceanic Life in New Zealand and Director of Oceanic Funds Management in Australia. When Oceanic was purchased by Sun Alliance, he was appointed New Zealand Manager of Sun Alliance Asset Management. He is currently Managing Director of his own distribution company, O'Sullivan Capital Management Ltd.

Additional Information

Payment and Other Instructions

Each investor releases, discharges and agrees to indemnify the Manager from and against all actions, proceedings, accounts, claims and demands whatsoever and howsoever arising from or in connection with or in any way related to the Manager in good faith accepting and acting on instructions received in writing, by facsimile transmission or by scanned image which are signed by or purported to be signed by an authorised signatory or signatories.

Fax & Scanned Images - Terms and Conditions

You should understand that a person without your authority could send the Manager a fax or scanned image, and by pretending to be you, transfer or withdraw funds from your account for their own benefit or request any other changes to your account.

In using fax or scan facilities, you agree that the Manager is not responsible to you for any fraudulently completed communications and that the Manager will not compensate you for any losses.

You agree that should such a fraud take place you release and indemnify the Manager against any liabilities whatsoever arising from the Manager acting on any communication received by fax or scanned image in respect of your investment, to the extent permitted by law.

The Manager will not be liable for any loss or delay resulting from the non-receipt of any transmission. These terms and conditions are in addition to any other requirements that may form part of your giving instructions relating to the completion of a particular authority.

By sending the Manager a fax or scanned image you signify your acceptance of these conditions.

Changes to Terms and Conditions

The fees that apply to investors' investment accounts can change from time to time. Investment terms and conditions can also be changed by the Manager giving notice of the changes. Investors will need to contact their adviser or the Manager, or access the Manager's website to find out the terms and conditions which apply from time to time.

Appointment of Authorised Delegate

An 'authorised delegate' is any company, partnership or individual appointed by an investor to operate their account. The most common arrangement is to appoint an investor's financial adviser to enable him or her to better manage the investor's financial affairs.

An investor may appoint an authorised delegate by signing and dating the authority on the Application Form. The authorised delegate must also sign the authority. Where the authorised delegate is a corporation or a partnership, a duly authorised officer or partner of the authorised delegate must sign the authority. The Manager may require proof of authorisation.

The authorised delegate has the same powers as an investor to access investments, make further investments in the Fund on behalf of the investor or to make written requests for withdrawals from the Fund. Such withdrawal may only be paid to the account nominated on the Application Form. In the case of an authorised delegate which is a corporation or a partnership, the Manager may act on the instructions of any person it reasonably believes to be an authorised officer or partner, and any instruction given by such an officer or partner shall be deemed to have been given by the authorised delegate.

Investors may at any time, in writing, notify the Manager of the revocation of appointment of an authorised delegate. Such revocation however, will not be effective until the Manager has acknowledged the revocation in writing.

By signing the authority on the Application Form, an investor agrees to release, discharge and indemnify the Manager from and against all actions, proceedings, accounts, claims and demands arising from the release of information to the authorised delegate named on the Application Form, or in respect of any loss or liability arising out of any transaction or dealing made or purported to be made pursuant to an actual, purported or alleged direction or authority of an authorised delegate, notwithstanding the fact that the transaction or dealing was requested or received without the authorised delegate's or the investor's knowledge or authority.

Joint Investors

If an investor's investment is held jointly with one or more other persons, the Manager can send notices, statements or other documents (including any changes to investment terms and conditions) by mailing them to any one of the joint holders (that is, the first investor or any of the other joint holders) at their nominated correspondence address. The investors will be deemed to have received the notice, statement or other document on the second business day after it is sent. If the Manager gives these notices, statements or other documents to any one of the joint holders, their authorised delegate or adviser, they will be deemed to have been received by all of the joint holders.

Applications signed by several parties are deemed to be signed as joint tenants and unless otherwise agreed all parties must sign to authorise a withdrawal.

Privacy – use and disclosure of personal information

The privacy of an investor's personal information is important to the Manager. The purpose of collecting investor information on the Application Form is to process the application and manage an investor's investment in the Fund. If the information an investor gives is not complete or accurate, the Manager may not be able to provide the products and services applied for.

In processing the application and managing investors' investments in the Fund, the Manager may disclose personal information to other parties such as an investor's financial adviser and/or IT service providers of financial advisers, the financial adviser's licensee or as required by law.

Investors are entitled to request reasonable access to their personal information. The Manager reserves the right to charge an administration fee for collating the information requested.

For further details on the Manager's Privacy Policy please visit the Manager's website at www.LMaustralia.com.

The Constitution for the Fund

The constitution for the Fund is a legal contract between the Manager as responsible entity and each investor. The constitution together with the Corporations Act and other relevant law governs the relationship between the Manager and investors, the Manager's duties as a responsible entity and the way the Manager must operate the Fund. The constitution includes provisions which deal with:-

- ▶ the rights of investors;
- ▶ the duties and obligations of the Manager as the responsible entity;
- ▶ investment and borrowing powers of the Manager;
- ▶ ability of the Manager to be indemnified by the Fund for all expenses, losses and liabilities arising in its capacity as responsible entity provided it has properly performed its duties;
- ▶ ability to remove the Manager;

- ▼ unit issue and redemption procedures;
- ▼ convening and conduct of the Fund's investor meetings;
- ▼ the duration and termination of the Fund; and
- ▼ rights to Fund interest distributions.

The terms and conditions of the constitution are binding on investors and the Manager as the responsible entity of the Fund.

The statements in this PDS only provide a summary of some of the provisions of the constitution. The Manager may change the constitution in accordance with the Corporations Act 2001. However any change that may adversely affect investors' rights must be approved by special resolution of the investors.

Classes Of Units

The Fund constitution authorises the Manager to issue different classes of units with special rights or restrictions as determined by the Manager from time to time. The interest distribution rate offered or paid to the different classes may vary. The Manager is required under the Corporations Act to treat all investors within a class of units equally and as between classes fairly. The Manager has created separate classes of units in the Fund representing each different type of investment. The Manager will only issue new classes of units where it considers it appropriate having regard to the interests of existing investors and in accordance with the Manager's obligations under the Corporations Act and the constitution.

Invitation Only Wholesale Clients in the Fund

The Manager may invite wholesale clients to invest in the Fund. Such an investor must provide 1 business day's notice of redemption of the investment to the Manager but is otherwise subject to the withdrawal provisions as outlined in the paragraph headed "Withdrawal from the Fund" on page 31 of this PDS. The interest distribution rate for such investors will be determined by the Manager from time to time. The Manager may waive the whole or part of its Management Fee in respect of such investors. The Manager may also waive the whole or part of its Management Fee in relation to investments by its employees, or employees of a related body corporate of the Manager.

The above arrangements constitute differential fee arrangements under ASIC Class Order 03/217 (as amended) and are offered to wholesale clients (within the meaning of section 761G of the Corporations Act 2001) or employees of the Manager, or of a related body corporate of the Manager.

The Manager also issues units to relatives of the Manager's employees, and waives the whole or part of its Management Fee for those members. Those members hold units of different classes to the units held by other members in the Fund.

The Nature of Units of the Fund

Each unit gives the holder an undivided interest in the Fund. However, a unit does not confer any interest in any particular asset of the Fund and does not entitle the holder to have any of the assets of the Fund transferred to them or to interfere with any of the Manager's rights or powers.

Powers and Duties of the Responsible Entity

All of the assets and undertakings of the Fund vest in the Manager to hold on trust for investors. In relation to the assets of the Fund the Manager has all of the powers of a natural person who is the absolute beneficial owner of the assets.

The Manager must act in accordance with the constitution and the Corporations Act 2001 and is responsible for administering the

Fund, determining investment policy, selecting and managing the investments, valuing the investments, sending notices and reports to investors, arranging investors' meetings, accepting or rejecting applications for investment, calculating the number of units to be issued or withdrawn, maintaining a register of investments, payments of interest distributions to investors, preparation and interest distribution of cheques, managing the Fund borrowings and ensuring that the Fund is carried on and conducted in a proper and efficient manner. The Manager is entitled to various indemnities under the constitutions.

Withdrawal from the Fund

Generally the Manager is required by the constitution to satisfy withdrawal requests within 180 days. In certain circumstances, that period may be extended to 365 days or the Manager may be entitled to suspend withdrawals in order to protect all investments. The Manager has a liquidity policy that is monitored by the Board to adequately manage payment of withdrawals within the time period specified. The Manager may suspend withdrawals where:

- (i) the Fund's cash reserves fall and remain below 5% for 10 consecutive Business Days; or
- (ii) if in any period of 90 days, the Manager receives net withdrawal requests equal to 10% or more of the Fund's issued units and, during the period of 10 consecutive days falling within the 90 day period, the Fund's cash reserves are less than 10% of the total assets; or
- (iii) it is not satisfied that sufficient cash reserves are available to pay the withdrawal price on the appropriate date and to pay all actual and contingent liabilities of the Fund; or
- (iv) any other event or circumstance arises which the Manager considers in its absolute discretion may be detrimental to the interests of the members of the Fund.

Historically, the Fund has successfully met all withdrawal requests on time and in full. This is due to the liquidity management of the Fund and the structure of the investment terms (although past performance is not an indicator of future performance).

The Manager does not expect that the Fund will be a managed investment scheme that is not liquid as that term is defined in the Corporations Act.

Part 5C.6 of the Corporations Act provides that a managed investment scheme is liquid if liquid assets account for at least 80% of the value of scheme property. Liquid assets would ordinarily include money in an account or on deposit with a bank, bank accepted bills, marketable securities, or any other property (including the mortgage loans of the Fund) which the Manager reasonably expects can be realised for its market value within the period specified in the Fund's constitution for satisfying withdrawal requests while the Fund is liquid. The liquidity of the Fund is therefore dependant on whether 80% of the Fund property (including the mortgage loans) can be realised for its market value within the period specified in the constitution for satisfying withdrawal requests while the Fund is liquid. In the unlikely event that the Fund is not liquid, an investor will only be able to withdraw their investment in the manner specified in s601KB to s601KE of the Corporations Act, which would include making written withdrawal offers to all investors (or all investors of a particular class) based on the units they hold in the Fund.

Authorised Investments of the Fund

The Manager may invest in "Authorised Investments" as defined in the constitution, which includes but is not limited to bank deposits,

investments in cash, stocks, bonds, notes or other securities or derivatives and options over securities or derivatives, loans and interests in any registered managed investment scheme (as defined in the Corporations Act 2001).

To the extent that they may affect the value or performance of an underlying investment the Manager may take into account labour standards, or environmental, social or ethical considerations when making, retaining or realising an investment in the Fund. The Manager has no predetermined view about how far such matters will be taken into account, and the Manager will make a determination on such issues on a case by case basis.

Appointment and Removal of the Manager

The Manager may retire in accordance with the Corporations Act 2001. Investors of the Fund by extraordinary resolution may remove the Manager and appoint a new responsible entity of the Fund.

Borrowings of the Fund

Under the constitution the Manager may borrow against the Fund assets on terms and conditions acceptable to the Manager.

The Manager has arranged a line of credit facility with the Commonwealth Bank of Australia ("CBA") for \$215 million. This facility was put into place in order to allow the Manager to take advantage of competitive commercial lending opportunities, or to assist the Fund with managing liquidity, interest distributions or funding loan commitments. At the date of this PDS the amount owing to the CBA was \$155 million. As at the date of this PDS the interest rate of the facility is variable and is priced between 0.50% to 1.10% above the respective BBSY bid rate. The facility term is the subject of an annual review. The finance facility is secured by a fixed and floating charge over the assets of the Fund, providing the CBA as a secured lender with first priority over the assets and income of the Fund. The rights of investors to the income and assets of the Fund are secondary to the rights of the CBA. The facility will be repaid via investment inflows and inflows received from principal repayments from borrowers. This facility or a similar facility may be varied from time to time in order to manage the Fund.

The Manager's Indemnity

To the extent allowed by law, the Manager is indemnified out of the Fund against any claim, action, damage, loss, liability, costs, expense or payment which the Manager incurs or is liable for in relation to the Fund, provided that it does not arise from the fraud, negligence or wilful default of the Manager or its employees.

Expenses

All expenses reasonably and properly incurred by the Manager in connection with managing the Fund are payable or able to be reimbursed out of the assets of the Fund. These expenses include:

- ▶ preparation, review, distribution and promotion of any offer document;
- ▶ the sale, purchase, insurance, custody and any other dealing with assets;
- ▶ any proposed investment;
- ▶ administration, management and promotion of the Fund;
- ▶ communicating with, or convening and holding meetings of and dealings with investors;
- ▶ tax (provided it is not on the personal account of the Manager) and bank fees;
- ▶ the engagement of experts and advisers;

- ▶ preparation and audit of the taxation returns and financial statements of the Fund;
- ▶ termination of the Fund and the retirement or removal of the Manager and the appointment of a new responsible entity; and
- ▶ any court proceedings, arbitration or other dispute concerning the operation of the Fund or any asset of the Fund.

Fees payable to an adviser of an investor will also be expenses of the Fund.

Liability of Investors

The constitution limits the liability of investors to the amount of their investment. However, the Manager cannot give an absolute assurance on this matter as the issue of the investor's liability has not been fully resolved by the courts.

Compliance Plan

As a responsible entity, the Manager is required to adhere to the compliance plan for the operation of the Fund. The compliance plan sets out compliance measures in relation to the conduct of the Fund and its business. The compliance plan is designed to document compliance risks, the monitoring process, and provide a basis for compliance adherence and auditing. The compliance plan is lodged with ASIC and is independently audited annually.

The Manager's Board and Compliance Committee monitor and review its compliance plans to ensure that all compliance systems are followed.

Investment Procedures and Policies

Investment procedures and policies of the Manager are reviewed on an ongoing basis. Outlined below is a broad overview of the investment and lending procedures that apply to the Fund.

Investments by the Manager

The Manager has policies in relation to investing the Fund's assets with specialised fund managers of registered managed investment schemes (as defined by the Corporations Act 2001). A specialist fund manager is only chosen if the Manager is fully satisfied with its due diligence conducted on the specialist fund manager which includes the investment style, expertise of their investment team and a range of other factors. The Manager constantly monitors and reviews each specialist fund manager's performance ensuring that they operate within mandated expectations and guidelines.

At the date of this PDS, the Manager has a policy of limiting investment with specialist fund managers that invest in income bearing cash investments, equity securities and options to 10% of the assets of the Fund.

Lending Criteria of the Fund

- ▶ The Manager has determined and documented lending policies for the approval and management of mortgages. Risk management is a priority, with mortgages diversified over a number of levels including geographic location, sector, loan size, interest rate and maturity profile.
- ▶ The type of real estate offered for security must be acceptable to the Manager. Typical mortgage securities will include commercial, industrial and residential real estate (including development loans across these sectors) secured by a registered first mortgage. A first mortgage must be registered on the primary security property.

- ▶ The value of the security property must be established in accordance with the valuations policy of the Manager.
- ▶ The ability of the borrower to service the facility must be established to the satisfaction of the Manager.

Development Loans

The following additional requirements are imposed in the case of development loans:

- ▶ The initial drawdown for the facility is arrived at after considering both the approved loan to valuation ratio on the "as is" valuation and the "cost to complete" formula. The initial drawdown must meet the loan to valuation ratio required and also allow sufficient funds to be available in the facility to complete the development. The project feasibility must reflect the "cost to complete" formula throughout the life of the project. The concept of a "cost to complete" formula is that the lender always retains sufficient funds within the loan facility to complete the development based on its assessment of the actual cost to complete the project.
- ▶ Additional development loan procedures are required throughout the development stages of the loan to ensure the development is adequately monitored.
- ▶ Where applicable a tripartite agreement is made between the Manager, the borrower and the builder. This enables the Manager, in the event of default by the borrower, to deal directly with the builder.

Credit Committee

The Credit Committee is an internal review committee for all mortgage investments and is independent from all other departments. The Credit Committee meets as required to consider proposed and actual investment opportunities. The Credit Committee contains a broad experience base and includes departmental team leaders for planning purposes.

New mortgage investment proposals are put forward by the commercial lending department for consideration with a written summary. The Credit Committee is responsible for setting the primary terms and conditions upon which subsequent approval will be based.

When mortgage investment proposals are completed in accordance with the Manager's credit standards they are required to be finally approved by the Credit Committee.

Valuations Policy

All real property assets of the Fund are required to be valued prior to settlement of each transaction. Valuations may only be carried out by the Manager's panel valuers or by a valuer meeting the Manager's standards for inclusion on its panel and must adhere to the Manager's valuation guidelines. The Manager has determined and documented valuation review procedures for guidance on each valuation.

Appropriate instructions must be given to the valuer having regard to the type of valuation required. In particular the instructions should indicate the type of valuation required eg. "as is" or "on completion".

The Manager, in accordance with its valuations review guidelines is responsible for the review of all valuations. Unresolved issues arising from a review must be referred to an executive director for discussion and determination.

As an internal checking mechanism, an independent property

report is obtained (where appropriate) from two real estate agents or an alternate valuers report whose normal trade area encompasses the property being valued.

The valuer must have appropriate professional indemnity insurance.

The valuer must certify they are independent of both the borrower and the security property.

The Manager does not accept valuations performed on the instruction of borrowers. The Manager requires that valuations be provided on the Manager's instructions, or that valuers confirm that their valuations adhere to the Manager's requirements.

An updated valuation will generally be required where a loan term is extended or a loan is otherwise varied. An updated valuation will also generally be required for commercial loans at 24 month intervals and construction loans at 12 month intervals. The requirement for an updated valuation may be waived where the Manager considers that an updated valuation would serve no useful purpose (eg where it is demonstrable that property values have increased or not changed in the locality of the property, where a property under construction is significantly presold, where a commercial property has long term leases in place, where a sale or refinance is imminent or where the loan to valuation ratio of the property is low).

Valuation Panel

Members of the valuation panel are appointed and removed in accordance with the Manager's valuation panel appointment guidelines. The Manager is responsible for approving the appointment or removal of a panel valuer.

Development Valuations

Separate valuations (may be within the one valuation report) are required in relation to "as is" and "on completion" valuations.

"As is" Valuation

The "as is" valuation is the market valuation of the property at the time of the initial drawdown. The loan to valuation ratio in this case must fall within the Manager's lending criteria.

"On Completion" Valuation

The "on completion" value is the market value of the property at the completion of development. The valuation methodology required is as follows:

- ▶ "feasibility analysis" including demolition, subdivisional, construction, and other development costs, allowances for sales and marketing expenses, interest and an allowance for profit and risk to arrive at a base value for the land. Any such analysis is based on the premise that the development approval has or will be obtained prior to settlement of the loan. Alternatively, the valuation must contain an adjustment for any uncertainty attaching to the development approval process. The requirement for a feasibility analysis may be satisfied, if appropriate, using alternate techniques such as discounted cash flows; and
- ▶ "gross realisation" based on comparable sales evidence for the individual components eg. houses, units, allotments etc.

The Manager will reasonably assess the appropriateness of the feasibility analysis within the valuer's report by comparison with cost estimates provided by a competent quantity surveyor selected from the Manager's panel.

The "on completion" value is the valuation figure used in the cost to complete calculations during the development phase. The "on completion" value may be revised during the term of development to reflect changes as approved by the Manager.

Complaints Procedure

If an investor has a complaint they should generally first contact their adviser. If the adviser is unavailable, unwilling, or unable to assist, or if the investor wishes to directly contact the Manager, and the complaint relates to the Fund or the Manager, then the investor should contact the Client Relations Department at the office of the Manager on free call 1800 062 919 (Australia only) or +617 5584 4500. Complaints may be made in writing or by telephone. The Manager will respond within 30 days of receiving the complaint. If complaints cannot be resolved internally the Manager will refer the complainant to the Financial Industry Complaints Service ("FICS"), an external industry complaints body which has been approved by ASIC and of which the Manager is a member.

Financial Industry Complaints Service Limited
 PO Box 576
 Collins Street
 MELBOURNE VIC 8007
 Telephone: 1800 335 405
 Facsimile: (03) 9621 2291
 email: fics@fics.asn.au

Interests of the Manager

Pursuant to the compliance plan, the Manager and the employees and officers of the Manager and the various investment schemes of the Manager, are entitled to apply for units in the Fund. The Manager will be a wholesale investor and may be offered a differential fee arrangement in these circumstances.

Related Parties

Peter Drake, a director of the Manager is the beneficial owner of LM Administration Pty Ltd, which has been engaged by LM Investment Management Ltd to provide administration services at a commercial arms-length fee. In addition to this LM Administration Pty Ltd provides administration and funds management services to the Fund and is paid a management fee direct from the Fund.

John O'Sullivan, a non-executive director of the Manager is the beneficial owner of O'Sullivan Capital Management Ltd. O'Sullivan Capital Management Ltd has been engaged by LM Investment Management Ltd to provide marketing services in New Zealand at a commercial arms-length fee. This fee is paid by the Fund.

The Fund may lend to related parties provided the loans are on commercial arms-length terms and are subject to review by the Board.

The Board of the Manager is responsible for reviewing and approving the structure and probity of commercial dealings between the Manager and any related parties. Fees issued to the account of the Fund by related parties, which are recoverable from the Fund must be on commercial arms-length terms and are subject to review by the Board.

Related Party Loans of the LM First Mortgage Income Fund

Name	Loan balance as at 29 February 2008	Interest rate	Percentage of total loan portfolio
Australian International Investment Services Pty Ltd*	\$7,779,519	10.5%	1%

* Australian International Investment Services Pty Ltd is 100% owned by the LM Managed Performance Fund (a related investment fund), which has entered into a joint venture with a property developer to develop land in Canberra.

The Fund is lending money on commercial terms and conditions to Australian International Investment Services Pty Ltd.

The Manager received establishment fees of 1% of the total loan amount (\$7,779,519) for this loan.

Related Party Finance

The Manager is the Responsible Entity of the LM Managed Performance Fund. From time to time the LM Managed Performance Fund advances loans by way of second mortgages to borrowers who have first mortgage advances from the Fund. At 29 February 2008 there are 8 such loans by the LM Managed Performance Fund in the total amount of \$27,387,416. In these instances the Fund enters into Priority Deeds with the borrower as part of normal loan documentation procedures. The LM Managed Performance Fund generates fees, charges and interest rates all of which are paid by the borrower.

Conflicts of Interest Management

The Manager has a documented Conflicts Management Policy which deals with the identification, assessment and treatment of conflicts of interest and related party transactions. The Risk Manager has responsibility for conflicts and prepares conflict records for each conflict or related party transaction identified. Board approval is required for all related party transactions.

Manager's Liability

To the extent allowed by law the Manager is not liable for any loss or damage to any person (including any investor) arising out of any matter provided the Manager acts in good faith and in accordance with the constitution.

This PDS has been prepared by the Manager based on information within its own knowledge or provided to it by its advisers. Other than as required by law, no responsibility is taken by the Manager or any parties mentioned in this PDS for any statement made in relation to the Fund other than those statements made in this PDS. Neither the Manager, nor any other party gives any guarantee with respect to the performance of the Fund. The Manager has authorised the issue of this PDS. The Manager does not purport to advise investors in relation to this investment or their taxation position.

**Custodian's Disclosures and Disclaimer
 Interests of the Custodian**

The custodian has no interest in relation to the Fund, and has not received any inducements other than the remuneration it is entitled to receive under the relevant custody agreement or constitution by way of custodian fees.

The custodian fees for the LM First Mortgage Income Fund are currently the greater of 0.02% pa of the assets of the LM First Mortgage Income Fund or \$20,000 pa.

It is the intention of the Manager to take over the role of custodian of the Fund during the life of this PDS. All legislative requirements will be adhered to by the Manager at that time.

