

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**

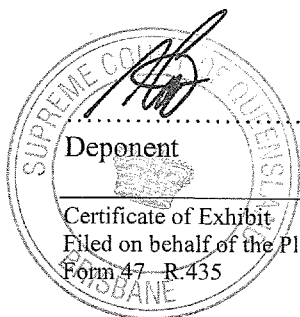
CERTIFICATE OF EXHIBIT

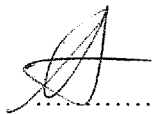
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Exhibits "SC-22" to "SC-43" to the affidavit of **SCOTT COUPER** sworn at Brisbane on this 31st day of January 2020.

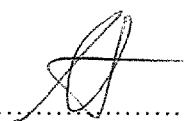
Exhibit	Description	Page No.
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SC-23	LMIM Conflicts Management Policy (Exhibit 5)	1122-1131
Loan documents and relevant emails		




Solicitor **CLAUDIA JANE DENIMISON**

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Deponent


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Solicitor CLAUDIA JANE DENNISON

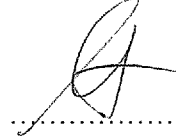
Certificate of Exhibit
Filed on behalf of the Plaintiff Applicant
Form 47 R.435

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Deponent



Solicitor CLAUDIA JANE DENNISON

"SC-22"



LM Investment Management Ltd
ABN 68 077 208 461 Responsible Entity & AFSL No. 220281

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: 28 November 2008

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Part 1

The Compliance Plan

This Replacement Compliance Plan (the Plan) is *effective as of 28 November 2008*, 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 Corporations Act (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. 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 Policy Statement 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

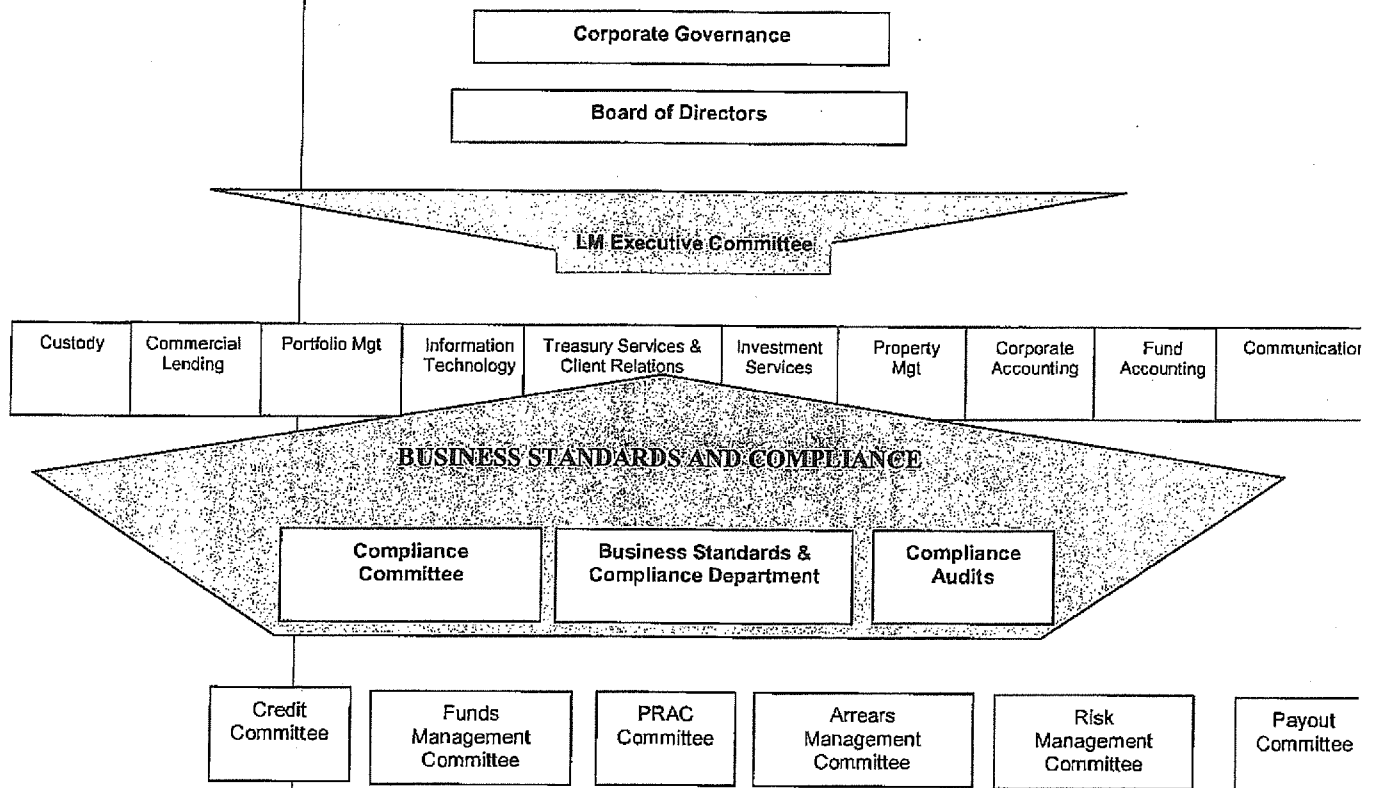
The parts of the contents of this master Compliance Plan is referred to by other Schemes for which the RE is responsible except for Scheme specific issues documented in Part 6 of this Plan, which are specific to the First Mortgage Income Fund Compliance Plan.

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, at least fortnightly 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 on a quarterly basis, 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

1. Compliance Responsibilities

The duties of the RE and each of the Directors and other Officers of the RE under this Plan include the following:

- 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;
- to treat Investors who hold interests of the same class equally and Investors who hold interests of different classes fairly;
- not to make use of information acquired through being the RE, an officer or an Employee of the Scheme in order to :
 - gain an improper advantage for itself (the RE), themselves (officer or Employee) or another person; or
 - cause detriment to the Investors of the Scheme; and
- 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;
- 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.

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.

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

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 an 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

The Committee will meet generally on a quarterly basis or more frequently as required. 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

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

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

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

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4. Safekeeping and Segregating Scheme Property and Custodian	601FB, 601FC(1)(i), 601HA(1)(a), Policy statements 132 and 133		17
5. Training, Recruitment and Experience	Policy Statements 130, 138, 146 and 164		22
6. Confidentiality and Insider Trading	601FC, Part 7.10 – Div 3, Policy Statement 132		24
7. Audit	601HG to 601HI	27	25
8. Accounts and Record Keeping	Chapter 2C, 2M, 601HA(1)(e)	22,27	27
9. Fees and Expenses	601FC(1)(k), 601GA(2)	18	32
10. Related Party Issues	Ch 2E, Part 5C.7, Policy Statement 132		33
11. Conflict of Interest	912A(1)(aa), PS 181		35
12. Use of External Service Providers	601FB		36
13. Complaints Handling	601GA(1)(c), 912A(2)	14	37
14. Distribution Channels	Chapter 7, Policy statement 175		39
15. Disclosure and Reporting Review Policy	Part 7.9 and 7.10	11,18	41
16. Investment processing	601GA(4), 601KA, 601FC, C/O 3/217, s1012D, s1016A	5,6,7,8,11,12	45
17. Foreign Exchange Contracts			59
18. Investor reporting	Ch2M		60
19. Fund Management Committee			61
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21. Powers to Borrow	601GA (3)	13	63
22. Unit Pricing	601GA(1)(a), 601FC	3,5,6,7,8	64
23. Scheme Valuation		17	65
24. Scheme Fund Income		13	66
25. Collection and Arrears Management			67
25. Collection and Arrears Management Credit Committee			69
26. Lending Criteria	601FC(4), 601GA(1)(b) ¹ and (3), Licence conditions	13	70
27. Valuation Policy – Mortgage Lending	601FC(1)(j)	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>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 and relevant Committees.</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 Compliance Committee, then the Board 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 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. <p>Breaches that are likely to occur because of the number and frequency of similar previous breaches may also be reported to ASIC.</p> <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>	

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3. Licence Conditions

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
<p>The Australian Financial Services Licence is current and conditions are reviewed and monitored to ensure they continue to be met.</p>	<p>Failure to comply with Licence conditions; Licence suspension or revoked; Investor's interests may not be adequately protected or disadvantaged.</p>	<p>Conditions of the Licence are checked as detailed below:</p>	
		<p>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.</p>	<p>The Board is responsible for all business services and the Compliance Committee monitors the Licence conditions.</p>
		<p>Any variation to the Licence conditions will be approved by the Compliance Committee</p>	
		<p>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.</p>	<p>Chief Financial Officer - Monthly</p>
		<p>Custodian –</p> <p>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.</p> <p>b. The RE must also ensure the external Custodian complies with PS 133.</p>	<p>a. Business Standards and Compliance Department- Quarterly b. Business Standards and Compliance Department - Annually</p>

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
		Additions or changes to any business or trading names that may require modification to the Licence are monitored.	The Responsible Department for the products and services, Then Business Standards and Compliance Manager – on notification of the change
		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.	Business Standards and Compliance Manager - Annually
		<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>	Business Standards and Compliance Manager - Annually
		Ensure that authorised representatives have been acquainted with and comply with the Financial Transactions Reports Act and s243D of the ASIC Act	Business Standards and Compliance Manager - Annually

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 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. Commercial Lending 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>Commercial Lending 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>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>
To ensure insurance adequately covers the RE's activities and the Scheme Property.	<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>Commercial Lending Department yearly on Scheme property and each responsible Department on engagement of External Service Providers.</p> <p>Business Standards and</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>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 at least one (1) internal training session per month. 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 Business Standards and Compliance Department 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>

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 confidential information and insider trading	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 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>All Departments – continuous</p> <p>Treatment of 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
A yearly audit is performed to ensure the RE is performing its duties in compliance with this Plan as required by the Act.	<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>	Business Standards and Compliance Department - yearly
Ongoing internal compliance audits are performed	<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.

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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>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 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
To ensure records are retained accurately and securely and critical deadlines are met on time.	<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 group calendars 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. The Finance Department administer a group calendar in relation to statutory reporting in relation to the RE and its various Schemes.</p> <p>The RE has prepared a list of all reporting obligations, including reporting obligations to ASIC, that the RE has to apply in managing the Scheme</p>	<p>Each Department for critical events relating to the relevant department are maintained on an ongoing basis.</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. Replication of the critical data from the Gold Coast to Sydney Disaster Recovery site is performed on a 'real time' basis.</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 transactions on a quarterly basis. 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
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.	The RE does not manage Conflicts of interest adequately which may cause; <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. 	The RE has a Conflicts of Interest Policy which describes how the RE manages Conflicts which comprises of a 3 step process: <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 	The Risk Manager is responsible for the review of the Conflicts of interest policy at least yearly.
			The following implement the Policy: <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; 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>Department responsible for the particular service provider performs due diligence check on each new provider.</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>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
<p>Ensure financial products are distributed by authorised licensees and their representatives.</p>	<p>Products are inappropriately distributed or not distributed according to LM policy, which may lead to Investors being misinformed.</p>	<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>	<p>Treasury Department for each new distributor</p>

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. Prior to payment of commissions, the payee is checked against the records of the management system. Commission calculations are checked by a person independent from the processor. The commissions are paid weekly.</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>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
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.	Product disclosure documents, offer documents or marketing material may be misleading or deceptive or may not comply with the Act.	<p>All marketing material to investors must be reviewed and approved by:</p> <ul style="list-style-type: none"> • The General Manager Distribution/Product (Director) or one other Director for content approval; • The Communications Manager for presentation, layout, and communication of the central ideas; • Business Standards and Compliance Manager 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>	Treasury Department, Directors and Business Standards and Compliance Manager.

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 or on the RE's website (if the disclosure is not materially adverse to investors).</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>

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>	<p>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 Mail Coordinator 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.</p> <p>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.</p> <p>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.</p> <p>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> <p>Once the valid application and application moneys are received the Applications Administrator</p>	<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
		<p>then authorises the monetary value and validates to the bank account.</p> <p>A reconciliation of the investment amounts to the banking is completed each day by the Senior Accountant.</p> <p>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 transaction in the system and processed to the general ledger.</p> <p>A contract note is then forwarded to the Investor confirming acceptance into the Scheme.</p>	
b. Non - 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>	<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 Mail Coordinator maintains a daily register of investments received through the mail which is entered as correspondence. • A currency 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 • 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. • Applications are entered into correspondence and held pending the receipt of the funds which are matched prior to processing. • Once the application money is used to enter into a foreign exchange contract the application is passed onto the Correspondence Administrator to commit the correspondence to the management system and then passed onto the Application Administrator for processing. • The Australian dollar equivalent from the foreign exchange contract is transferred to the Custodian's bank account for the fund and reconciled to the application. • 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 	<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>accurate authorises the transaction. At this point the transaction becomes a valid transaction in the system and processed to the general ledger.</p> <p>A contract note is then forwarded to the Investor confirming acceptance into the Scheme.</p>	
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>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>

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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 investment summary and contract note within one month 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 validated then the Redemption Coordinator 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 unless advised otherwise by the Investor to withdraw or reinvest for another specified term. 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 Redemption Coordinator processes the withdrawal in the system and completes withdrawal checklists for each withdrawal. This is checked and validated by an Investment Services Checking Officer. These transactions are then processed to the general ledger; ○ On the date of withdrawal the Redemption Coordinator 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. ● 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. 	
h. Australian Dollar Distributions			
<p>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.</p>	<p>Investor may suffer a loss if distributions are not processed correctly.</p>	<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 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</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>Accountant reconciles the system generated distribution to the Scheme accounts.</p> <p>Income distributions are accounted for monthly and paid within 14 days following the distribution period (one calendar month) of collection in accordance with the Constitution and the PDS. This period may be extended if the distribution is paid, with the investment withdrawal, at the end of the term.</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. The distributions will be paid within 10 days of the quarterly anniversary date of the investment.</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>
i. Non- Australian Dollar Distributions			
<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>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</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		<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 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>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>

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16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
j.	Financial Transaction Reports Act 1988 and Anti Money Laundering and Counter Terrorism Financing Act 2006	FTR Act 1988	Financial Transaction Reports Act 1988 and Anti Money Laundering and Counter Terrorism Financing Act 2006
<p>Ensure that the RE complies with its obligations under the Financial Transactions Reports Act 1988 (FTR Act 1988) and subsequent the Anti Money Laundering and Counter Terrorism Financing Act 2006 (AML/CTF Act 2006) in respect of the financial services it provides.</p>	<p>The RE does not comply with the respective Acts ;</p> <p>Money launderers or Terrorists may invest illegal money in the Scheme which remains undetected.</p>	<p><u>Suspect transaction</u></p> <p>The RE as an Australian Financial Services Licensee falls within the definition of cash dealer within the meaning of the Financial Transaction Reports Act 1988. Sec 243D of the Australian Securities and Investments Commission Act 2001 requires the RE where it has reasonable grounds to suspect that information it has concerning a transaction may be relevant to investigation of, or prosecution of a person for, an offence under this Act or the Corporations Act, to prepare a report (including the reportable details as set out in Schedule 4 to section 16 of the Financial Transaction Reports Act) of the transaction and communicate that information to the Australian Transaction Reports and Analysis Centre ("AUSTRAC"). Details of the procedures to be followed are in "Suspect transaction procedures"</p> <p><u>Significant cash transactions in amounts of \$AUD10,000 or more</u></p> <p>Any transaction involving cash (\$AUD10,000 or more or equivalent in foreign currency) is required to be reported to AUSTRAC. Where the transaction is also considered suspect, then a separate report must be prepared and lodged with AUSTRAC. It is the policy of the RE that cash only be handled by a teller of a bank and never by Officers, Staff or Advisers of the RE.</p> <p><u>Transfer of \$AUD10,000 or more in cash into or out of Australia</u></p> <p>Where an amount of \$AUD10,000 or more is carried into or out of Australia, then it must be reported to AUSTRAC.</p> <p><u>International funds transfer instruction or telegraphic transfer</u></p> <p>Any international funds transfer in any amount is required to be reported to AUSTRAC where the RE arranges the transfer directly, by electronic or similar, and not by a bank.</p>	<p>Controlled by The Investment Services Applications Team Leader on a continuous basis and the AML Officer.</p>

16. Investment processing

Rule	Risk Addressed	Compliance Measures	Responsibility Checked by
		<p>Normally these transfers are arranged through a bank in which case the bank will transfer the funds and report the transaction to AUSTRAC. It is the policy of the RE that international funds transfers only be arranged through a bank.</p> <p>The obligations under the FTR Act 1988 will be superseded with the implementation of the respective requirements under the AML/CTF Act 2006. The obligations to comply with the AML/CTF Act requirements are in accordance with the dates stipulated in the AML/CTF Act 2006.</p> <p>AML/CTF Act 2006</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>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>	

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. Two of these authorised staff members must authorise the transaction with the foreign exchange dealer. The checking and Authorising Officers have been delegated by the Chief Financial Officer. One of the Authorising Officers may be a Checking Officer</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 new investment summary 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 is 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
<p>Ensure the Scheme's liquidity procedures are in accordance with the Constitution and the PDS.</p>	<p>The level of liquidity in the Schemes is reduced significantly which would adversely affect Investor's interests in the Scheme.</p>	<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; 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>	<p>Senior Accountant, supervised by the Chief Financial Officer – monthly</p> <p>The financial position of the Scheme is reported monthly to the Chief Financial Officer</p>

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 Commercial Lending 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 Commercial Lending 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 and fully recoverable.</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 Portfolio Manager, the Risk Manager, the Arrears Manager, the Asset Manager and members of the Commercial Lending Department as appropriate; ■ The Arrears Committee generally meet at weekly. 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 prepared and 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; 	<p>Arrears Committee meets weekly.</p>

		<ul style="list-style-type: none"> • Issue of default notices; • 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; • 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 generally 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; ▪ 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 Commercial Lending, 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 Commercial Lending, Commercial Lending 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 Commercial Lending 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 Commercial Lending 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 Commercial Lending 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	
<p>Ensure that investment in Scheme Property is in accordance with the Act and the Scheme Constitution and PDS.</p>	<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; • 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; • Commercial Lending carries out regular reviews of all current loans; and • Settlement and ongoing payments must be certified by two approved Commercial Lending 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> <ul style="list-style-type: none"> • 65% for vacant land; • 75% for commercial loans; 	<p>The lending criteria is reviewed yearly by Commercial Lending Department.</p> <p>Credit Committee is responsible for each new proposal.</p> <p>The Commercial Lending 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"> 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 Commercial Lending 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 Scheme Property are valued at regular intervals appropriate to the nature of the asset.</p>	<p>Inaccurate valuations are performed on Scheme Property which may be of disadvantage to investors' interests.</p>	<p>Individual Scheme 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 Commercial Lending 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 Commercial Lending 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 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 requirements for an updated valuation may be waived where the RE considers that an updated valuation would serve no useful purpose.</p>	<p>Commercial Lending 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 Scheme 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>Commercial Lending 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 Commercial Lending Department.</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.

'Related Party' has the meaning given to the term in Part 5C of the Act.

'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.

'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.

'Rule' compliance rules forming part of the Plan.

'Scheme' means the registered managed investment Scheme to which this Plan applies.

'Scheme Property' means assets of the Scheme including but not limited to:

- (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);

'Security' in the context of loans means security in respect of a loan or an accompanying Scheme loan over the assets of the Scheme.

'Security property' means any property offered by a Borrower as security for an approved Mortgage in the Scheme.

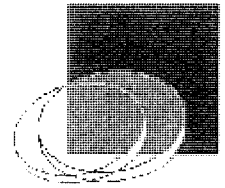
'Scheme Auditor' means the person who from time to time conducts the statutory audit of the Scheme.

'Scheme Property' means all the property, rights and income of the Scheme

'Service Provider' means a company contracted by the RE to provide a service to the Scheme.

'Unit' means an individual share in the beneficial interest in the Scheme as provided in the Constitution.

"SC-23"



LM Investment Management Ltd Conflicts Management Policy

Dated July 2005
Updated September 2009

Overview

This Conflicts Management Policy (*Policy*) was approved by the board of LM Investment Management Ltd (*LM*) on 4 August 2005.

Section 912A(1)(aa) of the *Corporations Act* requires a financial services licensee to:

have 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

ASIC has published [*PS 181*] *Licensing: Managing conflicts of interest* as a means of explaining its interpretation of section 912A(1)(aa) and its expectations of the arrangements to be implemented by financial services licensees.

This Policy seeks to document the arrangements within LM for the management of conflicts of interest in compliance with the requirements of section 912A(1)(aa) and with reference to the guidance provided by [*PS 181*] *Licensing: Managing conflicts of interest*.

Objectives

The objectives of this Policy are to:

1. Adopt a best practice approach to managing conflicts;
2. Aim to promote in management and staff a heightened awareness of conflicts;
3. Assist in reducing the possibility of conflicts occurring;
4. Ensure that the conflicts are managed effectively; and
5. Demonstrate compliance with section 912A(1)(aa) Corporations Act.

LM recognizes that conflicts management is an integral part of good management practice. LM has therefore integrated this Policy into its everyday business practices.

Scope

This Policy applies to all of LM's licensed activities, including LM's operation of the following managed investment schemes:

- LM First Mortgage Income Fund
- LM Wholesale First Mortgage Income Fund
- LM Cash Performance Fund
- LM Protected Cash Performance Fund
- LM Currency Protected Australian Income Fund
- LM Institutional Currency Protected Australian Income Fund
- LM Australian Income Fund – Currency Protected
- LM Australian Alif Fund

Policy Development Process

This Policy was developed by undertaking the following tasks:

- Reviewing relevant ASIC publications (primarily *[PS 181] Licensing: Managing conflicts of interest*);
- Defining “conflicts” for the purposes of the Policy;
- Documenting existing conflicts management practices;
- Reviewing and where necessary changing those practices;
- Identifying conflicts likely to arise in the conduct of LM’s financial services business;
- Assessing and evaluating such conflicts;
- Determining appropriate methods of dealing with such conflicts; and
- Documenting the resulting policy in this document.

This Policy has been developed by a consultative process involving relevant LM staff. It is critical that the Policy is communicated to all LM staff and, in particular, that the likelihood and consequences of conflicts are communicated to those staff having responsibility for the day to day management of LM’s financial services business. Ongoing training is to be provided to LM staff in relation to this Policy.

Responsibility for managing conflicts of interest

Primary responsibility for managing conflicts lies with the Board of Directors. The Board relies on the following to implement this Policy:

- Compliance Committee;
- Risk Manager (the Risk Manager has primary responsibility for implementing this Policy);
- Team Leaders;
- The Responsible Officers under the FSR licence; and
- LM staff.

The Board has formally approved this Policy for implementation.

Definition of conflict

For the purposes of this Policy, a conflict may be defined as:

A situation in which the interests of people to whom LM or its representatives provide financial services are inconsistent with, or diverge from, the interests of:

- *LM or its representatives; or*
- *other people to whom LM or its representatives provide financial services.*

(Adapted from: *[PS 181] Licensing: Managing conflicts of interest*)

A conflict may be actual, apparent or potential.

How LM manages conflicts

LM manages conflicts by a 3 step process:

1. Identifying conflicts;
2. Assessing and evaluating conflicts; and
3. Taking appropriate action.

Further information regarding each step is set out below:

Identifying conflicts

The Risk Manager has primary responsibility for identifying conflicts. The Risk Manager discharges this responsibility by:

- Continuously monitoring business activities within LM, including by attendance at committee meetings;
- Periodically reviewing selected files and records;
- Periodically reviewing specific LM department procedures in consultation with department managers;
- Educating staff generally in relation to conflicts and the requirements of this Policy; and
- Encouraging staff to identify and report conflicts.

Team leaders also have responsibility for identifying conflicts within their departments and reporting them to the Risk Manager.

Assessing and evaluating conflicts

The Risk Manager has primary responsibility for assessing and evaluating conflicts. The Risk Manager will consider each identified conflict and determine:

1. The nature of the conflict;
2. The extent of the conflict; and
3. The appropriate means of responding to the conflict.

In considering the appropriate response, the Risk Manager must have regard to the various duties that apply at law.

Directors' duties

The **directors** of LM have certain duties under Part 2D.1 of the *Corporations Act* including:

- to exercise their powers and discharge their duties with the degree and care of a reasonable person – section 180;
- to exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose – section 181;
- to not improperly use their position to gain advantage for themselves or someone else, or cause detriment to the corporation – section 182; and
- to notify other directors of material personal interest when a conflict arises – section 191

Officers' duties

The **officers** of LM have duties under section 601FD(1) of the Corporations Act:

- to act honestly;
- to exercise the degree of care and diligence that a reasonable person would exercise if they were in the officer's position;
- to act in the best interests of members and, if there is a conflict between the member's interest and the interests of the responsible entity, give priority to the member's interest;
- to not make use of information acquired through being an officer of the responsible entity in order to gain an improper advantage for the officer or another person, or cause detriment to the members of the scheme;
- to not make improper use of their position as an officer to gain, directly or indirectly, an advantage of for themselves for themselves or for any other person or to cause detriment to the members of the scheme; and
- to take all steps that a reasonable person would take to ensure that LM complies with the *Corporations Act*, LM's AFSL conditions, the relevant constitution and the relevant compliance plan of each LM fund.

Importantly, section 601FD(2) states that any duty of an officer under section 601FD(1) overrides any conflicting duty the officer has under Part 2D.1. In some cases, this may dictate a response to a conflict.

LM's duties

As a trustee LM owes fiduciary duties to the members of the funds operated by it. The relevant fiduciary duties imposed on LM as a trustee may be gauged by reference to the following quote from Jacob's Law of Trusts:

A trustee must not abuse his position by making it a means of profit or benefit to himself or to any third party. There are two elements in the reasoning which supports the fundamental rule; the first is the preclusion from effect upon the trustee of considerations of personal interest and is expressed by saying that the trustee must account for benefits or gains obtained in circumstances where there was an actual or significant possibility of conflict, between personal interest and fiduciary duty; the second is the preclusion of the trustee from actual misuse of his position and is expressed by saying he must account for any benefit or gain obtained or received by reason of or by use of his fiduciary position or of opportunity or knowledge resulting from it.

This general law restriction (which generally prevents a trustee from putting itself in a position where its duty and interest may conflict) may be excluded by a trust deed or constitution. That has been done in relation to the funds operated by LM.

However LM must nevertheless comply with the duties set out section in sections 601FC(1) and 601FC(2) of the *Corporations Act* in relation to each LM fund:

- to act honestly;
- to exercise the degree of care and diligence that a reasonable person would exercise if they were in the LM's position;
- to act in the best interests of the members and, if there is a conflict between the members' interests and its own interests, give priority to the members' interests;

- to treat the members who hold interests of the same class equally and members who hold interests of different classes fairly;
- to not make use of information acquired through being the responsible entity in order to gain an improper advantage for itself or another person or cause detriment to the members of the scheme;
- to ensure that the scheme's constitution meets certain requirements in the *Corporations Act*;
- to ensure that the scheme's compliance plan meets certain requirements of the *Corporations Act*;
- to comply with the scheme's compliance plan;
- to ensure that scheme property is clearly identified as scheme property and held separately from property of the responsible entity and property of any other scheme;
- to ensure that the scheme property is valued at regular intervals appropriate to the nature of the property;
- to ensure that all payments out of the scheme property are made in accordance with the scheme's constitution and the *Corporations Act*;
- to report to ASIC any breach of the *Corporations Act* that relates to the scheme and has had, or is likely to have, a materially adverse effect on the interests of members as soon as practicable after it becomes aware of the breach;
- to carry out or comply with any other duty, not inconsistent with the *Corporations Act*, that is conferred on LM by the scheme's constitution; and
- to hold scheme property on trust for scheme members.

Section 601FC(3) states that any duty of LM under section 601FC(1) and 601FC(2) overrides any conflicting duty an officer or employee has under Part 2D.1 of the *Corporations Act 2001*. This overriding mechanism may dictate LM's response to a conflict.

Related party transactions

It is possible that circumstances giving rise to a conflict of interest may involve a related party transaction. Where this is so, LM may need to comply with the provisions relating to related party transactions set out in Chapter 2E of the *Corporations Act* and as modified by Part 5C.7 in respect of a registered scheme.

Under the *Corporations Act*, a related party transaction is generally a transaction between a public company such as LM and a related party of LM, which involves the giving of a financial benefit to the related party. A related party includes a director of LM, a spouse, parent, or child of a director, an entity controlled by any of those persons or, if LM is controlled by an entity that is not a body corporate, each of the persons making up that controlling entity.

Where necessary, professional legal advice should be sought in relation to the application of Chapter 2E and Part 5C.7 and the procedures which are required to be undertaken.

Taking appropriate action

The Risk Manager has primary responsibility for undertaking appropriate action in relation to a conflict. The action taken will depend on the circumstances. As indicated above it may be necessary to:

1. *avoid* a conflict;
2. *disclose* a conflict; or
3. *control* a conflict.

Where there is doubt about what action to take to resolve a conflict, the Risk Manager will consult with LM's external lawyers and/or the Compliance Committee and/or the Board.

Avoiding conflicts

Any person who is involved in deciding an appropriate action to take where a conflict of interest arises (including the Risk Manager or any member of the Compliance Committee or the Board) must not be significantly affected by the conflict themselves.

As indicated above, the appropriate way of dealing with a conflict will depend on the circumstances. Sometimes the nature of a conflict may be so serious that the conflict must be avoided. In such a case LM must decline to provide the relevant financial service or to enter into the relevant transaction.

Disclosing conflicts

Disclosure is another possible way of dealing with a conflict. The mechanism by which disclosure (where it is appropriate) works to deal with a conflict is that it can demonstrate **informed consent** to the conflict. In the context of financial services, disclosure helps the client assess the service they are being offered in light of the licensee's interests and decide whether or not they will rely on the service on that basis.

To be effective, disclosure should:

1. be timely, prominent, specific and meaningful to the client;
2. occur before or when the relevant financial service is provided, or the relevant transaction is entered into, but in any case allow the client sufficient opportunity to assess its effect; and
3. refer to the specific service or the specific relevant transaction to which the conflict relates.

Disclosures may be given orally or in writing. For record keeping purposes, it is strongly recommended that disclosures be given in writing. Disclosures must comply with all relevant legislation, including the Corporations Act.

Controlling conflicts

There are many possible ways in which conflicts may be controlled. Whatever control is put in place, it must be sufficient to ensure that LM's duties are carried out in a transparent way. For example, it may be appropriate to control a conflict arising from a related party transaction by ensuring that the transaction is entered into on arm's length terms. This may be done by means of an independent valuation.

Structural arrangements to manage conflicts

Flat management structure

LM has a flat management structure. This structure supports the management of conflicts by ensuring a wide dissemination of information about LM's business activities throughout the company. It is considered that conflicts are more likely to be recognized and acted on if staff know what is happening within LM's different departments.

Roles of specific committees

The following structural arrangements are in place to manage conflicts:

- All loan applications are considered by a Credit Committee. This reduces the likelihood of the interests of prospective borrowers being preferred over the interests of fund investors.
- All defaults are managed through a Arrears Management Committee. This reduces the likelihood of the interests of defaulting borrowers being preferred over the interests of fund investors.
- Fund investments are managed by the Funds Committee. This reduces the likelihood of the interests of borrowers or fund investors being preferred over the interests of other fund investors.
- Related party dealings must be dealt with by the Compliance Committee as required by the Compliance Plan. This reduces the likelihood of the interests of related parties being preferred over the interests of fund investors.

Staff training

All LM staff receive training in relation to conflicts, at least once a year. The purpose of the training is to:

- define conflicts;
- provide examples of conflicts that arise in practice;
- enable staff to identify conflicts;
- describe how LM manages conflicts; and
- encourage staff to report conflicts to their Team Leader or to the Risk Manger.

Documentation and record keeping

Adequate records will be kept to demonstrate adherence to this Policy. The following records will be kept for at least 7 years, including records showing what LM has actually done to monitor compliance with this policy:

1. conflicts identified and action taken (these records will be kept by the Risk Manager in the form of a Conflicts Register);
2. reports given to the Compliance Committee, the Board or the Senior Executive Committee relating to conflicts (these records will be kept by the Risk Manager in a suitable form); and
3. copies of written conflict disclosures given to clients or to the public (these records will usually form part of the company's general business records - eg copies of previous PDS documents - or will otherwise be kept by the Risk Manager in a suitable form).

The Risk Manager reports to the Compliance Committee and the Board on a regular basis (at each Compliance Committee and Board meeting or more frequently if required) in relation to identified conflicts and how they are dealt with. The Compliance Committee and the Board monitor conflicts by reference to these reports.

Review of this Policy

Internal review

This Policy is to be subject to internal review at least once a year, or more frequently where required. The Risk Manager is responsible for conducting the internal review.

External review

This Policy is to be subject to external review at least once a year. The reviewer may be LM's auditor or LM's external lawyers. The Risk Manager is responsible for procuring the external review.

Conflicts of interest table

NB: This table is intended to record conflicts that may arise or have arisen in the course of LM's financial services business. It is envisaged that the table will be supplemented with examples of conflicts as and when they are recognized by the Risk Manager or other members of staff or as and when they arise in practice. Therefore the table should **not** be considered a definitive analysis of all conflicts that may arise.

Activity	Nature of possible conflict	Method of control
Loan fees	Preferring own interests over interests of fund investors	Disclosure/committee approval for individual transactions
Insurance requirements on loans	Preferring own interests to interests of fund investors	Disclosure
Investments by staff/friends or relatives of staff	Staff preferring own interests/interests of friends or relatives over interests of fund investors	Monitor staff investments/committee approval in accordance with Compliance Plan/ educate staff regarding need to treat all fund investors equally
Investments between funds	Preferring own interests over interests of fund investors	Disclosure/committee approval in accordance with Compliance Plan
Loan default management	Prefer interests of borrower over interests of fund investors	Committee approval for default action
Loans to related entities	Preferring interests of related entity over interests of fund investors	Disclosure/committee approval for all loans
Loans between funds	Preferring interests of one fund over the other	Disclosure/committee approval for all loans
Provision of services by related entity	Preferring interests of related entity over interests of fund investors	Disclosure/committee approval in accordance with Compliance Plan
Sale or purchase of property from related entity	Preferring interests of related entity over interests of fund investors	Sale or purchase considered by Board

"SC-24"

From: Grant Fischer
Sent: Tuesday, 17 February 2009 4:25 PM
To: 'Rebecca.Burrows@au.ey.com'
Cc: David Monaghan; Lisa Darcy
Subject: MPF Assigned loans and MIF PDS

Hi Bec

Spoke with David about the loans as per your call today.

We have classified this charge as a receivable to the fund rather than an investment. Investments of the MIF have to be first mortgages as represented in the PDS.

This is therefore a receivable created on assignment of an investment (first mortgage) secured by a charge.

It is better outlined in the first paragraph attached in the response to Mr Trudgeon.



Letter to Mr
Robert Trudgeon.d.

Grant Fischer
Chief Financial Officer
LM Investment Management Ltd
Phone: (07) 5584 4500
Fax: (07) 5592 2505
Email: gfischer@LMaustralia.com
Visit Our Website: www.LMaustralia.com/

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Mr R Trudgeon
28 Windsor Road
CRONULLA NSW 2230

10 February 2009

Dear Mr Trudgeon

RE YOUR LETTERS DATED 26 JANUARY 2009 and 31 JANUARY 2009 (2 LETTERS)

We refer to your 3 letters above.

We wrote to you on 3 February 2009 advising that we would be sending all investors an update regarding the fund within the next couple of weeks. That update will provide general information which responds to some of your questions. Not all of your questions will be answered by the update, so we have provided additional specific answers in this letter.

Your letter dated 26 January 2009

1. You ask whether the responsible entity is guilty of misleading or deceptive conduct by representing that it only invests in first registered mortgages, given that it has assigned 3 first registered mortgages to the LM Managed Performance Fund. We are firmly of the view that the responsible entity is not guilty of misleading or deceptive conduct in this or any other respect. The responsible entity formed the view that the best way to deal with the mortgages in question was to assign them. They were assigned. There was a resulting receivable due from the assignee, being the price of the mortgages assigned. That receivable was secured by a charge over the assignee. In our view it is incorrect to characterise the charge as an "investment". The taking of the charge was a prudent measure taken by the responsible entity to secure the purchase price for the assignment.
2. You ask whether the responsible entity has failed to be "responsible" by forgoing the security of 3 registered first mortgages for a charge over the assignee. The point you are missing is that the charge ranks ahead of other liabilities of the assignee. In those circumstances our response is that the actions of the responsible entity were entirely reasonable and "responsible".
3. You ask whether the assignment of the 3 loans to a related party was inconsistent with the representation that the fund was a first mortgage fund. There is no inconsistency.
4. You ask various questions in relation to a guarantee given by the LM Managed Performance Fund in favour of the LM First Mortgage Income Fund disclosed in the SPDS issued on 28 November 2008. Our responses are as follows: The guarantee was given because it was in the commercial interests of the LM Managed Performance Fund to give the guarantee. The terms of the loan are ordinary commercial terms. The guarantee is not a result of terms outside the LM

First Mortgage Income Fund's usual guidelines. The fund always seeks to take a guarantee, when available, from a party with a commercial interest in a transaction. The guarantee was given on arms length terms.

5. You ask various questions relating to the 3 related party loans disclosed in the SPDS issued on 28 November 2008. Our responses are as follows: The June and September 2008 loans were not made to related companies experiencing financial difficulties. The loans were made to the LM Managed Performance Fund and to LM MPF Developments No 1 Pty Ltd respectively. The due dates for repayment are 1 July 2009 and 1 October 2009 respectively. The loan terms have not been extended. The following repayments have been received for the second loan: \$631,852.63 was received on 10 October 2008 and \$451,495.79 was received on 23 January 2009.
6. You note that our Mr Monaghan told you on 11 December 2008 that LM attends to distributions to members before paying management fees. Whilst this was the position at the time, there is no requirement for LM to pay distributions first, and LM did not do this in January. Further information in relation to management fees will appear in the forthcoming investor update.
7. You ask whether the fund could have been insolvent since December 2008 when, according to you, "accounting would have indicated inability to pay January 2009 distributions". Interest distributions are not considered to be a debt of the fund. The fund is not insolvent and was not insolvent in December 2008.
8. You ask whether the responsible entity made any payment during December 2008 or January 2009 when it could have been insolvent. The responsible entity was not and is not insolvent.
9. You ask whether the responsible entity was in breach of the fund's constitution by not making December's interest payment by 14 January 2009. The constitution requires that distributable income be paid within 21 days of the end of each distribution period. The latest interest payments were made on or about 28 January 2009, some 7 days late.
10. You have asked whether the responsible entity is in breach of section 173(3) of the Corporations Act by not providing a computer disc detailing the members' register in response to your request for same. We have responded to this question previously. You have failed to satisfy us concerning your proposed use of the computer disc. The responsible entity is not in breach of the section.

Your shorter letter dated 31 January 2009

1. You ask why the portfolio update dated 31 October 2008 did not refer to the charge referred to in paragraph 1 under the previous heading above. The charge was only lodged for registration on 27 October 2008. In any event, we disclosed it in the SPDS issued on 28 November 2008. In our opinion, that was the appropriate place in which to disclose it.

2. You ask whether the failure to refer to the charge in the 31 October 2008 update was misleading or deceptive. It was not.
3. You ask some questions relevant only if the charge was created after 31 October 2008. There is no need to answer these questions.

Your longer letter dated 31 January 2008

1. You ask whether January interest was paid by way of additional funds borrowed from the Commonwealth Bank. We assume you are referring to December interest, which was paid in January. It was not paid by way of additional funds from the Commonwealth Bank.
2. You ask whether borrowing from the Commonwealth Bank is the means by which the responsible entity has funds available to pay its management fees. It is not.
3. You ask why the interest rate payable to members is to be reduced by 1%. The rate has been determined by reference to the position of the fund overall.
4. You ask for an explanation of the basis on which the responsible entity's management fees are calculated. This is explained in the PDS. The forthcoming investor update will also deal with this topic.
5. You ask for confirmation that loan terms are not being renewed. How we deal with loan terms depends on the particular circumstances of each loan. In general we are requesting that loans be repaid upon expiry. However, as you will appreciate, in the current financial crisis many borrowers are unable to repay or refinance loans. In those circumstances we may extend the term of a loan on satisfactory conditions.
6. You ask how the responsible entity "allows" LVRs of 80% or 90%. The constitution and the PDS permit this. Furthermore, as you will appreciate, the current financial crisis has made it difficult or impossible for many otherwise creditworthy borrowers to repay or refinance loans. In these circumstances an increase in some LVRs is to be expected.
7. You ask whether any of the loans you have referred to are to related companies. They are not.
8. You ask whether any of the loans you have referred to was renewed when the LVR increased beyond 70%. In relation to this question there comes a point where it is oppressive to require a fund manager to delve into records of past transactions apparently just to satisfy your curiosity. We think that point has been reached with this question. You will find disclosure of our practice with regard to LVRs in the PDS and the SPDS which are both available on our website.
9. You ask how frequently securities are revalued. This question is answered in the PDS.

10. You have requested copies of the fund's constitutions and compliance plans for the past 5 years. The current constitution has been provided to you. We are unaware of any obligation for us to provide the balance of the documents you have requested.

Finally, we wish to say something of a general nature about your repeated requests and letters to us. We acknowledge that members of the fund will occasionally have questions for us outside of the extensive disclosure that we already provide, including through the PDS, any relevant SPDS and our website. We are happy to respond to those questions provided they are reasonable and not oppressive in nature. However, we are not happy to respond to repeated requests of an unreasonable nature which do not appear to have any sensible purpose. Your longer letter of 31 January 2009 in particular appears to us to be in that category. Please note that we do not intend to respond to further correspondence of that nature.

We also wish to say something about the threats contained in your 2 letters of 31 January 2009. Such threats are unnecessary and inappropriate. They will not result in us dealing with your correspondence any more quickly.

Yours faithfully

"SC-25"

From: Shelley Chalmers
Sent: Monday, 19 July 2010 11:56 AM
To: 303 Commercial Lending
Subject: Notes from Asset Management Meeting 14.7.10

Folks notes of last week's meeting

I have highlighted matters for immediate action.

If there are any points I have not included please let me know.