Custodian Disclaimer

The role of the custodian is to hold the assets of the Fund and title documents as agent for the Manager. It is not the role of the custodian to protect the rights and interests of the Fund's investors.

The custodian does not guarantee the return of any investment, any tax deduction availability or the performance of the Fund.

Consent by Auditors

Ernst & Young, financial and compliance auditors, have consented to be named in this PDS in the form and context in which they appear. Ernst & Young is not responsible for, nor has it caused or authorised the issue of this PDS.

Continuous Disclosure

The Fund is a disclosing entity for Corporations Act purposes and as such is subject to regular reporting and disclosure obligations. Copies of documents lodged with ASIC in relation to the Fund may be obtained from, or inspected at, an ASIC office.

Investors have a right to obtain a copy of the following documents:

- ▶ the annual financial report for the Fund;
- ▶ any half-year financial report lodged with ASIC; and
- ▶ any continuous disclosure notices given by the Fund.

Effect of International Accounting Standards

Under AASB 132 "Financial Instruments: Disclosures and Presentations", contractual obligations are regarded as liabilities. As unitholders have the ability to redeem units from the Fund, all unitholders' funds are recognised as liabilities of the Fund, rather than equity. The result of this is to reduce the net assets of the Fund to zero. As interest distributions paid and payable make up a proportion of unitholders' funds, they will be classified as interest expenses in the Statement of Financial Performance.

AASB139 requires assets to be classified into one of four categories depending on the type of asset.

Investments are classified as either held to maturity investments or available for sale financial assets depending on the type of investment. Those investments that are held to maturity are measured at amortised cost using the effective interest rate method. The investments that are classified as available for sale are measured at a fair value basis each reporting period, with any movement in fair value being reflected through the equity reserve.

Under the Australian Equivalent of the International Financial Reporting Standards (AIFSR) the Fund is required to recognise all the derivative financial instruments at fair value on the balance sheet. Where possible, the Fund will adopt hedge accounting so that the gains and losses on the financial instrument are recognised in line with income recognition for the hedged term and the volatility in the profit and loss is minimised.

Where hedging accounting cannot be adopted the gains and losses on the financial instrument are recognised at fair value with changes in fair value recorded through the profit and loss.

Where fair value hedge accounting is used, fair value changes on

both the hedged item and the hedging instrument are recognised directly in the profit and loss. Where cash flow hedge accounting is used the carrying value of the hedged item is not adjusted and the fair value changes on the related hedging instrument are reflected in a separate equity reserve and are then transferred to the profit and loss at the time the hedged item is realised.

The Fund uses cash flow hedge accounting. As such there is a potential for volatility in the equity reserve.

Electronic PDS

This PDS is available in electronic form at www.LMaustralia.com. Any person receiving this PDS electronically will on request be sent a paper copy of the PDS (and attached Application Form) by the Manager free of charge during the period of the offer. Applications must be made by completing a paper copy of the Application Form which forms part of this PDS.

The Manager will not accept a completed Application Form if it has reason to believe that the applicant has not received a complete paper copy or electronic copy of the PDS or if it has reason to believe that the Application Form or electronic copy of the PDS has been altered or tampered with in any way. While the Manager believes that it is extremely unlikely that during the period of the offer the electronic version of the PDS will be tampered with or altered in any way, the Manager cannot give any absolute assurance that this will not occur. Any investor in doubt concerning the validity or integrity of an electronic copy of the PDS should immediately request a paper copy of the PDS direct from the Manager or their adviser.

Anti-Money Laundering Procedures

The Australian Government has introduced anti-money laundering legislation to help combat money-laundering and the financing of terrorism. Under this legislation the Manager is required to collect more information from investors.

The Manager as Responsible Entity of the Fund needs to identify the underlying owner of each investment who has not previously been identified. For example, a private company will need to provide supporting documentation to identify the company as well as the usual account opening information. The Manager is also required to identify certain other parties to the investment such as a trustee or power of attorney.

If you hold an investment with the LM First Mortgage Income Fund which commenced prior to 31 January 2008 and are making an additional investment, then you may be required to provide us with verification documents. The Manager will contact you if required.

For wholesale investors e.g. master trusts or wrap services, please contact the Manager for the latest service agreement which includes Anti-Money Laundering details if not already completed.

What Documentation Needs to be Submitted with an Application for an Australian or New Zealand Investor

Investors' financial advisers will be able to assist investors in providing the necessary verification documents. Below is an outline of the verification documents that may be required for an Australian or New Zealand investor only.

TYPE OF INVESTOR	INVESTMENT ACCOUNT MUST BE IN THE NAME OF	SIGNATURE(S) REQUIRED	VERIFICATION DOCUMENTS REQUIRED (IN SUPPORT OF THE APPLICATION FORM)
Individual Account and Sole Traders	The individual e.g. John Citizen	The individual's	Certified copy of any of the following that verify your name, date of birth and/or current address:- Option 1: Current Passport or Drivers Licence. Option 2: Either Birth Certificate, Citizenship Certificate or Pension Card And Notice issued by a government body within preceding 12 months or utility provider issued within the preceding 3 months.
Joint Account	Both or all joint applicants e.g. John Citizen and Jane Citizen	All joint applicants'	
Superannuation Fund	The trustee(s) of the fund and name of the Super Fund e.g. ABC Trustees atf John Citizen Super Fund	All trustees' or that number of trustees as required by the Trust Deed	Certified copy of the first page, schedule (and any relevant pages including the page that list details in relation to who can sign on behalf of the Trust) of the Trust Deed confirming name and trustee(s) signatures. For one individual trustee, please also provide the same type of information requested for an Individual Account . Or For one corporate trustee please also provide the same type of information requested for a Company . Regulated Australian Superannuation Funds only require a current search of ASIC, ATO or regulator's website confirming the fund name and that the fund is regulated.
Trust	The trustee(s) of the trust and name of the trust e.g. ABC Trustees atf John Citizen Trust		
Company	The name of the company e.g. ABC Pty Ltd	Two directors; or a director and a company secretary or if there is only one director, by that director	▶ Certified copy of the Certificate of Registration. Or ▶ ASIC (or equivalent regulatory body) search within the last 30 days confirming name, registration and identification number.
Partnership	All partners e.g. John Citizen and Jane Citizen	Two partners	▶ Certified copy or certified extract of a partnership agreement. Or ▶ Certified copy or certified extract of minutes of a meeting confirming partnership. And ▶ Confirmation of current membership if regulated by professional association by current membership certificate or confirmation from relevant association. For one individual partner, please also provide the same type of information requested for an Individual Account .

Alternate Verification Documentation

For details of other verification documentation which is acceptable to the Manager other than outlined above or other entity types, please refer to the Anti-Money Laundering Form available from the Manager's website at www.LMaustralia.com or by telephoning the Manager on +617 5584 4500.

What Documentation Needs to be Submitted with an Application for an Investor other than an Australian or New Zealand Investor

Your financial adviser will be able to assist you in providing the necessary verification documents. In addition to completing the Application Form in the PDS investors will need to complete an Anti-Money Laundering Form applicable to the investor's classification (i.e. individual, company, trust, county the investor resides etc). These forms are located on the Manager's website at www.LMaustralia.com

Suitable Certifiers for Copies of Documents

Where an investor's identification documents need to be certified, the Manager suggests that the person certifying the document(s) for the investor use the following statement on the copy being certified:-

"I certify this to be a true and correct copy of the [Name of Document] the original of which, was produced to me at the time of signing and it is a true likeness of the identified (where there is a photo id)".

The document must also be dated and have the signature, printed name, occupation, employer and address of the person certifying the document.

Some of the persons who may certify copies of the original documents are:-

- ▶ a finance company officer with 2 or more continuous years of service with one or more finance companies (may include such professionals as financial adviser);
- ▶ an officer with 2 or more continuous years of service with one or more financial institutions;
- ▶ an officer with, or authorised representative of, a holder of an Australian financial services licence, having 2 or more continuous years of service with one or more licensees;
- ▶ a member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants with 2 or more years of continuous membership;
- ▶ a Justice of the Peace;
- ▶ a notary public (for the purposes of the Statutory Declaration Regulations 1993);
- ▶ a police officer;
- ▶ a legal practitioner who is on the roll of a Supreme Court of a State or Territory, or the High Court of Australia;
- ▶ a judge of a court;
- ▶ a magistrate;
- ▶ a chief executive officer of a Commonwealth court;
- ▶ a registrar or deputy registrar of a court;
- ▶ an agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public;
- ▶ a permanent employee of the Australian Postal Corporation with 2 or more years of continuous service;
- ▶ an Australian consular officer or an Australian diplomatic officer.

Queries

Should you require information in relation to what documents need to be submitted with an application or if you are unsure which classification your application falls under please contact your financial adviser or the Manager on +617 5584 4500 prior to submitting an application.

Incomplete Applications

An application cannot be processed by the Manager unless the appropriate verification documentation and information is supplied with the application or if the Manager is not satisfied with the legitimacy of the verification documentation or information supplied. The Manager takes no responsibility for any delay in processing an incomplete application. The Manager will contact advisers as soon as practicable and ask them to supply any necessary additional information for the investor in order for the application to be processed.

The Manager reserves the right to refuse or cancel applications at any time if it believes that the application breaches any anti-money laundering/counter-terrorism financing law or the money laundering or terrorism financing risk is unacceptable to the Manager. The Manager may also request any further information at any time throughout the investment from an investor that it considers necessary for it to satisfy any applicable anti-money laundering/counter-terrorism financing laws. If the Manager has requested an investor to provide further information, the processing of their application may be delayed until the information is received.

The directors of LM Investment Management Ltd have authorised and consented to the issue of this PDS.

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Application Form Checklist

To ensure the Manager is able to process an investor's application quickly and efficiently please check the Application Form is completed as set out below and that all additional information in relation to Anti-Money Laundering requirements is provided.

Section 1 – Nominate the type of investment and type of investor/s to open a new account.

Section 2 – Individual and Joint Investor/s Details - Provide the investor/s' full name/s. Joint investors must each provide their full names and sign the Application Form. All correspondence about the investment (including interest distributions and withdrawals) may be sent to the first person named on the Application Form. Joint investors are treated as joint tenants. This means that if one of two joint investors dies, only the other joint investor will be recognised as having any claim to the investment.

Section 3 – Sole Trader Investor Details

Section 4 – Company Investor Details

Section 5 – Superannuation Fund/Trust Investor Details – only the trustee has rights and obligations under the Fund's constitution.

Section 6 – Partnership or Association Investor Details

Section 7 – Politically Exposed Persons

Section 8 – Provide contact details for the investor/s.

Section 9 – Provide the investor/s' residential street address or if applicable business street address.

Section 10 – Provide Tax File Number or Exemptions (refer below).

Your alternatives to quoting a Tax File Number

If the investor's Tax File Number or the Tax File Number Exemption details are not supplied, the Manager is required to withhold tax from your income distribution at the highest marginal tax rate (plus Medicare Levy).

Exemptions:-

Pensioner - Write the name of your pension on the Exemption Line (eg Age Pension)

Non-Resident - Write your country of residence on the line below the Tax File Number

Non-Profit Organisation - If you are not required to lodge a tax return write "NL"

Section 11 – Nominate the investment option, amount to be invested and complete whether monthly returns are to be reinvested or not.

Section 12 – Select instructions for investment at maturity/rollover (for currency hedged investment terms only).

Section 13 – Nominate how the investment amount is to be paid.

- ▶ **Cheque** – If investing via cheque please cross your cheque "Not Negotiable" and make payable to "**PTAL acf LM First Mortgage Income Fund**".
- ▶ **Direct Debit** – For Australian dollar investors with Australian bank accounts or New Zealand dollar investors with New Zealand bank accounts only. If you are investing by direct debit please complete the relevant Direct Debit Form attached to the Application Form and complete the financial institution details in Section 15.
- ▶ **BPay** – Remit Australian dollar funds directly by BPay. In this instance you must fax the completed Application Form and a copy of your BPay receipt to the Manager (facsimile number +617 5592 4116) then telephone the Manager on +617 5584 4500 to receive your account number. Once you have your account number you can proceed to BPay your investment money by using the Biller Code No outlined in the "How to Invest" Section on Page 14 of this PDS and your account number as the reference number.
- ▶ **Electronic Direct Credit or Telegraphic Transfer** – Details of the financial institution account to be credited are contained in the "How to Invest" Section of this PDS on Pages 14 and 15. Once you have forwarded the electronic direct credit or telegraphic transfer you must fax the completed Application Form and copy of electronic direct credit receipt or telegraphic transfer (and forward the original by mail) to the Manager on facsimile number +617 5592 4116.
- ▶ **Credit Card** – Please complete the Credit Card Payment Form attached to this PDS and send the completed payment form with this Application Form to the Manager.

Application Form Checklist (continued)

Section 14 – Provide details of where the funds for this investment came from.

Section 15 – Complete details of the investor/s financial institution account to which interest distributions and withdrawals will be paid. If you are investing by direct debit investment, funds will be deducted from this account unless otherwise specified.

Section 16 – Please read this section for details on how the Manager can use the investor/s' personal information provided on the Application Form.

Section 17 – Authorised Delegate or Power of Attorney - If the Application Form is being signed under a Power of Attorney the Attorney must provide personal details in this section. If you wish to authorise another person to access and operate your investment (please read the section headed "Authorised Delegate" in the Additional Information Section of this PDS on Page 30), then:-

- ▶ complete the name of the authorised delegate;
- ▶ have the authorised delegate sign where indicated; and
- ▶ investor/s must also sign this section.

The appointment is limited to this Fund and the authorised delegate can only direct withdrawals to the nominated account or other existing investment accounts of the investor held by the Manager.

Section 18 – Please read this section and execute the Application Form in acknowledgement. Ensure that **if you are investing under a Joint Account** all applicants have signed and dated the form. **If the investor is a company** please ensure that the Application Form is executed by either 2 directors, 1 director and company secretary, or the sole director who is also the sole secretary. **If the investor is a trust** please ensure the Application Form is executed by all trustees or the sole trustee if there is only one trustee. **If signing under a Power of Attorney**, please attach a certified copy of the Power of Attorney document together with a declaration by the attorney/s that the Power of Attorney has not been revoked and a certified copy of the Attorney/s' passport or driver's licence and forward with this Application Form to the Manager.

Section 19 – Complete details of any special instructions including any amount of commission payable to the adviser in relation to this investment.

Section 20 – Complete details of the investor's financial adviser (if any).

Once you have completed and executed the Application Form

Please send the form and your prescribed method of payment to either:-

Your financial adviser

or

The Manager:
LM Investment Management Ltd
PO Box 485
Surfers Paradise Qld 4217

3. SOLE TRADER INVESTOR DETAILS

Full Business Name

Grid for Full Business Name (2 rows of 20 boxes each)

Australian Business Number or equivalent regulatory number (if applicable)

Grid for Australian Business Number (2 rows of 10 boxes each)

4. COMPANY INVESTOR DETAILS

Full Organisation Name

Grid for Full Organisation Name (1 row of 20 boxes)

Country in which the organisation was established

Grid for Country (1 row of 20 boxes)

If Entity is a Company-

Public Private Listed or Unlisted

Business/Type/Activity of Company

Grid for Business/Type/Activity of Company (1 row of 15 boxes)

If Regulated Company – provide the name of the Regulator and License number

Grid for Regulator and License number (1 row of 20 boxes)

Australian Business Number or equivalent regulatory number (if applicable)

Grid for Australian Business Number (2 rows of 10 boxes each)

If listed company provide the name of the market/exchange

Grid for Market/Exchange (1 row of 20 boxes)

If majority-owned subsidiary of an Australian listed company – provide name of Australian listed company and name of market/exchange

Grid for Australian listed company and market/exchange (1 row of 20 boxes)

If unregulated (not regulated by an Australian Commonwealth, State or Territory regulator) Proprietary Company provide Names and Residential or Principal addresses of Company Shareholders with over 25% ownership. If more that 2 Shareholders, attach list to this to Application Form.

Shareholder 1

First Name(s)

Grid for First Name(s) (1 row of 20 boxes)

Last Name

Grid for Last Name (1 row of 20 boxes)

Residential or Principal Street address

Grid for Residential or Principal Street address (1 row of 20 boxes)

Suburb

Grid for Suburb (1 row of 20 boxes)

State

Grid for State (1 row of 20 boxes)

Country

Grid for Country (1 row of 20 boxes)

Shareholder 2

First Name(s)

Grid for First Name(s) (1 row of 20 boxes)

Last Name

Grid for Last Name (1 row of 20 boxes)

Residential or Principal Street address

Grid for Residential or Principal Street address (1 row of 20 boxes)

Suburb

Grid for Suburb (1 row of 20 boxes)

State

Grid for State (1 row of 20 boxes)

Country

Grid for Country (1 row of 20 boxes)

If Proprietary Company provide Names of All Company Directors. If more than 2 Company Directors attach a list to this Application Form.

Company Director 1

First Name(s)

[Grid for first name entry]

Last Name

[Grid for last name entry]

Company Director 2

First Name(s)

[Grid for first name entry]

Last Name

[Grid for last name entry]

5. SUPERANNUATION FUND / TRUST INVESTOR DETAILS

Full Organisation Name of Trust/Superannuation Fund

[Grid for full organisation name]

Country in which the organisation was established

[Grid for country]

Type/Activity of Trust

[Grid for type/activity of trust]

Names and Residential or Principal addresses of All Trustee/s. If more than 2 trustees, attach a list to this Application Form.

Trustee 1

First Name(s)

[Grid for first name]

Last Name

[Grid for last name]

Date of Birth

[Grid for date of birth]

Gender

Male Female

Residential or Principal Street Address

[Grid for residential or principal street address]

Suburb

[Grid for suburb]

State

[Grid for state]

Country

[Grid for country]

Trustee 2

First Name(s)

[Grid for first name]

Last Name

[Grid for last name]

Date of Birth

[Grid for date of birth]

Gender

Male Female

Residential or Principal Street Address

[Grid for residential or principal street address]

Suburb

[Grid for suburb]

State

[Grid for state]

Country

[Grid for country]

If the Trustee is a Company please complete the Company details in Section 4 of this Application Form.

Names of All Beneficiaries or class of beneficiaries of a Superannuation Fund /Trust (except for regulated Australian Superannuation Funds). If more than 2 Beneficiaries of a Superannuation Fund/Trust, attach a list to this Application Form.

Beneficiary 1

First Name(s)

Last Name

Beneficiary 2

First Name(s)

Last Name

Class of Beneficiaries (if applicable)

6. PARTNERSHIP / OR ASSOCIATION INVESTOR CONTACT DETAILS

Full Organisation Name of Partnership/Association

Country in which the organisation was established

Business/Type/Activity of Partnership /Association

If Regulated Partnership – provide name and membership details of professional association

Australian Business Number or equivalent regulatory number (if applicable)

Names and Residential or Principal addresses of All Partners / Association's 2 public officers. If more than 2 partners or public officers, attach a list to this Application Form.

Partner 1

First Name(s)

Last Name

Date of Birth

/ /

Gender

Male Female

Residential or Principal Street Address

Suburb

State

Country

Partner 2

First Name(s)

Last Name

Date of Birth

/ /

Gender

Male Female

Residential or Principal Street Address

Suburb

State

Country

7. POLITICALLY EXPOSED PERSONS

Are you or anyone named on this form or any of your or their close personal or business relationships, associates or family members politically exposed persons e.g. Heads of State, senior politicians, judicial or military officers, senior executives of state owned corporations?

Yes No

If yes please provide details _____

8. INVESTOR CONTACT DETAILS

Contact Name

Postal Address

Email

Phone (Business/Home)

Phone (Mobile)

Please indicate your preferred method of receiving correspondence

Email Post OR All correspondence to Adviser only

Financial statements are available on the Manager's website.

Do you wish to receive financial statements of the Fund Yes No

If Yes – do you wish to receive the financial statement by email Yes No

9. RESIDENTIAL / PRINCIPAL BUSINESS STREET ADDRESS OF INVESTOR/S

Individual investors must provide their residential street address and if sole trader their principal business address (if different). Company, partnership, superannuation fund, association or trust investors must provide their principal business street address and registered office address (if different). Post office boxes are not acceptable.

INVESTOR 1 / COMPANY/ TRUST / SUPERANNUATION FUND / PARTNERSHIP / ASSOCIATION / SOLE TRADER

Residential / Principal Business Street

Suburb

State

Country

INVESTOR 2 / INCORPORATED REGISTERED ADDRESS (if applicable)

Residential / Principal Business Street

Suburb

State

Country

10. INVESTOR TAX FILE NUMBER OR EXEMPTION DETAILS

INVESTOR 1 / COMPANY PARTNERSHIP / SUPERANNUATION FUND / TRUST

Tax File Number

OR Exemption

If a foreign resident for tax purposes, specify country of residence

INVESTOR 2

Tax File Number

OR Exemption

If a foreign resident for tax purposes, specify country of residence

11. INVESTMENT DETAILS

LM FIRST MORTGAGE INCOME FUND AUSTRALIAN DOLLAR INVESTMENT OPTIONS

Cheques MUST be made payable to "PTAL acf LM First Mortgage Income Fund" (Select method of payment in the "Payment Details" – See Section 13 below)

FLEXIACCOUNT OPTION

Flexi Account Option AUD\$

FIXED TERM INVESTMENT OPTIONS

Investment Amount

<input type="checkbox"/> 1 Month Term	AUD\$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> 3 Month Term	AUD\$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> 6 Month Term	AUD\$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> 12 Month Term	AUD\$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> 13 Month Term	AUD\$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> 2 Year Term	AUD\$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> 3 Year Term	AUD\$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> 4 Year Term	AUD\$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

INTEREST DISTRIBUTION

- ▶ Reinvest Yes No If No please select one of the options below
 - Credit my/our bank account monthly or quarterly (complete Section 15) Monthly Quarterly
 - Pay to my/our LM Cash Performance Fund Account Yes No
 - Pay the Split Interest Distribution set out below Yes No

SPLIT DISTRIBUTION OPTION

Amount to be paid from interest distribution monthly or quarterly AUD\$

Note the balance interest distribution on this investment will be reinvested to your investment account. If the interest distribution amount is less than the amount nominated, the Manager will only pay the interest distribution amount. Monthly Quarterly

REGULAR ADDITIONAL INVESTMENT OPTION (Minimum AUD\$1,000)

– Please complete the Direct Debit Request Form attached to this Application Form

Regular additional investment amount AUD\$

Please nominate how often the additional investment is to be made e.g. monthly

LM SAVINGS PLAN OPTION

Please complete the Direct Debit Request Form attached to this Application Form

	Initial Investment Amount (Minimum initial investment AUD\$100)	Ongoing Investment Amount (Minimum AUD\$100 / month)
<input type="checkbox"/> LM Savings Plan	AUD\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	AUD\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Please nominate how often the additional investment is to be made e.g. monthly

NB: If you nominate to have the Regular Additional Investment or Ongoing Investment to be added on a monthly basis the monthly amount is automatically debited on the 24th of each month or next business day if 24th falls on a weekend or public holiday. If other date for direct debit is required please nominate the date on which the ongoing amount is to be direct debited on: _____ of each month. If you nominate to have the Regular Additional Investment or Ongoing Investment to be added on a weekly or fortnightly basis the Regular Additional Investment or Ongoing Investment will be automatically debited weekly or fortnightly from the receipt and processing of your application for investment.

www.LMaustralia.com > LM First Mortgage Income Fund

11. INVESTMENT DETAILS (continued)

LM FIRST MORTGAGE INCOME FUND CURRENCY HEDGED INVESTMENT OPTIONS

The investor may use this Application Form to select either one or a diversified range of currency investments. (Investment may be arranged for most currencies. For clarification on hedging a specific currency, contact the Manager.)