Asset Mment list
of loans.xls

Shelley Chalmers
Commercial Lending
LM Investment Management Ltd
Phone: (07) 5584 4500
Fax: (07) 5592 2505
Email: schalmers@LMaustralia.com
Visit Our Website: www.LMaustralia.com/

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the recipient to whom it is addressed. If you are not the intended recipient or the person responsible for delivering this e-mail to the intended recipient, you are advised that any use, dissemination, forwarding, printing, or copying of this e-mail and any file attachments is strictly prohibited. If you have received this e-mail in error, you must destroy the original transmission and any attachments and immediately notify the sender by reply e-mail.

In red are "stressed loans"

MO/RT/MPF/AF/CP	Borrower	Asset manager and team	COMMENTS/ISSUES	Default loans	Interest Held in Facility	active Construction/non-construction	GEO AREA	REGION	SUBURB	LOAN TYPE	SECTOR CLASSIFICATION	SUB-SECTOR	RISK RATING	Related Borrowers	DB as at 30.6.10	Weighted Avg on Current Debt	Weighted Average Rate on total facility	Term of Loan	Maturity date
2008	Anchor Holdings	AA, BK	14.7.10 LVR from 80% to 90% for \$275,500. Due to priority LVR we get \$211,000. A shortfall we resolve - first to the bridge loan		\$ 626,178.49	Originaly construction, now commercial and in set down	NSW	Sydney	Wahroonga	Commercial	Residential	Average	1	626,178.49	626,178.49	#REF!	30	30/6/2009	
2140	Speci Pty Ltd	AA, BK	Bank competing for house with intention to sell. What is the status? 14.7.10 AA issuing intent to sell.		\$ 481,133.78	Incomplete construction, LVR not funding.	NSW	Other	Bonwars	Other	Residential	AAR - OI	2	481,133.78	481,133.78	#REF!	24	23/3/2009	
2012	Belpac	DM	14.7.10 litigation in train. MF, and MPF conflict issues still need to be considered. An agreement between the 2 MFs on a manager for the best way forward.		\$ 44,947,882.70	No	NSW	Other	Belbamb	Other	Industrial	AAR - OI	1	44,947,882.70	44,947,882.70	#REF!	36	30/6/2009	
MPF	Belpac/GPC (MPF)	DM	see above												20,135,607.69				30/6/2009
MPF	Elard Pty Trust	LD, SC	14.7.10 535 Sussex St opp. No issues at present												2,896,897.71				11.3.2011
2233	Greening Developments Pty Ltd	MB, BK	14.7.10. Loan in default. Del notices issued but not NEPOS. AA to include in status as a default loan. SI met with Borrowers recently. They say they have more assets. Not great prices. Extract details urgently to compare to release prices etc		\$ 14,791,878.57	Complete but not interest servicing to date as commercial	NSW	Other	Greening	Other	Industrial	Average	3	14,791,878.57	14,791,878.57	#REF!	24	14/1/2009	
MPF	Greening (MPF)	MB, BK	as above												1,300,566.00				12/3/2009
2164	Green Square Property Developments	MB, BK	14.7.10 LVR is breached past 85% and term expired. Do not extend, other loans to be included in default status, without notices being issued for time being.		\$ 8,907,822.48	Construction complete - in set down	NSW	Sydney	Abouadria	Other	Commercial	Average	4	8,907,822.48	8,907,822.48	#REF!	18	17/2/2010	
MPF	Green Square (MPF)	MR, BK	See above												2,587,060.00				17/2/2010
2057	Greenleaf Lifestyle Resort Pty Ltd	AA, BK	14.7.10 Residual lot 2 MP, and being marketed. AA now placing instructions to sell with agents		\$ 489,346.97	Vacant land	NSW	Other	Belmont	Other	Residential	AAR - OI	2	489,346.97	489,346.97	#REF!	24	15/2/2009	
2235	Greystance Projects Pty Ltd	MB, BK	14.7.10 Default loan from point of view that notices have been issued, but not NEPOS. AA to include loan in default status. Points moving forward are to either restart construction from unrestricted cash, or as a capital improvement from restricted cash. MPF may lend construction - under an agreement with MF. STMB to do a submission to ED once strategy decided.		\$ 21,980,302.51	construction loan but suspended for time being	NSW	Other	Greystance	Other	Industrial	AAR - OI	3	21,980,302.51	21,980,302.51	#REF!	24	1/8/2009	
MPF	Greystance (MPF)	MB, BK	As above												5,275,662.00				1/8/2009
2181	Lot 111 Pty Ltd	MB, BK	14.7.10 LVR is breached past 85% and term expired. Do not extend, other loans to be included in default status, without notices being issued for time being. There is a possible \$1M sale hanging in the wind. Matt has the details? Compare to val and release press.		\$ 23,362,707.14	Originally cons. completed years ago, now commercial	NSW	Other	Bekose	Other	Commercial	Average	4	23,362,707.14	23,362,707.14	#REF!	24	17/2/2010	
MPF	Lot 111 (MPF)	MB, BK	see above												3,634,006.00				17/2/2010
2199	Maidens Properties Pty Ltd	AA, DB	14.7.10 SI approved funding for AA to getting marketing campaign under way		\$ 3,636,902.40	Commercial	NSW	Other	Kingscliff	Commercial	Commercial	Average	7	3,636,902.40	3,636,902.40	#REF!	60	17/1/2011	
2113	Magnolia Grove Investments Pty Ltd	AA, DB	14.7.10 5 units left, no current offers, not actively marketing, only internet marketing until funds available for marketing campaign. SI approved funding for AA to re-investigate a marketing campaign.		\$ 3,401,435.23	completed years ago, now commercial, although not interest servicing	NSW	Sydney	Wahroonga	Other	Residential	Non Perf	6	3,401,435.23	3,401,435.23	#REF!	15	19/5/2007	
2080	Oval Pty Ltd 1	77 57/ND, DB, AM	April 2010 Currently negotiating with second Mortgagee to reach agreement so he will sign Consents to allow settlements. 2 Settlements pending subject to Walker's consent 14.7.10 Negotiations with Zet have made no significant progress. Contoller about to see apposed		\$ 10,389,195.35	Originally cons. completed years ago, now commercial	NSW	Other	Banora Pt	Other	Residential	AAR - OI	9	10,389,195.35	10,389,195.35	#REF!	18	30/9/2010	
2215	Oval Pty Ltd 2	77 57/ND, DB, AM	see above		\$ 8,466,871.28		NSW	Other	Banora Pt	Other	Residential	AAR - OI	9	8,466,871.28	8,466,871.28	#REF!	18	30/9/2010	
1	NSI (Trustee Investment Company) Pty Ltd (FIMF Receivable)	AA, GM 77/SC	This is receivable to FIMF from participant in MFL. Ligation on the loan involving INTERNAL LOAN EXPRESS AUGUST 2010 14.7.10 SI and GM concerns negotiations with Capital Corp for a possible JV on the land. Although this in light of impending expiry - if a deal is struck transaction will be re-structured. If not done in time an extension will need to be agreed with FIMF		\$ 21,388,774.34	No	NSW	Other	Cullin	Other	Pre-development Land	AAR - OI	5	21,388,774.34	21,388,774.34	#REF!	18	28/8/2010	
2153	Becarra Developments Pty Ltd (class)	AA77/SC	14.7.10 In negotiation for 2 possible sales.		\$ 47,196,753.57	Originally cons. completed years ago, now residential	QLD	Other	Sumers Prairie	Other	Residential	Average	10	47,196,753.57	47,196,753.57	#REF!	24	11/2/2006	

ID	Borrower	Asset manager and team	COMMENTS/ISSUES	Default loans	Interest held in Facility	Active construction/non-commercial	REG AREA	REGION	SUBURE	LOAN TYPE	SECTOR CLASSIFICATION	SUB-SECTOR	RISK RATING	Related Borrowers	Debt as at 30.6.10	Weighted Avg on Current Debt	Weighted Average Rate on total Facility	Term of Loan	Maturity date
2200	Brambleton Pty Ltd	FV/SC	April 2010 MF: Monthly rental distributions being received via receivers of Cayman. Some contribution to interest paid by contractor. One Body Corp leaves \$163k (letter of demand received 6/05/10); rest \$131k & linked SECK. 14.7.10 No change for June being	\$ 26,168,889.38		commercial	QLD	Other	Surfers Paradise	Commercial	Commercial	Hosp	Average	11	26,168,889.38	#REF!	#REF!	12	1/12/2010
2206	Conveyance Management Pty Ltd (Company name up at 08/8 on Silobone pvt)	LA, REIT, NS, BK, AM, BK	14.7.10 Term expired. Do not extend as this is an "enh 3 strategy" - AA to include further details	\$ 16,517,272.34	\$ 19,222,740.37	construction of Stage 1 completed. Stage 2 deferred.	QLD	Other	Caboolture	Other	Residential	Ret V/A	AAR - OI	12	19,222,740.37	#REF!	#REF!	12	1/5/2009
2248	(Bushland Bands) LMM aff. LM Managed Perf Fund	GM, DB	April 2010 Direct loan ownership by MF. GM working on DA ext. possibly next 4 weeks. 14.7.10. OBI to write to CC - extend term. Lower position on LVR. Interest starting etc.	\$ 2,203,198.91	\$ 2,203,198.91	NO	QLD	Other	Bushland Beach	Other	Pre-development/Land		AAR-OI	5	2,203,198.91	#REF!	#REF!	12	1/12/2010
MF	LM Capicola	GM, DB, NS	April 2010 Deb to speak to Grant, GM suggests increase in LVA to \$10M. Deb to discuss with MF re wording of interest clause and increase to LVA at the same time 14.7.10 ongoing												7,862,679.12	#REF!	#REF!		13.10
MF	LM Conover, (also see Youngland for \$9.5M component)	SW, BG, SM, DB, NS	14.7.10. GM and BK to review and take to MF. DC in light of MGLA being amended. Also update on status on Y/N and Suffer's Finance		\$ 4,893,416.00										35,817,500.00	#REF!	#REF!		30.11.2014
2200	Northshore Bayview SF Pty Ltd	GM, BK	April 2010 35.0% deficit has changed to 10% loan (MF and MF) which believe is now to be a high net fee and revised changed accordingly? CC approval to be sought on extension and strong other changes. Various ongoing issues with builder etc. Conflict issue between MF and MF in light of LVR position on GST (architectural). Joint issue on GST (architectural). Joint issue on GST (architectural). Joint issue on GST (architectural). Joint issue on GST (architectural).	\$ 48,881,258.23	\$ 22,837,468.12	Construction ceased	QLD	Other	Runaway Bay	Other	Residential	Residential	AAR - OI	13	16,857,233.23	#REF!	#REF!	24	1/11/2010
MF	Northshore (MF)	GM, BK	see above		\$ 4,893,416.00										4,693,415.00	#REF!	#REF!		30/11/2010
MF	Parragon Beach (Northshore)	GM, SM, SW	New MF project - David Howes - test case for MF file structure												75,100.00				
MF	New David Haves Reclaim Bay Development (Petrae)	LM RET L - KS, GM, BK	14.7.10 Check file be packaged for CC BEFORE SETTLEMENT? Original test case for MF file structure. Submitted and 27/1/2010	\$ 22,837,468.12	\$ 22,837,468.12	Construction ceased	QLD	Other	Reclaim Bay	Other	Residential	Ret V/A	AAR - OI	9	22,837,468.12	#REF!	#REF!	18	1/10/2008
2225	Reclaim Bay Leisure Life Development (Petrae)	LM RET L - KS, GM, BK	14.7.10 Long term hold	\$ 24,550,112.79	\$ 24,550,112.79	Construction ceased	QLD	Other	Reclaim Bay	Other	Residential	Ret V/A	AAR - OI	9	24,550,112.79	#REF!	#REF!	12	1/10/2008
2165	Reclaim Bay Leisure Life (Petrae)	NS	as above	\$ 12,871,486.31	\$ 12,871,486.31	No	QLD	Other	Calms	Commercial	Commercial	Stud Acc	Average	11	12,871,486.31	#REF!	#REF!	24	30/2/2009
2230	Source Student Lodge Pty Ltd	NS	14.7.10 Receiver and Manager Appointed. Strategy under review with PD.	\$ 13,480,423.18	\$ 13,132,877.88	Construction ceased	QLD	Other	Coopers	Other	Residential	Ret V/A	AAR - OI	14	13,132,877.88	#REF!	#REF!	17	1/11/2008
2242	Source Developments No 1 Pty Ltd	GM/MBY/DB	April 2010 strategy moving forward - dependent on cash - expect that once CBA refinanced on this would be one of the first projects to get under way. 14.7.10. Now CBA is gone we are looking to gear up to continue funding. Possibly a September start.	\$ 37,434,970.34	\$ 37,434,970.34	No	QLD	Other	Port Douglas	Other	Commercial	Ret V/A	Non Perf	15	37,434,970.34	#REF!	#REF!	18	1/9/2008
2177	St. Crispin's Property Pty Ltd	NS	14.7.10 N/C		\$ 8,306,379.63	LM not funding construction - another lender in place.	QLD	Other	Sticks Creek	Other	Residential	Ret V/A	AAR - OI	16	8,306,379.63	#REF!	#REF!	12	31.8.10
2144	Tali Trees Tanah Merah (Living Concepts) Pty Ltd (UPD)	GM, BK	April 2010 Status on CBA funding project moving forward. What is current V/R - awaiting details of CBA priority. June 2010 received C.C. approval - stated that we are a secured lender and we are back to the CBA but the bank is not giving us the address security also. 14.7.10 What is position on the additional security and term extension recently approved? Term expires 31.8.10? GM to speak to CBA on its position and update CC meeting forward		\$ 15,560,415.19	No	QLD	Other	Townside	Commercial	Commercial	Hosp	Average	17	15,560,415.19	#REF!	#REF!	36	2/9/2010
2231	Townside Commercial Pty Ltd (DR)	NO, SC	14.7.10 ST to speak to Warren Thompson. Draft letter to Borrower not yet sent.												27,273,528.86	#REF!	#REF!		21/9/2010
2102	Young Land Corporation (Yeppoon)	GM, DB	May 2010 DY to present PD with leases on possible scenarios in view of zoning issues. DY to contact all creditors to make payment arrangements. 14.7.10. Project provided by DY were insufficient. GM speaking to DY on this issue. Hidden Valley line issue impacts on value. Marketing campaign next 6 months. Non performing loan to be treated as a default loan for sale.		\$ 9,568,237.75	No	QLD	Other	Yeppoon	Other	Residential	Ret V/A	AAR - OI	18	9,568,237.75	#REF!	#REF!	18	21/9/2010
2102	Young Land Corporation (Yeppoon) (parent to DY)	GM, DB	refer above and also refer to LM Coomer loan		\$ 2,800,047.30	No	QLD	Other	Yeppoon	Other	Commercial	Hosp	Average	18	2,800,047.30	#REF!	#REF!	36	20/12/2009
2223	Young Land Corporation - Carrol	AA, DB	14.7.10 fastest rental income being received into the Coomer Account		\$ 2,800,047.30	No	QLD	Other	Surfers Paradise	Commercial	Commercial	Hosp	Average	18	2,800,047.30	#REF!	#REF!	36	20/12/2009

MORT/ MPF/ AIFCP	Borrower	Asset manager and team	COMMENTS/ISSUES	Default loans	Interest Held In Facility	active Construction/ non- construction	GEO AREA	REGION	SUBURB	LOAN TYPE	SECTOR CLASSIFICATION	SUB - SECTOR	RISK RATING	Related Borrowers	Debt as at 30.6.10	Weighted Avg on Current Debt	Weighted Average Rate on total facility	Term of Loan	Maturity date
2043	Bridgewater Lake Estate Ltd	LM RET L - KS, NO DB	LM controller from 01.04.10 (Liquidator retirement) - operational issues & stat requirements being bedded down. Lot 14 sold, settlement expected by 26 May, the bulk of sale proceeds to come to LM after receiver fees and adjustments etc 14.7.10 Under ongoing management	\$ 16,433,879.67	\$ 16,433,879.67	construction ceased	VIC	Melbourne	Roxburgh Park	Other	Residential	Retl Vnt	Non Perf	10	16,433,879.67	#REF!	#REF!	24	1/7/2008
2071	KPG 13th Beach Stage 1 (FMIF Receivable)	ND, AA, SC	14.7.10 INTERNAL LOAN EXPIRES AUGUST 2010. Most likely that this loan will be extended. Monitor for a little while longer and see what happens on the Lifestyle loan. Deal with them together if possible.	\$ 9,037,815.00	\$ 9,037,815.00	completed years go, now commercial	VIC	Other	Barwon Heads	Other	Residential		Non Perf	5	9,037,815.00	#REF!	#REF!	18	28/8/2010
2083	Trinity Project Developments	MB, DB	April 2010 50 lots being developed. 44 sold, completion mid July, settlement late August. 14.7.10 CC synopsis recently circulated for an extension and for LM to recoup some interest/fees from profits. ST to speak to DB on the proposal. Likelihood that AIF may buy a share of FMIF loan.	\$ 5,966,669.29	\$ 5,966,669.29	Still considered a construction loan. UDLB stated	VIC	Other	Hoppers Crossing	Other	Residential		AAR - OI	20	5,966,669.29	#REF!	#REF!	10	1/11/2009
2118	U-Own Storage (Southbank) Pty Ltd	GM, DB	April 2010 GM meeting Terry Scanlan & Chris Bell this week. 14.7.10 ongoing	\$ 3,737,611.73	\$ 3,730,685.17	Stage 1 completed. Stage 2 deferred.	VIC	Melbourne	Port Melb	Other	Commercial		AAR - OI	21	3,730,685.17	#REF!	#REF!	24	30/11/2008
2157	AIIS Ply Ltd	GM, SC	April 2010 Both FMIF and MPF loans expire 1.5.10. GM getting advice on LIA issues and working on lease's etc. to meet with LM Directors. Plan take to CC 14.7.10 GM to take to CC for extensions. MPF to pay interest moving forward?			No	ACT	Canberra	Phillip	Other	Pre-development Land		AAR - OI	5	7,816,603.64	#REF!	#REF!	24	1/5/2010
	AIIS Ply Ltd (mpf)	GM, SC	AS ABOVE											5,043,981.04					1/5/2010
2240	Couler Developments	MB, DB	April 2010 work complete - QC due any day. Caveat issues with former builder, borrower getting advice. Presales have been terminated due to length of time to settle, litigation between builder and borrower currently before the Courts re Caveat on Title with some determination expected in the next few weeks. 14.7.10 Proceed to completion with new builder, lift caveat, get titles		\$ 11,460,175.36	Yes. UDLB stated	WA	Perth	Perth	Other	Residential		AAR - OI	22	11,460,175.36	#REF!	#REF!	24	30/9/2010
2163	Eden Apartments Pty Ltd	ND, DB	Some units leased, income from rental being received into Controller Account, one offer on the table at present, albeit below valuation	\$ 22,546,616.18	\$ 21,064,884.03	Originally cons. completed years go, now commercial	WA	Perth	Perth	Other	Residential		Average	23	21,064,884.03	#REF!	#REF!	24	1/9/2008
2196	Kingopen P/L	MB, SC	Last Council Bond totalling \$117k due back as soon as landscaping works on council land have been completed. Landscaping quotes due by week ending 7th May, approx 2 weeks to complete Landscaping then further 2 weeks to receive council sign off and return of Bond. Conflict issues between FMIF and MPF. E38	\$ 6,626,258.49	\$ 6,626,258.49	Between stages, no Const funding approved	WA	Perth	Perth	Other	Residential		AAR - OI	24	6,626,258.49	#REF!	#REF!	10	1/11/2008
MPF	Kingopen P/L	MB, SC	as above											8,752,002.00					1/11/2008
2193	Canoco Estates P/L	LM RET LIV - KS, ND, DB	ND to hand over to Kate Scott	\$ 3,584,870.26	\$ 3,516,014.26	Originally cons. completed years go,	TAS	Launceston	Launceston	Other	Commercial	Retl Vnt	Average	25	3,516,014.26	#REF!	#REF!	10	1/7/2008
				\$ 328,584,120.28	\$ 320,823,854.47														
					21														

AUDITORS

SC-26

From: Simon Tickner
Sent: Tuesday, 17 August 2010 8:34 AM
To: Grant Fischer
Cc: Lisa Darcy
Subject: FW: Bellpac Rates
Attachments: 20100806191938516.pdf

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

From: Adrien Armes
Sent: Monday, 16 August 2010 2:22 PM
To: Simon Tickner
Cc: David Monaghan (Monaghan Lawyers); Amy Duke; Ann McCallum; Fiona Draney
Subject: Bellpac Rates

Simon

The rates as attached can be paid off by instalments as follows :

Notice		Payment By 31/8/2010	Payment By 30/11/2010	Payment By 28/2/2011	Payment By 31/5/2011
0643564	Arrears	\$279,027.87			
	Instalment	\$ 67,784.22	\$ 67,784.22	\$ 67,784.22	\$ 67,784.22
2116072	Arrears	\$ 3,144.21			
	Instalment	\$ 184.35	\$ 184.20	\$ 184.20	\$ 184.20
Total		\$350,140.65	\$ 67,968.42	\$ 67,968.42	\$ 67,968.42

If you want to reduce the payments I will have to ring them and see what can be arranged.

Thanks

Adrien Armes
 Arrears Manager
 LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5538 1965
 Email: adrien@LMaustralia.com
 Visit Our Website: www.LMaustralia.com

'SC-27'

From: Grant Fischer [gfischer@lmaustralia.com]
Sent: Wednesday, 18 August 2010 10:17 AM
To: Simon Tickner
Cc: Lisa Darcy; David Monaghan; Shelley Chalmers
Subject: RE: Bellpac Rates

Hi Simon - 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.