Payment MUST be made to "PTAL acf LM First Mortgage Income Fund"

FIXED TERM INVESTMENT OPTIONS

Specify Term – 1, 3, 6 or 12 Month Term

<input type="checkbox"/>	USD	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/>	GBP	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/>	EUR	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/>	JPY	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/>	CAD	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/>	HKD	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/>	SGD	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/>	NZD	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/>	Other Specify:	Amount \$	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Interest distribution (Income Only) on Maturity of Investment Term (please tick appropriate box)

Credit to my Fund Account Yes No If No the interest distribution will be credited to the bank account nominated in Section 15

12. MATURITY/ROLLOVER INSTRUCTIONS FOR CURRENCY HEDGED INVESTMENT TERMS ONLY

Please tick the appropriate instructions. NB if this section is not completed and no written instructions are received by the Manager at least 5 business days prior to this investment's maturity date then at maturity of each investment the investor's original investment and interest distribution is automatically reinvested in the original nominated currency for further 1 month investment terms until the investor notifies the Manager of a longer reinvestment term or a withdrawal notice is received.

On maturity of each investment term **continue to roll the investment and interest distribution (income) amount for further investment terms of the same length until notified otherwise by the investor** by the appropriate notice.
EG On maturity of USD 12 Month Term the interest distribution will be credited to the investor's investment account and principal investment amount and the interest distribution will be rolled for further USD 12 Month Terms until notified otherwise by the investor.

On maturity of each investment term **continue to roll the original investment amount on maturity for further investment terms of the same length until notified otherwise by the investor** by the appropriate notice **AND electronically credit the interest distribution (income) amount to the Investor's Account nominated in Section 15 of this Application Form.**
EG On maturity of USD 12 Month Term the principal investment amount will be rolled for further USD 12 Month Terms and the interest distribution will be electronically credited to the investor's account nominated in Section 15 of the Application Form until notified otherwise by the investor.

On maturity **redeem the investor's investment and interest distribution (income) amount** and electronically credit the Investor's Account nominated in Section 15 of this Application Form.

Note: See page 17 of this PDS ("How to Withdraw") for details of the notice periods required and the restrictions on breaking an investment term, which also apply to investment terms resulting from a rollover.

Note: Investors should consult with their adviser to obtain details of the latest PDS prior to reinvestment. The latest PDS is also available from the Manager's website at www.LMaustralia.com or by telephoning the Manager on +617 5584 4500.

13. PAYMENT DETAILS

How will this investment be made? NOTE: Cash is not acceptable

AUSTRALIAN DOLLAR PAYMENT OPTIONS:-

- Cheque** Make cheque payable to the Fund:- **PTAL acf LM First Mortgage Income Fund;**
- Direct Debit** Make sure you also complete the relevant Direct Debit Form for Australian Dollar Investments attached to this Application Form. Your investment will be directly debited from your nominated Australian financial institution account.
- BPay** Please attach a copy of the BPay receipt to the Application Form. For details on how to BPay Australian dollar investment funds please refer to Page 14 of this PDS.
- Electronic Direct Credit or Telegraphic Transfer** Please attach a copy of the electronic direct credit receipt or telegraphic transfer to the Application Form and provide the electronic direct credit reference code provide by the bank or telegraphic transfer reference code provided by the bank:- _____
Please see details on how to electronically direct credit or telegraphically transfer investment funds on page 14 of this PDS.
- Credit Card** Make sure you complete the Credit Card Payment Form attached to this Application Form.

NON-AUSTRALIAN DOLLAR CURRENCY HEDGED PAYMENT OPTIONS:-

Payment must be made by telegraphic transfer.

Please attach a copy of the telegraphic transfer to the Application Form and provide the telegraphic transfer reference code provided by the bank:- _____. Please see details on how to telegraphically transfer investment funds on page 15 of this PDS.

NEW ZEALAND investors can also

- ▶ choose to have NZD investments direct debited from their bank account. Please complete the New Zealand Direct Debit Form that follows this Application Form

OR

- ▶ Investors living in New Zealand can make NZD deposits in person at an ANZ bank or electronically direct credit investment funds to the ANZ Bank (Bank details are shown on page 15 of this PDS).

Direct Credit – If funds are being remitted by direct credit please supply the banking reference number or copy of credit receipt provided by the remitting bank _____.

THIRD PARTY PAYMENTS

The Manager expects funds to come from the investor's own account. Please provide an explanation if payment is made from a third party. We may require additional information in respect of the third party payment if accepted.

14. SOURCE OF INVESTMENT FUNDS – Must be completed for Anti-Money Laundering Requirements

Please tick the appropriate box to provide information on where funds for this investment came from.

- Savings Sale of Assets Profit Other please specify e.g. gift, donation:- _____

15. INVESTOR ACCOUNT DETAILS (for payment of interest distributions and withdrawals from a Fund)

Account Name

Bank Name

Bank Address

BSB Number (Australia Only) Bank Account Number

Currency Swift Code Sort Code

Routing Code/Fedwire (US banks only) IBAN Number

Intermediary Bank Name (For overseas bank accounts using an intermediary bank, if applicable)

Intermediary Bank Address

Intermediary Swift Code Intermediary Sort Code

Intermediary Account Number

16. PERSONAL INFORMATION

The privacy of an investor's personal information is important to the Manager. The purpose of collecting investor information on the Application Form is to process the application and manage an investor's investment in the Fund. If the information an investor gives is not complete or accurate, the Manager may not be able to provide the products and services applied for.

In processing the application and managing investors' investments in the Fund, the Manager may disclose personal information to other parties such as an investor's financial adviser and/or IT service providers of financial advisers, the financial adviser's licensee or as required by law.

Investors are entitled to request reasonable access to their personal information. The Manager reserves the right to charge an administration fee for collating the information requested.

For further details on the Manager's Privacy Policy please visit the Manager website at www.LMaustralia.com.

17. APPOINTMENT OF AUTHORISED DELEGATE /POWER OF ATTORNEY

Please ensure an identity verification document (e.g. Certified copy of current Passport) for the Authorised Delegate/Attorney is attached.

Name of Authorised Delegate

First Name(s)

[Grid of 20 boxes for First Name(s)]

Last Name

[Grid of 20 boxes for Last Name]

Date of Birth

[Grid of 8 boxes for Date of Birth with slashes]

Gender

Male [] Female []

Nationality

[Grid of 10 boxes for Nationality]

Current Occupation

[Grid of 15 boxes for Current Occupation]

Residential Street Address

[Grid of 25 boxes for Residential Street Address]

Suburb

[Grid of 20 boxes for Suburb]

State

[Grid of 10 boxes for State]

Country

[Grid of 10 boxes for Country]

Signature of Authorised Delegate and Investor must be provided below. Attorneys are not required to complete the balance of this section.

I/We have read the section on authorised delegates in this PDS under the section headed "Additional Information" and agree to its terms and conditions. I/We appoint the following authorised delegate:

Signature of Authorised Delegate

[Signature box for Authorised Delegate]

Date

[Date box for Authorised Delegate]

I/We request that my/our authorised delegate receive access to my/our financial records in relation to my/our Fund/s investment/s and consistent with the Fund/s terms and conditions, agree that my/our authorised delegate has the same powers as I/we do to make further investments in or withdrawals from, the Fund/s. I/We release, discharge and agree to indemnify the Manager and the Custodian as provided in the "Additional Information" section of this PDS.

Signature of Investor 1/Company Officer (please nominate office held eg. Director)

[Signature box for Investor 1/Company Officer]

Date

[Date box for Investor 1/Company Officer]

Signature of Investor 2/Company Officer (please nominate office held eg. Director)

[Signature box for Investor 2/Company Officer]

Date

[Date box for Investor 2/Company Officer]

20. ADVISER/INTERMEDIARY DETAILS

Title Mr Mrs Miss Other

First name(s)

Last Name

AFS Licensee

Adviser Email

Telephone Number (Business)

Facsimile Number

Mobile Telephone Number

AFS Licence No LM Adviser ID No (Optional)

Adviser Stamp

Postal Address

Australian Financial Adviser Investor Identity Verification Declaration

I certify that in accordance with the IFSA/FPA Industry Guidance Note 24 that:- (tick the appropriate box)

- 1. My licensee has an agreement in place with LM where I have collected, verified and retained the appropriate customer identification documentation to confirm the identity of all investors associated with this application to meet my obligations in respect of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ('AML/CTF laws') and agree to provide access to these records as required.
OR
- 2. My licensee has an agreement in place with LM and as such I have attached a copy of the industry "Customer Identification Form" which confirms that I have sighted and verified all of the documentation required to identify a customer under the AML/CTF laws.
OR
- 3. I have attached a copy of the source documents from which I have identified the customer as required by the AML/CTF laws.

If no box is marked, I agree Option 3 applies.

Adviser Signature

Date
 / /

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Direct Debit Request Form (AUD INVESTMENTS ONLY)

AUSTRALIAN BANK ACCOUNT HOLDERS ONLY

Please complete and sign this form to make your initial investment.

Direct Debit Request Form

REQUEST FOR DEBITING AMOUNTS TO ACCOUNTS BY THE DIRECT DEBIT SYSTEM

PLEASE READ ALL INSTRUCTIONS WHEN COMPLETING THIS FORM

If you are an existing investor please complete your Investor ID or LM Investment Account Number (if known)

Investor ID No. LM Investment Account No. Date / /

Name and address of financial institution at which your account is held:

Insert full name of investor: (Surname, Company Name or Business Name)

(Given Names, ACN or ABN)

Direct debit authorisation:-

I / we authorise LM Investment Management Ltd (ACPC User ID Number: 097695) to arrange for funds to be debited from my/our account at the financial institution identified above and as prescribed through the bulk electronic clearing system (becs);

I/We have read the 'Direct Debit Customer Service Agreement' provided in this form and agree with its terms and conditions.

I/We request this arrangement remain in force in accordance with the details set out in the Schedule below and in compliance with the 'Direct Debit Customer Service Agreement'.

Signature of investor 1 or company officer Signature Date / /

Print Name

Signature of investor 2 or company officer Signature Date / /

Print Name

The Schedule

Insert name of account which is to be debited

BSB No:* Account No:*

*Do not quote your ATM card or credit card number.

PLEASE NOTE: Direct Debiting is not available on the full range of accounts. If in doubt please refer to your financial institution.

Credit Card Payment Form

Please complete and sign this form to make your initial investment and/or to make additional investments together with the relevant application form.

REQUEST FOR PAYMENT BY CREDIT CARD

PLEASE READ ALL INSTRUCTIONS WHEN COMPLETING THIS FORM

If you are an existing investor please complete your Client ID or LM Investment Account Number (if known)

Investor ID No. LM Investment Account No. Date / /

Insert full name of investor:

(Surname, Company Name or Business Name)

(Given Names, ACN or ABN)

Signature of investor 1
or company officer

Signature

Date

 / /

Print Name

Signature of investor 2
or company officer

Signature

Date

 / /

Print Name

The Schedule

Please enter your initial investment/additional deposit/ monthly investment amount which is to be credited to:

Fund Name

Initial/Additional Investment Amount

\$AUD

LM Savings Plan or Regular Additional Investment

\$AUD

Consecutive investment amount

NB: The amount deducted will be the investment amount. The credit card merchant service fee of 1.54% of that amount (GST inclusive) will be deducted by the Manager from the investment amount. The credit card merchant service fee is subject to change at anytime in line with the Merchant Service Agreement. The charge of 1.54% is current as at the date of this PDS.

Payment details Credit Card (Tick one only)

Master Card

Visa

Insert name on Credit Card

Card No:

Expiry

Cardholder Telephone No:

Credit Check Value No:

I agree to accept the credit card merchant service fee passed on by LM Investment Management Ltd and understand that the deduction from my credit card will be the investment amount only and the credit card merchant charges of 1.54% (GST inclusive) will be deducted by the Manager from the investment amount. I also agree to accept that the credit card merchant service fee is subject to change at anytime in line with the Merchant Service Agreement.

Card Holder's Signature

The credit card merchant service fee may be passed onto the consumer in accordance with the Merchant Pricing Reform, 1 January 2003.

Direct Debit Authority for NEW ZEALAND INVESTORS ONLY

NEW ZEALAND BANK ACCOUNT HOLDERS ONLY

Name of Account: _____

CUSTOMER TO COMPLETE BANK BRANCH NUMBER AND ACCOUNT NUMBER AND SUFFIX OF ACCOUNT TO BE DEBITED

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------

Bank Branch Number Account Number Suffix

**Authority
to accept
Direct Debits**

(Not to operate as an assignment or agreement)

To: The Manager (Please print full postal address clearly for window envelope)

BANK & BRANCH: _____

ADDRESS (PO BOX): _____

TOWN / CITY: _____

AUTHORISATION CODE

0	1	0	9	4	1	7
---	---	---	---	---	---	---

DATE: ____ / ____ / ____

I / We authorise you until further notice in writing to debit my / our account with you all amounts which

L M Administration Pty Ltd
(Hereinafter referred to as the Initiator)

the registered Initiator of the above Authorisation Code, may initiate by Direct Debit.

I / We acknowledge and accept that the Bank accepts this authority only upon the conditions listed on the reverse of this form

INFORMATION TO APPEAR IN MY / OUR BANK STATEMENT (TO BE COMPLETED BY INITIATOR)

PAYER PARTICULARS	PAYER CODE	PAYER REFERENCE
L M F M I F <input type="text"/>	<input type="text"/>	L M F M I F <input type="text"/>

NAME OF ACCOUNT: _____

AUTHORISED SIGNATURE(S): _____

Approved	FOR BANK USE ONLY		
	DATE RECEIVED: ____ / ____ / ____	RECORDED BY: _____	CHECKED BY: _____
	BANK STAMP		
	<p>Original: Retain at Branch.</p> <p>Copy: Forward to Initiator in postage prepaid and addressed envelope provided by the Initiator</p>		

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Australian Dollar Direct Debit Customer Service Agreement

Our Responsibility

- ▶ The direct debit of your investment amount will be drawn immediately once LM Investment Management Ltd (the "Manager") receives this form or further written instructions from you. Please ensure your investment funds are cleared and available.
- ▶ The Manager will only debit your account for your initial investment amount as stated on the Application Form or additional investment amount as advised by you in further written instructions concerning additional deposits.
- ▶ The Manager reserves the right to cancel the direct debit arrangements if three or more drawings are returned unpaid by your nominated financial institution.
- ▶ Subject to its obligations at law, the Manager will keep all information pertaining to your nominated account at the financial institution private and confidential.
- ▶ Where the due date for a drawing falls on a non-business day, the Manager will draw the amount on the next business day.
- ▶ The Manager will investigate and deal promptly with any queries, claims or complaints regarding debits providing a response within 20 business days.

Your Responsibility

- ▶ Where you consider that a drawing has been initiated incorrectly you should take the matter up directly with the Manager.
- ▶ It is your responsibility to ensure that the authorisation on the direct debit request is identical to the account signing instruction held by the financial institution of the nominated account.
- ▶ It is your responsibility to ensure at all times, that sufficient funds are available in the nominated account to meet a drawing on the due date for payment.
- ▶ It is your responsibility to advise the Manager if the account nominated by you to meet a drawing is altered, transferred or closed.
- ▶ It is your responsibility to arrange with the Manager a suitable alternate payment method if the drawing arrangements are stopped either by you or the nominated financial institution.
- ▶ It is your responsibility to meet any charges resulting from the use of the direct debit system. This may include fees charged by the Manager as a result of drawings being returned unpaid.

Your Rights

- ▶ You may request or defer or alter the drawing authority, by giving written notice to the Manager. The Manager must receive such notice at least 5 business days prior to the date of the next drawing.
- ▶ You may cancel the direct debit arrangement at any time by giving written notice to the Manager. The Manager must receive such notice at least 5 business days prior to the date for the next drawing.
- ▶ All transaction disputes, queries, and claims should be raised directly with the Manager. The Manager will provide a verbal or written response within 20 business days from the date you notify the Manager. If the claim/dispute is successful the Manager will reimburse you by way of electronic credit to your nominated account.

Terms and Conditions of the New Zealand Dollar Direct Debit Authority

1. The Initiator:

- (a) Has agreed to give written notice of the net amount of each Direct Debit no later than the Direct Debit is initiated.

This notice will be provided either:

- (i) in writing; or
(ii) by electronic mail where the Customer has provided prior written consent to the Initiator.

The advance notice will include the following message:

The amount \$ _____, will be direct debited to your Bank account on (initiating date).

- (b) May, upon the relationship which gave rise to this Authority being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the Authority. Upon receipt of such notice the Bank may terminate this Authority as to future payments by notice in writing to me/us.

2. The Customer may:

- (a) At any time, terminate this Authority as to future payments by giving written notice of termination to the Bank and to the Initiator.
(b) Stop payment of any direct debit to be initiated under this authority by the Initiator by giving written notice to the Bank prior to the direct debit being paid by the Bank.

3. The Customer acknowledges that:

- (a) This authority will remain in full force and effect in respect of all direct debits made from me/our account in good faith notwithstanding my/our death, bankruptcy or other revocation of this authority until actual notice of such event is received by the Bank.
(b) In any event this authority is subject to any arrangement now or hereafter existing between me/us and the Bank in relation to my/our account.
(c) Any dispute as to the correctness or validity of an amount debited to my/our account shall not be the concern of the Bank except in so far as the direct debit has not been paid in accordance with this authority. Any other disputes lie between me/us and the Initiator.
(d) Where the Bank has used reasonable care and skill in acting in accordance with this authority, the Bank accepts no responsibility or liability in respect of:
- the accuracy of information about Direct Debits on Bank statements;
- any variations between notices given by the Initiator and the amounts of Direct Debits.
(e) The Bank is not responsible for, or under any liability in respect of the Initiator's failure to give written advance notice correctly nor for the non-receipt or late receipt of notice by me/us for any reason whatsoever. In any such situation the dispute lies between me/us and the Initiator.

4. The Bank may:

- (a) In its absolute discretion conclusively determine the order of priority of payment by it of any monies pursuant to this or any other authority, cheque or draft properly executed by me/us and given to or drawn on the Bank.
(b) At any time terminate this authority as to future payments by notice in writing to me/us.
(c) Charge its current fees for this service in force from time-to-time.

Credit Card Customer Service Agreement

Our Responsibility

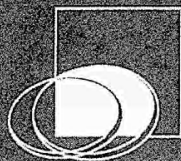
- ▶ The credit card payment of your investment amount will be drawn immediately once LM Investment Management Ltd (the "Manager") receives this form or further written instructions from you. Please ensure your investment funds are cleared and available.
- ▶ The Manager will only debit your account for your initial investment amount as stated on the Application Form or additional investment amount as advised by you in further written instructions concerning additional deposits. The credit card merchant service fee will be deducted from your initial investment amount or additional investment amount/s.
- ▶ The Manager reserves the right to cancel the credit card arrangements if three or more drawings are returned unpaid by your nominated financial institution.
- ▶ Subject to its obligations at law, the Manager will keep all information pertaining to your nominated account at the financial institution private and confidential.
- ▶ Where the due date for a drawing falls on a non-business day, the Manager will draw the amount on the next business day.
- ▶ The Manager will investigate and deal promptly with any queries, claims or complaints regarding debits providing a response within 20 business days.

Your Responsibility

- ▶ Where you consider that a drawing has been initiated incorrectly you should take the matter up directly with the Manager.
- ▶ It is your responsibility to ensure that the authorisation on the credit card payment request is identical to the account signing instruction held by the financial institution of the nominated account.
- ▶ It is your responsibility to ensure at all times that sufficient funds are available in the nominated account to meet a drawing on the due date for payment.
- ▶ It is your responsibility to ensure your bank will allow drawings on a credit card transaction without the card present.
- ▶ It is your responsibility to advise the Manager if the account nominated by you to meet a drawing is altered, transferred or closed.
- ▶ It is your responsibility to arrange with the Manager a suitable alternate payment method if the drawing arrangements are stopped either by you or the nominated financial institution.
- ▶ It is your responsibility to meet any charges resulting from the use of the credit card system. This may include fees charged by the Manager as a result of drawings being returned unpaid.

Your Rights

- ▶ You may request or defer or alter the drawing authority, by giving written notice to the Manager. The Manager must receive such notice at least 5 business days prior to the date of the next drawing.
- ▶ You may cancel the credit card arrangement at any time by giving written notice to the Manager. The Manager must receive such notice at least 5 business days prior to the date for the next drawing.
- ▶ All transaction disputes, queries, and claims should be raised directly with the Manager. The Manager will provide a verbal or written response within 20 business days from the date you notify the Manager. If the claim/dispute is successful the Manager will reimburse you by way of electronic credit to your credit card account.



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Adviser's Stamp

"SC-21"



REPLACEMENT COMPLIANCE PLAN

LM FIRST MORTGAGE INCOME FUND (the "Scheme")

ARSN 089 343 288

Lisa Darcy
Director

Peter Drake
Director

Eghard van der Hoven
Director

Francene Mulder
Director

John O'Sullivan
Director

Simon Tickner
Director

Effective date: 16 March 2011,

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Part 1

The Compliance Plan

This Replacement Compliance Plan (the Plan), replaced under Section 601HE(1) of the Corporations Act (Act), and is *effective as of 16 March 2011*, and is the Replacement Compliance Plan of LM Investment Management Ltd, Responsible Entity (RE) that is required in respect of the Scheme, pursuant to Section 601HA of the Act. The Board of the RE is satisfied that given the extent of the compliance framework and the Compliance Program there are sufficient resources and structure to implement, monitor and maintain the Plan.

Preparation of the Plan

Senior Representatives of the RE endorsed the Plan and recommended its approval by the Board. The Plan was prepared by the RE. All Directors have signed the Plan in accordance with Section 601HC of the Act. The Plan has been prepared having regard to the matters that were considered as a result of the RE conducting a compliance risk assessment and to the matters required to be included in the Plan pursuant to Part 5C of the Act and to the relevant Australian Securities and Investment Commission (ASIC) Policy Statements, including particularly Regulatory Guide 132.

Scope of the Plan

The Plan has been structured so that it addresses the key processes, systems and structures that the RE and its officers, Employees and authorised representatives must apply to ensure compliance with the Act and the Constitution. The Plan does not describe in detail all aspects of the systems and processes that it maintains to ensure compliance. Rather, it provides sufficient detail to describe the measures of the more detailed systems, policies and procedures, plus information on how those systems can be monitored and accessed to ensure the RE's compliance obligations are met.

Amendment of the Plan

The Business Standards and Compliance Department, the Compliance Committee and the Plan Auditor will review the Plan on an ongoing basis and the Business Standards and Compliance Department will make necessary amendments to the Plan when appropriate. This is to be done with regard to changes in the Act, the practice of ASIC, in the nature of the Scheme, and what is seen as being best practice. The Compliance Committee may obtain independent advice on whether it is appropriate to make an amendment to the Plan.

Distribution and use of the Plan

The Business Standards and Compliance Department has responsibility for providing copies and amendments to the Compliance Plan to all Staff and the Compliance Committee and Plan auditor.

Sections of the Plan considered essential reading are Parts 1 to 4 which give an overview on the Compliance Plan, Corporate Governance, the Compliance Committee and the compliance duties of the RE, Officers and Staff.

Part 5 lists the core compliance elements.

Part 6 provides the detail the essential measures in place to ensure the legal responsibilities are complied with.