From: Simon Tickner
Sent: Tuesday, 17 August 2010 8:34 AM
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Cc: Lisa Darcy
Subject: FW: Bellpac Rates

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Adrien Armes
 Arrears Manager
 LM Investment Management Ltd
 Phone: (07) 5584 4500

Fax: (07) 5538 1965
Email: adrien@LMaustralia.com
Visit Our Website: www.LMaustralia.com

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"SC-28"

From: David Monaghan
Sent: Friday, 20 August 2010 9:29 AM
To: Grant Fischer; Simon Tickner
Cc: Lisa Darcy; Shelley Chalmers
Subject: RE: Bellpac Rates

Follow Up Flag: Follow up
Flag Status: Flagged

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.

David Monaghan
 Principal
Monaghan Lawyers
 Level 4, 9 Beach Road
 Surfers Paradise, Qld 4217
 Phone (07) 5584 4500
 Fax (07) 5538 1965
 Email: dmonaghan@monaghanlawyers.com.au

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Cc: Lisa Darcy
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2116072	Arrears	\$ 3,144.21			
	Instalment	\$ 184.35	\$ 184.20	\$ 184.20	\$ 184.20
Total		\$350,140.65	\$ 67,968.42	\$ 67,968.42	\$ 67,968.42

If you want to reduce the payments I will have to ring them and see what can be arranged.

Thanks

Adrien Armes
 Arrears Manager
 LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5538 1965
 Email: adrien@LMaustralia.com
 Visit Our Website: www.LMaustralia.com

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"SC-29"

From: Ann McCallum
Sent: Friday, 20 August 2010 12:24 PM
To: Matthew Batcheldor; Greg McDonald
Cc: Simon Tickner; Lisa Darcy
Subject: FW: Funding by MPF

Matt / Greg
 See below.

Matt, as discussed, can u please put together a cash flow of funds needed for **Kingopen** and **Greystanes**. I think you will need to distinguish between holding costs and development costs, MIF interest. Simon would like this before any agreement between MPF and MIF is decided.

Greg, at the moment I believe all rates etc on **AIS** and **Bushland Beach** are paid by MPF. MPF is funding interest on MIF loan for AIS but interest is accumulating on the MIF Bushland Beach loan. We will also need development cashflows on these 2 loans in due course to look at funding requirements.

Bellpac costs of litigation are being funded by MPF. A decision needs to be made re holding cost rates etc. Fiona tells me that Grant has Land Tax on his list to pay from MPF by end of September (\$103,501) and rates to 30/6/11 are payable by instalments of \$350,141 by 31/8 with further instalments of \$68K due in November, Feb 2011 and May 2011.

Happy to discuss.
 Ann

From: Ann McCallum
Sent: Friday, 20 August 2010 9:04 AM
To: Simon Tickner
Cc: Lisa Darcy
Subject: Funding by MPF

Simon

The loans we had earmarked to be potentially funded (wholly/partially) by MPF are:

- Bellpac
- Greystanes
- AIS
- Bushland Beach
- Kingopen

We have some holding costs (rates etc) to pay now. Can we please have some direction on payments as the DB agreement requires all rates etc to be paid by the due date. Due by 31/8 is Bellpac \$350,140 and Greystanes \$100,160.

Ta

Ann McCallum
 Commercial Lending
LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5538 1965
 Email: amccallum@LMAustralia.com
 Visit Our Website: www.LMAustralia.com/

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 -----/

"SC-30"

From: Simon Tickner
Sent: Wednesday, 25 August 2010 12:16 PM
To: Eghard van der Hoven; Peter Drake; Lisa Darcy
Subject: Fw: Bellpac - Rates account # 0643564 and 2116072
Attachments: 20100806191938516.pdf

As discussed recently we need to determine the funding of rates for Bellpac If MIF funds them it has to be under terms of the DB agreement where they must be paid in full by end September If MPF decides to fund them it can enter the payment plan below at around 130k per quarter

If MPF funds then it will allow MIF cash to return quicker to a position where we have access to unrestricted cash and less reliant on MPF for fees. First payment due by 31 august

I think this may be the best solution and if so we should include this in an interfund agreement

Your thoughts

----- Original Message -----

From: Adrien Armes
To: Simon Tickner; Ann McCallum; Fiona Draney; Shelley Chalmers
Cc: Grant Fischer; David Monaghan (Monaghan Lawyers)
Sent: Wed Aug 25 10:04:30 2010
Subject: Bellpac - Rates account # 0643564 and 2116072

Hi Simon

With regard to the above, as requested I rang the council to make an arrangement to pay off the rates totalling \$554,046.90, the only arrangement they would make was if we paid the total amount owing before the next rates notice was issued which is 1/7/2011 for the period 2011 - 2012. We agreed to the following arrangement and the Council's written agreement is in the email below.

The arrangement is for us to pay off the rates in 4 instalments commencing 31/8/2010 with the final instalment on 31/5/2011.

1st payment due 31/8/2010
 Full payment of account 2116072 for \$3,881.16
 1 instalment of account 0643564 for \$137,541.12

Future instalments
 2nd Instalment 30/11/2010 \$137,541.12
 3rd instalment 28/2/2011 \$137,541.12
 4th instalment 31/5/2011 \$137,541.12

I assume this will be paid via MPF ?

Adrien Armes
 Arrears Manager
 Property Asset Management
 LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5538 1965
 Mobile: 0419 647 283
 Email: adrien@LMAustralia.com
 Visit Our Website: www.LMAustralia.com <<http://www.lmaustralia.com/>>

From: Val Kucelj [mailto:VKucelj@wollongong.nsw.gov.au]
 Sent: Wednesday, 25 August 2010 9:53 AM
 To: Adrien Armes
 Subject: RE: Rates account # 0643564 and 2116072

Good morning Adrien

Thank you for your email and I confirm acceptance of your payment arrangement detailed below and look forward to receiving the first instalment on 31 August 2010.

Please do not hesitate to contact me by telephone /email if you have any further enquiries.

Regards

Val Kucelj
 Senior Debt Recovery Officer
 Wollongong City Council
 41 Burelli Street
 Wollongong NSW 2500
 T: 02 4227 7123
 F: 02 4226 9836
 E: vkucelj@wollongong.nsw.gov.au

From: Adrien Armes [mailto:adrien@lmaustralia.com]
 Sent: Tuesday, 24 August 2010 4:40
 To: Val Kucelj
 Subject: Rates account # 0643564 and 2116072

Dear Val

With regard to the above and to our telephone discussion of today, we hereby request you agree to the following payment arrangement

Rate A/c 2116072

\$3,881.16 Paid by 31/8/2010

Rate a/c 0643564

\$137,541.12	paid by	31/08/2010
\$137,541.12	paid by	30/11/2010
\$137,541.12	paid by	28/02/2011
\$137,541.12	paid by	31/05/2011

Upon confirmation from you that this is acceptable I will arrange for the 1st instalment to be made.

King regards & appreciation.

Adrien Armes
 Arrears Manager
 Property Asset Management
 LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5538 1965

Mobile: 0419 647 283

Email: adrien@LMAustralia.com

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"SC-31"

From: Simon Tickner [STickner@lmaustralia.com]
Sent: Tuesday, 31 August 2010 3:49 PM
To: David Monaghan
Subject: RE: Bellpac - Rates account # 0643564 and 2116072

Follow Up Flag: Follow up
Flag Status: Flagged

David

One of the reasons for an agreement may be to satisfy DB that FMIF is not required to pay outstanding sums as their facility requires FMIF to ensure all such charges are up to date. A formal agreement would make that easier. Would there be any disadvantage in having it documented?

-----Original Message-----

From: David Monaghan [mailto:dmonaghan@monaghanlawyers.com.au]
Sent: Tuesday, 31 August 2010 3:44 PM
To: Simon Tickner
Subject: RE: Bellpac - Rates account # 0643564 and 2116072

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.

David Monaghan
Principal
Monaghan Lawyers
Level 4, 9 Beach Road
Surfers Paradise, Qld 4217
Phone (07) 5584 4500
Fax (07) 5538 1965
Email: dmonaghan@monaghanlawyers.com.au

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-----Original Message-----

From: Simon Tickner [mailto:STickner@lmaustralia.com]
Sent: Monday, 30 August 2010 9:34 AM
To: David Monaghan
Subject: FW: Bellpac - Rates account # 0643564 and 2116072

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.

Many thanks

Simon

-----Original Message-----

From: Simon Tickner
Sent: Monday, 30 August 2010 9:33 AM

To: Adrien Armes
 Subject: FW: Bellpac - Rates account # 0643564 and 2116072

MPF draw for the 1st instalment

-----Original Message-----

From: Eghard van der Hoven
 Sent: Monday, 30 August 2010 9:33 AM
 To: Simon Tickner
 Subject: RE: Bellpac - Rates account # 0643564 and 2116072

Can go

Eghard van der Hoven
 Executive Director/ Portfolio Manager
 LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5592 2505
 Email: evanderhoven@LMaustralia.com
 Visit Our Website: www.LMaustralia.com/

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-----Original Message-----

From: Simon Tickner
 Sent: Monday, 30 August 2010 9:30 AM
 To: Eghard van der Hoven
 Subject: Fw: Bellpac - Rates account # 0643564 and 2116072

Can this go tomorrow?

----- Original Message -----

From: Lisa Darcy
 To: Simon Tickner; Eghard van der Hoven; Peter Drake
 Sent: Wed Aug 25 12:37:02 2010
 Subject: Re: Bellpac - Rates account # 0643564 and 2116072

Agree with this mpf cash permitting lisa Lisa Darcy LMIM Ltd

----- Original Message -----

From: Simon Tickner
 To: Eghard van der Hoven; Peter Drake; Lisa Darcy
 Sent: Wed Aug 25 12:16:19 2010
 Subject: Fw: Bellpac - Rates account # 0643564 and 2116072

As discussed recently we need to determine the funding of rates for Bellpac If MIF funds them it has to be under terms of the DB agreement where they must be paid in full by end September If MPF decides to fund them it can enter the payment plan below at around 130k per quarter

If MPF funds then it will allow MIF cash to return quicker to a position where we have

access to unrestricted cash and less reliant on MPF for fees. First payment due by 31 august

I think this may be the best solution and if so we should include this in an interfund agreement

Your thoughts

----- Original Message -----

From: Adrien Armes
 To: Simon Tickner; Ann McCallum; Fiona Draney; Shelley Chalmers
 Cc: Grant Fischer; David Monaghan (Monaghan Lawyers)
 Sent: Wed Aug 25 10:04:30 2010
 Subject: Bellpac - Rates account # 0643564 and 2116072

Hi Simon

With regard to the above, as requested I rang the council to make an arrangement to pay off the rates totalling \$554,046.90, the only arrangement they would make was if we paid the total amount owing before the next rates notice was issued which is 1/7/2011 for the period 2011 - 2012. We agreed to the following arrangement and the Council's written agreement is in the email below.

The arrangement is for us to pay off the rates in 4 instalments commencing 31/8/2010 with the final instalment on 31/5/2011.

1st payment due 31/8/2010
 Full payment of account 2116072 for \$3,881.16
 1 instalment of account 0643564 for \$137,541.12

Future instalments
 2nd Instalment 30/11/2010 \$137,541.12
 3rd instalment 28/2/2011 \$137,541.12
 4th instalment 31/5/2011 \$137,541.12

I assume this will be paid via MPF ?

Adrien Armes
 Arrears Manager
 Property Asset Management
 LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5538 1965
 Mobile: 0419 647 283
 Email: adrien@LMAustralia.com
 Visit Our Website: www.LMAustralia.com <<http://www.lmaustralia.com/>>

From: Val Kucelj [mailto:VKucelj@wollongong.nsw.gov.au]
 Sent: Wednesday, 25 August 2010 9:53 AM
 To: Adrien Armes
 Subject: RE: Rates account # 0643564 and 2116072

Good morning Adrien

Thank you for your email and I confirm acceptance of your payment arrangement detailed below and look forward to receiving the first instalment on 31 August 2010.

Please do not hesitate to contact me by telephone /email if you have any further

enquiries.

Regards

Val Kucelj
Senior Debt Recovery Officer
Wollongong City Council
41 Burelli Street
Wollongong NSW 2500
T: 02 4227 7123
F: 02 4226 9836
E: vkucelj@wollongong.nsw.gov.au

From: Adrien Armes [mailto:adrien@lmaustralia.com]
Sent: Tuesday, 24 August 2010 4:40
To: Val Kucelj
Subject: Rates account # 0643564 and 2116072

Dear Val

With regard to the above and to our telephone discussion of today, we hereby request you agree to the following payment arrangement

Rate A/c 2116072

\$3,881.16 Paid by 31/8/2010

Rate a/c 0643564

\$137,541.12	paid by	31/08/2010
\$137,541.12	paid by	30/11/2010
\$137,541.12	paid by	28/02/2011
\$137,541.12	paid by	31/05/2011

Upon confirmation from you that this is acceptable I will arrange for the 1st instalment to be made.

King regards & appreciation.

Adrien Armes
Arrears Manager
Property Asset Management
LM Investment Management Ltd
Phone: (07) 5584 4500
Fax: (07) 5538 1965
Mobile: 0419 647 283
Email: adrien@LMAustralia.com
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'SC-32'

From: Simon Tickner [STickner@lmaustralia.com]
Sent: Thursday, 21 October 2010 11:52 AM
To: David Monaghan; Lisa Darcy
Cc: Peter Drake; Grant Fischer
Subject: RE: Bellpac

Thanks David

We can discuss this in detail at our meeting next Tuesday as we will also need to contemplate how and settlement is attributable to each fund .

Simon

From: David Monaghan [mailto:dmonaghan@monaghanlawyers.com.au]
Sent: Thursday, 21 October 2010 11:48 AM
To: Lisa Darcy
Cc: Peter Drake; Simon Tickner; Grant Fischer
Subject: RE: Bellpac

Lisa

Last time, ie in the 23 July 2008 restated settlement deed, Gujarat agreed to a sale price of \$35M for the mining land. There was to be a \$25M loan from LM and the balance of \$10M was to be paid by way of Gujarat bonds. I am determining the holding costs.

The feasibility for the development land is attached (from Grant). It shows an NPV of \$36M. The relevant assumptions are in tab 2 of the spreadsheet.

If LM achieved a sale of the mining land at \$35M and went on to fully develop the development land in accordance with the assumptions, I believe that means the debt would be paid in full (Grant, is this right?). However I think ideally LM should try for a royalty payment to provide a buffer, and to provide some flexibility for dealing with the development land. For example LM may wish to sell the development land rather than develop it.

David Monaghan
Principal
Monaghan Lawyers



A Level 4 9 Beach Road Surfers Paradise Qld P PO Box 315 Surfers Paradise Qld 4217
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-----Original Message-----

From: Lisa Darcy [mailto:ldarcy@LMAustralia.com]
Sent: Wednesday, 20 October 2010 6:31 PM
To: David Monaghan; Peter Drake; Simon Tickner
Subject: Re: Bellpac

Hi there - I think we should put some science around sale price if we haven't already - ie what did they agree to last time plus holding costs is this higher or lower than 35m ?? Also do we recover the residual debt from development feaso?? Ta lisa Lisa Darcy LMIM Ltd

----- Original Message -----

From: David Monaghan <dmonaghan@monaghanlawyers.com.au>

To: Peter Drake; Lisa Darcy; Simon Tickner

Sent: Wed Oct 20 16:27:55 2010

Subject: Bellpac

Peter, Lisa and Simon

Attached for your reference is a letter from Verekers Lawyers dealing with possible outcomes of the mediation.

By way of background, the existing debts are as follows (from progressive list of loans spreadsheet):

- Bellpac MPF - \$12.2M
- Bellpac FMIF - \$45.3M
- GPC MPF - \$9.2M
- TOTAL - \$66.7M

The outcome I think we should be looking to achieve is as follows:

1. "Mining Land" to be sold to Gujarat for say \$35M, with first mortgage finance by LM on terms to be agreed. Gujarat may seek to negotiate on price as they have already provided \$10M in bonds to Bellpac. We are trying to recover these bonds through the liquidator so maybe the price could be variable depending on our success. This would be a mortgagee sale, so there are mortgagee duty issues to consider and there are subsequent mortgagees who are unfriendly, however I think we could get a valuation to establish that \$35M is the best price we could hope to achieve. Alternatively we could structure it as a sale by the liquidator who I believe would cooperate;
2. "Development Land" to be retained by LM as mortgagee in possession, with boundary adjustment to lot 151 to permit development of lot 151 in conjunction with lots 1-4. Comprehensive agreement by Gujarat to support rezoning and development. Once we have met with Wollongong Council (scheduled for 27 October) we will hopefully have a better idea of how much this development is likely to contribute to debt repayment;
3. Royalty per tonne of coal produced to make up balance of LM debt, over say 10 year period. Alternatively bond by Gujarat to make up balance of LM debt, or combination of royalty and bond;
4. Comprehensive agreement by LM to support continued mining by Gujarat and not to lodge any objection to Gujarat's part 3A application/s.

Any sort of permutation or combination of the above may be possible.

I think Gujarat will start from the position that they would like to buy the land (I think they will want the whole of the land) for valuation. In the past they have said they have a valuation at around \$7M. They may be negotiable on price for a straight purchase but I doubt whether they would go anywhere near a price that would pay out the existing debt. However they may be prepared to give a bond for a figure somewhere close to the debt amount. They like bonds because they don't require them to outlay any cash.

We will need to explain to them that LM's imperative is to make up the debt amount somehow, and a combination such as I have suggested seems the most logical way.

Can I please have your input as I would like to give our legal team an indication of what you have in mind so they can start to plan their approach.

David Monaghan

Principal

Monaghan Lawyers

A Level 4 9 Beach Road Surfers Paradise Qld P PO Box 315 Surfers Paradise Qld 4217

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"SC-33"

From: Simon Tickner
Sent: Thursday, 11 November 2010 5:45 PM
To: Lisa Darcy
Subject: Re: Interfund loans

rog

----- Original Message -----

From: Lisa Darcy
To: Simon Tickner; Shelley Chalmers
Cc: Ann McCallum
Sent: Thu Nov 11 17:41:48 2010
Subject: Re: Interfund loans

Hi simon I would like to be involved in this so maybe when I get back from honkers - I did have a meeting w shell re this today lisa Lisa Darcy LMIM Ltd

----- Original Message -----

From: Simon Tickner
To: Shelley Chalmers; Lisa Darcy
Cc: Ann McCallum
Sent: Thu Nov 11 17:18:05 2010
Subject: RE: Interfund loans

Shall we schedule to meet mid next week re this. I will be back in the office Wednesday

From: Shelley Chalmers
Sent: Thursday, 11 November 2010 3:28 PM
To: Simon Tickner; Lisa Darcy
Cc: Ann McCallum
Subject: Interfund loans

Dear Simon and Lisa

I understand the Directors/ Grant have been in some discussion on MPF writing off some of its second mortgage loans either in part or in full.

When you decide for certain what you are going to do (or if you want to have a meeting with any of us to talk it through) I would like to make sure that people who work on these files know what is happening and why, have some input if need be and we can ensure that CC/ files/ conflict register etc are updated/noted as the case may be. From the point of view of education for the whole department I think it would be worthwhile for everyone to hear the logics etc.

There are some loans where the MPF loan may be being asked to make payments or accomodations in relation to the asset (where FMIF is the 1st) and I think that people can fall into the trap where they forget that the FMIF and MPF need to be treated independantly and without regard to the other. There are a couple loans below, where if MPF were an independent 2nd mortgagee and being asked to make payments and/or make concessions, MPF might feel that it was throwing good money after bad or alternately it might want "something in return".

I was thinking too that as Carolyn is trying to put conflicts training into place in the near future (early December I think) some of these loans could be good topics for conversation at the PAM session.

The loans that I have immediate concerns with are:

- Green Square - FMIF (1st) and MPF (2nd) - possible write off?
- Lot 111 - - FMIF (1st) and MPF (2nd) - possible write off?
- Greystanes - FMIF (1st) and MPF (2nd) - possible write off?
- Glendenning - FMIF (1st) and MPF (2nd) - possible write off?
- Northshore - - FMIF (1st) and MPF (2nd) - MPF's position on funding?
- Kingopen - - FMIF (1st) and MPF (2nd) - - MPF's position on funding?
- Bellpac - FMIF (1st) and MPF (2nd) - holding pending the Gujarat settlement being bedded down.

I look forward to hearing from you.

Shelley Chalmers
 Property Asset Management
 LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5592 2505
 Email: schalmers@LMAustralia.com
 Visit Our Website: www.LMAustralia.com/

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"SC-34"

From: Lisa Darcy [ldarcy@LMAustralia.com]
Sent: Friday, 12 November 2010 5:15 PM
To: David Monaghan
Subject: Re: Bellpac

Follow Up Flag: Follow up
Flag Status: Flagged

Ps we should think about an agreement between mpf and mif in particular who funds coalfields amount Lisa Darcy LMIM Ltd

----- Original Message -----

From: David Monaghan <dmonaghan@monaghanlawyers.com.au>
To: Lisa Darcy
Sent: Fri Nov 12 15:38:30 2010
Subject: FW: Bellpac

Lisa

Can you please authorise a draw for \$20K from MPF on Bellpac to pay GT and allow the title deeds to be released by Allens. I spoke with Grant about this before he went and he said it would be OK but I didn't receive this email before he went so hence I am asking you.

Thanks

David Monaghan

Principal

Monaghan Lawyers

A Level 4 9 Beach Road Surfers Paradise Qld P PO Box 315 Surfers Paradise Qld 4217

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From: Trevor Pogroske [mailto:Trevor.Pogroske@au.gt.com]
Sent: Friday, 12 November 2010 2:59 PM
To: Graham Killer; David Monaghan
Cc: Tim Cossart; Jarred Erceg
Subject: Bellpac
Importance: High

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David

Thank you for your email dated 11 November 2010.

This week we received a GST refund from the ATO of around \$20,000.

Therefore, if you provide us with a deposit of \$20,000 into the receivers account this should be sufficient for us to finalise the receivership. Our bank details are set out below for your convenience.

Bank: National Australia Bank Limited
BSB Number: 084-004
Account Name: Bellpac Pty Ltd (Receivers and Managers Appointed)
Account Number: 89 734 4288

Once the \$20,000 deposit is received from you, we will let Alf at Allens know and he can release the title deeds to you.

In relation to our retirement as Receivers and Managers, Graham and I will probably need a week or two to finalise the receivership. As such, if you wish to retire us before then, we may need to remain appointed to the bank account only until everything is finalised.

Can you please confirm that the settlement deed will be executed and given effect post our retirement, because we are mindful of our Section 420A obligations and the fact that we

were parties to the Court proceedings.

We have not taken any legal advice in this regard and would suggest that this matter be considered as soon as possible.

It would probably be appropriate for that advice to be independent.

If you require anything further, please do not hesitate to contact me.

Thanks and regards

Trevor

Trevor Pogroske | Director - Specialist Advisory
Grant Thornton Australia
Level 17 | 383 Kent Street | Sydney | NSW 2000 | Australia
T +61 2 8297 2400 | D +61 2 8297 2601 | F +61 2 9299 4533
E trevor.pogroske@au.gt.com | W www.grantthornton.com.au

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From: "David Monaghan" <dmonaghan@monaghanlawyers.com.au>
Date: 11 November 2010 4:40:18 PM AEST
To: "Graham Killer" <GKiller@grantthornton.com.au>, "Trevor Pogroske"
<Trevor.Pogroske@au.gt.com>
Subject: Bellpac

Graham, and Trevor

As we discussed some time ago, Allens are holding the Bellpac titles on account of their fees. As I have already advised Trevor, we provisionally settled the Bellpac litigation with Gujarat on Tuesday, and I need to obtain the titles as we are selling the land to Gujarat. We are planning to sell as mortgagee in possession, so that you won't need to worry about s420A issues, and so we can sell through the other mortgages. We will

therefore need to retire you.

Alf tells me Allens are still owed \$25K on Bellpac. If I arrange for LM to pay you say \$35K, to cover Allens' fees and your own fees on Bellpac (please let me know if it is more), are you happy to confirm to Alf that he can hand the titles back to me?

Thanks

David Monaghan
Principal
Monaghan Lawyers

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"SC-35"

From: Lisa Darcy [ldarcy@LMAustralia.com]
Sent: Monday, 22 November 2010 2:47 PM
To: David Monaghan; Eghard van der Hoven
Cc: Simon Tickner; Andrew Petrik
Subject: RE: Bellpac

Follow Up Flag: Follow up
Flag Status: Flagged

Read my mind - we need to think about some form of agreement between the two funds - alos this may go some way to justify conflicts etc.,

From: David Monaghan [mailto:dmonaghan@monaghanlawyers.com.au]
Sent: Monday, 22 November 2010 12:46 PM
To: Eghard van der Hoven
Cc: Lisa Darcy; Simon Tickner; Andrew Petrik
Subject: Bellpac

Eghard

Just letting you know in advance about a cash requirement. We are going to need to pay \$1.3M to Coalfields in order to secure removal of their caveats so we can sell the Bellpac land to Gujarat. This will be required when settlement occurs, which looks like being in about mid-December.

I assume FMIF will not have the capacity to make such a payment, so presumably this money will need to come from MPF.

We will not get any cash from Gujarat until one month after settlement, when we will get \$1M, and then 6 months after settlement, when we get another \$14.5M. Then there will be seven annual instalments of approx \$7M each commencing on 1 December 2014. We are yet to determine how these funds will be split between FMIF and MPF.

I am still trying to work out whether we will require any additional cash for adjustments (eg rates and taxes). I will try and avoid this.

Can you please confirm that the \$1.3M will be OK, otherwise I will need to work out a plan B.

David Monaghan
Principal
Monaghan Lawyers



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"SC-36"

From: Simon Tickner [STickner@lmaustralia.com]
Sent: Monday, 22 November 2010 2:56 PM
To: Eghard van der Hoven; David Monaghan
Cc: Lisa Darcy; Andrew Petrik
Subject: RE: Bellpac

Follow Up Flag: Follow up
Flag Status: Flagged

It would be advantageous for MPF to incur the debt as well as fund the payment. It has already contributed to all the costs of the legal proceedings which has allowed this positive outcome from mediation. In return for this MPF can make a commercial agreement with FMIF regarding the breakdown between the Fund's of the settlement

From: Eghard van der Hoven
Sent: Monday, 22 November 2010 2:52 PM
To: David Monaghan (Monaghan Lawyers)
Cc: Lisa Darcy; Simon Tickner; Andrew Petrik
Subject: RE: Bellpac

Hi David

Just when it was safe to go back into the water!!!

We should be ok with the cash. Apart from the cash flow, which fund will incur the actual debt?

Out of interest what is plan B?

Eghard van der Hoven
 Executive Director/ Portfolio Manager
LM Investment Management Ltd
 Phone: (07) 5584 4500
 Fax: (07) 5592 2505
 Email: evanderhoven@LMaustralia.com
 Visit Our Website: www.LMaustralia.com/

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From: David Monaghan [<mailto:dmonaghan@monaghanlawyers.com.au>]
Sent: Monday, 22 November 2010 2:46 PM
To: Eghard van der Hoven
Cc: Lisa Darcy; Simon Tickner; Andrew Petrik
Subject: Bellpac

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"SC-37"

From: David Monaghan
Sent: Wednesday, 24 November 2010 11:19 AM
To: Peter Drake (pdrake@lmaustralia.com); Lisa Darcy (ldarcy@lmaustralia.com); Eghard van der Hoven (EVanderhoven@lmaustralia.com); Francene Mulder (FMulder@lmaustralia.com); Simon Tickner (STickner@lmaustralia.com)
Subject: Bellpac

A quick update on the Bellpac settlement:

- Drafts of documents are well advanced, however it is a complex settlement and there are some issues to be resolved so it will take a little time to resolve them all;
- There are still some commercial matters outstanding, in particular:
 - Price – there has already been some correspondence with Arun about this and we can hopefully meet today to finalise our position and get back to him;
 - Securities to be granted by Gujarat to secure the unpaid purchase price – again we can hopefully meet on this today and finalise our position;
- At this stage we are looking to finalise the documents by early next week. There will then be an exchange, and at that point the parties will be bound to proceed with the sale;
- At a later date (probably mid-December) settlement of the land sale will occur, at which point we will be obliged to pay Coalfields \$1.3M. We are trying to coordinate payment of Gujarat's first \$1M to LM so that this happens on settlement and we only have to come up with \$300K for Coalfields, however I think we should plan to have the \$1.3M available;
- At this stage there is every indication that Gujarat is as keen to settle as we are, and their lawyers are actively progressing the documents;
- We are still yet to decide on the position as between FMIF and MPF, but this probably needs to await finalisation of the price as referred to above;
- The last day for lodging an objection to Gujarat's current part 3A application is next Monday, 29 November. We have to lodge an objection by this date if we want to retain our right of appeal in relation to the application. I would prefer to do it by this Friday to be on the safe side. It is possible that Gujarat is trying to lull us into a false sense of security so we do not lodge an objection, with a view to then not proceeding with the settlement. Given their past performance you would have to say this is possible. My solution to this is for LM to lodge a very brief, one or two page objection, which will not go into any real detail and will be easy to withdraw without doing any substantial damage to Gujarat. We have secured an informal extension of time from the Planning Department to lodge the more detailed objection until next Friday, 3 December, and we can tell Gujarat that we will not lodge the more detailed objection until then. That will keep the pressure on Gujarat to finalise the documents if we do run into any delays. It is possible that lodging even a brief objection will upset Arun and derail the settlement. However, on balance I think we need to proceed with the objection in order to ensure LM's negotiating position is not compromised. I suggest we discuss this when we meet to finalise the price and security issues referred to above.

David Monaghan
 Principal
Monaghan Lawyers



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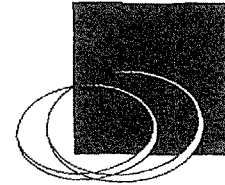
LM INVESTMENT MANAGEMENT LTD

Arrears Calculation for advance to
Bellpac - Bellambie

MPF2-418

Lower rate 16%
Higher rate 4%

Report dated 29-Jun-15



		<u>Reduction</u>	<u>Draw</u>	<u>Interest</u>	<u>Payment</u>	<u>Arrears</u>	<u>interest due but not rasied</u>	<u>Penalty</u>	<u>Costs</u>
Draw	26/06/2006		\$ 1,958,598.00						\$ 1,958,598.00
Interest on Loan	28/06/2006			\$ 1,609.81					\$ 1,960,207.81
Draw	28/06/2006		\$ 320,197.28						\$ 2,280,405.09
Draw	29/08/2006		\$ 77,715.00						\$ 2,358,120.09
Draw	03/07/2006		\$ 518,464.77						\$ 2,876,584.86
Draw	14/07/2006		\$ 5,947.22						\$ 2,882,532.08
draw	14/07/2006		\$ 15,720.22						\$ 2,898,252.30
Interest on Loan	28/07/2006			\$ 34,414.51					\$ 2,932,666.91
MIF Interest	28/07/2006		\$ 218,603.20						\$ 3,151,270.11
Loan Reduction	28/07/2006	-\$	111,150.00						\$ 3,040,120.11
Draw	18/08/2006		\$ 1,100.00						\$ 3,041,220.11
Interest on Loan	28/08/2006			\$ 38,734.81					\$ 3,079,954.92
MIF Interest	28/08/2006		\$ 225,868.39						\$ 3,305,823.31
Loan Reduction	29/08/2006	-\$	111,150.00						\$ 3,194,673.31
Loan Reduction	06/09/2006	-\$	1,784.19						\$ 3,192,889.12
Loan Reduction	26/09/2006	-\$	114,827.40						\$ 3,078,061.72
Interest on Loan	28/09/2006			\$ 40,634.43					\$ 3,118,696.15
MIF Interest	28/09/2006		\$ 225,868.39						\$ 3,344,564.54
Loan Reduction	27/10/2006	-\$	111,123.29						\$ 3,233,441.25
Interest on Loan	28/10/2006			\$ 41,188.69					\$ 3,274,629.94
MIF Interest	30/10/2006		\$ 218,582.31						\$ 3,493,212.25
Interest on Loan	28/11/2006			\$ 44,322.91					\$ 3,537,535.16
MIF Interest	28/11/2006		\$ 225,964.20						\$ 3,763,499.36
Interest on Loan	28/12/2006			\$ 46,399.31					\$ 3,809,898.67
MIF Interest	28/12/2006		\$ 218,582.31						\$ 4,028,480.98
Kemp Strang	15/01/2007		\$ 56,885.72						\$ 4,085,366.70
Interest on Loan	28/01/2007			\$ 51,626.65					\$ 4,136,992.35
MIF Interest	29/01/2007		\$ 225,868.39						\$ 4,362,860.74
Deacons	21/02/2007		\$ 4,610.05						\$ 4,367,470.79
Draw	22/02/2007		\$ 2,904.00						\$ 4,370,374.79
Draw	23/02/2007		\$ 173,369.37						\$ 4,543,744.16
Interest on Loan	28/02/2007			\$ 55,865.48					\$ 4,599,609.64
MIF Interest	28/02/2007		\$ 225,917.89						\$ 4,825,527.53
Kemp Strang	06/03/2007		\$ 100,000.00						\$ 4,925,527.53
Draw	20/03/2007		\$ 50,000.00						\$ 4,975,527.53
Interest on Loan	28/03/2007			\$ 56,595.11					\$ 5,032,122.64
MIF Interest	28/03/2007		\$ 204,053.99						\$ 5,236,176.63
Land Tax	27/04/2007		\$ 149,477.82						\$ 5,385,654.45
Interest on Loan	30/04/2007			\$ 66,768.88					\$ 5,452,423.33
MIF Interest	30/04/2007		\$ 225,868.39						\$ 5,678,291.72
Interest on Loan	28/05/2007			\$ 69,820.69					\$ 5,748,112.41
MIF Interest	31/05/2007		\$ 218,681.32						\$ 5,966,793.73
Kemp Strang	01/06/2007		\$ 100,000.00						\$ 6,066,793.73

"SC-38"

United Valuers	05/06/2007					\$	2,200.00	\$	6,068,993.73
AAR's	05/06/2007					\$	8,389.70	\$	6,077,383.43
Interest on Loan	28/06/2007		\$	76,951.95				\$	6,154,335.38
MIF Interest	28/06/2007	\$	226,012.18					\$	6,380,347.56
Interest on Loan	28/07/2007		\$	78,661.82				\$	6,459,009.38
MIF Interest	28/07/2007	\$	218,582.31					\$	6,677,591.69
Interest adjustment	29/07/2007		-\$	104.37				\$	6,677,487.32
Interest adjustment	29/07/2007		-\$	75.85				\$	6,677,411.47
Kemp Strang	10/08/2007	\$	50,000.00					\$	6,727,411.47
Refund	14/08/2007	-\$	8,389.70					\$	6,719,021.77
Interest on Loan	28/08/2007		\$	85,210.41				\$	6,804,232.18
MIF Interest	28/08/2007	\$	225,964.20					\$	7,030,196.38
Interest on Loan	28/09/2007		\$	89,562.78				\$	7,119,759.16
MIF Interest	28/09/2007	\$	225,868.39					\$	7,345,627.55
Kemp Strang	04/10/2007	\$	10,000.00					\$	7,355,627.55
Interest on Loan	28/10/2007		\$	90,661.17				\$	7,446,288.72
Payment of Interest	29/10/2007			-\$	90,661.17			\$	7,355,627.55
Interest on Loan	28/11/2007		\$	93,745.94				\$	7,449,373.49
Payment of Interest	28/11/2007			-\$	93,745.94			\$	7,355,627.55
Deacons	20/12/2007					\$	758.80	\$	7,356,386.35
Interest on Loan	28/12/2007		\$	90,688.31				\$	7,447,074.66
Payment of Interest	28/12/2007			-\$	90,688.31			\$	7,356,386.35
Interest on Loan	28/01/2008		\$	93,718.35				\$	7,450,104.70
Payment of Interest	28/01/2008			-\$	93,718.35			\$	7,356,386.35
Land Tax	08/02/2008	\$	178,596.20					\$	7,534,982.55
AAR's	12/02/2008					\$	1,089.62	\$	7,536,052.17
Interest on Loan	28/02/2008			\$	95,193.29	\$	25,384.88	\$	7,656,630.34
Interest on Loan	28/03/2008			\$	90,947.72	\$	24,333.40	\$	7,771,911.46
Interest on Loan	28/04/2008			\$	99,012.02	\$	26,403.21	\$	7,897,326.69
AAR's	19/05/2008					\$	23,424.39	\$	7,920,751.08
Interest on Loan	28/05/2008			\$	97,399.40	\$	25,973.17	\$	8,044,123.65
Interest on Loan	28/06/2008			\$	102,920.70	\$	27,327.98	\$	8,174,372.33
Interest on Loan	28/07/2008			\$	107,498.60	\$	26,874.65	\$	8,308,745.58
refund Land tax	04/08/2008	-\$	377,123.33					\$	7,931,622.25
Interest on Loan	28/08/2008			\$	108,940.34	\$	27,235.09	\$	8,067,797.68
Interest on Loan	28/09/2008			\$	109,633.63	\$	27,408.41	\$	8,204,839.72
Interest on Loan	28/10/2008			\$	107,899.26	\$	26,974.82	\$	8,339,713.80
Interest on Loan	28/11/2008			\$	113,328.71	\$	28,332.18	\$	8,481,374.69
Interest on Loan	28/12/2008			\$	111,535.89	\$	27,883.97	\$	8,620,794.55
Interest on Loan	28/01/2009			\$	117,148.33	\$	29,287.08	\$	8,767,229.96
Interest on Loan	28/02/2009			\$	119,138.25	\$	29,784.56	\$	8,916,152.77
Interest on Loan	28/03/2009			\$	109,436.61	\$	27,359.15	\$	9,052,948.53
Interest on Loan	28/04/2009			\$	123,020.89	\$	30,755.22	\$	9,206,724.64
Interest on Loan	28/05/2009			\$	121,074.73	\$	30,268.68	\$	9,358,068.05
Interest on Loan	28/06/2009			\$	127,167.17	\$	31,791.79	\$	9,517,027.01
AAR's	15/07/2009					\$	100,000.00	\$	9,617,027.01
Interest on Loan	28/07/2009			\$	125,725.29	\$	31,431.32	\$	9,774,183.62
Interest on Loan	28/08/2009			\$	132,821.78	\$	33,205.45	\$	9,940,210.85
Grant Thornton	17/09/2009					\$	50,000.00	\$	9,990,210.85
Interest on Loan	28/09/2009			\$	67,659.52	\$	67,659.52	\$	10,159,359.65
Interest on Loan	28/10/2009			\$	66,133.94	\$	66,133.94	\$	10,325,028.16
AAR's	18/11/2009					\$	50,000.00	\$	10,375,028.16
Verekers Trust A/c	25/11/2009					\$	20,000.00	\$	10,395,028.16
Interest on Loan	28/11/2009			\$	68,910.50	\$	68,910.50	\$	10,567,987.34
Draw	07/12/2009					\$	52,783.00	\$	10,620,770.34
Verekers Trust A/c	21/12/2009					\$	20,000.00	\$	10,640,770.34

Interest on Loan	28/12/2009	\$	67,755.81	\$	67,755.81	\$	34,880.88	\$	10,811,162.84
CRS Warner Trust a/c	14/01/2010							\$	20,000.00
Interest on Loan	28/01/2010	\$	70,747.85	\$	70,747.85	\$	20,141.34	\$	10,831,162.84
Bernard Chui	28/01/2010							\$	1,980.00
Verekers Trust A/c	02/02/2010							\$	50,000.00
CRS Warner Trust a/c	12/02/2010							\$	34,014.67
Verekers Trust A/c	18/02/2010							\$	150,000.00
Interest on Loan	28/02/2010	\$	72,049.50	\$	72,049.50	\$	37,718.62	\$	11,410,612.18
Interest on Loan	28/03/2010	\$	66,293.23	\$	66,293.23	\$	35,013.39	\$	11,578,212.02
Monaghans Lawyers	20/04/2010							\$	12,116.50
Interest on Loan	28/04/2010	\$	73,867.76	\$	73,867.76	\$	39,344.82	\$	11,777,408.87
Verekers Trust A/c	29/04/2010							\$	20,000.00
Receiver Manager	29/04/2010							\$	20,000.00
Interest on Loan	28/05/2010	\$	72,283.99	\$	72,283.99	\$	38,847.37	\$	12,000,824.22
Monaghan Lawyers	10/06/2010							\$	5,698.00
Monaghan Lawyers	25/06/2010							\$	12,859.00
Interest on Loan	28/06/2010	\$	75,224.59	\$	75,224.59	\$	40,785.39	\$	12,019,381.22
Draw	08/07/2010							\$	150,000.00
Monaghan Lawyes	08/07/2010							\$	4,196.50
Adrian Brown Cons	08/07/2010							\$	5,502.18
Grant Thornton	08/07/2010							\$	15,000.00
Interest on Loan	28/07/2010	\$	74,130.76	\$	74,130.76	\$	40,527.39	\$	12,210,615.79
AAR's	30/07/2010							\$	15,254.28
Various Draws	11/08/2010							\$	100,105.00
JAB Urban Planning	23/08/2010							\$	4,635.00
Draw	25/08/2010							\$	14,537.60
interest	28/08/2010	\$	77,996.55	\$	77,996.55	\$	42,959.80	\$	12,708,635.26
Rates	30/08/2010							\$	140,685.33
Consultants cost	10/09/2010							\$	615.09
AAR's	14/09/2010							\$	5,560.92
Consultants cost	16/09/2010							\$	614.85
Various Draws	17/09/2010							\$	250,000.00
Monaghan Lawyers	22/09/2010							\$	22,047.30
interest	28/09/2010	\$	80,413.84	\$	80,413.84	\$	44,623.97	\$	13,327,111.65
Consultants cost	19/10/2010							\$	5,016.82
interest	28/10/2010	\$	79,715.44	\$	79,715.44	\$	44,495.57	\$	13,532,563.29
Yeats Consulting	28/10/2010							\$	3,080.00
JBA Urban Planning	07/11/2010							\$	7,070.25
AAR's	11/11/2010							\$	900.35
Grant Thornton	15/11/2010							\$	20,035.00
Monaghan Lawyers	15/11/2010							\$	53,786.22
Rates	16/11/2010							\$	138,278.17
Various Draws	19/11/2010							\$	12,179.95
Verekers Trust A/c	19/11/2010							\$	30,000.00
interest	28/11/2010			\$	188,162.02	\$	47,040.50	\$	14,006,836.50
Draw	07/12/2010							\$	3,080.00
Draw	08/12/2010							\$	30,035.00
interest	28/12/2010			\$	187,584.24	\$	46,896.06	\$	14,242,039.02
Draw	27/01/2011							\$	5,500.00
interest	28/01/2011			\$	197,174.43	\$	49,293.61	\$	14,245,119.02
Draw	01/02/2011							\$	77,508.86
Draw	08/02/2011							\$	20,000.00
Interest	28/02/2011			\$	201,688.73	\$	50,422.18	\$	14,761,602.36
draw	02/03/2011							\$	45,262.00
Draw	09/03/2011							\$	3,300.00
Draw	10/03/2011							\$	26,693.93