Application of Plan

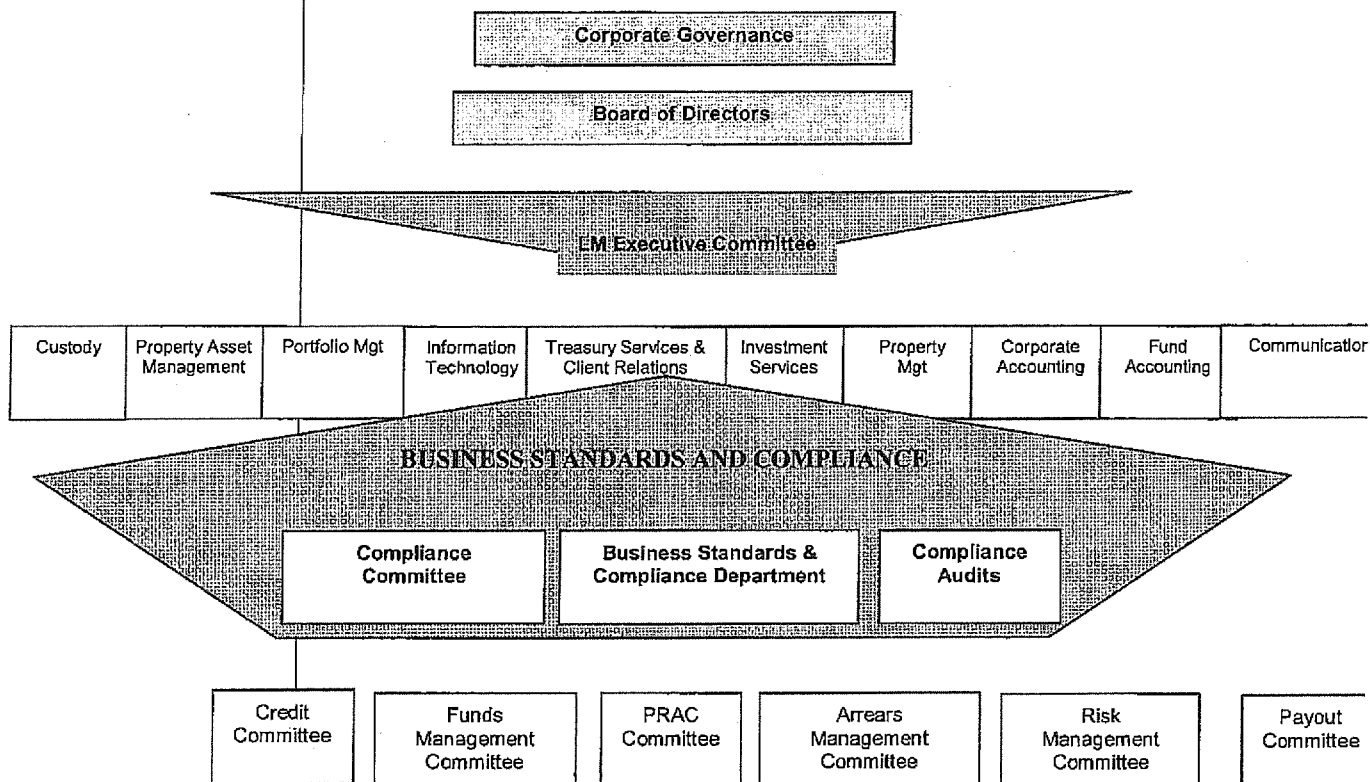
The parts of the contents of this master Compliance Plan is referred to by other Schemes for which the RE is responsible except for Scheme specific issues documented in Part 6 of this Plan, which are specific to the First Mortgage Income Fund Compliance Plan.

Each Scheme may have specific Scheme issues which will be detailed in individual plans.

Part 2

Corporate Governance

The RE maintains a “flat” organisation structure, which lends itself to effective communication across the company. The Directors believe that this “flat” structure and the participative management style adopted by the Directors are essential foundations in the development of a true compliance culture. The Directors are committed to ensuring compliance is a part of the RE’s culture and Directors, Officers and staff takes ownership of compliance. The diagram below sets out the compliance structure;



All staff fall within a particular department. Each department has a Team Leader or Manager. Team Leaders/Managers are appointed to represent their department to other departments and at management meetings. Team Leaders/Managers are responsible for their departmental operations and their continuous improvement programs. There are a number of Committees within the RE. Their role is to enhance the decision making processes of the business. The continuous improvement programs are summarised on the business plan of the RE.

The scope of the Compliance Committee’s duties encompass all operational departments. The Compliance Committee reports directly to the Board in a similar way to the RE’s external auditors.

Communication and information

Direct access to Directors and Team Leaders/Managers

The flat hierarchy of the RE means that all staff have direct access to Directors and Team Leaders/Managers. The Directors and Team Leaders/Managers actively encourage staff to raise ideas with them. The RE maintains a list of corporate values stated in the business plan of the RE. The business plan is reviewed annually. All staff and the

Directors have committed to these values. These values are one of the key foundations for trust and teamwork in the company, and the foundations of a compliance culture.

LM Meeting

The Team Leaders/Managers (or appointed delegate) from each department meet on a regular basis in the LM Executive Meeting. There is generally at least one Director in attendance. It is open to all staff to attend the LM Meeting where they have an interest in any agenda items or have an issue which requires consideration. The LM Meeting is the key communication forum and decision making process for the RE with an all encompassing scope including;

- Operational issues;
- Staffing and training issues; and
- Compliance issues

Input is sought from all attendees and a majority of all present is generally required to resolve issues.

Minutes of each meeting are distributed to all staff and Directors.

Business Unit Measurement

The RE conducts a business unit measurement meeting, generally within two weeks of the end of each month, to inform all staff of performance results for the preceding month for all departments. If, for some reason, the RE is unable to have the meeting in any one month the RE will report those results at the next meeting.

The performance results are reported to the Board at each Board meeting.

The Business Standards and Compliance Manager reports results in relation to breaches that have occurred in the preceding months. These breaches along with the resolution of rectification measures are discussed with the responsible Department Team Leaders/Managers, usually, prior to the meeting.

The open and participative management style employed by the RE ensures that Directors, Team Leaders, Managers and staff have access to relevant information in relation to the management of the Scheme and the company.

Board of Directors

The full Board generally meets at least three times a year, or more frequently if necessary,, to discuss strategic, business and control matters.

The Board has primary responsibility for ensuring that there is an adequate and effective system operating within the RE. As part of this responsibility the Board monitors business activity to ensure that the systems and controls are operating effectively and deals with any issues effecting the efficiency and effectiveness of these systems and controls.

Each Board member is required to complete the appropriate forms on disclosure of interests, and where relevant, to satisfy the externality test in Section 601JA of the Act.

Part 3

Compliance systems

*Corporations Act, ASIC
Regulatory Guide*

s 601FD, RG132.12(g)

1. Compliance Responsibilities

The compliance duties of the RE, Directors and Officers include:

- to act honestly;
- to exercise the degree of care and diligence that a reasonable person would exercise if they were in the position of the RE;
- to act in the best interests of the Investors and, if there is a Conflict between the Investors' interests and its/their own interests, give priority to the Investors' interests;
- not to make use of information acquired through being the RE, a director or officer of the Scheme in order to :
 - gain an improper advantage for itself (the RE), themselves (director or officer) or another person; or
 - cause detriment to the Investors of the Scheme; and
- Directors and Officers to take all steps that a reasonable person would take, if they were in the Officer's position, to ensure that the RE - complies with :
 - the Act;
 - any conditions imposed on the Australian Financial Services Licence of the RE;
 - the Constitution; and
 - the Compliance Plan; and
- to ensure that any duty of an officer under Section 601FD (1) of the Act overrides any Conflicting duty under part 2D.1 of the Act.

s 601FC, RG 132.12(f)

The RE must ensure:

- to treat Investors who hold interests of the same class equally and Investors who hold interests of different classes fairly;
- to ensure that the Constitution meets the requirements of sections 601GA and 601GB of the Act;
- to ensure that the Plan meets the requirements of section 601HA of the Act;
- to comply with the Plan;
- to ensure that Scheme Property are :
 - clearly identified as Scheme Property; and
 - held separately from property of the RE and property of any other Scheme; and
- to ensure that the Scheme Property are valued, as necessary, at intervals appropriate to the nature of the property;
- to ensure that all payments out of the Scheme Property are made in accordance with the Constitution and the Act;
- to report to ASIC any breaches as required by the Act;
- carry out or comply with any other duty, not inconsistent with this Act, that is conferred on the RE by the Constitution

The Board of the RE has the ultimate compliance responsibility for ensuring that breaches of legal, regulatory and contractual obligations will be prevented.

The responsibility for compliance in the first instance rests with the Officers and Employees performing operational tasks. Compliance systems are embedded in the business systems and procedures to ensure that compliance aspects are addressed.

S 601FE

In addition to the obligations in this Plan Employees of the RE must not make improper use of their position as an Employee to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Investors of the Scheme and must ensure that their duties under Section 601FE of the Act override any Conflicting duty the Employee has under Section 2D.1 of the Act.

2. Compliance Framework

The framework of compliance is documented in the Compliance Program. The Compliance Program represents the totality of compliance measures adopted by the RE whether in respect of

this Scheme or not and addresses compliance with laws, regulations and the RE's ethical standards.

The activities of the RE must be performed in accordance with the Compliance Program that it has adopted. The RE requires that all Officers and other Employees display the highest commitment to ethical and informed behaviour.

The Compliance Program was developed to conform to the Australian Standard AS 3806. The Plan is an integral part of the Compliance Program and focuses on those matters that are required by Part 5C of the Act.

The key elements in the Compliance Program are a framework of compliance procedures, controls, training, exception reporting and auditing. These are supported by the requirement that key processes follow established procedures and Officers and Employees are required to make declarations of compliance with the Plan. Focus is on compliance with the key requirements in the Act, the Constitution, the product disclosure statement (PDS) documents and those matters identified by the Risk Management Statement of the RE.

The Compliance Committee has responsibility for ensuring that the RE and all Officers and Employees comply with the Act and the Constitution and in doing so has regard to the terms of the Plan and the other elements of the Compliance Program. The Business Standards and Compliance Manager is a member of the Compliance Committee whose task is to monitor the Compliance Program and report to the Committee.

3. Compliance risk assessment

The RE's Risk Management Statement identifies key risk areas within the business and the controls in place to mitigate those risks.

The main compliance risks which may effect a breach of the Compliance Plan, the Act or Constitution are:

- Breach of Compliance Plan
- Breach of Licence conditions
- Inappropriate management of funds
- Inaccurate, incomplete or invalid applications, withdrawals or distributions
- Inappropriate or inadequate disclosure and/or reporting
- Inadequate segregation of assets
- Inappropriate related party transactions
- Failure of information technology systems and inadequate disaster recovery program
- Inadequacy in the lending and valuation criteria on Scheme Property (Scheme specific)

The Compliance Plan details measures in place to mitigate the above risks. The RE's various departmental Team Leaders/Managers are required to review compliance risks relating to their area of responsibility on an ongoing basis and report any material issues arising to the Business Standards and Compliance Manager and/or at the LM Meeting.

Amendments to the risk management controls and procedures implemented by the RE maybe required to be approved by all Directors and/or Team Leaders/Managers prior to implementation dependant on the procedure type.

Compliance risks and risk management controls and procedures are communicated and actioned to staff through staff training, and the various checklists required to be completed and reviewed within the management of the Scheme.

4. Compliance training

The Business Standards and Compliance Manager initiate compliance training in conjunction with the Team Leader/Manager of each department. The department Team Leader/Managers are primarily responsible for developing, maintaining and disseminating the contents of the Plan to Employees within their respective departments. Each Team Leader/Manager is responsible for ensuring that staff within their department conduct the affairs of the RE in accordance with the Compliance Plan.

Part 4

Compliance Committee

Corporations Act

s601HA(1)(b)(i)

1. Members

Under Section 601JA of the Act, the RE is required to have a Compliance Committee in relation to the Scheme that complies with the requirements of the Act, including the external membership requirements of Section 601JB of the Act.

The RE has determined that the Committee will have three Members. It will consist of the Business Standards and Compliance Manager of the RE and two external Members.

A quorum for Committee meetings is the Compliance and Business Standards Manager and at least one external Member.

The Board is responsible for appointing new members to the Committee and ensuring the external members meet the definition of external member under Section 601JB of the Act. The Board is also responsible for ensuring members have appropriate qualifications and experience which may include:

- Relevant experience in the funds management industry;
- Auditing experience;
- Experience in relation to operational, quality, compliance or management systems; and
- Experience in relation to the Act, in particular, Australian Financial Service licensing, PDS documents, fund raising and familiarity with relevant legislation within the RE's jurisdiction.

It is the responsibility of the Compliance Committee to monitor satisfaction of the externality tests required by Sections 601JA and JB of the Act.

The Committee is not a Committee of the Board of the RE. It is intended that the Committee would, except in exceptional circumstances, act by a simple majority on all business.

The Committee reports to the Board and provides assurance that the compliance plan continues to be adequate for its stated purpose. The Committee also oversees and makes recommendations with respect to the Plan to the Board. The Committee will rely upon the Plan Auditor to report on matters of control and adherence to the Plan, in accordance with their audit program.

The functions of the Committee include the following:

- To monitor to what extent the RE complies with the Compliance Plan;
- To report to the RE:
 - Any breach of the Act involving the Scheme; or
 - Any breach of the provisions included in the Constitution in accordance with section 601GA of which the Committee becomes aware or that it suspects;
- To report to ASIC if the Committee is of the view that the RE has not taken, or does not propose to take, appropriate action to deal with a matter reported in relation to the previous point above;
- To assess at regular intervals whether the Compliance Plan is adequate, to report to the RE on the assessment and to make recommendations to the RE about any changes that it considers should be made to the plan;
- Maintain a Compliance Register that will contain compliance documents;
- Take all reasonable steps to assist ASIC in carrying out a check under Subsection 601FF(1) of the Act;
- Provide all reasonable assistance to the Plan Auditor and to the Scheme Auditor; and
- To undertake such other matters as are not in Conflict with the foregoing or with the Governing Documents or the Act.

Each Member of the Committee in addition to any other duty or obligation that he or she may have to the RE or in respect of the Scheme is required:

- To act honestly;
- To exercise the degree of care and diligence that a reasonable person would exercise if they were in his or her position;

- Not to make use of information acquired through being a member in order to :
 - gain an improper advantage for himself or herself or another person; or
 - cause detriment to the Investors of the Scheme; and
- Not to make improper use of his or her position as a member to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Investors of the Scheme.

2. Meetings

s601HA(1)(b)(ii)

The Committee will meet generally at least three times a year, or more frequently if necessary. The Committee is required to keep minutes of its meetings and make available those minutes for the Directors, Team Leaders, Managers or other staff.

The RE undertakes to provide all assistance and will maintain records and materials of the Committee. The RE undertakes to pay for all independent advice reasonably required by the Committee.

3. Compliance reporting

s601HA(1)(b)(iii)

The Compliance Committee assists the Board and includes a report to the Board at the Board Meeting on matters including:

- Changes in laws and regulations;
- Ongoing compliance with the Compliance Plan, PDS and Constitution;
- Audit results;
- Report on regulatory reviews by ASIC;
- New policies or procedures;
- Compliance with licensing and financial requirements;
- Training and education;
- Currency of insurance;
- Any other matters

s601HA(1)(b)(iv)

The Committee have access to the Scheme and Plan auditors. In the case of the external Plan Auditors, the auditor will generally liaise with the Business Standards and Compliance Manager and/or Committee on compliance matters prior to a final auditor's report to the Board of Directors. The Business Standards and Compliance Manager generally attend Audit Committee meetings of the RE.

4. Access to records

s601HA(1)(b)(v)

The RE undertakes to provide access to the Scheme's accounting records and to information that is relevant to its compliance with the Act, the Constitution and this Plan to the Committee and any independent adviser of the Committee. The RE further undertakes to ensure that adequate records are maintained of the Scheme's operations and that compliance with this Plan is audited as required by Section 601HG of the Act and to have the Scheme Property valued at intervals appropriate to the nature of the property.

5. Business Standards and Compliance Manager

The Business Standards and Compliance Manager is a senior officer with sufficient skill and experience to undertake the compliance duties that relate to the conduct of the affairs of the RE.

The RE will ensure that there is at all times a senior officer in the position of Business Standards and Compliance Manager. The Business Standards and Compliance Manager reports directly to the Compliance Committee and represents the Compliance Committee at the LM meetings.

The duties of the Business Standards and Compliance Manager are maintained in the Compliance Register. These duties include assisting the RE to ensure its Staff, Officers and operations maintain compliance with the Compliance Plan, Constitution and any relevant Laws, Legislation and Regulations appropriate to the business. The Business Standards and Compliance Department facilitates and promotes a culture of compliance. They work with and assist departments to ensure that appropriate systems are in place to adequately operate, maintain and monitor business processes that are in compliance with the above. The Business Standards and Compliance Manager in conjunction with the Team Leaders, Managers and Directors are responsible for the ongoing review of compliance on an ongoing basis. He/she is responsible for ensuring that the compliance risk assessment, which forms part of the RE's Risk Management Statement, is updated and appropriate risk management

controls and procedures have been implemented and are working adequately.

Part 5

The Compliance Elements

	Corporations Act ASIC Regulatory Guide	Constitution Clause *	Page
	<i>RG132.10, RG132.11, RG132.12(f)</i>		
1. Scheme Overview	<i>RG 132.12(d),,</i>		11
2. Identifying, Reporting and Rectifying Breaches			12
3. Licence Conditions			14
4. Safekeeping and Segregating Scheme Property and Custodian	<i>601HA(1)(a), RG 132.12(a)</i>		17
5. Training, Recruitment and Experience			22
6. Confidentiality and Insider Trading	<i>RG 132.12(c)</i>		24
7. Audit	<i>601HA(1)(d)</i>	27	25
8. Accounts and Record Keeping	<i>601HA(1)(e)</i>	22,27	27
9. Fees and Expenses		18	32
10. Related Party Issues	<i>RG132.12(b)</i>		33
11. Conflict of Interest	<i>RG132.12(b)</i>		35
12. Use of External Service Providers			36
13. Complaints Handling		14	37
14. Distribution Channels			39
15. Disclosure and Reporting Review Policy		11,18	41
16. Investment processing		5,6,7,8,11,12	45
17. Foreign Exchange Contracts			59
18. Investor reporting			60
19. Fund Management Committee	<i>RG 132.12(d)</i>		61
20. Liquid Preservation Rule		7	62
21. Powers to Borrow		13	63
22. Unit Pricing		3,5,6,7,8	64
23. Scheme Valuation	<i>601HA(1)(c)</i>	17	65
24. Scheme Fund Income		13	66
25. Collection and Arrears Management			67
25. Credit Committee	<i>RG 132.12(d)</i>		69
26. Lending Criteria		13	70
27. Valuation Policy – Mortgage Lending	<i>601HA(1)(c)</i>	13	73

* Constitution clauses refer to the LM First Mortgage Income Fund Constitution. For Schemes that refer to this master Compliance Plan refer to the individual Schemes' Constitutions for detail.

Part 6

Compliance Elements Detail by Section

1. Scheme Overview

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
<p>To ensure the Scheme's investment objectives continue to be met.</p>	<p>Investment objectives of the Scheme are not met or change and do not correspond with that disclosed in the PDS.</p>	<p>The investment objective of the Scheme is to provide investors with income and allow investors a choice of term or flexi account and return.</p> <p>The RE achieves this by being selective of the investments of the LM First Mortgage Income Fund, which are a diversified "pool" of registered first mortgages, cash and "at call" securities.</p> <p>As part of the asset allocation strategy, the RE diversifies the underlying mortgage portfolio at a number of levels including, sector, geographic location, and term and loan size.</p> <p>As part of a structured exit strategy for a loan the Manager may subordinate the priority of a first mortgage.</p> <p>Further details in relation to the Scheme objectives are described in the investment mandate of the Scheme.</p> <p>The structure of the Scheme is a unit trust. Units are issued at the current issue price and withdrawals are made using the current withdrawal price, which is calculated by the RE in accordance with the Constitution. Interest in the Scheme of each Investor is calculated as a percentage of their unit holdings to the total issued units of the Scheme.</p>	<p>Directors are responsible for the scheme objectives and investment policy and relevant Committees assist in the monitoring process.</p>

2. Identifying, Reporting and Rectifying Breaches

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>The RE is required to ensure that breaches in the Constitution, Compliance Plan or Corporations Act are detected and reported to the Compliance Committee and/or ASIC as required by the Act.</p>	<p>Non-compliance with the Act, Compliance Plan or Constitution;</p> <p>A breach may not be reported;</p> <p>RE's Licence may be threatened;</p> <p>Investor's interests may be disadvantaged.</p>	<p>The RE has a breach policy detailing identifying, reporting, recording, assessment, measurement, rectification and review of breaches.</p> <p>In recognition of these obligations the RE carries out a number of supervisory processes including;</p> <ul style="list-style-type: none"> Internal audits performed by the Compliance Officer. An internal audit Compliance Program is used as a guide for the audits, which cover all aspects of the Plan. It includes checking internal systems and processes to ensure they comply with the Plan, PDS, Constitution and any relevant legislation as appropriate. Results of the audits are reported to the relevant departments and the Compliance Committee with recommendations for rectifications of any breaches or business risks identified. Yearly audit by the Plan Auditor who undertakes independent testing of files and compliance systems. Prompt follow up of any enquiries or Complaints received by the Business Standards and Compliance Manager. Staff are encouraged to report breaches of the Compliance Plan to the Business Standards and Compliance Manager under an ongoing program of continuous improvement. Number of breaches is a Key Performance Indicator for compliance, reported at the monthly Business Unit Measurement meeting. <p>All breaches are recorded in the breach register which includes details particulars of the breach, who or which department is responsible and the action taken to rectify the breach. The register is reviewed at each Compliance Committee meeting.</p>	<p>Business Standards and Compliance Department – continuous.</p> <p>Reported to the Compliance Committee at each Compliance Committee meeting.</p>

2 Identifying, Reporting and Rectifying Breaches

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
		<p>When a breach is identified and reported the breach is assessed in accordance with the breach policy to determine the level of severity and materiality.</p> <p>In any case, significant or material breaches requiring immediate action, will be notified to the Board and the Compliance Committee, and where required by the Act, ASIC.</p> <p>Factors that will determine whether a breach is material or significant are:</p> <ul style="list-style-type: none"> • The number or frequency of similar previous breaches ; • The impact of the breach on the RE's ability to provide its financial services; • The extent to which the breach indicated the RE's arrangement to ensure compliance with its Licence obligations are inadequate; and/or • The actual or potential financial loss to investors/clients or the RE itself. <p>Rectification of breaches</p> <p>Rectification of breaches is the responsibility of the operational department concerned. The Compliance Committee must monitor the rectification process, if applicable, to ensure it is sufficient to prevent further breaches of that nature and that the Plan properly reflects that process.</p> <p>Departmental Team Leaders/Managers are responsible for the implementation of revised or amended systems.</p>	

3. Licence Conditions

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
The Australian Financial Services Licence is current and conditions are reviewed and monitored to ensure they continue to be met.	Failure to comply with Licence conditions; Licence suspension or revoked; Investor's interests may not be adequately protected or disadvantaged.	Conditions of the Licence are checked as detailed below:	
		The RE is restricted to providing financial service business as is permitted on the current Australian Financial Services Licence – the RE continuously monitors current and any new business to ensure it is adequately covered by the Licence conditions.	The Board is responsible for all business services and the Compliance Committee monitors the Licence conditions.
		Any variation to the Licence conditions will be approved by the Compliance Committee	
		Capital adequacy – The NTA of the RE must be calculated with reference to the definition of “Net Tangible Assets” set out in the Licence. The calculation is based on the most recent RE financial statements and compared with the minimum NTA requirement under the Licence based on the current level of Scheme Property.	Chief Financial Officer - Monthly
		Custodian – a. The RE must ensure that where an external Custodian is employed the Custodian's net tangible assets position meets the minimum requirements as set in the Licence. The RE may receive a guarantee in substitution for net tangible assets as described in paragraph 131.26 of Policy Statement 131. b. The RE must also ensure the external Custodian complies with PS 133.	a. Business Standards and Compliance Department- Quarterly b. Business Standards and Compliance Department - Annually

3. Licence Conditions

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
		<p>Base level financial requirements–</p> <p>a. Ensure the RE's total assets exceed the total liabilities as defined in the Licence;</p> <p>b. Be able to pay its debts when they are due and payable; and</p> <p>c. Ensure the RE meets the cash needs requirements by preparing a 12 monthly cash flow forecast of operation of the RE, based on the most recently audited financial statements of the RE. The Chief Financial Officer must provide an opinion, based on three monthly cash flows, on whether there are sufficient financial resources to meet ongoing requirements for a minimum of three months as at the date of the review.</p> <p>The RE must ensure that the cash needs requirement continues to be met with either the reasonable projection plus cash contingency basis or the contingency based projection basis as stated in the Licence.</p>	Chief Financial Officer - Monthly
		An audit opinion on the financial requirements of the RE is lodged with ASIC yearly. A review of the audited financial statements and review of any qualifications contained in the audit report is performed with any deficiencies in the audit report noted and action taken as necessary.	Chief Financial Officer - Annually
		Current professional and fidelity/fraud insurances to at least \$5 million are maintained at all times.	Business Standards and Compliance Manager - Annually
		Nominated Responsible Officers are appointed and in particular whether any event or occurrence has occurred that may disqualify an officer from continuing to hold that position. A check of continuing membership of appropriate industry associations and/or ongoing training is undertaken.	Business Standards and Compliance Manager – on notification of the event
		The nature of the RE's business, Schemes managed, its products or services has not changed in any material way that may require a variation to the existing Licence is monitored.	The Responsible Department for the products and services, Then Business Standards and Compliance Manager – on notification of the change

3. Licence Conditions

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
		<p>Additions or changes to any business or trading names that may require modification to the Licence are monitored.</p>	<p>The Responsible Department for the products and services, Then Business Standards and Compliance Manager – on notification of the change</p>
		<p>Ensuring that reviews of any authorised representatives appointed has been conducted satisfactorily and that appropriate remedial action has been undertaken where appropriate. Ensure that authorised representatives have not contravened the Act or any conditions of the Licence.</p>	<p>Business Standards and Compliance Manager - Annually</p>
		<p>Ensure that any authorised representatives appointed are sufficiently trained in relation to the activities they are to carry out on its behalf, before they commence those activities. The authorised representatives must have undertaken relevant education courses at least sufficient to comply with the PS146 requirements as per the Licence conditions.</p> <p>Ensure that authorised representatives keep up to date through the use of continuing training programs.</p>	<p>Business Standards and Compliance Manager - Annually</p>

4. Safekeeping and Segregating Scheme Property

Rule	Risk Addressed	Compliance Measures	Responsibility/ Checked by
<p>To ensure all Scheme Property is clearly identifiable, held separately from the RE's own property and that of other Schemes operated by the RE.</p>	<p>Scheme Property is mixed with that of the RE or other Schemes managed by the RE and cannot be separately identified.</p>	<p>Identifying and separating Scheme Property</p> <p>The RE maintains a computerised management system which records all information for all Schemes which the RE manages. Mortgage Scheme Property (Security Property) is identified with a unique account number. The account number is allocated to the property during the approval stage and is used as the unique identifier for that property. The account number is entered into the system once preliminary assessment of the property is complete. Property Asset Management Department give new loan instructions and details to Investment Services to process and validate in the system.</p> <p>When mortgage Scheme Property is entered into the system the specific Scheme is selected from the product list to ensure the property is attached and recorded with the Scheme to which it belongs. This also ensures that details relating to the Scheme are recorded separately from other Schemes managed by the RE.</p> <p>Scheme Property of cash received by investors into the Scheme are matched to applications for the Scheme and processed in accordance with Section 15 - Investment Processing.</p> <p>All payments directed to the Scheme are directly paid by the payer into the bank accounts of the Custodian of the Scheme or by cheque payable to the Custodian. Bank accounts are reconciled daily by the Custodian</p> <p>Scheme Property of investments are processed by the Finance Department on instruction by the Senior Accountant or Chief Financial Officer which are passed to the Custodian for approval.</p>	<p>Property Asset Management Department are responsible for the instructions of mortgage and loan processing.</p> <p>The Investment Services Team Leaders are responsible for investment processing.</p> <p>The system is monitored monthly by the Senior Accountant who is responsible for monthly reporting and reconciliations of funds under management.</p> <p>Cash movements are managed daily by the Finance Department.</p> <p>The Custodian is responsible for reconciliation and monitoring of Scheme Property.</p>

4. Safekeeping and Segregating Scheme Property

Rule	Risk Addressed	Compliance Measures	Responsibility/ Checked by
		<p>Systems assurance</p> <p>The management system is a separate application from other accounting applications of the RE. All Scheme Property is entered into the management system by the Investment Services Department. Account processing of the RE is performed by the Finance Department. Payments are made from the Scheme to the RE through a service agreement monitored by the Chief Financial Officer.</p> <p>RE ensures that computerised processing by the RE follows the strict guidelines documented in the Plan. These guidelines are based on the premise of security and control including:</p> <ul style="list-style-type: none"> • Segregation of incompatible duties,; • Two party authorisation processes for sensitive data entry and edits - refer Section 6 - Investment Processing; and • Physical & logical access controls to systems including three tiers of security to manage access to client accounts. Access to client accounts is via the management system and all three tiers of security are required. The three tiers are; system/domain security, group access security and application security. All security and access requests are requested by authorised staff to the Information Technology Department in accordance with the Change Control Policy. 	<p>Investment Services Manager is responsible for the Scheme applications.</p> <p>Chief Financial Officer is responsible for the accounting of the Scheme and the RE.</p> <p>Computerised System security is the responsibility of the Information Technology Manager.</p>

4. Safekeeping and Segregating Scheme Property

Rule	Risk Addressed	Compliance Measures	Responsibility/ Checked by
<p>The RE appoints an independent external Custodian and the Custodian performs its duties delegated to it on an ongoing basis including safekeeping and separation of Scheme Property.</p>	<p>Custodian does not perform its duties in accordance with the service agreement which may affect the Scheme Property or the investors.</p>	<p>Custodianship of Scheme Property</p> <p>The RE has to appoint an External Custodian for Scheme Property. The Custodian will manage deposits of all moneys received on behalf of the Scheme.</p> <p>The RE has entered into an agreement (the Custody Agreement) with the Custodian, whereby the Custodian will provide (inter alia) the following custodial and administration services to the Scheme:</p> <ul style="list-style-type: none"> • Keep proper books of account and deposit all moneys received on behalf of the Scheme into the Scheme accounts. These moneys include application moneys and income; • Hold Scheme Property; • Keep informed of the exercise by the RE of its powers and the performance of its functions under the Constitution; • Act as a Custodian of the Investors until the Scheme is determined or the Custodian retires or is removed; and • Comply with any directions given to it at meetings by the Investors convened pursuant to the terms of the Constitution. <p>The RE must comply with the independent Custodian arrangements in the Act and as part of its Licence when it is required to do so.</p> <p>All custody, settlement, cash flows and other financial transactions affecting the Scheme will be transacted and recorded using the systems of the RE and reconciled by the Custodian.</p> <p>The Custodian is appointed pursuant to a Custody Agreement and must acknowledge the compliance obligations relevant to the performance of the tasks it has undertaken to perform and that it is capable and competent to conform to them and has adequate insurance in place. The appointment of the initial Custodian has been made in accordance with these procedures.</p>	<p>The RE will oversee the performance of the Custodian and will require it to have appropriate compliance systems in place that the RE will monitor and review via various departments.</p> <p>The Custodian will provide monthly reporting to the RE on custody, settlement and other cash flows and other financial transactions affecting the Scheme.</p>

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4. Safekeeping and Segregating Scheme Property

Rule	Risk Addressed	Compliance Measures	Responsibility/ Checked by
		<p>Cash movement procedures</p> <p>All cash balances of the Scheme will be held by the Custodian in bank accounts in the name of the Custodian and solely under the control of the RE.</p> <p>The RE will issue all instructions to the Custodian in relation to cash movements. The Custody Agreement sets out the protocol for the issuance of instructions. The Custodian must only act under written instruction by nominated authorised personnel of the RE as set out in the list of authorised signatories attached to the Custody Agreement. The Custodian will nominate its own authorised personnel to the RE in relation to cash movements.</p>	<p>Cash movements are monitored daily by the Finance Department.</p> <p>The Custodian will provide monthly reporting to the RE on cash flows and other financial transactions affecting the Scheme.</p>
		<p>Monitoring of Custodian</p> <p>The monitoring of the Custodian is similar to the procedure from monitoring of the Service Providers. In addition to these matters, the Business Standards and Compliance Department (or representative) will meet with the Custodian's (responsible) Manager generally on a yearly basis or more frequently of required to discuss and review any matters with the Custodian relating to the Scheme that have arisen in the course of the delivery of services by the Custodian.</p> <p>The Business Standards and Compliance Department will report any matters of concern that arise during the course of discussions with the Custodian to the Compliance Committee.</p> <p>The Scheme Auditor will review the audit report of the Custodian as part of the annual compliance audit.</p>	<p>Business Standards and Compliance Department - yearly</p>
<p>To ensure insurance adequately covers the RE's activities and the Scheme Property.</p>	<p>Insurance does not adequately cover the activities of the RE and therefore putting business operations at risk;</p> <p>Insurance does not adequately cover the</p>	<p>Insurances</p> <p><u>Insurance General</u></p> <p>Insurance is regarded as a critical risk in relation to various areas:</p> <ul style="list-style-type: none"> • Insurances in respect to the RE and its activities in relation to the conduct of the Scheme; • Insurances directly protecting Scheme Property; and • Insurances of External Service Providers, in particular, adequacy of Professional Indemnity insurance of panel valuers. 	<p>Property Asset Management Department yearly on Scheme property and each responsible Department on engagement of External Service Providers.</p>

4. Safekeeping and Segregating Scheme Property

Rule	Risk Addressed	Compliance Measures	Responsibility/ Checked by
	<p>Scheme Property which may cause loss of property.</p>	<p>The RE must engage the services of a competent insurance broker experienced in property ownership and management and in the provision of indemnity insurance in relation to its insurance requirements.</p> <p><u>Insurances directly protecting Scheme Property</u></p> <p>These policies are generally taken by entities not associated with the RE and therefore a review process is undertaken prior to settlement of each transaction to ensure that:</p> <ul style="list-style-type: none"> • Policies are in place and the premium has been paid; • Are appropriate; • Provide adequate coverage to the standard required of the RE,; • Note the Custodian as an interested party; and • Are renewed at each expiry date. <p>Where the RE deems that appropriate insurances are not in place, then the RE will require appropriate cover to be instated prior to settlement of each transaction.</p> <p><u>Insurance Tracking</u></p> <p>The RE maintains a computerised insurance tracking system in relation to general insurance policies protecting Scheme Property. The tracking system ensures that sufficient warning is provided to the RE in relation to insurance expiry dates so that the RE may undertake action to ensure the policy premium is paid and the policy renewed. In some circumstances this may require the RE to pay the premium from its own, or Scheme funds and seek reimbursement from the insured at a later date.</p>	<p>Business Standards and Compliance Manager yearly on the RE's business and professional indemnity insurance.</p>



5. Training, Recruitment and Experience

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
To ensure that Officers, Employees and authorised representatives of the RE are adequately qualified and experienced to competently perform their roles and receive ongoing training to enable them to comply with the Act, the Constitution and Compliance Plan.	Inadequately training and experienced Officers, Employees or authorised representatives which may cause business to be miss managed, operated inefficiently or not within compliance of the Act, the Constitution or Compliance Plan.	<p>Staff and Responsible Officers training</p> <p>The RE provides internal training sessions. Staff and Officers should complete at least 12 hours training per annum unless it is logistically impractical. If this is the case staff should try to use other resource means for keeping up to date with the necessary knowledge requirements of their duties.</p> <p>The RE's training includes:</p> <ul style="list-style-type: none"> • Compliance requirements; • RE's processes and procedures; • Investment knowledge; and • General knowledge & skills. <p>Departments also have individual training specific to their requirements.</p> <p>A training register is maintained detailing the office training and attendance.</p>	<p>The Communications Coordinator is responsible for managing training topics, external guest speakers, maintaining the training register, approving external training and all other matter relating to training.</p> <p>Training program is reviewed quarterly.</p>
		<p>Authorised Representatives training</p> <p>The RE is required to ensure that its authorised representatives are sufficiently trained in relation to the activities they are to carry out on its behalf, before they commence those activities. The Authorised Representatives must have undertaken relevant education courses at least sufficient to comply with the PS146 requirements as per the Licence conditions.</p> <p>Normally the Authorised Representative will have provided satisfactory evidence of competence and expertise as part of the process of qualifying for appointment as the Authorised Representatives. The RE is required to ensure that Authorised Representatives keep up to date through the use of continuing training programs. Although the RE will ensure that internal training programs are made available to Authorised Representatives, the RE imposes a parallel obligation on Authorised Representatives to undertake continuing external training in all subjects relevant to their activities on behalf of the RE.</p>	<p>Business Standards and Compliance Department -yearly</p>

5. Training, Recruitment and Experience

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		<p>Recruitment and experience</p> <p>The Human Resource Department initiate a due diligence process on all new staff including:</p> <ul style="list-style-type: none"> • Analysis of prior experience; • Demonstrated enthusiasm, initiative and honesty; • Appropriate academic qualifications or industry equivalent experience; • Reference checking; • Appropriate verification checking including a staff check performed by an external service provider; • A recruitment interview; <p>More intensive due diligence may be performed on new staff in senior management positions.</p> <p>New Employees are informed of their compliance obligations in respect of the RE's compliance with the Act, Constitution and Compliance Plan and are required to sign an Employee compliance declaration and confidentiality and ethics agreement.</p>	Human Resource Department for each new Employee.
		<p>Directors and Responsible Officers</p> <p>This process is extended in the case of new Directorships and/or Responsible Officers to include:</p> <ul style="list-style-type: none"> • Noting other Directorships or Responsible Officer positions held; • An objective assessment of the relative value, knowledge and experience to be gained by the RE in the appointment of the Director and/or Responsible Officer; • Assessment of any Conflicts of interest; and • Determination of appropriate remuneration. 	Appointment of a new Director and/or Responsible Officer requires a majority decision of the full Board.

6. Confidentiality and Insider Trading

Rule	Risk Addressed	Compliance Measures	Responsibility checked by
Ensure staff are sufficiently trained and aware of the obligations in relation to	Misuse of inside information by staff.	<p>Confidential Information</p> <p>The RE and Officers and Employees of the RE are required to deal with confidential information in the manner required in Part 5C of the Act and to observe the requirements in</p>	All Departments – continuous Treatment of

5. Training, Recruitment and Experience

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
confidential information and insider trading		<p>respect of information that is deemed to be 'Inside Information' under Section 1042 of the Act.</p> <p>The RE and its Officers and employees and the Members of the Compliance Committee must follow the procedures that have been developed to ensure that all confidential information is identified and treated appropriately.</p> <p>Access to documents and information is to be restricted to those with the 'need to know' and when specific 'Chinese wall' procedures are adapted to limit and monitor the flow of confidential information within the RE they must be observed.</p> <p>Insider trading</p> <p>The RE must take all reasonable steps to ensure that Employees and Advisers do not derive financial benefits by use of information obtained by virtue of their privileged position within the company that is not generally available to the market as a whole.</p>	<p>confidential information is checked yearly by Internal Audit. Any issues found are reported to the Compliance Committee.</p>

7. Audit

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
<p>A yearly audit is performed to ensure the RE is performing its duties in compliance with this Plan as required by the Act.</p>	<p>Failure to have Compliance Plan audited as required by the Licence;</p> <p>The auditor is ineligible to act as auditor for the Scheme;</p> <p>The auditor fails to perform it's obligations within the letter of engagement.</p>	<p>The RE undertakes the following in respect of the audit of the Compliance Plan:</p> <ul style="list-style-type: none"> • Ensure that the audit is carried out in accordance with the letter of engagement; • Ensure that at all times a registered company auditor is engaged to audit compliance with the Plan in accordance with the Act; • Ensure that the person is eligible to act as the auditor of the Compliance Plan as required by the Act; • Ensure that the audit is carried out and the Plan is examined in accordance with section 601HG of the Act; • Ensure that within three months after the end of a financial year, the Plan Auditor will examine the Plan and report to the RE as required by Section 601HG (3) of the Act on the degree of compliance with the Plan and the appropriateness with the Plan; • To require the Plan Auditor, as soon as possible, to notify ASIC in writing if the Auditor has reasonable grounds to suspect that a contravention of the Act has occurred and believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the RE; and • To provide to the Plan Auditor a right of access to the files and records of the Scheme and will require its Officers to provide information in connection with the audit. <p>The Plan Auditor will conduct a periodic review that will focus on the risks of non-compliance and will report back to the Committee on his findings. The scope of this audit will include all computerised operations.</p>	<p>Business Standards and Compliance Department - yearly</p>
<p>Ongoing internal compliance audits are performed</p>	<p>Breaches may go undetected;</p> <p>Risks of non-compliance of the Plan, Constitution or the Act may go undetected;</p> <p>Quality controls may not be implemented.</p>	<p>The RE has an internal compliance audit function within the Business Standards and Compliance Department that works with the Plan Auditor and Compliance Committee in monitoring compliance with the Act, the Plan and the Constitution. A risk based methodology is used in the yearly audit program. The Plan Auditor will also assist to develop and maintain a program of annual assessment of effectiveness of the Plan.</p>	<p>Business Standards and Compliance Department and Compliance Committee review the adequacy of the internal audit program on a yearly basis.</p> <p>It is the</p>

7. Audit

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
			responsibility of the relevant Manager to ensure timely implementation of audit recommendations. Any issues arising from the audit throughout the year are reported to the Compliance Committee each Compliance Committee meeting.

8. Accounts and Record Keeping

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>To ensure accounts and records are maintained accurately and on a timely basis and the Scheme is valued appropriately.</p> <p>To ensure records are maintained accurately.</p>	<p>Incorrect or insufficient records resulting in qualified audit report and/or incorrect disclosure and reporting.</p>	<p>Record keeping</p> <p>The RE undertakes to ensure that adequate records are maintained of the Scheme's operations</p> <p>The Accountants, overseen by the Chief Financial Officer, will ensure that the records of the Scheme and the RE are appropriately established and maintained separately from those of other interests of the RE. Scheme accounts are provided to the Scheme Auditor for audit including certification that the accounting and taxation standards applied are adequate for the purpose required by the Scheme. Any material audit adjustments arising from the auditor's work are recorded in the accounting system of the RE to reconcile the audited balances with the Scheme accounting records. Only audited accounts may be forwarded to Investors.</p> <p>The Senior Accountant is responsible for the accounting of gross income received, commissions and fees and any other Scheme expenses or reimbursements that are properly incurred and allowable under the Constitution. The Scheme accounts are prepared on a monthly basis with a reconciliation of the funds in accordance with accounting procedures. The Chief Financial Officer oversees the Senior Accountant in respect to gross income collected and management fees, expenses and commissions paid during the month. Refer to distributions, section 15 of the plan, for further detail on end of month processing and payment of distributions to investors.</p> <p>The scheme taxation requirements are performed by an external tax agent. The tax agent complete taxation return for the scheme on a yearly basis.</p> <p>Fund management records and accounting functions are performed on a computerised system. The IT and accounting infrastructure within the RE is maintained in a secure environment in their premises. Appropriate physical and logical controls are in place to preserve the confidentiality of sensitive information.</p> <p>With respect to the Scheme, where critical systems applications are being administered by the Custodian, the RE has required details of their disaster recovery plans and will take actions to ensure that they are adequate.</p>	<p>The Scheme's funds management records (including Investor register) are under the control of the Applications Investment Services Team Leader.</p> <p>The accounting and taxation functions of the RE and the Scheme are under the supervision of the Chief Financial Officer.</p> <p>The financial position of the Scheme is reported monthly to the Chief Financial Officer and to the Board each Board meeting.</p>

8. Accounts and Record Keeping

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
	<p>Inaccurate or inadequate records kept with may result in a financial loss to investors.</p>	<p>The Investor register</p> <p>The system contains a register which records the interests of contributing Investors, particularly in relation to investment amount, maturity, income payment amounts and dates. A unique account number is given to each Investor which is then linked to the particular Scheme in which they have invested. The system reports Investor details separately for each Scheme. The register is maintained by the Applications Coordinator.</p>	<p>Controlled by the Applications Investment Services Team Leader on a continuous basis.</p> <p>The Investment Services Manager reports to the Board each Board meeting on current statistics on investment and monthly efficiency results to all staff in the Business Unit Measurement Meeting. The Business Unit Measurement results are included in the each Board Report.</p>

8. Accounts and Record Keeping

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>To ensure records are retained accurately and securely and critical deadlines are met on time.</p>	<p>Insufficient records are kept which would cause a breach of the Act;</p> <p>Insufficient records resulting in a qualified audit report and/or inappropriate disclosure.</p> <p>Inability to meet statutory deadlines and therefore a breach of the Act.</p>	<p>Record retention</p> <p>Material documents generally including original loan agreements, mortgages, leases and collateral security documents are held separately by the Custodian as required, where an external custodian is employed, otherwise by the RE.</p> <p>Where an external custodian is employed, the Custodian maintains a computerised document management and custody system which the RE has reviewed and approved for use in the management of its material documents. The custody system identifies the documents held with the appropriate Scheme and contains a diary system for alerting the Custodian and the RE with key dates and statutory retention period maturity.</p> <p>Where an external custodian is not employed records mentioned above will be held by the Custodian staff of the RE.</p> <p>The management system retains all investor records which is managed by the Investment Services Department.</p> <p>The Business Standards and Compliance Department retains all records with respect to the compliance related issues.</p> <p>The Finance Department retain all records with respect to finance and company matters.</p> <p>The Plan Auditors will review these records as part of their audit of the Plan.</p> <p>As required under S1101C of the Act, all registers and other records required to be maintained under the Act are held for 5 years after the day of the last entry in the register or last record made. Investor records are held for 7 years after the day of the last entry in the register or last record is made in accordance with the Anti Money Laundering/Counter Terrorism Financing Act 2006 Financial records required by the Act are held for 7 years after the transactions covered by the record are completed.</p>	<p>Each relevant department for their own documentation.</p> <p>The Custodian will provide monthly reporting to the RE on custody, and settlement and other cash flows and other financial transactions affecting the Scheme.</p>

8. Accounts and Record Keeping

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
		<p>Statutory deadlines and reporting</p> <p>Operational departments maintain various electronic calendars, as necessary, which record critical events relating to the conduct of the RE's business and Scheme related events to the extent they are not recorded in the management system or automated from the external parties.</p> <p>The RE has procedures to ensure it meets it's reporting obligations, including reporting obligations to ASIC, that the RE has to apply in managing the Scheme</p>	<p>Each Department are responsible for critical events relating to the relevant department which are managed on an ongoing basis.</p> <p>The Finance Department are responsible for statutory reporting in relation to the RE and its various Schemes.</p>
<p>Ensure computer systems are adequate and maintained effectively to ensure records and accounting information is accurate and secure.</p>	<p>Inadequate computer systems which may cause information to be insecure or inaccurate.</p>	<p>Computer systems</p> <p>The RE maintains various computerised systems in the conduct of its business. The IT system is critical for the maintaining of accurate records, accounting and security of data.</p> <p>The development of IT systems is based on an outcomes/deliverables based approach and the anticipation of future growth identified in the business plan and growth forecasts.</p> <p>Material changes to processes and/or high security issues are raised by the IT Manager at the LM Meeting.</p>	<p>The IT Manager is responsible for IT systems and operations.</p> <p>The IT Manager reports to the Board each Board meeting on IT systems.</p>

8. Accounts and Record Keeping

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		<p>Disaster recovery and business continuation</p> <p>Policy and procedures in respect to disaster recovery and business continuation have been developed and are to be followed and are set out in a documented Disaster Recovery and Business Continuation Plan.</p> <p>Data is protected by daily tape backup in accordance with a rotating tape backup strategy involving multiple backup tapes and rotating offsite storage.</p> <p>Data recovery plans are tested on a six monthly basis and verification of back up data tested on a monthly basis.</p> <p>A Disaster Recovery site has been established in the RE's Sydney office. The main purpose of the site is to enable business continuity if operations are interrupted and there is a loss of physical access to the Gold Coast server.</p>	IT Manager.