Draw	26/03/2011				\$	5,479.65	\$	15,191,957.71
Interest	28/03/2011							\$ 15,424,749.59
Draw	08/04/2011		\$ 186,233.50	\$	46,558.38			\$ 15,432,814.38
Draw	14/04/2011					\$ 8,064.79		\$ 15,437,889.67
Draw	19/04/2011					\$ 5,075.29		\$ 15,443,014.42
Interest	28/04/2011		\$ 209,729.63	\$	52,432.41			\$ 15,705,176.45
Draw	26/05/2011					\$ 40,740.15		\$ 15,745,916.60
Interest	28/05/2011		\$ 206,569.54	\$	51,642.39			\$ 16,004,128.53
Draw	08/06/2011					\$ 9,560.00		\$ 16,013,688.53
Sale Proceeds	22/06/2011	-\$ 12,747,810.53						\$ 3,265,878.00
Interest	28/06/2011		\$ 184,036.09	\$	46,009.02			\$ 3,495,923.11
Draw	29/06/2011					\$ 4,545.94		\$ 3,500,469.05

Interest suspended as at 30-6-2011 \$2,574,361.45 \$ 912,001.65

Draw	06/07/2011					\$ 2,227.19		\$ 3,502,696.24
Draw	07/07/2011					\$ 3,829.65		\$ 3,506,525.89
Draw	22/07/2011					\$ 34,841.04		\$ 3,541,366.93
Interest	28/07/2011		\$ 46,179.94	\$	11,544.99			\$ 3,599,091.86
Draw	17/08/2011					\$ 1,375.00		\$ 3,600,466.86
Interest	28/08/2011		\$ 48,914.84	\$	12,228.71			\$ 3,661,610.40
Draw	07/09/2011					\$ 95,986.12		\$ 3,757,596.52
Draw	20/09/2011					\$ 9,040.00		\$ 3,766,636.52
Interest	28/09/2011		\$ 50,673.07	\$	12,668.27			\$ 3,829,977.87
Draw	05/10/2011					\$ 24,655.17		\$ 3,854,633.04
Draw	20/10/2011					\$ 19,139.17		\$ 3,873,772.21
Interest	28/10/2011		\$ 50,682.53	\$	12,670.63			\$ 3,937,125.37

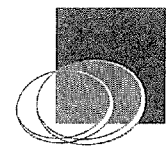
-\$ 12,747,810.53 \$ 6,268,323.60 \$ 1,247,000.89 -\$ 368,813.77 \$ 3,133,025.89 \$ 5,345,173.29 \$ 2,411,130.92 \$ 2,135,458.19

Summary	
Reductions	-\$ 12,747,810.53
Principal	\$ 7,146,510.72
Interest Arrears	\$ 3,133,025.89
Penalty	\$ 538,015.01
Costs	\$ 2,135,458.19
sub	\$ 205,199.28
Interest not raised	\$ 7,218,289.20
Total	\$ 7,423,488.48

Composer Balance	
Balance	\$ 205,199.28
Write off amount	
Interest not raised	\$ 7,218,289.20
Difference	\$ -

\$ -

"SC-39"



LM Investment Management Ltd

Date: December 12, 2011

Alfred Wong
 Bellpac Pty Ltd
 GPOBX 3364
 SYDNEY NSW 2001

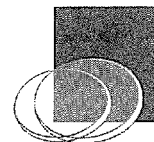
Borrower ID	109151
Statement begins	01/01/2004
Statement ends	12/12/2011
Interest rate	8.00%
Max Approved Amount	\$8,500,000.00
Loan balance	\$252,428.02DB
Commencement date	26/06/2006
Expiry Date	30/06/2009

Loan Summary	Account number	100183565
Bellambi security refer MORT2042		MPF2-418
Brought forward balance		0.00
Dishonoured Interest Payment		216,362.95
Interest Payment on Loans		90,661.17-
Interest Payment on Loans - DDR		494,515.55-
Interest on Loan		4,918,222.01
Interest on Loan - Adjustment		180.22-
Loan Draw		9,298,644.16
Loan Reduction		13,595,444.16-
Closing balance as at 12/12/2011		\$252,428.02DB

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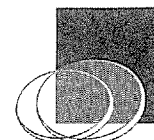
LM Investment Management Ltd

Date: December 12, 2011

Statement begins	01/01/2004
Statement ends	12/12/2011

Loan Transactions		Account number		100183565
Date	Transaction description	Debits	Credits	Balance
26/06/2006	Brought forward balance			0.00DB
26/06/2006	Loan Draw	1,958,598.00		1,958,598.00DB
	LM MIF Working Acc	\$50,000.00		
	LM MIF Working Acc	\$1,825,858.27		
	LM MPF	\$82,739.73		
28/06/2006	Interest on Loan	1,609.81		1,960,207.81DB
28/06/2006	Loan Draw	320,197.28		2,280,405.09DB
	LM MIF Working Acc	\$320,197.28		
29/06/2006	Loan Draw	77,715.00		2,358,120.09DB
	LM MPF	\$10,385.00		
	Deacons Trust Account	\$67,330.00		
03/07/2006	Loan Draw	518,464.77		2,876,584.86DB
	LM MIF Working Acc	\$1,063.22		
	LM MPF	\$517,401.55		
14/07/2006	Loan Draw	5,947.22		2,882,532.08DB
	LM Investment Management Ltd	\$5,947.22		
26/07/2006	Loan Draw	15,720.22		2,898,252.30DB
	LM MIF Working Acc	\$8,218.54		
	LM MIF Working Acc	\$7,501.68		
28/07/2006	Interest on Loan	34,414.61		2,932,666.91DB
28/07/2006	Loan Reduction		111,150.00	2,821,516.91DB
	Austcorp 1/2 Share interest Mort 2042			
28/07/2006	Loan Draw	218,603.20		3,040,120.11DB
	LM MIF Working Acc	\$218,603.20		
18/08/2006	Loan Draw	1,100.00		3,041,220.11DB
	LM Investment Management Ltd	\$1,100.00		
28/08/2006	Interest on Loan	38,734.81		3,079,954.92DB
28/08/2006	Loan Draw	225,868.39		3,305,823.31DB
	LM MIF Working Acc	\$225,868.39		
29/08/2006	Loan Reduction		111,150.00	3,194,673.31DB
	1/2 share Austcorp Interest			
06/09/2006	Loan Reduction		1,784.19	3,192,889.12DB
	Share AUSTCORP Int August			
26/09/2006	Loan Reduction		114,827.40	3,078,061.72DB
	1/2 share Austcorp Interest			
28/09/2006	Interest on Loan	40,634.43		3,118,696.15DB
28/09/2006	Loan Draw	225,868.39		3,344,564.54DB
	LM MIF Working Acc	\$225,868.39		
27/10/2006	Loan Reduction		111,123.29	3,233,441.25DB
	1/2 share Austcorp Interest			
28/10/2006	Interest on Loan	41,188.69		3,274,629.94DB

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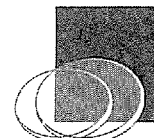
Date: December 12, 2011

Statement begins	01/01/2004
Statement ends	12/12/2011

Loan Transactions
Account number

Date	Transaction description		Debits	Credits	Balance
30/10/2006	Loan Draw		218,582.31		3,493,212.25DB
	LM MIF Working Acc	\$218,582.31			
28/11/2006	Interest on Loan		44,322.91		3,537,535.16DB
28/11/2006	Loan Draw		225,964.20		3,763,499.36DB
	LM MIF Working Acc	\$225,964.20			
28/12/2006	Interest on Loan		46,399.31		3,809,898.67DB
28/12/2006	Loan Draw		218,582.31		4,028,480.98DB
	LM MIF Working Acc	\$218,582.31			
15/01/2007	Loan Draw		56,885.72		4,085,366.70DB
	Kemp Strang Office Acc.	\$56,885.72			
28/01/2007	Interest on Loan		51,625.65		4,136,992.35DB
29/01/2007	Loan Draw		225,868.39		4,362,860.74DB
	LM MIF Working Acc	\$225,868.39			
21/02/2007	Loan Draw		4,610.05		4,367,470.79DB
	LM Investment Management Ltd	\$4,610.05			
22/02/2007	Loan Draw		2,904.00		4,370,374.79DB
	Kevin Mills & Associates	\$2,904.00			
23/02/2007	Loan Draw		173,369.37		4,543,744.16DB
	Forbes Rigby Pty Ltd	\$21,934.00			
	Blake Dawson Waldron Office account	\$12,085.72			
	Coffey Geotechnics	\$5,115.00			
	Colston Budd Hunt & Kafes Pty Ltd	\$5,082.00			
	GHD Geotechnics	\$13,772.00			
	Highes Trueman Pty Ltd	\$24,145.00			
	Kemp Strang Office Acc.	\$3,458.62			
	LFA (Pacific) Pty Ltd	\$83,201.03			
	Sinclair Knight Merz	\$4,576.00			
28/02/2007	Interest on Loan		55,865.48		4,599,609.64DB
28/02/2007	Loan Draw		225,917.89		4,825,527.53DB
	LM MIF Working Acc	\$225,917.89			
06/03/2007	Loan Draw		100,000.00		4,925,527.53DB
	Kemp Strang Trust Account	\$100,000.00			
20/03/2007	Loan Draw		50,000.00		4,975,527.53DB
	LM MIF Working Acc	\$50,000.00			
28/03/2007	Interest on Loan		56,595.11		5,032,122.64DB
28/03/2007	Loan Draw		204,053.99		5,236,176.63DB
	LM MIF Working Acc	\$204,053.99			
27/04/2007	Loan Draw		149,477.82		5,385,654.45DB
	Office of State Revenue	\$149,477.82			
28/04/2007	Interest on Loan		66,768.88		5,452,423.33DB
30/04/2007	Loan Draw		225,868.39		5,678,291.72DB
	LM MIF Working Acc	\$225,868.39			

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LM Investment Management Ltd

Date: December 12, 2011

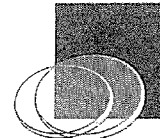
Statement begins	01/01/2004
Statement ends	12/12/2011

Loan Transactions

Account number

Date	Transaction description		Debits	Credits	Balance
28/05/2007	Interest on Loan		69,820.69		5,748,112.41DB
31/05/2007	Loan Draw		218,681.32		5,966,793.73DB
	LM MIF Working Acc	\$218,681.32			
01/06/2007	Loan Draw		100,000.00		6,066,793.73DB
	Kenp Strang Trust Account Quote Ref 2735	\$100,000.00			
05/06/2007	Loan Draw		2,200.00		6,068,993.73DB
	VPC United Pty Ltd	\$2,200.00			
06/06/2007	Loan Draw		8,389.70		6,077,383.43DB
	LM Investment Management Ltd	\$8,389.70			
28/06/2007	Interest on Loan		76,951.95		6,154,335.38DB
28/06/2007	Loan Draw		226,012.18		6,380,347.56DB
	LM MIF Working Acc	\$226,012.18			
28/07/2007	Interest on Loan		78,661.82		6,459,009.38DB
29/07/2007	Interest on Loan - Adjustment			75.85	6,458,933.53DB
29/07/2007	Interest on Loan - Adjustment			104.37	6,458,829.16DB
30/07/2007	Loan Draw		218,582.31		6,677,411.47DB
	LM MIF Working Acc	\$218,582.31			
01/08/2007	Loan Draw		12,085.72		6,689,497.19DB
	Blake Dawson Waldron Office account	\$12,085.72			
01/08/2007	Loan Reduction			12,085.72	6,677,411.47DB
	Return of payment 22/2/07 from Blake Dawson Weldron - uniden				
10/08/2007	Loan Draw		50,000.00		6,727,411.47DB
	Kemp Strang Trust Account	\$50,000.00			
14/08/2007	Loan Reduction			8,389.70	6,719,021.77DB
	Refund of invoice incorrectly charged				
28/08/2007	Interest on Loan		85,210.41		6,804,232.18DB
28/08/2007	Loan Draw		225,964.20		7,030,196.38DB
	LM MIF Working Acc	\$225,964.20			
28/09/2007	Interest on Loan		89,562.78		7,119,759.16DB
28/09/2007	Loan Draw		225,868.39		7,345,627.55DB
	LM MIF Working Acc	\$225,868.39			
04/10/2007	Loan Draw		10,000.00		7,355,627.55DB
	Kemp Strang Trust Account	\$10,000.00			
28/10/2007	Interest on Loan		90,661.17		7,446,288.72DB
29/10/2007	Interest Payment on Loans			90,661.17	7,355,627.55DB
28/11/2007	Interest on Loan		93,745.94		7,449,373.49DB
28/11/2007	Interest Payment on Loans - DDR			93,745.94	7,355,627.55DB
20/12/2007	Loan Draw		758.80		7,356,386.35DB
	LM Investment Management Ltd	\$758.80			

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LM Investment Management Ltd

Date: December 12, 2011

Statement begins	01/01/2004
Statement ends	12/12/2011

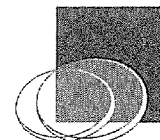
Loan Transactions

		Account number		
Date	Transaction description	Debits	Credits	Balance
28/12/2007	Interest on Loan	90,688.31		7,447,074.66DB
28/12/2007	Interest Payment on Loans - DDR		90,688.31	7,356,386.35DB
28/01/2008	Interest on Loan	93,718.35		7,450,104.70DB
28/01/2008	Interest Payment on Loans - DDR		93,718.35	7,356,386.35DB
08/02/2008	Loan Draw Champion Legal Pty Ltd Account	178,596.20		7,534,982.55DB
				\$178,596.20
12/02/2008	Loan Draw LM Investment Management Ltd	1,069.62		7,536,052.17DB
				\$1,069.62
28/02/2008	Interest on Loan	120,578.17		7,656,630.34DB
28/03/2008	Interest on Loan	115,281.12		7,771,911.46DB
28/03/2008	Interest Payment on Loans - DDR		90,947.72	7,680,963.74DB
28/03/2008	Dishonoured Interest Payment	90,947.72		7,771,911.46DB
28/04/2008	Interest on Loan	125,415.23		7,897,326.69DB
28/04/2008	Interest Payment on Loans - DDR		125,415.23	7,771,911.46DB
29/04/2008	Dishonoured Interest Payment	125,415.23		7,897,326.69DB
18/05/2008	Change in interest rate to 8.00%			0.00DB
19/05/2008	Loan Draw LM Investment Management Ltd	23,424.39		7,920,751.08DB
				\$23,424.39
28/05/2008	Interest on Loan	123,372.57		8,044,123.65DB
26/06/2008	Change in interest rate to 8.00%			0.00DB
28/06/2008	Interest on Loan	130,248.68		8,174,372.33DB
28/07/2008	Interest on Loan	134,373.25		8,308,745.58DB
04/08/2008	Loan Reduction Refund Land Tax paid by Lender \$377,123.33		377,123.33	7,931,622.25DB
28/08/2008	Interest on Loan	136,175.43		8,067,797.68DB
28/09/2008	Interest on Loan	137,042.04		8,204,839.72DB
28/10/2008	Interest on Loan	134,874.08		8,339,713.80DB
28/11/2008	Interest on Loan	141,660.89		8,481,374.69DB
28/12/2008	Interest on Loan	139,419.86		8,620,794.55DB
28/01/2009	Interest on Loan	146,435.41		8,767,229.96DB
28/02/2009	Interest on Loan	148,922.81		8,916,152.77DB
28/03/2009	Interest on Loan	136,795.76		9,052,948.53DB
28/04/2009	Interest on Loan	153,776.11		9,206,724.64DB
28/05/2009	Interest on Loan	151,343.41		9,358,068.05DB
28/06/2009	Interest on Loan	158,958.96		9,517,027.01DB

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LM Investment Management Ltd

Date: December 12, 2011

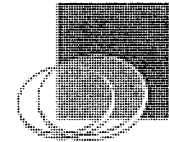
Statement begins	01/01/2004
Statement ends	12/12/2011

Loan Transactions

Account number

Date	Transaction description		Debits	Credits	Balance
15/07/2009	Loan Draw Allens Arthur Robinson Trust Account	\$100,000.00	100,000.00		9,617,027.01DB
28/07/2009	Interest on Loan		157,156.61		9,774,183.62DB
28/08/2009	Interest on Loan		166,027.23		9,940,210.85DB
17/09/2009	Loan Draw Bellpac P/L (Receivers & Managers Appt)	\$50,000.00	50,000.00		9,990,210.85DB
28/09/2009	Change in interest rate to 8.00%				0.00DB
28/09/2009	Interest on Loan		67,659.52		10,057,870.37DB
28/10/2009	Interest on Loan		66,133.94		10,124,004.31DB
18/11/2009	Loan Draw Bellpac P/L (Receivers & Managers Appt)	\$50,000.00	50,000.00		10,174,004.31DB
25/11/2009	Loan Draw Verekers Trust Account	\$20,000.00	20,000.00		10,194,004.31DB
28/11/2009	Interest on Loan		68,910.50		10,262,914.81DB
07/12/2009	Loan Draw Bellpac P/L (Receivers & Managers Appt) Verekers Trust Account CRS Warner Kugel P/L Trust Account Cateo Pty Ltd	\$20,000.00 \$20,000.00 \$10,000.00 \$2,783.00	52,783.00		10,315,697.81DB
21/12/2009	Loan Draw Verekers Trust Account	\$20,000.00	20,000.00		10,335,697.81DB
28/12/2009	Interest on Loan		67,755.81		10,403,453.62DB
14/01/2010	Loan Draw CRS Warner Kugel P/L Trust Account	\$20,000.00	20,000.00		10,423,453.62DB
28/01/2010	Loan Draw Bernard Chiu Legal & Business Solutions	\$1,980.00	1,980.00		10,425,433.62DB
28/01/2010	Interest on Loan		70,747.85		10,496,181.47DB
02/02/2010	Loan Draw Verekers Trust Account Bellpac P/L (Receivers & Managers Appt)	\$30,000.00 \$20,000.00	50,000.00		10,546,181.47DB
12/02/2010	Loan Draw CRS Warner Kugel P/L Trust Account	\$34,014.67	34,014.67		10,580,196.14DB
18/02/2010	Loan Draw Bellpac P/L (Receivers & Managers Appt) Verekers Trust Account CRS Warner Kugel P/L Trust Account	\$130,000.00 \$10,000.00 \$10,000.00	150,000.00		10,730,196.14DB
28/02/2010	Interest on Loan		72,049.50		10,802,245.64DB
28/03/2010	Interest on Loan		66,293.23		10,868,538.87DB
20/04/2010	Loan Draw Monaghan Lawyers	\$12,116.50	12,116.50		10,880,655.37DB
28/04/2010	Interest on Loan		73,867.76		10,954,523.13DB

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LM Investment Management Ltd

Date: December 12, 2011

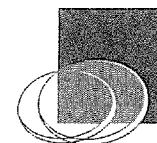
Statement begins	01/01/2004
Statement ends	12/12/2011

Loan Transactions

Account number

Date	Transaction description		Debits	Credits	Balance
29/04/2010	Loan Draw		40,000.00		10,994,523.13DB
	Verekers Trust Account	\$20,000.00			
	Bellpac P/L (Receivers & Managers Appt)	\$20,000.00			
28/05/2010	Interest on Loan		72,283.99		11,066,807.12DB
10/06/2010	Loan Draw		5,698.00		11,072,505.12DB
	Monaghan Lawyers Business	\$5,698.00			
25/06/2010	Loan Draw		12,859.00		11,085,364.12DB
	Monaghan Lawyers	\$12,859.00			
28/06/2010	Interest on Loan		75,224.59		11,160,588.71DB
08/07/2010	Loan Draw		4,196.50		11,164,785.21DB
	Monaghan Lawyers	\$4,196.50			
08/07/2010	Loan Draw		150,000.00		11,314,785.21DB
	Verekers Trust Account	\$50,000.00			
	Bellpac P/L (Receivers & Managers Appt)	\$50,000.00			
	CRS Warner Kugel P/L Trust Account	\$50,000.00			
08/07/2010	Loan Draw		5,502.18		11,320,287.39DB
	Adrian Brown Consultants Inc	\$5,502.18			
14/07/2010	Loan Draw		15,000.00		11,335,287.39DB
	LM MIF Working Acc	\$15,000.00			
28/07/2010	Interest on Loan		74,130.76		11,409,418.15DB
30/07/2010	Loan Draw		15,254.28		11,424,672.43DB
	Allens Arthur Robinson	\$15,254.28			
11/08/2010	Loan Draw		100,105.00		11,524,777.43DB
	CRS Warner Kugel Pty	\$50,000.00			
	Verekers Trust Account	\$25,000.00			
	Bellpac Pty Ltd (Receivers and Managers)	\$25,000.00			
	Suncorp Fee	\$105.00			
23/08/2010	Loan Draw		4,635.00		11,529,412.43DB
	JBA Urban Planning	\$4,635.00			
25/08/2010	Loan Draw		14,537.60		11,543,950.03DB
	Monaghan Lawyers Business Account	\$14,537.60			
28/08/2010	Interest on Loan		77,996.55		11,621,946.58DB
30/08/2010	Loan Draw		140,685.33		11,762,631.91DB
	Wollongong City Council	\$3,144.21			
	Wollongong City Council	\$137,541.12			
10/09/2010	Loan Draw		615.09		11,763,247.00DB
	LM Administration Pty Ltd	\$615.09			
14/09/2010	Loan Draw		5,560.92		11,768,807.92DB
	Allens Arthur Robinson	\$5,560.92			
16/09/2010	Loan Draw		614.85		11,769,422.77DB
	LM Administration Pty Ltd	\$614.85			
17/09/2010	Loan Draw		250,000.00		12,019,422.77DB
	CRS Warner Kugel P/L Trust A/C	\$185,000.00			
	Verekers Trust Account	\$40,000.00			