9. Fees and Expenses

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>Ensure fees and expenses charged are calculated and deducted correctly in accordance with the Constitution.</p>	<p>Expenses and management fees paid are not valid or overpaid which may cause a financial loss to the Scheme and/or Investors or a breach of the Constitution.</p>	<p>It is intended that the RE be entitled to fees for the performance of services where it has performed them properly and to an indemnity in respect of liabilities and expenses incurred in the proper performance of its duties. The rights of the RE to fees and indemnities are set out in the Constitution. A description of these rights is also be set out in general terms in the PDS.</p> <p>The Chief Financial Officer is familiar with the Constitution in determining the types and quantum of fees and expense reimbursements allowable. The Chief Financial Officer monitors any unusual fee payment and seeks advice from the Business Standards and Compliance Manager or the Committee as appropriate.</p> <p>In the case of any doubt, the Committee may require that a payment or a request for payment be fully supported by explanatory materials and by appropriate professional opinions. The Committee may obtain independent advice on whether the proposal complies with the Act and with the Constitution and the Plan.</p> <p>Payment of Scheme fees or expenses are checked by an independent checking officer, signed by the authorised signatories of the Custodian where an external Custodian is employed, and an authorised signatory of the RE. Where there is no external Custodian employed the payments will be co-signed by an RE custodian staff member. Any new authorised signatories of the RE are approved by the Chief Financial Officer.</p>	<p>The Senior Accountant is responsible for accounting and authorising all fee payments and expense reimbursements.</p> <p>Fees and expenses are reviewed on a monthly basis by the Senior Accountant. The Chief Financial Officer supervises the Senior Accountant in the above.</p> <p>The financial position of the Scheme and the RE are reported monthly to the Chief Financial Officer and to the Board each Board meeting.</p>

10. Related Party Issues

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>Ensure related party provisions of the Act are complied with in relation to disclosure and granting of financial benefit.</p>	<p>Dealing with related parties may not be at "arms length" which may cause the Investors to suffer a loss;</p> <p>The reputation of the RE and the Scheme may be damaged.</p>	<p>Related Party provision of service</p> <p>If any related entity, Officer or Director of the RE is engaged to provide services or other involvement with the Scheme, then any such involvement must be pre-approved by the Committee or the Board. The Committee or the Board will assess the suitability and probity of the proposed involvement and will have absolute discretion to approve such an involvement. The RE will also ensure that appropriate disclosures are made in each PDS document as appropriate. The Members of the Committee or the Board will be able to obtain such independent advice on these matters relevant to the Scheme as shall be reasonably necessary. Any Board member involved in the provision of service will not vote on the decision. Refer also Conflicts of Interest, Section 11, of the Plan.</p> <p>The Chief Financial Officer monitors service agreements between the RE or the Scheme and any related parties to either the RE or Scheme. An annual review is performed by the Chief Financial Officer which includes consultation with independent accountants to verify that the agreements are commercial. The results of the review are reported to the Board annually.</p> <p>A related party service register is maintained which documents all related parties who provide a service to the RE.</p>	<p>The Chief Financial Officer monitors service agreements between the RE or the Scheme and any related parties to either the RE or Scheme.</p> <p>The Board is responsible for reviewing and approving the structure and probity of commercial dealing between the RE and related parties.</p> <p>The Finance Department are responsible for checking related party provision of service on an annual basis for disclosure in the financial reports.</p>

		<p>Related Party transactions</p> <p>The RE must comply with Section 601FG regarding the acquisition of interests in the Scheme. Acquisitions of interests in the Scheme by the RE, other Schemes managed by the RE or its Officers, Employees or authorised representatives must be made on an identical basis to all other Investors as regards the consideration and the terms and conditions of issuance. There may be a differential fee arrangement in place.</p> <p>Any other proposal for the acquisition or withdrawal of an interest in the Scheme requires the consent of the Committee or the Board. The Committee may obtain independent advice on whether the proposal complies with the Act and the Constitution.</p> <p>A related party transaction register is maintained which documents all related party investment transactions.</p>	<p>Investment Services Applications Team Leader is responsible for new applications including related party transactions.</p> <p>Internal audit are responsible for checking related party acquisition of interest in the Scheme transactions as part of the audit process. Any issues found will be reported to the Committee</p>
		<p>Privacy of Related Party Information</p> <p>All Related Party information will be treated confidentially and in accordance with LM's privacy statement. Monitoring of sensitive information will occur if deemed necessary by the Committee i.e. if the Related Party or entity is a competitor.</p>	

11. Conflict of Interest

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>To ensure the RE has in place adequate arrangements for the management of Conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative.</p>	<p>The RE does not manage Conflicts of interest adequately which may cause;</p> <ul style="list-style-type: none"> • Unfair treatment of some Investors, • Unfair treatment of some borrowers, • The RE, officers or staff gaining an unfair advantage. 	<p>The RE has a Conflicts of Interest Policy which describes how the RE manages Conflicts which comprises of a 3 step process:</p> <ol style="list-style-type: none"> 1. Identifying Conflicts; 2. Assessing and evaluating Conflicts; and 3. Taking appropriate action which may or may not include disclosure. <p>The policy describes in detail each of the above steps.</p> <p>The policy also describes:</p> <ul style="list-style-type: none"> • The structural arrangements to manage Conflicts, including flat management structure and various committees within the RE for decision making, • Staff training on Conflicts, and • Documentation and recordkeeping of Conflicts 	<p>The Manager responsible for the conflicts policy reviews the Conflicts of interest policy at least yearly.</p> <p>The following implement the Policy:</p> <ul style="list-style-type: none"> ■ Compliance Committee; ■ Risk Manager (the Risk Manager has primary responsibility for implementing this Policy); ■ Team Leaders/Managers; ■ The Responsible Officers under the FSR license; and ■ Staff.

12. External Service Providers

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>Ensure service providers have systems and resources to perform their functions in accordance with the Compliance Plan and the Act.</p>	<p>A service provider may not perform its duties as required by the RE;</p> <p>The Scheme may suffer a loss due to poor service by external service providers.</p>	<p>The RE has determined to use external service providers to attend to a number of functions in situations where it believes that by doing so it can obtain the most cost effective delivery of services. While the RE has ultimate responsibility for management of the Scheme, it intends to outsource a number of functions for which it has responsibility under the Constitution and the Act, in accordance with best industry practice.</p> <p>Appointment</p> <p>The RE will conduct a detailed due diligence check set out in the appointment procedures, including reference checks, on key personnel with respect to its key service providers and may assess the internal compliance and control procedures of each service provider.</p> <p>An assessment of whether each service provider is capable of performing their respective duties will be based on these factors. Service providers will be selected having regard to the cost of their services, their quality and their comprehensiveness and compliance requirements. In relation to each significant transaction, the RE may obtain legal advice to receive confirmation that the contracts or terms of engagement for each service provider are appropriate for the intended purpose and contain adequate compliance related measures</p> <p>Each Department maintains a services provider register which includes relevant detail of each service provider appointed.</p> <p>Monitoring ongoing service</p> <p>Each Department responsible for service providers will continuously monitor the performance of those service providers. Where it is appropriate, formal reporting procedures will be established which service providers will produce to the Department. Such reports will be designed to demonstrate that the service provider is fulfilling its legal and contractual obligations, as well as identifying any breakdown in the controls or compliance procedures within the service provider in a timely manner</p>	<p>Department responsible for the particular service provider performs due diligence check on each new provider.</p> <p>Dept responsible for the particular service provider will monitor on a continuous process i.e. as and when each provider is used monitoring will occur consistently throughout that period.</p>

13. Complaints Handling

Rule	Risk Addressed	Compliance Measures	Responsibility checked by
<p>Complaints are to be handled appropriately according to the Constitution and Act.</p>	<p>Complaints are not adequately addressed and are escalated to litigation;</p> <p>Breach of the Act and the Constitution;</p> <p>Damage the reputation of the RE.</p>	<p>Complaints Handling Policy</p> <p>The RE has a policy that deals with the handling of Complaints. This policy was developed using the Australian Standard, AS ISO 10002-2006 as a benchmark and is to be included in the Relevant Materials.</p> <p>Investor's will generally report a complaint to their Advisor in the first instance. The policy states if the Advisor is unable to assist or if it relates to the Scheme or the RE, then the Advisor will pass the Complaint onto the RE. This process does not exclude an Investor from making a Complaint directly to the RE. The respective client relations staff will take responsibility of the Complaint and record the Complaint. The RE has 30 days to respond to the Complaint once it is received.</p> <p>Complaints may be referred to the respective Team Leaders/Managers or a formal Complaint to the Business Standards and Compliance Manager where it will be recorded in the formal Complaints register.</p> <p>Full details of each formal Complaint and resolution thereof is recorded in the formal Complaints Register including (as applicable or available):</p> <ul style="list-style-type: none"> • The person responsible for resolving the Complaint; • The name of the Investor making the Complaint; • The nature of the Complaint; • The product, service or department in respect of which the Complaint was made; • Time line on Complaint; • The actual resolution of the Complaint; • Recommendations for changes to products, disclosures, systems or processes to ensure similar Complaints do not arise in future. <p>The RE is a member of the Financial Ombudsman Service (FOS) which is an external body approved by ASIC. If the complaint is unable to be resolved internally by the RE the person complaining should be passed onto FOS.</p> <p>Full terms of reference for the FOS are held by the Business Standards and Compliance</p>	<p>The Treasury Team Leader and the Business Standards and Compliance Manager are responsible for monitoring of Complaints and the management of formal Complaints as they arise.</p> <p>Complaints are reported to the Compliance Committee each Compliance Committee meeting.</p>

13. Complaints Handling			
Rule	Risk Addressed	Compliance Measures	Responsibility checked by
		<p>Manager.</p> <p>The Complaints process is explained in all PDS documents, which is required to be read by all Investors.</p>	
		<p>Systemic Complaints</p> <p>In the course of overseeing a Complaint, the relevant Manager may become aware of a Complaint arising from deficient or inappropriate systems or processes. The Manager of the Department responsible should assess the nature of the systemic Complaint. Amendments to systems or processes arising from the identification of systemic Complaints are the responsibility of the Manager. Details of the proposed amendments and subsequent implementation must be reported to the Committee and/or a Director as part of the monitoring process of Complaints.</p>	<p>Manager of the Department responsible</p>

14. Distribution Channels

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
Ensure financial products are distributed by authorised licensees and their representatives.	Products are inappropriately distributed or not distributed according to LM policy, which may lead to Investors being misinformed.	<p>The RE's investment products are primarily offered to the public through other Australian Financial Services Licensees and their authorised representatives. The products are also distributed through overseas intermediaries who are Licenced in their respective jurisdictions where required. The RE does not have any authorised representatives that distribute its own products.</p>	
		<p>Intermediary Distributor Due Diligence</p> <p>The RE has an established distribution network of Australian Financial Services Licensees (Licensees), their authorised representatives and overseas intermediaries. It is the policy of the RE to perform a due diligence process on intermediaries new to the RE to ensure LM is satisfied they are able to distribute and market LM's products.</p> <p>The due diligence process principally involves obtaining and reviewing the Licensee's:</p> <ul style="list-style-type: none"> • Australian Financial Services Licence or equivalent Licence, as relevant, in an overseas jurisdiction; • Appropriate anti-money laundering declaration; and • Certificate of Currency of Professional Indemnity Insurance (and Fidelity Insurance where appropriate); or • Should the Licensee not be covered by Professional Indemnity Insurance, the decision of whether to allow the Licensee to market the RE's investment products is at RE's discretion. This decision is based on the criteria established in the RE's "Financial Services Licensees New Business Policy" where a questionnaire is completed by the intermediary on insurance and claims. <p>The RE has an intermediary (terms of business) agreement which is executed by the RE and the intermediary.</p>	Treasury Department for each new distributor

14. Distribution Channels

Rule	Risk Addressed	Compliance Measures	Responsibility/ Checked by
<p>Ensure commissions are paid correctly and accurately.</p>	<p>Commissions are not paid accurately or correctly.</p>	<p>Commission Payments</p> <p>Commissions may be paid directly to intermediaries (Licensees) or to their authorised representatives with the consent of the Licensee.</p> <p><u>Upfront commissions</u></p> <p>The management system records details of all of Intermediary Distributors (Licensee) registered with the RE. Once entered the system automatically calculates commission payable to the Licensee during the month.</p> <p><u>Trailing commissions</u></p> <p>The management system links each Investor with their nominated Intermediary Distributor (Licensee)/authorised representative and records the amount of ongoing commissions' payable for each investment in each Scheme managed by the RE. Once entered, the system automatically calculates commission payments to the Licensee at the end of the month.</p> <p><u>Rebate commissions</u></p> <p>Any requests for rebate of commission are entered into the system on investment or notification by an Investment Services Administrator. The Applications Administrator enters the commission details relating to each investment. Investment Services Checking Officer checks data entered to the documentation. Once satisfied the information is complete and accurate authorises the transaction. At this point the transaction becomes a valid investment in the system and processed to the general ledger . Refer to 16. Investment Processing for further details.</p>	<p>Payment of commissions is controlled by the Commissions Team on a continuous basis.</p> <p>The Investment Services Manager reports to the Board each Board meeting on current statistics on investments and monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the Board Reports.</p>

15. Disclosure and Reporting Review Policy

Rule	Risk Addressed	Compliance Measure	Responsibility/Checked by
<p>Ensure all product disclosures statements, any offer documents and marketing material are not misleading or deceptive, meet the disclosure requirements of the Act and are appropriately authorised.</p>	<p>Product disclosure documents, offer documents or marketing material may be misleading or deceptive or may not comply with the Act.</p>	<p>All marketing material to investors must be reviewed and approved by:</p> <ul style="list-style-type: none"> • The Manager Distribution/Product or one other Director for content approval; • The Communications Manager or Communications Representative for presentation, layout, and communication of the central ideas; • Business Standards and Compliance Manager or Compliance Representative in relation to compliance with the Act, Compliance Plan, Constitution, PDS and advertising standards for the LM mortgage Schemes under ASIC Regulatory Guide 45. Also to ensure there are no breaches and no unintended misrepresentations. <p>All marketing material to financial advisers and or intermediaries must be reviewed and approved by the General Manager Distribution/Product (Director) or one other Director.</p> <p>All marketing approvals and supporting documentation are contained in a marketing register maintained by the Communications Manager. A separate register is maintained for PDS approvals and relevant supporting documentation.</p>	<p>Treasury Department, Directors and Business Standards and Compliance Manager.</p>

15. Disclosure and Reporting Review Policy

Rule	Risk Addressed	Compliance Measure	Responsibility Checked by
		<p>Additional requirements for Product Disclosure Statements and Supplementary Product Disclosure Statements</p> <p>All statements in any Product Disclosure Statement (PDS) or Supplementary Product Disclosure Statement (SPDS) must be verifiable and supported by written documentary evidence where possible.</p> <p>The RE ensures the final PDS and/or SPDS has been reviewed and comments/amendments received and signed off by:</p> <ul style="list-style-type: none"> • A person independent from the author; • Corporate solicitor (except for SPDS due to minor changes such as distribution rates) ; • Business Standards and Compliance Manager; and • The Board. <p>The review should be complete prior to lodgement of an in use notice with ASIC to determine:</p> <ul style="list-style-type: none"> • PDS and SPDS and meets the appropriate disclosure requirements as required by the Act; • Full disclosure of commissions for PDS and/or SPDS where appropriate; • No false, misleading or deceptive statements; • Statements of fact are verifiable with documentary evidence; and • All opinions expressed by the RE represent the considered view of the Board. 	<p>PDS Coordinator for all new PDS documents.</p>

15. Disclosure and Reporting Review Policy

Rule	Risk Addressed	Compliance Measure	Responsibility Checked by
		<p>Disclosure Benchmarks</p> <p>Under ASIC Regulatory Guide 45 (Mortgage Schemes - improving disclosure for retail investors) the RE must disclose whether it meets the requirements of the benchmarks stated in the guide for all LM Schemes defined as mortgage Schemes. If the benchmarks are not met the RE must disclose why they are not met.</p> <p>The RE may make this disclosure, including any material changes to the benchmarks, through a PDS, SPDS, via direct investor communications or if the disclosure is not materially adverse to investors decisions, on the RE's website.</p>	<p>The disclosure on the benchmarks is monitored monthly by the Portfolio Department. Monthly signoff is obtained by a Director on the adequacy of current disclosure.</p>

15. Disclosure and Reporting Review Policy

Rule	Risk Addressed	Compliance Measure	Responsibility Checked by
		<p>Reporting on Material Issues and Ongoing Disclosure</p> <p>Changes in material issues affecting the Scheme must be approved by a majority of the Board or Funds Management Committee. They may consider details of any legal advice in relation to the issue.</p> <p>Any material change or significant event that affects a matter, being a matter that would have been required to be specified in the PDS or SPDS needs to be advised to current Investors in accordance with the current Corporations Act.</p> <p>Disclosure of material issues arising in the conduct of the Scheme will be referred to the appropriate committee i.e. the Funds Management Committee, the Board or the LM meeting, as relevant. The Treasury Team Leader is responsible for ensuring appropriate disclosure to investors. Such client communications must follow the disclosure and reporting review policy set out above.</p> <p>It should be determined at the appropriate meeting if any other interested parties are required to be informed of the material issue including any requirements under the Corporations Act. In the case of threatened legal action, the RE insurer must be informed of the details of the intended action.</p> <p>The RE provides up to date information on the Schemes via the RE's website or direct investor communications. This includes updated material disclosures of the PDS and/or SPDS which are not materially adverse to investors.</p> <p>Further reporting and disclosures specific to the Scheme are contained under Investor Reporting, section 16 of the Plan.</p>	<p>The Directors and appropriate Committees for material issues.</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
a. Australian Dollar Applications			
<p>To ensure application money is received in accordance with PDS documents, Constitution and Act. Also to ensure Applications are processed correctly, accurately, and in a timely manner.</p>	<p>Applications are not processed in accordance with the PDS and/or the Constitution;</p> <p>Applications are processed incorrectly, inaccurately or not in a timely manner.</p>	<ul style="list-style-type: none"> • Investors may only subscribe for units in the Scheme using the application form attached to the Product Disclosure Statement (PDS). Applications are separated from other mail received by the Mail Coordinator. The Applications Team maintains a daily register of investments received through the mail which is entered as correspondence. Applications may also be received by electronic means which are marked as copies and monitored for receipt of originals. • Applications may only be accepted on receipt of a duly executed application form that is checked for completeness, accuracy and relevancy on receipt including any relevant Adviser details by an Applications Administrator and validated in the system. Missing, incomplete or incorrect application forms are passed to the Investment Services Applications Team leader and/or Applications Administrator and followed up with applicants or their Advisers within seventy two hours. Where the details of the referring or advising party are not known to the RE, then the Applications Administrator will verify the legal capacity of that party and their legal eligibility to receive commissions. For further details on commission payments refer to section 14 under heading - Commission Payments. • An application checklist is validated within the management system. The Applications Administrator is responsible for data entry into the investor management system. A separate investment account is created and a unique account number is allocated to the account. The actual number of units issued is determined with reference to the current unit issue price calculated in accordance with the Constitution. Details of the investment and investor are entered. • Application moneys are payable to the Scheme bank account held by the Custodian. An investment can only be processed on receipt of a valid application and application moneys. If at any time applications money is unable to be matched to an application and all reasonable effort has been taken to find and identify the corresponding application then the money may be returned to the sender. 	<p>Applications are controlled and checked by the Investment Services Checking Officer on a continuous basis. The checking may be delegated to an Investment Services Administrator.</p> <p>The Investment Services Manager reports to the Board each board meeting on current statistics on investments and monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the Board Reports.</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		<ul style="list-style-type: none"> Once the valid application and application moneys are received the Applications Administrator then authorises the monetary value and validates to the bank account. A reconciliation of the investment amounts to the banking is completed each day by the Applications Team in conjunction with the Senior Accountant. After processing an Investment Services Checking Officer checks all data entered to the documentation. Once satisfied the information is complete and accurate authorises the transaction. At this point the transaction becomes a valid investment in the system and processed to the general ledger. A contract note is then forwarded to the Investor, within 5 business days, confirming acceptance into the Scheme. 	
b. Non - Australian Dollar Applications			
To ensure Application Money is received in accordance with PDS documents, Constitution and Act. Also to ensure Applications are processed correctly, accurately, and in a timely manner.	<p>Applications are not processed in accordance with the PDS and/or the Constitution;</p> <p>Applications are processed incorrectly, inaccurately or not in a timely manner.</p>	<p><u>Application Money</u></p> <ul style="list-style-type: none"> Application Monies are made payable to the Custodian and are banked directly into a Subscriptions Account held by the Custodian. An investment can only be processed on receipt of a valid application and application monies. If at any time applications money is unable to be matched to an application and all reasonable effort has been taken to find and identify the corresponding application then the money will be returned to the sender. The money is in the foreign currency as determined by the investor. The application money is held in the Subscription Account. Once both the monies and application form is received the application monies are exchanged for Australian dollars at the prevailing spot market rate. The Scheme simultaneously will hedge the relevant currency using forward foreign exchange contracts and the funds are transferred to the Scheme. The timing of these contracts is at the discretion of the RE. If application money has not been used to enter into a forward foreign exchange contract within 30 days the RE will notify the payer, unless the payer of the money has not been able to be identified, and the payer may request the return of the money to the financial institution account nominated by the payer. Any transaction costs incurred the RE in 	<p>The Currency Investment Services Checking Officer is responsible for checking on a continuous basis. The checking may be delegated to another Investment Services Team Leader or Finance Department Officer.</p> <p>The Investment Services Manager reports quarterly to the Board on current statistics on investments and</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		<p>relation to the money will be deducted prior to returning the money to the payer.</p> <p><u>Application forms</u></p> <ul style="list-style-type: none"> • Investors may only apply for investments using the Application Form attached to the PDS. Applications received through the mail are separated from other mail received by the Mail Coordinator. The Applications Team maintains a daily register of investments received through the mail which is entered as correspondence. Applications may also be received by electronic means which are marked as copies and monitored for receipt of originals. • A register is maintained by Investment Services for all new applications received by mail, facsimile or scanned email. Facsimile or emailed applications are marked as copies and monitored for receipt of originals and held pending the receipt of the funds which are matched prior to processing. • Applications may only be accepted on receipt of a duly executed Application Form that is checked for completeness, accuracy and relevancy on receipt including any relevant Adviser details by an Investment Services Administrator. Missing, incomplete or incorrect Application Forms are followed up with applicants or their Advisers within seventy two hours. Where the details of the referring or advising party are not known to the RE, then the Investment Services Administrator will verify the legal capacity of that party and their legal eligibility to receive commissions. • The Applications Administrator is responsible for data entry into the management system. Details of adviser commissions, residency status and tax file number details are also entered. A separate investment account is created and a unique account number is allocated to the account for each investment. • After processing an Investment Services Team Leader or delegated Checking Officer checks all data entered to the documentation. Once satisfied the information is complete and accurate authorises the transaction. At this point the transaction becomes a valid transaction and entered into the management system and processed to the general ledger. • Once matched and approved by the checking officer the investment amounts are then automatically transferred into the foreign exchange trading report for trading. • Once the settlement of the foreign currency trade has occurred the Australian dollar 	<p>monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the quarterly Board</p>