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LM Investment Management Ltd

Date: December 12, 2011

Statement begins	01/01/2004
Statement ends	12/12/2011

Loan Transactions**Account number**

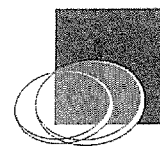
Date	Transaction description		Debits	Credits	Balance
	Bellpac P/L (Receivers & Managers Appt)	\$25,000.00			
22/09/2010	Loan Draw		22,047.30		12,041,470.07DB
	Monaghan Lawyers	\$22,047.30			
28/09/2010	Interest on Loan		80,413.84		12,121,883.91DB
19/10/2010	Loan Draw		5,016.82		12,126,900.73DB
	Adrian Brown Consultants Inc	\$5,016.82			
28/10/2010	Interest on Loan		79,715.44		12,206,616.17DB
28/10/2010	Loan Draw		3,080.00		12,209,696.17DB
	Yeats Consulting Pty Ltd	\$3,080.00			
04/11/2010	Loan Draw		7,070.25		12,216,766.42DB
	JBA Urban Planning	\$7,070.25			
15/11/2010	Loan Draw		900.35		12,217,666.77DB
	Allens Arthur Robinson	\$900.35			
15/11/2010	Loan Draw		20,035.00		12,237,701.77DB
	Bellpac Pty Ltd (Receivers & Managers Ap	\$20,000.00			
	Suncorp RTGS Fee	\$35.00			
16/11/2010	Loan Draw		53,786.22		12,291,487.99DB
	Monaghan Lawyers	\$53,786.22			
16/11/2010	Loan Draw		138,278.17		12,429,766.16DB
	Wollongong City Council	\$138,278.17			
19/11/2010	Loan Draw		12,179.95		12,441,946.11DB
	JBA Urban Planning	\$7,070.25			
	Yeats Consulting Pty Ltd	\$3,960.00			
	Holman Webb Lawyers	\$387.20			
	Adrian Brown Consultants, Inc.	\$762.50			
22/11/2010	Loan Draw		30,000.00		12,471,946.11DB
	Verekers Trust Account	\$30,000.00			
07/12/2010	Loan Draw		3,080.00		12,475,026.11DB
	Yeats Consulting Pty Ltd	\$3,080.00			
08/12/2010	Loan Draw		30,035.00		12,505,061.11DB
	Allens Arthur Robinson Trust Account	\$30,000.00			
	RTGS Fee	\$35.00			
27/01/2011	Loan Draw		5,500.00		12,510,561.11DB
	Halcrow Pacific Pty Ltd	\$5,500.00			
01/02/2011	Loan Draw		77,508.86		12,588,069.97DB
	Monaghan Lawyers	\$63,039.90			
	pae holmes	\$14,468.96			
08/02/2011	Loan Draw		20,000.00		12,608,069.97DB
	Verekers Trust Account	\$20,000.00			
02/03/2011	Loan Draw		45,262.00		12,653,331.97DB
	CRS Warner Kugel P/L Trust Account	\$45,262.00			
09/03/2011	Loan Draw		3,300.00		12,656,631.97DB
	WMS Chartered Accountants	\$3,300.00			

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1181



LM Investment Management Ltd

Date: December 12, 2011

Statement begins	01/01/2004
Statement ends	12/12/2011

Loan Transactions

Account number

Date	Transaction description		Debits	Credits	Balance
10/03/2011	Loan Draw		26,693.93		12,683,325.90DB
	Allens Arthur Robinson	\$26,658.93			
	RTGS Fee	\$35.00			
21/03/2011	Loan Draw		5,479.65		12,688,805.55DB
	Cumberland Ecology Pty Ltd	\$5,479.65			
08/04/2011	Loan Draw		8,064.79		12,696,870.34DB
	LM Administration Pty Ltd	\$8,064.79			
14/04/2011	Loan Draw		5,075.29		12,701,945.63DB
	LM Administration Pty Ltd	\$5,075.29			
19/04/2011	Loan Draw		5,124.75		12,707,070.38DB
26/05/2011	Loan Draw		40,740.15		12,747,810.53DB
	Monaghan Lawyers	\$40,740.15			
08/06/2011	Loan Draw		9,560.00		12,757,370.53DB
22/06/2011	Loan Reduction			12,747,810.53	9,560.00DB
	Settlement Proceeds				
29/06/2011	Loan Draw		4,545.94		14,105.94DB
06/07/2011	Loan Draw		2,227.19		16,333.13DB
07/07/2011	Loan Draw		3,829.65		20,162.78DB
22/07/2011	Loan Draw		34,841.04		55,003.82DB
	Allens Arthur Robinson	\$34,841.04			
17/08/2011	Loan Draw		1,375.00		56,378.82DB
07/09/2011	Loan Draw		95,986.12		152,364.94DB
20/09/2011	Loan Draw		9,040.00		161,404.94DB
	Allens Arthur Robinson Trust Account	\$9,040.00			
05/10/2011	Loan Draw		24,655.17		186,060.11DB
	Monaghan Lawyers	\$11,771.77			
	Allens Arthur Robinson	\$12,883.40			
20/10/2011	Loan Draw		19,139.17		205,199.28DB
	Monaghan Lawyers	\$9,915.71			
	Verekers Lawyers Office Acc	\$9,223.46			
25/11/2011	Loan Draw		5,384.83		210,584.11DB
25/11/2011	Loan Draw		8,966.56		219,550.67DB
25/11/2011	Loan Draw		5,377.35		224,928.02DB
07/12/2011	Loan Draw		27,500.00		252,428.02DB
	Closing balance as at 12/12/2011				\$252,428.02DB

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"SC-40"

Interest Accrual for payable from MPF to MIF (for loan purchase)
 Interest Rate 0.1 p.a.
 Interest Rate 0.07 p.a. from 29/08/09
 Interest Rate 0.085 p.a. from 28/08/10
 NOT CAPITALISING

Date	Days	Amount	Description	Balance	Repayment	Interest Payable	Running Balance
28/08/2008		33,513,345.16	Opening balance transfer	33,513,345.16			
30/09/2008	33	302,169.51	Interest charged			302,169.51	33,815,514.67
31/10/2008	31	283,856.20	Interest charged			283,856.20	34,099,370.87
30/11/2008	30	274,699.55	Interest charged			274,699.55	34,374,070.42
31/12/2008	31	283,856.20	Interest charged			283,856.20	34,657,926.62
31/01/2009	31	283,856.20	Interest charged			283,856.20	34,941,782.82
28/02/2009	28	256,386.25	Interest charged			256,386.25	35,198,169.07
31/03/2009	31	283,856.20	Interest charged			283,856.20	35,482,025.27
30/04/2009	30	274,699.55	Interest charged			274,699.55	35,756,724.82
31/05/2009	31	283,856.20	Interest charged			283,856.20	36,040,581.02
30/06/2009	30	274,699.55	Interest charged			274,699.55	36,315,280.58
8/07/2009	8	-1,400,000.00	Repayment		-1,400,000.00		34,915,280.58
10/07/2009	2	-1,133,434.70	Repayment		-1,133,434.70		33,781,845.88
16/07/2009	6	-831,282.29	Repayment		-831,282.29		32,950,563.59
20/07/2009	4	-571,687.44	Repayment		-571,687.44		32,378,876.15
31/07/2009	31	263,429.99	Interest charged			263,429.99	32,642,306.14
14/08/2009	14	-49,051.10	Repayment		-49,051.10		32,593,255.04
31/08/2009	31	245,446.60	Interest charged			245,446.60	32,838,701.64
30/09/2009	30	169,886.49	Interest charged			169,886.49	33,008,588.13
31/10/2009	31	175,549.37	Interest charged			175,549.37	33,184,137.50
30/11/2009	30	169,886.49	Interest charged			169,886.49	33,354,023.99
31/12/2009	31	175,549.37	Interest charged			175,549.37	33,529,573.36
31/01/2010	31	175,549.37	Interest charged			175,549.37	33,705,122.73
28/02/2010	28	158,560.72	Interest charged			158,560.72	33,863,683.45
31/03/2010	31	175,549.37	Interest charged			175,549.37	34,039,232.82
30/04/2010	30	169,886.49	Interest charged			169,886.49	34,209,119.31
31/05/2010	31	175,549.37	Interest charged			175,549.37	34,384,668.68
30/06/2010	30	169,886.49	Interest charged			169,886.49	34,554,555.17
31/07/2010	31	175,549.37	Interest charged			175,549.37	34,730,104.54
31/08/2010	3	179,189.80	Interest charged			179,189.80	34,909,294.34
30/09/2010	30	206,290.74	Interest charged			206,290.74	35,115,585.07
31/10/2010	31	213,167.09	Interest charged			213,167.09	35,328,752.17
31/10/2010	0		Repayment		-466,708.25		34,862,043.92
30/11/2010	30	203,700.87	Interest charged			203,700.87	35,065,744.79
30/11/2010	0		Repayment		-4,413,458.62		30,652,286.17
31/12/2010	31	181,778.35	Interest charged			181,778.35	30,834,064.51
31/12/2010	0		Repayment		-4,435,810.47		26,398,254.04
31/01/2011	31		Interest charged			149,755.44	26,548,009.48
31/01/2011	0		Repayment		-2,813,211.65		23,734,797.83
28/02/2011	28	117,017.11	Interest charged			117,017.11	23,851,814.94
28/02/2011	0		Repayment		-5,568,436.20		18,283,378.74
31/03/2011	31	85,404.79	Interest charged			85,404.79	18,368,783.53
31/03/2011	0		Repayment		-4,258,972.22		14,109,811.31
30/04/2011	30	52,895.33	Interest charged			52,895.33	14,162,706.63
30/04/2011	0		Repayment		-3,278,309.08		10,884,397.55
31/05/2011	27	26,992.87	Interest charged			26,992.87	10,911,390.42
31/05/2011	0		Repayment		-4,292,983.13		6,618,407.29
31/05/2011	0			0.00			6,618,407.29
							-33,513,345.16

"SC-41"



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7 March 2011

Mr D Monaghan
 Monaghan Lawyers
 PO Box 315
 SURFERS PARADISE QLD 4217

By email – dmonaghan@monaghanlawyers.com.au

Dear Mr Monaghan

RE: SPLIT OF LITIGATION PROCEEDS REGARDING BELLPAC PTY LTD MATTER

INTRODUCTION

The directors of LM Investment Management Limited ("LM") in their capacity as Responsible Entity ("RE") for LM First Mortgage Income Fund ("FMIF") and LM Management Performance Fund ("MPF") have instructed WMS Chartered Accountants ("WMS") to prepare an independent expert's report in relation to the transaction summarised below. This report has been prepared in accordance with Chapter 2E of the *Corporations Act 2001* ("the Act") and having regard to ASIC Consultation Paper 142 "Related Property Transactions" and the accounting standard AASB 124 "Related Party Disclosures".

TRANSACTION

We are instructed to provide an opinion as to a fair and reasonable split of the likely litigation proceeds to be received by FMIF and MPF pursuant to legal proceedings relating to loan advances made to Bellpac Pty Ltd ("Bellpac"). The anticipated capital proceeds are \$50.5 million being \$15.5 million in cash over 6 months and \$35.0 million vendor finance at a prevailing interest rate of the Bank Bill Swap Bid Rate ("BBSY") plus 1% over 10 years with amortisation starting in year four. Additionally, a call option is proposed to be granted in favour of LM as the RE for both funds to acquire a 50% interest in the Bellpac land at a future point in time. It is unclear whether this call option has a current value.

This report has been prepared in accordance with requirements in the Act and guidelines noted above.

SOURCE OF INFORMATION

This report is prepared in accordance with your instructions and is primarily based on information supplied as follows:

- E-mail dated 6 December 2010 providing brief background in relation to the matter from Monaghan Lawyers.
- Undertaking in Gujarat/Williams proceedings.
- Heads of Agreement recording Agreement in Principle.
- "Arrears Calculation of advance to Bellpac – Bellambie – MORT2042" covering the period 11 March 2006 to 28 November 2010.
- "Arrears Calculation for advance to Bellpac – Bellambie – MPF2-418" covering the period 26 Jun 2006 to 28 November 2010.
- "Arrears Calculation for advance to Greater Pacific – Bellambie – MPF2-408" covering the period 26 June 2004 to 28 November 2010.
- Coalfields Position Paper in the Supreme Court proceedings (2009/298727).
- Gujarat's Position Paper being the Position Paper for Gujarat NRE Minerals Limited and SouthBulli Holdings Pty Ltd.
- Mediation Position Paper for LM, PTAL and Bellpac.
- Review of Securities for Bellpac matter.

RELIANCE ON INFORMATION & SCOPE

We understand that this report may be used by the directors of LM in determining a fair and reasonable split of the litigation proceeds between FMIF and MPF.

We are instructed that LM's major funder is Deutsche Bank. The proposed split does not take into account the requirement and arrangements in place between these parties. This will need to be reviewed by the LM directors and/or their legal representatives.

Based on the background information we understand that legal proceedings are currently being undertaken by Mr Anthony Warner and Mr Steven Kugel ("collectively the liquidators") in their capacity as Liquidators appointed to Bellpac in relation to an alleged preferential payment claim. Additionally, we understand LM as the RE has instigated proceedings against a Bellpac Director, Mr Alfred Wong in relation to a personal guarantee. We are instructed that both legal costs and liquidators fees are being funded by MPF. The potential proceeds (if any) from such actions have not been considered in this report and we understand will be dealt with by the directors of LM at a later date (if applicable).

Further, we have not commented on any potential split attaching to the potential value of the call option for the Bellpac land granted in favour of LM in its capacity as the RE for FMIF and MPF.



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GLOSSARY OF TERMS

Act	Corporations Act 2001
ASIC	Australian Securities and Investment Commission
AASB	Australian Accounting Standards Board
Bellpac	Bellpac Pty Ltd
BBSY	Bank Bill Swap Bid Rate
Gujarat	Gujarat NRE Coking Coal Limited
Land	800 hectares of land owned by Bellpac located at Russell Vale near Wollongong
Liquidators	Mr Anthony Warner and Mr Steven Kugel
LM	LM Investment Management Limited
FMIF	LM First Mortgage Income Fund
MPF	LM Management Performance Fund
RE	Responsible Entity being LM
WMS	WMS Chartered Accountants

1.0 EXECUTIVE SUMMARY

In our opinion, the proposed split of 65% to FMIF and 35% to MPF is fair and reasonable having regard to comparable arm's length transactions.

As noted above, it is beyond our scope to determine the rights and or influence LM's funder Deutsche Bank has on directing the litigation proceeds.

Based on the proposed litigation proceeds and litigation costs we estimate a fair and reasonable split to be as follows:

Summary of Litigation Split		
	FMIF	MPF
	\$	\$
Share of Litigation Proceeds	32,825,000	17,675,000
Total Litigation Proceeds (Pre-Interest)		50,500,000
Notes:		Table 1
<1> Interest to be apportioned on the same basis (i.e. percentage).		

2.0 BACKGROUND

Based on the information provided and discussions with the Monaghan Lawyers we set out below our understanding of the background matters.

LM operates certain managed investment schemes including FMIF and MPF.

FMIF invests mainly in first mortgages, whilst MPF has a more wide ranging mandate, including investing in second mortgages behind FMIF.

Both funds have made loans to Bellpac and hold secured positions over Bellpac's land. FMIF has made one loan and MPF two loans. FMIF's loan is secured by a first registered mortgage and MPF's loans are secured by a second registered mortgage. As at 28 November 2010 the loan amount including interest by FMIF to Bellpac was \$48,873,495.23. As at 28 November 2010 the two loans by MPF to Bellpac including interest were \$14,242,039.02 and \$9,799,569.31 respectively.

Primary security for these loans is approx 800 hectares of land owned by Bellpac located at Russell Vale near Wollongong ("the land"). There is an operating coal mine on the land. The coal mine is operated by Gujarat NRE Coking Coal Limited ("Gujarat"). Gujarat has a mining lease over most of the land. The mining lease is granted by the State under relevant mining legislation. The mining lease permits Gujarat to use the land for the purpose of mining without Bellpac's consent. The lease term expires in 2023, but this term is able to be extended by Gujarat under the legislation. Gujarat's web site indicates that the mine has an expected life of 30 years, and a remaining resource of 400 million tonnes of coal.

Bellpac was originally both the land owner and the lessee under the mining lease. During the calendar year 2004, Bellpac sold the mining lease to Gujarat pursuant to a complex suite of documents. The intent was that Gujarat would relinquish the mining lease over the Bellpac land, and rehabilitate the land, by December 2007, thereby making the land available for a residential subdivision proposed by Bellpac. However, Gujarat did not relinquish the mining lease and nor did it rehabilitate the land.

Bellpac engaged in litigation with Gujarat, and ultimately entered into two settlement deeds with Gujarat. The latter of these two settlement deeds would have resulted in LM's facilities being satisfied, however Gujarat allegedly reneged on its obligations under the deed. Furthermore, the settlement deeds had the purported effect of releasing Gujarat from certain of its obligations under the 2004 suite of documents, and under the mining legislation. One of the obligations purportedly released was the obligation to pay compensation under the mining legislation.

The FMIF and MPF facilities fell into arrears. LM appointed receivers, who then became liquidators to Bellpac. Just after the appointment of the receivers, LM attended a meeting with Gujarat in which Gujarat indicated that in their view, they had the right to continue to occupy the Bellpac land for as long as the mining lease remained on foot, for no consideration. Gujarat indicated that they were prepared to buy the land, but they were only prepared to pay \$7M.

LM as RE was therefore required to assess the recoverability of the loans advanced and options available. LM took the view point that at a practical level, the land was unsaleable whilst Gujarat remained in occupation, and LM was receiving nothing from Gujarat to offset holding costs or interest. In LM's view, Gujarat was the only likely buyer of the land. LM therefore decided to issue proceedings against Gujarat, claiming under the 2004 agreements and the later settlement agreement.

The litigation was highly complex and the prospects uncertain. There were a number of different parties in addition to LM and Gujarat. LM and Gujarat were both represented by experienced solicitors, junior counsel and senior counsel. The process was very expensive for both sides.

Shortly after LM commenced litigation the FMIF account was frozen. This resulted in no new funds flowing in from investors and an obligation to remit borrowers' repayments to LM's former funder the Commonwealth Bank of Australia. FMIF was in the position of being unable to provide funding, and of being unable to satisfy any adverse costs orders that might have been made against LM. FMIF remains in that position. Hence the burden of funding the litigation fell solely on MPF.

It was always the 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, however as the outcome of the litigation was so uncertain, and the possible methods of resolving the litigation so varied, it was not considered appropriate to enter into any formal agreement to split the proceeds at that time.

In addition to the main proceeding against Gujarat, LM also pursued various other actions designed to recover funds and/or put pressure on Gujarat and/or improve LM's position in some other way, including the following:

- LM funded the liquidators to pursue recovery in relation to certain alleged preferential payments made by Bellpac;
- LM pursued a guarantor Mr Alfred Wong of the facilities;
- LM engaged consultants for the purpose of preparing an objection to planning applications being pursued by Gujarat in relation to the land.

MPF also paid for all of these actions.

In due course the main litigation against Gujarat progressed to the stage where the pleadings had closed, and a mediation was ordered. The mediation was held before ex-High Court Judge Michael McHugh QC. LM and Gujarat were represented by their full legal teams as well as directors from each of the parties. The mediation ultimately resulted in non-binding heads of agreement.

LM is of the opinion the result achieved at the mediation was the best possible result that could have been obtained, on behalf of FMIF and MPF. Essentially the result was that:



- LM would sell the Bellpac land to Gujarat for a price of \$50.5M, \$15.5M in cash over 6 months, and \$35M vendor finance, at BBSY plus 1% over 10 years, with amortisation starting in year 4.
- LM was required to pay the sum of \$1.3M to another party, Coalfields, to secure the withdrawal of certain caveats.
- LM as RE for FMIF and MPF was also to have an option to purchase a half interest in the land once the mining was completed.