16. Investment processing			
Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
		<p>equivalent from the foreign exchange contract is transferred to the Custodian's bank account for the fund and reconciled to the application.</p> <ul style="list-style-type: none"> • A contract note is then forwarded to the Investor, within 5 business days, confirming acceptance into the Scheme. 	
c. Changes to Investor Details			
<p>Ensure applications and investment details are maintained accurately and in a confidential manner.</p>	<p>Changes to Investor details are not made correctly.</p>	<p>All change of details correspondence are received by mail, facsimile or scanned email and are forwarded to an Investment Services Administrator for processing.</p> <p>The change is entered in the system by the Correspondence Administrator editing investor details.</p> <p>The change is then checked by the Investment Services Checking Officer and becomes a valid change in the system.</p> <p><u>Transfer of ownership</u></p> <p>An application for transfer of investment is received on an approved transfer form.</p> <p>An Applications Administration is responsible for checking details on the transfer to ensure they are correct. After confirmation of the information the Applications Administrator processes the transfer.</p> <p>The transfer is then checked by the Investment Services Checking Officer and becomes a valid transaction in the system.</p> <p><u>Deceased Estates</u></p> <p>When a notification is received for a deceased estate the information is checked by an Investment Services Administrator. Confirmation must be received from the proper authority of the deceased and instruction for investment distribution. If the deceased is part of a joint account the investment is transferred into the name of the joint survivor.</p>	<p>Changes are controlled and checked by an Investment Services Checking Officer on a continuous basis. The checking may be delegated to an Investment Services Administrator.</p> <p>The Investment Services Manager reports to the Board each board meeting on current statistics on investments and monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the Board Reports.</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
		<p>An application of transmission and indemnity is completed. The details are checked by the Investment Services Administrator. Once all information is received and correct the Investment Services Administrator processes the transmission based on the instructions of the proper authority.</p> <p>The transaction is then checked by the Investment Services Checking Officer and becomes a valid transaction in the system</p>	

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
d. Additional applications			
Ensure additional applications are accepted in accordance with the Act.	<p>Additional applications are not processed in accordance with the Act or PDS;</p> <p>Additional applications are not processed correctly.</p> <p>Investors' funds are lost or misallocated.</p>	<p>The RE maintains an arrangement for making additional applications by Investors, which is described below and complies with s1012D and s1016A. The arrangement includes applications received in relation to switching of terms within the Scheme.</p> <p><u>The additional application arrangement</u></p> <p>By signing the original application form an Investor is taken to have elected to participate in the additional application arrangement.</p> <p>The Investment Services Administrator is responsible for forwarding to the Investor a current contract note, containing an investment summary, within 5 business days after acceptance of the application.</p> <p>Additional investments should be accompanied by that account number where possible.</p> <p>The Senior Accountant is responsible for the daily reconciliation of the bank statements to the management system and includes verifying the automatic allocation of direct deposits to the Investor's investment account by the management system.</p> <p><u>Switches</u></p> <p>On applying to switch terms within the Scheme an Investor completes either a switch form or provides written instruction to the RE to amend the existing investment. The RE has the discretion to allow switching within a term period.</p>	<p>Additional applications are controlled and checked by the Investment Services Checking Officer on a continuous basis. The checking may be delegated to an Investment Services Administrator.</p> <p>The Investment Services Manager reports to the Board each board meeting on current statistics on investments and monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the Board Reports.</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
		<p><u>Currency of PDS documents for existing Investors making additional deposits</u></p> <p>The RE must only accept additional applications where it believes on reasonable grounds that at the time the additional application was made, the current PDS has been made available to the Investor and any ongoing disclosure requirements notified. The RE will form this view on the basis that:</p> <ul style="list-style-type: none"> • On issue of each new PDS for the Scheme a copy of the new PDS is made available to all Investors registered in the additional applications arrangement; • Where a replacement or supplementary PDS is issued a copy of the replacement or supplementary PDS is made available to all Investors registered in the additional applications arrangement and that PDS has adequate disclosure of the arrangement; • The current PDS is available free of charge to any Investor in the arrangement, on request, at any time; and • Any ongoing disclosures are made available in accordance with the Act. <p><u>Replacement or supplementary PDS</u></p> <p>If at the time an Investor makes an additional investment:</p> <ul style="list-style-type: none"> • The RE has lodged with ASIC an in use notice for a replacement or supplementary PDS in respect to the current PDS; and, • The RE does not believe on reasonable grounds, that the replacement or supplementary PDS has been made available to the Investor; then, <p>The RE must send, or make available to the Investor, the missing documents and a written notice explaining that the investment has been accepted (or otherwise as the case may be).</p>	<p>Treasury Department for issuing of each PDS or supplementary PDS/ Investment Services Team Leader control Investor statements.</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
e. Differential Fee Arrangement			
<p>Ensure Investors under a differential fee arrangement are treated fairly and do not disadvantage other Investors. Also disclosure of the differential fee arrangement is in accordance with relevant legislation.</p>	<p>Investors under a differential fee arrangement disadvantage other Investors;</p> <p>Differential fee arrangements are not disclosed as required by legislation.</p>	<p>The RE may offer a Differential Fee Arrangement to Investors at rates to be disclosed from time to time offered to investors investing in the Fund as a Wholesale Investor, within the meaning of Wholesale Client in Section 761G of the Corporations Act or form employees or employees of a related body corporate of the RE .</p> <p><u>Compliance with Class Order [CO 03/217]</u></p> <p>The RE must ensure that:</p> <ul style="list-style-type: none"> • Where a Differential Fee Arrangement of a kind referred to in paragraph 1 of Schedule B of the Class Order is in place or is to be offered, a statement of the basis upon which the differential fee will be calculated and which specified the fees members will have to bear; and • Where a Differential Fee Arrangement of a kind referred to in paragraph 2 of Schedule B and the Class Order is in place or is to be offered to certain wholesale Investors, a statement of that fact, <p>is disclosed:</p> <ul style="list-style-type: none"> • To existing Members of the Scheme by no later than the date of the first communication which the RE makes to all Members which is made both: <ul style="list-style-type: none"> ○ after the date when the differential fee arrangement is first offered; and ○ after 18 March, 2001; and • In any disclosure document used for an offer of interests in the Scheme. <p>The Differential Fee Arrangement is made in accordance with Differential Fee Arrangement procedures.</p>	<p>Fund Management Committee for each new differential fee arrangement</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
f. Australian Dollar Withdrawals			
<p>Ensure withdrawal requests and reinvestments are processed in a manner consistent with the Constitution, PDS documents and the Act.</p>	<p>Investor may suffer a loss if withdrawal or reinvestments are not processed correctly.</p>	<p>Withdrawal requests must be made in writing (through facsimile, scanned email or mail) to the RE in accordance with the PDS. Signatures appearing on written withdrawal requests are compared with the original application form signatures by the Investment Services Administrator prior to approval.</p> <p>The RE requires that withdrawal requests only be paid to the bank account nominated on the Investor's application form. Where an investor requires deposit to a different account, then the RE requires written authorisation from the signatories to the original application form. Approval is at the discretion of the RE. It is the responsibility of the Investment Services Payments Team Leader to enforce this policy.</p> <p>The correspondence is logged then the Payment Administrator processes the withdrawal and completes a withdrawal checklist for each withdrawal.</p> <p>On the date of withdrawal it is processed and passed to the Checking Officer for checking when the file becomes valid in the system and processed to the general ledger.</p> <p>The payments are then batched in the banking system for payment and given to the Checking Officer for checking and approval.</p> <p>The withdrawal from the bank account is approved by the Checking Officer. The Custodian will receive instructions pursuant to the Custody agreement. The Custodian's authorised signatories must co-sign the withdrawal file and transmit the payment then return the file to the RE for confirmation.</p> <p>Withdrawals will be paid in accordance with the Constitution after the required written notice, within the notice period, disclosed in the product disclosure statement, has been received.</p>	<p>An Investment Services Checking Officer is responsible for control and checking of all withdrawal requests.</p> <p>The Investment Services Manager reports to the Board each board meeting on current statistics on investments and monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the Board Reports.</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
g. Non - Australian Dollar Withdrawals			
<p>Ensure withdrawal requests and reinvestments are processed in a manner consistent with the Constitution, PDS documents and the Act.</p>	<p>Investor may suffer a loss if withdrawal or reinvestments are not processed correctly</p>	<p><u>Maturing investments</u></p> <ul style="list-style-type: none"> ◦ At the end of the term the investment will automatically be reinvested for a further 1 month term in the same currency unless advised otherwise by the Investor to withdraw or reinvest for another specified term or in another currency. The system diarises the date of maturity based on the application date and term of the investment. The reinvestment will be reinvested in a 1 month or other specified term in the originally nominated currency. <p>If the investment is to be reinvested the Scheme will re hedge the foreign currency from the original maturing forward foreign exchange contract into a new forward foreign exchange contract at the prevailing rate.</p> <ul style="list-style-type: none"> ◦ If the Investor chooses to withdraw their investment on maturity: <ul style="list-style-type: none"> ◦ The Investor must give the RE the required notice in accordance with the PDS prior to maturity; ◦ Withdrawal requests must be made in writing (through facsimile, scanned email or mail) to the RE in accordance with the PDS; ◦ Notification is checked by Investment Services Administrator and recorded in the management system. Signatures appearing on written withdrawal requests are compared with the original application form signatures by the Investment Services Administrator prior to approval; ◦ The Payment Administrator processes the withdrawal in the system and completes withdrawal checklists for each withdrawal. This is checked by an Investment Services Checking Officer. These transactions are then processed to the general ledger; ◦ On the date of withdrawal the Payment Administrator rechecks the data ready for withdrawal and payment and reconciled to the bank; ◦ This is then passed to the Investment Services Checking Officer for checking and approval when the file becomes valid in the banking system; 	<p>An Investment Services Checking Officer is responsible for control and checking of all withdrawal requests.</p> <p>The Investment Services Manager reports to the Board each board meeting on current statistics on investments and monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the Board Reports.</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
		<ul style="list-style-type: none"> ○ The withdrawal from the foreign currency bank account is approved by the Checking Officer. The Custodian's authorised signatories must co-sign the withdrawal file and transmit the payment then return the file to the RE for confirmation; ○ This amount is then forwarded to the Investors agreed overseas account in the agreed foreign currency at the relevant foreign currency rate in the time frame determined under the constitution; ○ The RE requires that withdrawal requests only be paid to the account nominated on the Investor Application Form. Where an Investor requires deposit to a different account, then the RE requires written authorisation from the signatories on the original Application Form. Approval is at the discretion of the RE. <p>• Withdrawals must be converted from Australian dollars to the agreed currency at the agreed currency rate stipulated in the foreign exchange contract no later than the withdrawal date. On any one day a net settlement will occur for any differences in value between the total of maturing investments or reinvestments in the maturing forward foreign exchange contracts and the new forward foreign exchange contracts for the new reinvestment amounts and any additional new investments for each particular currency on that day. The net amount of each currency contract is either paid to or received from the foreign currency dealer.</p>	
h. Australian Dollar Distributions			
To ensure distributions by the Scheme to Investor are calculated correctly and distributed to the correct Investor on a timely basis and in accordance with the Constitution.	Investor may suffer a loss if distributions are not processed correctly.	<p>At the end of each month, reconciliation to the bank statements of the gross income collected is performed by the Senior Accountant. Various reports detailing gross income collected, fees and commissions paid are forwarded to the Senior Accountant for inclusion in the Scheme accounting records and verification.</p> <p>The Senior Accountant is responsible for the accounting of gross income received, commissions and fees and any other Scheme expenses or reimbursements that are properly incurred and allowable under the Constitution. The Scheme accounts are prepared on a monthly basis. The Senior Accountant liaises with the Chief Financial Officer in respect of gross income collected and management fees and expenses including commission's payable after the end of each month. The Senior Accountant accounts for and certifies the amount of fees, commissions and expenses and the calculation of the distributable income in accordance with the Constitution.</p>	<p>Controlled and checked by an Investment Services Checking Officer on each distribution payment.</p> <p>The Investment Services Manager reports to the Board each board meeting on current statistics on</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		<p>The Senior Accountant reconciles the system generated distribution to the Scheme accounts.</p> <p>Income distributions are accounted for monthly and paid in accordance with the terms of the Constitution.</p> <p>The system automatically calculates interest due to each investor with reference to the current interest rate. An Investment Services Team Leader checks and authorises the distribution. The distribution from the bank account is approved by the Custodian. The Custodian's authorised signatory must sign the withdrawal file and transmit the payment</p> <p>Investor unitholdings recorded in the management system as at the last day of the distribution period are used in calculating proportional investor entitlements to the distributable income. Income distributions are processed by direct credit to the Investor's nominated bank accounts or reinvested.</p> <p>Investors may also nominate to have their monthly distributions paid quarterly.</p>	<p>investments and monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the Board Reports.</p>
<p>i. Non- Australian Dollar Distributions</p>			
<p>To ensure distributions by the Scheme Fund to Investors are calculated correctly and distributed to the correct Investor on a timely basis and in accordance with the Constitution.</p>	<p>Investor may suffer a loss if distributions are not processed correctly.</p>	<p>Income distributions are accounted for and automatically reinvested with the maturing investment at the end of the term. If the Investor has not nominated to have the distribution paid or specified a term for reinvestment the funds will be reinvested for a 1 month term with the initial investment hedged in the currency originally nominated. If the distribution is to be reinvested the Scheme will hedge the distribution from the original maturing investment into a new forward foreign exchange contract at the prevailing spot rate with the maturing investment.</p> <p>The investor may have the option to withdraw the distribution at the end of the term by notifying the RE 5 days prior to maturity. These distributions are paid in accordance with the terms of the Constitution.</p> <p><u>Calculation of Distributions</u></p> <p>At the end of the month a reconciliation of the gross income collected is performed by the</p>	<p>Controlled and checked by an Investment Services Checking Officer on each distribution payment.</p> <p>The Investment Services Manager reports to the Board each board meeting on current statistics on investments and monthly efficiency results to all staff in the Business Unit Measurement</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		<p>Senior Accountant. Various reports detailing gross income collected, fees and commissions paid to financial planners are forwarded to the Fund Accountant for inclusion in the Scheme accounting records and verification.</p> <p>The Senior Accountant is responsible for the accounting of gross income received, commissions and fees and any other Scheme expenses or reimbursements that are properly incurred and allowable under the Constitution. The Scheme accounts are prepared on a monthly basis. The Senior Accountant liaises with the Chief Financial Officer in respect of gross income collected and management fees & commissions payable after the end of each month. The Senior Accountant accounts for and certifies the amount of fees, commissions and expenses and the calculation of the distributable income in accordance with the Constitution. The Senior Accountant reconciles the system generated distribution to the Scheme accounts.</p> <p>The system automatically calculates interest due in Australian dollars to each investor with reference to the current interest rate. An Investment Services Team Leader checks and authorises the distribution.</p> <p>Investor Unit Holdings recorded in the management system as at the last day of the distribution period are used in calculating proportional Investor entitlements to the Distributable Income. If the distribution amount is paid it is completed by redeeming the number of Investor's Units equivalent to the interest earned on the investment amount. This is processed through the net settlement process (stipulated under Maturing Investments) to the foreign currency dealer in Australian dollars who converts it to the agreed currency at the agreed currency rate stipulated in the foreign exchange contract. This is then paid to the Investor's nominated bank account</p>	<p>meeting. The Business Unit Measurement results are included in the Board Reports</p>
<p>j. Anti Money Laundering and Counter Terrorism Financing Act 2006</p>			
<p>Ensure that the RE complies with its obligations under the Anti Money</p>	<p>The RE does not comply with the Act ; Money launderers or</p>	<p>The RE has an AML/CTF Program in compliance with the AML/CTF Act. The AML/CTF program's central purpose is to meet LM's objectives in relation to anti-money laundering and counter terrorism financing (AML/CTF) as described in the LM AML/CTF policy.</p>	<p>Controlled by The Investment Services Applications Team on a continuous basis</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>Laundering and Counter Terrorism Financing Act 2006 (AML/CTF Act 2006) in respect of the financial services it provides.</p>	<p>Terrorists may invest illegal money in the Scheme which remains undetected.</p>	<p>The AML/CTF Program is divided into Part A and Part B.</p> <p>The primary purpose of Part A of the AML/CTF Program is to identify, manage and mitigate money laundering and terrorist financing risk that LM may face in relation to the provision of its designated services through both LM's Australian and overseas offices. Part A applies to all areas of the business that are involved in the provision of a designated service, including any function carried out by a third party.</p> <p>The primary purpose of Part B of the program is to set out LM's applicable customer identification procedures on new investments from the effective date in accordance with the legislation.</p>	<p>and the AML Officer.</p>

17. Foreign Exchange Contracts

Rule	Risk Addressed	Compliance Measure	Responsibility/Checked by
<p>To ensure forward foreign exchange contracts are purchased by authorised LM staff.</p>	<p>That inappropriate or unauthorised foreign exchange contracts are purchased.</p>	<p>The application money from the Investor may be received in Australian dollars or foreign currency received into a subscription account. If received in foreign currency the application money is held in the Subscription Account until a forward foreign exchange contract is entered into. Individual forward foreign exchange contracts are entered into for each currency. The timing of the contract is at the discretion of the RE. This pooled amount will be exchanged into Australian dollars at the prevailing spot market rate. The Scheme simultaneously will statically hedge the relevant currency using forward foreign exchange contracts and then transfer the funds to the Scheme.</p> <p>Foreign exchange contracts are processed by an Investment Services Administrator then checked by an independent Checking Officer. The RE holds a list of staff members who are approved to check the transactions prior to authorisation. Once checked the contracts are authorised. The RE maintains a list of staff members who must authorise the contract transaction. An authorised staff member must authorise the transaction with the foreign exchange dealer. The Authorising Officers have been delegated by the Chief Financial Officer or a Director. One of the Authorising Officers may be a Checking Officer. The Authorisers do not process investor's payments or receipts of funds.</p> <p>A transaction confirmation is addressed to either of the authorising officers from the Authorised Foreign Exchange Dealer by the end of the working day in which the transaction took place. This authorising officer must confirm and check details of the transaction.</p>	<p>Investment Services Currency Team Leader.</p>

18. Investor reporting

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>To ensure investors are informed of their investments and all material issues on a timely basis.</p>	<p>Reporting inaccurate or incorrect information to investors;</p> <p>Not reporting to investors on material issues;</p> <p>Not reporting to investors in a timely manner.</p>	<p>An investment summary, setting out details of the investment and units held and a contract note is forwarded to the Investor within one month of acceptance into the Scheme or within one month of any request such as additional deposits, free of charge. The letter accompanying the transaction statement for additional deposits details how the Investor is able to receive a current PDS.</p> <p>Where there is a change in an investment a confirmation statement or letter is issued reflecting those changes.</p> <p>A taxation statement is produced annually detailing all interest payments credited during each preceding financial year. This statement is also available on request.</p> <p>A periodic statement is issued annually, within 6 months of the end of the financial year, to all investors detailing transactions for the preceding financial year. If an investor withdraws from the fund a periodic statement (exit statement) is sent within 6 months after withdrawal detailing the transactions from the last periodic statement period to the date of withdrawal.</p> <p>Updates on disclosure information about the Scheme are provided at least 6 monthly to investors.</p>	<p>Controlled by the Investment Services Applications Team Leader on a continuous basis.</p> <p>The Investment Services Manager reports to the Board each board meeting on current statistics on investments and monthly efficiency results to all staff in the Business Unit Measurement meeting. The Business Unit Measurement results are included in the Board Reports.</p>

19. Funds Management Committee

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
	<p>Inappropriate decisions are made by the Funds Management Committee which may cause a financial loss to investors.</p>	<p>A review of the Scheme is conducted each quarter by the Funds Management Committee which consists of at least one Director, the Portfolio Manager and/or the Chief Financial Officer. The Funds Management Committee monitor;</p> <ul style="list-style-type: none"> • Budgets; • Distribution rates; • Weighting of underlying securities to particular asset classes; • Cash flows; • Average maturity profile of loan book; • Level of liquid assets with reference to withdrawal requests anticipated and determination of the minimum liquid funds threshold; • Weighting of loans to fixed and variable classes and consideration of loan terms and asset allocation; • Adherence to investment mandate; • Investment proposals of the fund other than mortgages. <p>The Funds Management Committee may make recommendation or proposals to the Board of Directors for consideration of the above. Any material variances from the specific directions given must be ratified by the Funds Management Committee.</p> <p>The Funds Management Committee will ensure that investment mandate will be adhered to at all times. A breach of that mandate would be classified as material and notified to the Business Standards and Compliance Department.</p>	<p>The executive Directors are responsible for ensuring that the Funds Management Committee contains the relevant experience within its members to fulfil its task.</p>

20. Liquid Preservation Rules

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
Ensure the Scheme's liquidity procedures are in accordance with the Constitution and the PDS.	The level of liquidity in the Schemes is reduced significantly which would adversely affect Investor's interests in the Scheme.	<p>The Portfolio Manager (Director) monitors cash and liquidity levels in accordance with the liquidity policy of the Scheme and if there is any event that he/she considers would adversely affect the liquidity of the Scheme, including as stated in the Constitution, where the Investors may be adversely affected, the Portfolio manager will liaise with at least one other Director to discuss the impact on withdrawals and interests of the investor. The Board of Directors must consider;</p> <ul style="list-style-type: none"> • Whether processing of the current monthly withdrawals should be suspended/postponed, and • How it and future withdrawal requests will be met without adversely affecting the interests of all members of the Scheme. <p>Fund cash flow position is prepared by the Finance Department on a daily basis for analysis by the Portfolio Manager and Chief Financial Officer. Liquidity/cash levels are monitored through this process.</p> <p>Cash levels, as per the investment mandate, are disclosed in the PDS and monthly fund reports.</p>	<p>The Portfolio Manager, Chief Financial Officer and Finance Department monitor liquidity on a daily basis.</p> <p>Fund Management Committee monitor liquidity – quarterly or more frequently as required. This is overseen by the Board of Directors.</p>

21. Powers to Borrow

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>To ensure the RE's power to borrow for the purposes of the Scheme is in accordance with the Act and any other relevant legislation and/or agreements.</p>	<p>The Scheme borrows for inappropriate purposes;</p> <p>The Scheme borrows beyond its covenants which may affect Investor's interests in the Scheme.</p>	<p>From time to time the Scheme may borrow or raise money for the purposes of the Scheme. Proceeds are used to fund complying assets originated by the Scheme. Borrowing must be in accordance with the Constitution, the Act and the agreement/s between the lender/s and the Scheme. Borrowings (including material covenants) are disclosed in the PDS and investment mandate.</p> <p>All proposals for borrowings must be approved by 2 Directors of the RE.</p> <p>Guidelines and parameters are set by the Directors to ensure borrowings do not adversely affect the Investors of the Scheme.</p>	<p>The Chief Financial Officer with the Portfolio Management Department reviews the borrowing monthly as part of the review of the financial accounts of the Scheme to ensure continuous compliance with the agreement.</p> <p>All borrowings are reviewed quarterly by the Funds Management Committee.</p>

22. Unit Pricing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>To ensure application and withdrawal prices are calculated in accordance with the Constitution, PDS documents and Corporations Act.</p>	<p>Unit pricing is calculated in a manner inconsistent with the Constitution or inaccurately;</p> <p>Investors may suffer a financial loss.</p>	<p>The issue price and the withdrawal price of a unit are calculated monthly in Australian dollars. The foreign currency investments are converted to Australian dollar units through the foreign exchange contract.</p> <p>The unit price is calculated in accordance with the Constitution and unit pricing policy based on the valuation of the Scheme Property. The net Scheme value is calculated as a part of the monthly accounting for the Scheme as at the cut off date.</p> <p>The number of units on issue is determined from the management system which records all units allotted to Investors. The issued units recorded in the management system are printed on the cut off date and is the number used for calculating the issue price and the withdrawal price.</p> <p>The Senior Accountant is responsible for advising the Chief Financial Officer or Portfolio Manager. This is then advised to a Director where a decision can be made whether to revise the unit price and to enable a revised Issue Price and Withdrawal Price to be calculated.</p>	<p>The Senior Accountant reviews the unit price monthly.</p>

23. Scheme Valuation

Rule	Risk Addressed	Compliance Measures
<p>To ensure the Scheme is valued accurately and in accordance with relevant Accounting Standards.</p>	<p>The value of the Scheme is inaccurate.</p>	<p><u>Scheme Valuation Policy</u></p> <p>The Scheme valuation policy must be in accordance with relevant Accounting Standards, applicable in Australia, at the time of valuation and have the endorsement of the Audit Committee of The RE which includes representatives of the Scheme's auditors. The RE's unit pricing policy details valuation methods of the Scheme's various assets.</p> <p><u>Valuation updates</u></p> <p>Assets are required to be revalued in accordance with the Constitution and unit pricing policy.</p> <p>In accordance with the Constitution, the Scheme is valued on a monthly basis. This valuation takes into account the latest available valuations of underlying assets in accordance with the valuation policy relating to individual security property valuations.</p> <p>Valuation of the Scheme is the responsibility of the Senior Accountant and occurs each month as a part of the monthly accounting process for the Scheme. Generally accepted accounting principles are applied in the preparation of the accounts in accordance with the Constitution.</p> <p>An accounting period "cut off" is set for the last day of the month. All calculations required under the Constitution are calculated as at the cut off date by the Senior Accountant.</p>

Senior Accountant, supervised by the Chief Financial Officer – monthly

The financial position of the Scheme is reported monthly to the Chief Financial Officer

24. Scheme Fund Income

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
To ensure Scheme income is accurate and received on a timely basis	Not all income to the Scheme is received which may cause a loss to the Scheme.	<p><u>Mortgages</u></p> <p>The management system contains a mortgage register which records the relationship between the borrower and the Scheme, in particular the outstanding amount, interest rate and monthly due date of payment as in accordance with the terms and conditions of the Loan Agreement. These details are certified by a Property Asset Management Team Leader prior to entry into the system. A unique number is allocated to the Mortgage, Borrower and the Scheme, each is linked via these numbers.</p> <p>An income diary is maintained in the management system which records all due dates for receipt of income. The management system is based on a direct debit system whereby income is directly debited from borrowers bank accounts in accordance with collection instructions received from the legal department at the time of settlement.</p> <p><u>Other Income</u></p> <p>The management system records receipt of Scheme income. The income is collected progressively each month by the Finance Department and deposited directly to the bank account, maintained by the Custodian, where it is held until distribution.</p> <p>Bank reconciliations are performed daily.</p> <p>The Finance Department prepare a reconciliation of income on a monthly basis.</p>	<p>System input controlled by An Investment Services Team Leader on a continuous basis which is certified by the Property Asset Management Department on initial recording.</p> <p>The income reconciliation is reviewed by the Senior Accountant on a monthly basis and reported to the Chief Financial Officer. The financial position is reported to the Board each board meeting.</p>

25. Collections and Arrears Management

Rule	Risk Addressed	Compliance Measures	Responsibility/Checked by
<p>To protect Scheme Property and ensure all repayments of income and capital is received on a timely basis.</p>	<p>Not all income and/or capital are received in the required time. This may lead to a capital loss of the fund.</p>	<p>The RE has documented arrears management processes which are implemented in the event that a mortgage loan goes into default. Arrears loans are managed by a team of experienced personnel. The documented processes include the following:</p> <ul style="list-style-type: none"> ■ Dishonoured payments or other defaults are referred to the Arrears Manager for actioning. The Arrears Manager immediately contacts the borrower to ascertain the circumstances of the default; ■ If the default is short term (less than 60 days), arrangements are made with the borrower to remedy the default; ■ If the default is long term (60 days or longer), a summary of the details obtained from the borrower is emailed to the Arrears Committee with recommendations; ■ The Arrears Committee is comprised of the Executive Directors, the Arrears Manager, and members of the Property Asset Management Department as appropriate; ■ The Arrears Committee generally meet at fortnightly or as required. The Arrears Committee considers the recommendations for arrears loans and oversees the preparation of an arrears management plan for each arrears loan. Given the nature of loans within the loan portfolio, the RE adopts a case by case approach to arrears management, reflected in the individual management plans for each arrears loan; ■ The management plan is implemented by the Arrears Manager who maintains a separate arrears file for each arrears loan; ■ Reports on arrears loans are presented at Arrears Committee meetings. Arrears management plans are considered and updated as necessary; ■ In the formulation of an arrears management plan the Arrears Committee considers the following factors: <ul style="list-style-type: none"> ● Current value of the security property; ● Whether updated valuation ought to be obtained; ● Current loan amount; ● Current loan to valuation ratio; ● A review of securities held; ● A review of insurances held; ● Issue of default notices; 	<p>Arrears Committee meets fortnightly or as required.</p>

		<ul style="list-style-type: none"> • For commercial loans: <ul style="list-style-type: none"> ▪ tenancy status; • For construction loans: <ul style="list-style-type: none"> ▪ status of construction; ▪ cost to complete; ▪ sales achieved; • review of presales • Current marketing and/or sales programs; • Credit assessment of the borrower and any guarantors; • Whether demands ought to be issued to any guarantors; • Any proposal by borrower to remedy the default; • Status of any second or subsequent mortgages and status of priority arrangements; • Desirability of taking possession or appointing a receiver or agent for the mortgagee. At the point of the mortgagee taking possession the RE will manage the Security Property. At the point of receivership the Receiver will manage the Security Property. • Compliance with statutory requirements (e.g. lodgement of notices, maintenance of controller accounts); • Any site-specific issues (e.g. planning, subdivision, contamination or heritage status); • Potential sales avenues; and • Whether sales agent ought to be appointed/selection of agent. <ul style="list-style-type: none"> ■ For all arrears loans, a detailed recoverability analysis is prepared and regularly updated as part of the arrears management plan; ■ External consultants (valuers, lawyers, insolvency practitioners, sales consultants etc) are engaged where appropriate throughout the arrears management process; ■ Arrears loans are managed in this way until the security is sold and/or all possible recovery action has been completed. 	
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26. Credit Committee

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>Ensure the Credit Committee correctly monitor and make accurate decisions on the investments of the Scheme</p>	<p>Credit Committee makes inappropriate investment decisions which may adversely affect the Investor's interest in the Scheme.</p>	<p>The Credit Committee is an internal review committee for all mortgage investments and is independent from all other departments. It is generally comprised of the Team Leaders/Managers (or approved delegates) of the Property Asset Management, Legal, Finance and Treasury Departments and generally one Executive Director. The Credit Committee meets as required to consider proposed and existing mortgage investment opportunities.</p> <p>Where new mortgage investment proposals pass the initial analysis by Property Asset Management, Property Asset Management will provide a written synopsis of the loan for consideration and discussion at the Credit Committee meeting. The Credit Committee is responsible for setting the primary terms and conditions of the loan within the parameters established by the funds management committee.</p> <p>Material issues arising from mortgage investment proposals currently undergoing due diligence and risk analysis by Property Asset Management are required to be raised for consideration and resolution by the Credit Committee. This includes any variation from the RE's standard terms and conditions.</p> <p>When mortgage investment proposals meet the RE's policies and procedures they are required to be finally approved by the Credit Committee before settlement occurs. Approval is evidenced by signatures of the Team Leaders of the Property Asset Management Department, Legal Department and one Executive Director on the pre-settlement checklist attached to the file.</p> <p>The Credit Committee has the final say in relation to all matters it considers. The Property Asset Management Department must abide by the Credit Committee's rulings. A two-thirds majority is required for approval of mortgage investment proposals, although unanimous approval is generally sought.</p> <p>The Credit Committee also nominates panel valuers and expert consultants and approves loan rollovers/ variations.</p>	<p>The Executive Directors are responsible for ensuring that the Credit Committee contains the relevant experience within its members to fulfil its task.</p>

27. Lending Criteria

Rule	Risk Addressed	Compliance Measures	
Ensure that investment in Scheme Property is in accordance with the Act and the Scheme Constitution and PDS.	<p>Investments in inappropriate Scheme Property which may adversely affect the Investors interest in the Scheme.</p> <p>The Scheme holds unauthorised property and therefore the RE would be in breach of its obligations.</p>	<p>The RE has determined and documented a lending policy for guidance in the approval and management of mortgage applications.</p> <p>For all mortgage applications:</p> <ul style="list-style-type: none"> ▪ The type of real estate offered for security must be acceptable to the RE. Typically mortgage securities will include; commercial, industrial and residential real estate (and development loans and pre-development land loans across these sectors) secured by registered first mortgage; ▪ A first mortgage must be registered on all primary security property, however, from time to time the RE may subordinate the priority of a first mortgage as part of a structured exit strategy for a loan; • A certificate is received from the RE's solicitor on all settlements confirming validity of security; • Security documents are lodged for stamping and registration within 14 days of settlement; • The value of the property must be established in accordance with the Valuations Policy-Mortgage Lending (refer section 28) and in accordance with its Constitution; • The Credit Committee applies the loan to value ratio to the valuation amount generally exclusive of GST, unless there are substantial positive factors such as high pre-sales, high net worth of the borrower etc.; • The serviceability for the facility must be established to the satisfaction of the RE. The serviceability analysis is performed to evaluate the financial capacity of each applicant borrower including checking the credit history of each borrower through a credit bureau; • Pre-settlement, settlement and post-settlement reviews are performed; • Property Asset Management carries out regular reviews of all current loans; and • Settlement and ongoing payments must be certified by two approved Property Asset Management Team members. <p>The Constitution of the Scheme does not allow the RE to exceed a loan to valuation ratio of 85% of any one loan except in the event of default. Notwithstanding the provisions of the Constitution, the RE has a policy of generally not exceeding the following loan to value ratios :</p>	<p>The lending criteria are reviewed yearly by Property Asset Management Department.</p> <p>Credit Committee is responsible for each new proposal.</p> <p>The Property Asset Management Department is responsible for all procedures to settle the loan.</p> <p>Loan status is reported to the Board each board meeting.</p>

27. Lending Criteria

Rule	Risk Addressed	Compliance Measures	
		<ul style="list-style-type: none"> • 65% for vacant land; • 75% for commercial loans; • 66.67% for construction and development loans of the gross realisation, calculated on a cost to complete basis. <p>It is the RE's policy to ensure that no single mortgage exceeds 10% of the Scheme assets.</p>	

27. Lending Criteria

Rule	Risk Addressed	Compliance Measures
		<p>Development loans</p> <p>Additional requirements are imposed in the case of development loans as follows:</p> <ul style="list-style-type: none"> • The initial drawdown for the facility is arrived at after considering both the approved loan to valuation ratio on the “as is” valuation and the cost to complete formula. The initial drawdown must meet the loan to valuation ratio required and also allow sufficient funds to be available in the facility to complete the development. The project feasibility must reflect the “cost to complete” formula throughout the life of the project. The concept “cost to complete” is that the lender always retains sufficient funds within the loan facility to complete the development based on its own assessment of the actual cost to complete the project; • On going analysis and mortgage management by Property Asset Management Department is performed on loans, this includes on draw downs; • Additional development loan procedures are required throughout the development stages of the loan to ensure the development is adequately monitored; and • A tripartite agreement will be put into place between the RE and Custodian, the borrower and the builder (where appropriate). <p><u>Loan variations and rollovers</u></p> <p>Loan variations or rollovers must be approved by the Credit Committee. A synopsis is prepared and the variation or rollover is presented to a Credit Committee meeting. If approved by the Credit Committee, the legal department documents the variation or rollover and completes a check list. The essential loan terms are reviewed and then legal documentation is issued. The checklist is signed by the preparer and reviewed by the legal department team leader.</p> <p>An updated valuation will generally be required where a loan term is extended or a loan is otherwise varied. The requirement for an updated valuation may be waived where the RE considers that an updated valuation would serve no useful purpose.</p>

28. Valuation Policy – Mortgage Lending

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>To ensure Security Property are valued at regular intervals appropriate to the nature of the asset.</p>	<p>Inaccurate valuations are performed on Security Property which may be of disadvantage to investors' interests.</p>	<p>Individual Security Property is valued prior to settlement of each transaction. Valuations relied upon must have been conducted no earlier than three months prior to the date of settlement of any mortgage loan.</p> <p>Valuations may only be carried out by panel valuers. Refer to sub-heading - Panel Valuers under this heading for details.</p> <p>Appropriate instructions must be given to the valuer having regard to the type of valuation required i.e. "as is" or "on completion".</p> <p>The valuer must certify they are independent of both the borrower and security property.</p> <p>The RE does not accept valuations performed on the instruction of borrowers. The RE requires that valuations be provided on the RE's instructions, or that valuers confirm that their valuations adhere to the RE's requirements.</p> <p>The Property Asset Management Department, in accordance with the valuation review guidelines, is responsible for the review of all valuations. Unresolved issues arising from the review must be referred to an Executive Director for discussion and determination.</p> <p>Where appropriate, the Property Asset Management Department obtains an independent property report from two real estate agents, or an alternate valuer's report, whose normal trade area encompasses the property being valued.</p> <p>Original valuation reports are retained in the file established for each investment proposal. They may also be imaged and stored on the computer network maintained by the RE.</p> <p>The RE has documented valuation review procedures for guidance on each valuation.</p> <p>An updated valuation will generally be required for commercial loans at 24 month intervals and construction loans at 12 month intervals. An updated valuation may also be required where a loan term is extended or a loan is otherwise varied. The requirements for an updated valuation may be waived where the RE considers that an updated valuation would serve no useful purpose.</p>	<p>Property Asset Management for each valuation.</p> <p>Valuation details are reported to an Internal Director prior to final settlement.</p>

28. Valuation Policy – Mortgage Lending

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>To ensure all Security Property is appropriately valued prior to settlement of each transaction and ongoing throughout the development phase where appropriate.</p>	<p>Inaccurate valuations are performed through the development phase of the project.</p>	<p>Developments</p> <p>Separate valuations (which may be within the one valuation report) are required in relation to “as is” and “on completion” valuations.</p> <p><u>“as is” valuation</u></p> <p>The “as is” valuation is the valuation figure used by the RE in calculating the initial drawdown. The “as is” valuation is the market valuation of the property at the time of the initial drawdown. The Loan to Value Ratio in this case must fall within the RE’s lending criteria in relation to vacant land.</p> <p><u>“on completion” valuation</u></p> <p>The “on completion” value is the market value of the property at the completion of the development.</p> <p>The valuation methodology required is as follows:</p> <ul style="list-style-type: none"> • “Feasibility analysis” including demolition, sub-divisional, construction, and other development costs, allowances for sales and marketing expenses, interest and an allowance for profit and risk to arrive at a base value for the land. Any such analysis is based on the premise that the development approval has or will be obtained prior to settlement of the loan. Alternatively, the valuation must contain an adjustment for any uncertainty attaching to the development approval process. The requirement for a feasibility analysis may be satisfied, if appropriate, using alternate techniques such as discounted cash flows. • “Gross realisation” based on comparable sales evidence for the individual components. E.g. Houses, units, allotments etc. <p>The RE will reasonably assess the appropriateness of the feasibility within the valuer’s report by comparison with cost estimates provided by a competent quantity surveyor and/or other specialists.</p>	<p>Property Asset Management Department for each development loan.</p> <p>Valuation details are reported to an Internal Director prior to final settlement.</p>

28. Valuation Policy – Mortgage Lending

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		The “on completion” value is the valuation figure used in the cost to complete calculations during the development phase. The “on completion” value may be revised during the term of development to reflect changes as approved by the RE.	
To ensure appropriately qualified valuers are on the RE’s valuation panel.	Valuations are performed by underqualified or unsuitable valuers thus may cause inaccurate valuations.	<p>Valuation panel</p> <p>In the first instance, one of the valuers listed on the RE’s panel valuer register will provide the services of a registered valuer to conduct the initial valuation. If the valuer chooses not to become a member of the RE’s panel the valuer must still meet The RE’s selection criteria for panel valuers. The explanation why he chooses not to be a member and details of the valuer must be taken to a Credit Committee meeting where the valuer must be approved by the Credit Committee prior to acceptance of any valuations from the valuer. The valuer must have appropriate professional indemnity insurance when performing a valuation.</p> <p>Members of the valuation panel are accepted and removed in accordance with the RE’s panel guidelines. A register of panel valuers is maintained and held with Property Asset Management Department.</p> <p>As a general rule no one valuer conducts more that 1/3 of the total valuation work for the scheme,</p>	The Credit Committee is responsible for approving the appointment of a valuer to the panel and/or its removal.
To ensure there is no Conflict of interest with valuers	Conflict of interest by valuers.	<p>Conflicts of interest by Valuers</p> <p>Panel valuers are required to disclose any potential Conflict or interest in the subject property or the proposed transaction concerning the subject property. This requirement is embodied in the valuation instructions to valuers.</p> <p>Generally a new valuation from another panel valuer will be required to resolve potential or actual Conflicts of interest and any relevant disclosures to Investors made.</p>	Disclosed or perceived Conflicts of interest are referred to the Credit Committee for consent. The Credit Committee may obtain independent advice.

Definitions

In this Compliance Plan, the following terms shall have the meanings assigned to them unless the context shall otherwise require:

'Act' means Corporations Act 2001 and includes the Corporations Regulations.

'Adviser' means authorised representative of an Australian Financial Services Licence.

'Arrangement' means a written arrangement between the RE and an Investor that sets out circumstances in which applications for interests in Registered Schemes operated by the RE may be accepted.

'ASIC' means the Australian Securities and Investment Commission.

'Board' means the Board of the RE.

'Committee' means the Compliance Committee of the Scheme.

'Committee Externality Test' means the tests in Section 601JB of the Act for determining whether a person is an external member of a compliance Committee.

'Complaints Handling Policy' means the policy of the RE for handling Complaints in respect of the Scheme from time to time.

'Complaint' has the meaning given thereto in the Complaints Handling Policy.

'Compliance Procedures' means the processes and procedures adopted by the RE in respect of compliance from time to time.

'Compliance Program' means the systems adopted by the RE in respect of compliance from time to time whether in respect of this Scheme or not.

'Compliance Register' means a register of significant compliance documents that the Committee may or may not be required to keep, which can be kept electronically.

'Compliance Risk Assessment' means an assessment of the major compliance risks to the operations of the Scheme that could result in losses arising from non-compliance with the Act and the Constitution having regard to the protection of Investors' interests and of measures designed to mitigate them.

'Compliance Structure' means the organisational structure of the RE as the RE in respect of compliance.

'Conflict' means a Conflict or potential Conflict of interests or duty.

'Constitution' means the Trust Deed that constitutes the Scheme.

'Custodian' means the person/s or company appointed as Custodian of Scheme Property. If the RE appoints an external Custodian 'Custodian' means the external custodian appointed. If the RE does not appoint an external Custodian 'Custodian' means the RE staff appointed to act as Custodian on behalf of the RE.

'Differential Fee Arrangement' means an arrangement pursuant to CO 03/217 which provides exemption from S601FC (1) (d) of the Act in relation to differential fee arrangement offered to investors investing in the Fund as a Wholesale Investor, within the meaning of Wholesale Client in Section 761G of the Corporations Act.

'Director Externality Test' means the tests in Section 601JA of the Act for determining whether a person is an external director of the RE.

'Employee' means a person which may include an Officer who is employed by the RE.

'Employee Compliance Declaration' means a declaration to be made by each Employee and officer of the RE concerning his or her compliance with the Plan in such form as the Committee determines from time to time.

'External Director' means a director of the RE who is regarded as an external director of the RE under the Director Externality Test.

'External Member' means a Member of the Committee who is regarded as an external member under the Committee Externality Test.

'Governing Documents' means the Rules, Constitution, FSR Licence, the Compliance Program and this Plan.

'Investment' means an asset acquired for the producing of income or capital gain for the owner.

'Investor' means a person who is a member in the Scheme.

'IT' means information technology.

'Law' means law in force in the relevant jurisdiction.

'Licence' means appropriate financial services Licence that sets the authorisations and conditions to provide the services.

'LM' means LM Investment Management Ltd, the RE.

'Member' means a person who is a member of a Committee.

'Membership' means membership of a Committee.

'Officer' means a director, executive of the RE or a person who participates in making decisions that affect the whole or a substantial part of the business of the RE.

'Other Scheme' means any other registered managed investment Scheme of the RE.

'Plan' means this Plan being a Compliance Plan adopted by the RE in respect of the Scheme as required by Section 601HA of the Act as the same may be amended or varied from time to time.

'Plan Auditor' means the person who has been appointed to audit compliance with the Plan as required by Section 601HG of the Act.

'PDS' means a product disclosure statement whereby interests in the Scheme are offered including any supplement thereto.

'RE' means the Responsible Entity.

'Regulatory Authority' means the Australian Securities and Investments Commission and any other body having regulatory authority over the Scheme and or the RE.

<p>'Related Party' has the meaning given to the term in Part 5C of the Act.</p> <p>'Relevant Materials' means the Attachments to this Plan, the Governing Documents, anything declared in the Plan to be within the term and such other documents and materials as the Committee determines shall be within the term.</p> <p>'Responsible Entity' means the party who is from time to time the responsible entity of the Scheme and in the first instance shall be the RE.</p> <p>'Rule' compliance rules forming part of the Plan.</p> <p>'Scheme' means the registered managed investment Scheme to which this Plan applies.</p> <p>'Scheme Auditor' means the person who from time to time conducts the statutory audit of the Scheme.</p> <p>'Scheme Property' means assets of the Scheme including but not limited to:</p> <ul style="list-style-type: none"> (a) contributions of money or money's worth to the Scheme; and (b) money that forms part of the Scheme assets under the provisions of the Law; and (c) money borrowed or raised by the RE for the purposes of the Scheme; and (d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and (e) the income and property derived, directly or indirectly from contributions, money or property referred to in paragraph (a), (b), (c) or (d); 	<p>'Security' in the context of loans means security in respect of a loan or an accompanying Scheme loan over the assets of the Scheme.</p> <p>'Security property' means any property offered by a Borrower as security for an approved Mortgage in the Scheme.</p> <p>'Service Provider' means a company contracted by the RE to provide a service to the Scheme.</p> <p>'Unit' means an individual share in the beneficial interest in the Scheme as provided in the Constitution.</p>
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