The funding provided by FMIF and MPF is as follows:

Litigation Funding		
	\$	%
FMIF	161,471	8.97%
MPF	<u>1,638,438</u>	<u>91.03%</u>
	1,799,909	100.00%

Notes: Table 2

<1> Includes the costs to fund alleged preferential payment claim and guarantor claim against Mr Alfred Wong.

<2> Excludes the sum of \$1.3M to another party Coalfields, to secure the withdrawal of certain caveats.

3.0 RELATED PARTY TRANSACTIONS

LM is the RE for both FMIF and MPF. In accordance with AASB's "Glossary of Defined Terms" the parties are deemed to be "related parties".

A "related party transaction"¹, is defined as "a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged".

On or about 18 October 2010 ASIC's Consultation Paper 142 "Related Party Transactions" was released. The paper sets out ASIC's proposed guidance to public companies and responsible entities of managed investment schemes on complying with the Act where they provide financial benefits to related parties. It is anticipated that the proposed guidance outlined in the paper will be incorporated into ASIC's Regulatory Guide 76 "Related Property Transactions". Whilst the primary purpose of this Consultation Paper is to provide guidance to independent experts in mergers and acquisition activity, in our opinion, the principles to be applied are relevant to these circumstances.

¹ Definition extracted from AASB "Glossary of Defined Terms".

Under Chapter 2E of the Act, public companies such as LM must obtain member approval to give a financial benefit to a related party unless the benefit falls within an exception set out in sections 210 to 216 of the Act.

In the matter at hand it is therefore necessary to have consideration to Section 210 of the Act which relates to “Arm’s length terms” and states:

Member approval is not needed to give a financial benefit on terms that:

- (a). Would be reasonable in the circumstances if the public company or entity and the related party were dealing at arm’s length; or*
- (b). Are less favourable to the related party than the terms referred to in paragraph (a).*

In our opinion, it is important to have reference to ASIC’s Consultation Paper 142 in “How experts should assess related party transactions” and we have copied certain extracts below.

We propose to provide guidance in RG 111 (“Content of expert reports”) about the approach an expert should take to assessing a related party transaction when preparing a report for member approval under Ch 2E of the Corporations Act or Chapter 10 of the ASX Listing Rules: see Attachment 1 to CP 143. Our proposed guidance is directed primarily at asset acquisitions and/or disposals, and will cover:

- (a) the importance of an expert focusing on the substance of the related party transaction, rather than the legal mechanism;*
- (b) when analysing whether a related party transaction is ‘fair and reasonable’, our view that an expert should make a separate assessment of whether the transaction is ‘fair’ and whether it is ‘reasonable’;*
- (c) the meaning of ‘fair’ in the context of a related party transaction—that is, a proposed transaction is ‘fair’ if the value of the financial benefit to be provided by the company to the related party is equal to or less than the value of the consideration being provided to the company, and that this comparison should be made on the basis set out in RG 111.10;*

- (d) *the meaning of 'reasonable' in the context of a related party transaction—that is, a transaction is 'reasonable' if it is 'fair', and it might also be 'reasonable' if, despite being 'not fair', the expert believes there are sufficient reasons for members to vote for the proposal; and*
- (e) *factors that an expert might consider in determining whether a transaction is 'reasonable' (see paragraphs 74–76).*

Having regard to the above, in our opinion, it is important to consider in the below section the terms of the overall transaction with comparable transactions between parties dealing on an arm's length basis in similar circumstances.

4.0 LITIGATION FUNDING

Based on the background section of our report, we note the following pertinent points:

- The matter became very complicated and the litigation was highly complex and the prospects uncertain. In our opinion, litigation by its nature is difficult to predict with absolute certainty.
- FMIF was in the position of being unable to provide additional funding, and of being unable to satisfy any adverse costs orders that might have been made against LM.
- The burden of funding the litigation fell largely on MPF.

The funding in the litigation by FMIF and MPF is summarised at Table 2 above being \$1,638,438 by MPF and \$161,471 by FMIF. As noted above, this does not include the \$1.3M to another party Coalfields, to secure the withdrawal of certain caveats.

In our opinion, based on the information provided and our discussions with Monaghan Lawyers a commercial decision was undertaken by MPF to fund the litigation to attempt to preserve the capital entitlements under the loan documents. In affect MPF's role was not dissimilar to a litigation funder.

Based on our inquiries, there are a number of organisations providing litigation funding. The terms of funding are typically established on a case by case base.

We note that IMF is a public listed company providing funding of legal claims and other related services in Australia and in other jurisdictions, where the claim size is over AUS \$2 million².

A document from IMF entitled "Apply for Funding" states:

IMF's commission normally ranges between 20% and 45%. Factors affecting the percentage include:

- i. the level of legal fees and disbursements expected to be incurred;*
- ii. the strength of the case;*
- iii. the likely capacity of the defendant to meet a judgment; and*
- iv. the time it will take for the case to be completed.*

We note a further listed company is Hillcrest Litigation Services Limited. An extract from the website is listed below³:

The amount of the agreed percentage of the Settlement Sum that is assigned to the Company in accordance with paragraph (d) above is the subject of negotiations between the Company and the client based on their respective assessments of the potential risks and rewards of the claim the subject of the funding agreement. The percentage will usually be in the range between 30 and 45. Key considerations that are generally taken into account in the determination of the percentage include the following:

- the estimated amount of the claim;*
- the estimated amount of costs for which funding is required;*
- the current status of the claim and any proceedings that have been instituted;*
- the estimated time period before the matter will be determined; and*
- the prospects of recovery from the defendant, if the claim is successful.*

² Refer to the website www.imf.com.au.

³ Refer to the website www.hillcrestlitigation.com.au.

In our opinion, there is significant reliable data from comparable transactions between parties dealing at arm's length to positively conclude a fair and reasonable split of the litigation proceeds to FMIF and MPF. Accordingly, a range of MPF's entitlement between 30% to 40% would appear reasonable given the complexities in the matter and the fact it appears to be close to settling pre trial.

5.0 SPLIT OF LITIGATION PROCEEDS

Based on our inquiries above, in our opinion, the litigation funding for a matter such as this would range between 30% to 40%. For the purposes of our allocation we have adopted the midpoint being 35% for MPF. Accordingly, the remaining 65% of the litigation proceeds should be applied to FMIF. The same percentage split should also apply to the interest income to be received (i.e. BBSY plus 1% over 10 years).

As noted above, we have at this juncture excluded the split in relation to the following;

- Alleged preferential payment being pursued by the liquidators against Bellpac;
- Potential proceeds from personal guarantee by Mr Alfred Wong; and
- Potential value of the call option for the Bellpac land granted in favour of LM in its capacity as RE.

We understand that the formal legal documents to settle the matter with Gujarat are yet to be completed. If the terms of the final settlement or the costs to be funded by MPF to reach such settlement materially change, then we recommend you seek an updated opinion from us.

"SC-42"

Allens Arthur Robinson 

Date 28 March 2011
From John Beckinsale / Amy Hoban
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Confidential Email

Dear David

Bellpac Settlement - Conflict issues

Background

1. LM Investment Management Limited (**RE**) is the responsible entity of the LM First Mortgage Income Fund (**FMIF**) and the trustee of the LM Managed Performance Fund (**MPF**). The FMIF is a registered managed investment scheme. The MPF is an unregistered managed investment scheme.
2. Both FMIF and MPF have made loans to Bellpac Pty Ltd (**Bellpac**) and have taken security over Bellpac's land (**Bellpac Land**). FMIF's loan is secured by a first registered mortgage and MPF's loans are secured by a second registered mortgage. As at 28 November 2010 the loan amount (including interest) owing to FMIF by Bellpac was approximately \$48.8m and to MPF by Bellpac was approximately \$24m.
3. Gujarat NRE Coking Coal Limited (**Gujarat**) has a mining lease over most of the Bellpac Land which allows it to use the land for the purpose of mining without Bellpac's consent. The lease term expires in 2023, but this term is able to be extended by Gujarat under legislation, and Gujarat's website indicates the mine on the Bellpac Land has an expected life of 30 years.
4. Bellpac was originally both the land owner and lessee under the mining lease however, in approximately 2004 Bellpac sold the mining lease to Gujarat pursuant to various documents. It was intended that Gujarat would relinquish the mining lease and rehabilitate

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the land by December 2007, thereby making the land available for a residential subdivision proposed by Bellpac. This did not come to fruition and Bellpac entered into litigation with Gujarat, which was ultimately settled. Gujarat allegedly reneged on its obligations under the settlement arrangements despite the fact that the arrangements purportedly released Gujarat from certain of its obligations under the 2004 purchase documents, including the obligation to pay Bellpac compensation under the mining legislation.

5. As a result of the disputes between Bellpac and Gujarat the FMIF and MPF facilities fell into arrears.
6. The RE appointed receivers, and then a liquidator, to Bellpac. Shortly after the appointment of the receivers, the RE attended a meeting with Gujarat at which Gujarat indicated that in their view they had the right to continue to occupy the Bellpac Land for the term of the mining lease without being obliged to pay compensation, and that they would only be prepared to pay \$7m to buy the Bellpac Land.
7. At that point the RE assessed the recoverability of the loans and the options available to it. It took the view that at a practical level the land was unsaleable while Gujarat remained in occupation, and the RE was receiving nothing from Gujarat to offset holding costs or interest. The RE considered Gujarat to be the only likely buyer of the Bellpac Land. Accordingly, the RE issued proceedings against Gujarat claiming under the 2004 purchase documents and the settlement arrangements with the objective of forcing Gujarat into a position where it would purchase the Bellpac Land for a reasonable price.
8. Shortly after the RE commenced the litigation, redemptions from the FMIF were frozen, which resulted in no new funds flowing in from investors and an obligation to remit borrower's repayments to the RE's former funder the Commonwealth Bank. FMIF was in the position of being unable to provide funding for the litigation and of being unable to satisfy any adverse costs orders that might have been made against the RE. Accordingly, the MPF has contributed the majority of the funding for the litigation (and certain other actions designed to recover funds from Gujarat or put pressure on it), amounting to approximately 91% of the total funding (the FMIF has contributed the remaining 9%).
9. The FMIF and the MPF did not enter into any formal agreement to split the proceeds recovered by the litigation despite it being the understanding of the RE'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.
10. The main litigation against Gujarat proceeded to mediation and a non-binding heads of agreement has been reached between the parties pursuant to which the RE will sell the Bellpac Land to Gujarat for \$50.5m, being \$15.5m in cash over 6 months and \$35m in vendor finance, and the RE will pay \$1.3m to another party, Coalfields, to secure the withdrawal of certain caveats. In addition, the RE will be granted an option to purchase a 50% interest in the Bellpac Land upon completion of the mining.
11. The RE and Gujarat are currently in discussions to agree a cash figure in lieu of the vendor finance arrangement. As at 14 March 2011 the parties had discussed \$45.5m cash conditional on settlement by 31 March 2011.

12. The RE considers the proposed settlement arrangement with Gujarat to be the best possible result it could have obtained on behalf of both FMIF and MPF.
13. The RE (on behalf of both FMIF and MPF) instructed WMS Chartered Accountants to provide an opinion as to what would be a fair and reasonable split of the likely litigation proceeds to be received by FMIF and MPF. The RE has confirmed that WMS Chartered Accountants is independent from the RE, its directors and controllers.
14. WMS Chartered Accountants provided their report in March 2011. They conclude:

"In our opinion, the proposed split of 65% to FMIF and 35% to MPF is fair and reasonable having regard to comparable arm's length transactions".

Advice Sought

15. You have asked us whether it is legally acceptable for the RE to split the litigation proceeds between FMIF and MPF on the basis of the opinion provided by WMS Chartered Accountants, given that the RE is in a position of conflict (in its capacity as responsible entity for FMIF and in its capacity as trustee for MPF).

Summary of advice

16. We consider that it is legally acceptable for the RE to split the litigation proceeds between FMIF and MPF on the basis of the opinion provided by WMS Chartered Accountants, despite the RE being in a position of conflict, subject to the following matters:
 - (a) We assume that in its capacity as responsible entity of the FMIF, the RE has considered all feasible options for the recovery of the loan advanced by FMIF to Bellpac, and is satisfied that the terms of the proposed settlement are in the best interests of FMIF members (see paragraphs 25, 27, 53 and 56 below).
 - (b) We assume that in its capacity as trustee of the MPF, the RE has considered all feasible options for the recovery of the loan advanced by MPF to Bellpac, and is satisfied that the terms of the proposed settlement are in the best interests of MPF members (see paragraphs 35 and 37 below).
 - (c) We assume that the decision by the RE in respect of the split will not be made in order to benefit the RE (or any of its associates) personally, for example, by ensuring that the effect of splitting the proceeds in a certain way results in the RE receiving more fees or some other benefit that would not have occurred had the split been done in a different way (see paragraphs 28 and 38 below).
 - (d) The directors must be satisfied that the proposed split of settlement proceeds and associated releases of securities by the RE would be reasonable in the circumstances if the RE as responsible entity of the FMIF and the RE as trustee of the MPF were dealing at arm's length. The WMS Chartered Accountants report makes it clear that "there is significant reliable data from comparable transactions between parties dealing at arm's length to positively conclude a fair and reasonable split of the litigation proceeds to FMIF and MPF". Consequently, the conclusion in the WMS Chartered Accountants report will be an important factor in the RE's decision in respect of the split of the litigation proceeds. However, the RE should not rely solely on the report. The directors of the RE must make "their own

independent assessment" of the relevant matters, and the advice from WMS Chartered Accountants does not replace "careful judgement by the directors". They should also consider the relevant factors referred to by ASIC in CP 142. See paragraphs 46 to 50 below.

- (e) The RE should ensure that it complies with any procedures in the FMIF compliance plan (or with any other procedures it has in place) in respect of conflicts of interest (see paragraphs 54 and 57 below).
 - (f) We assume that the RE has not made any representations to the members in the FMIF or the MPF which are inconsistent with the proposal to split the litigation proceeds in the manner outlined in the report of WMS Chartered Accountants.
 - (g) The directors of the RE must comply with their general law and statutory duties under the Corporations Act (see paragraphs 61 to 65 below). We are not aware of any reason why agreeing to split the litigation proceeds between FMIF and MPF on the basis of the opinion provided by WMS Chartered Accountants would raise any issues in this regard (assuming the matters in paragraphs (a) to (f) above are confirmed).
17. We assume that the RE will disclose the conflict to members in the FMIF and MPF in due course in accordance with its usual conflicts disclosure policies.

Details of advice

18. The terms of the proposed Gujarat settlement and the split of the litigation proceeds raise the following possible conflicts issues:
- (a) Issues for the RE as trustee of FMIF.
 - (b) Issues for the RE as trustee of MPF.
 - (c) Issues for the RE as responsible entity of a registered scheme.
 - (d) Issues for the RE as an AFS licensee.
 - (e) Issues for the RE as a public company.
 - (f) Issues for the directors of the RE.

The interaction between each of the above matters is not always clear. Note also that satisfaction of one of the relevant principles does not always mean that a similar principle will necessarily be satisfied.

Issues for the RE as trustee of FMIF

Comply with Constitution

19. The RE will need to comply with the constitution when agreeing to the Gujarat settlement terms and the proposed split of litigation proceeds with the MPF.
20. Clause 29.1 of the constitution provides that subject to the Law, nothing in the constitution restricts the RE from dealing with itself as trustee of another trust, being interested in any contract or transaction with itself as trustee of another trust, or acting in the same or similar capacity in relation to any other trust. We are not aware of any case law on how specific the terms in a trust deed must be to allow a self dealing. However, the wording in the

constitution is consistent with the standard types of provisions which are used to endeavour to allow a trustee to deal with itself, and we consider the better view is that the terms of the constitution would be interpreted to have the intended effect (that is, to allow the RE to deal with itself in two different capacities).

21. Clause 13 of the constitution confers on the RE all the powers in respect of the Scheme Property that it is possible under the Law to confer on a responsible entity and on a trustee, and to the extent allowed by law, to deal with any property, and to exercise all powers of a mortgagee pursuant to the mortgage terms and conditions.
22. Accordingly, the constitution does not expressly restrict the RE from agreeing to the Gujarat settlement terms and the proposed split of litigation proceeds with itself in the capacity as trustee of MPF, and provides sufficient powers for the RE to undertake such matters (subject to its general law duties, and any other relevant legal requirements).

Comply with General Law Duties

23. The RE as trustee of FMIF must comply with its general law fiduciary duties as a trustee when agreeing to any split of the litigation proceeds with MPF, and agreeing to the Gujarat settlement terms pursuant to which the RE will be obliged to release its security over the Bellpac Land in consideration for the payment of some of the litigation proceeds.
24. Although such duties take various different forms, and are often inter-related, the fundamental duty of all trustees is that of undivided loyalty to its beneficiaries (or to always act in the best interests of its beneficiaries). In the context of this transaction, the duties can probably best be summarised as the duty to act in the best interests of the beneficiaries, the no-profit rule, and the no-conflicts rule.
25. The RE therefore needs to always act in the best interests of the members of the FMIF when making any decision regarding the split of the litigation proceeds and the terms of the Gujarat settlement. We assume that the RE has considered all feasible options for the recovery of the loan advanced by FMIF to Bellpac, and is satisfied that the result of the litigation with Gujarat, being the terms of the proposed settlement, are in the best interests of FMIF members. In addition, we assume that the RE is satisfied that there is a need to reach agreement with the MPF trustee about sharing the litigation settlement proceeds with the MPF (because the overall settlement cannot occur without the agreement of the MPF trustee - for example, it needs to release its security and pay Coalfields to withdraw its caveats).
26. The no-conflict rule provides that trustees must avoid a situation where their own interest may conflict with their duties as trustee, or where two different duties may conflict. The no-profit rule stipulates that a trustee must not obtain an unauthorised profit from the trust.
27. In this case, there are two areas of conflict for the RE as responsible entity of the FMIF. The first is between the RE as responsible entity of the FMIF and the RE as trustee of the MPF.

We assume that any decision regarding the terms of the Gujarat settlement and the split of the litigation proceeds will be made on the basis of what is in the best interests of FMIF's members, and not for the purpose of benefitting the members of the MPF. If the proposed dealings are considered by the RE to be on arm's length terms for the purposes of Chapter

2E/Part 5C.7 (see paragraphs 39 to 50 below) then this will presumably be an important factor used by the RE in reaching this conclusion.

28. The second area of conflict is between the RE as responsible entity of the FMIF and the RE personally. We assume that the decision by the RE in respect of the split will not be made in order to benefit the RE (or any of its associates) personally, for example, by ensuring that the effect of splitting the proceeds in a certain way results in the RE receiving more fees or some other benefit that would not have occurred had the split been done in a different way.

Issues for the RE as trustee of MPF

Comply with Constitution

29. The RE will need to comply with the MPF's constitution when agreeing to the Gujarat settlement terms and the proposed split of litigation proceeds with the FMIF.
30. Similar to the terms of the FMIF constitution, clause 26.1 of the constitution provides that subject to the Law, nothing in the constitution restricts the RE from dealing with itself as trustee or responsible entity of another trust, being interested in any contract or transaction with itself as trustee or responsible entity of another trust, or acting in the same or similar capacity in relation to any other trust or managed investment scheme. The comments in paragraph 20 above also apply to clause 26.1 of the constitution for the MPF.
31. The following provisions in clause 12 of the constitution are relevant to the power of the RE to enter into the Gujarat settlement terms and to agree to a split of the litigation proceeds:
- 12.1 The Manager has all the powers:...
- (b) in respect of the Scheme and the Scheme Property that it is possible under the Law to confer on a Manager and a Trustee;
- ...
- 12.2 Without limiting the generality of clause 12.1, the Manager may:
- (a) purchase, sell...enter into any other agreement or dealing including the surrender or termination of any dealing in relation to any property forming or which is to form part of the Scheme, on any terms the Manager thinks fit;
- ...
- (e) exercise any Power and perform all obligations in relation to any property forming part of the Scheme as if the Manager is the beneficial owner of the property.
- ...
- (g) enter into possession of and manage any property interests of the Scheme.
- 12.8 Without limiting the generality of clause 12.1, the Manager may:
- ...
- (b) refer any dispute affecting the assets of the Scheme to arbitration, other than a dispute involving a Member; and
- (c) settle on any terms any matter which arises in relation to the Scheme (if the Manager settles any matter the settlement is binding on all persons interested in the Scheme, including all Members)....

12.10 To the extent allowed by law:

...

(b) the Manager may deal with any property to exercise all the powers of a mortgagee pursuant to the mortgage terms and conditions.

32. Accordingly, the constitution does not expressly restrict the RE from agreeing to the Gujarat settlement terms and the proposed split of litigation proceeds with itself in the capacity as trustee and responsible entity of FMIF, and provides sufficient powers for the RE to undertake such matters (subject to its general law duties, and any other relevant legal requirements).

Comply with General Law Duties

33. The RE as trustee of MPF must comply with its general law fiduciary duties as a trustee when agreeing to any split of the litigation proceeds with FMIF, and agreeing to the Gujarat settlement terms pursuant to which the RE will be obliged, in consideration for the payment of some of the litigation proceeds, to release its security over the Bellpac Land and to pay Coalfields to withdraw its caveat.
34. Our analysis regarding the duties of a fiduciary in paragraphs 23 and 24 above are equally applicable in the context of the RE acting in its capacity as trustee of MPF.
35. The RE therefore needs to always act in the best interests of the members of the MPF when making any decision regarding the split of the litigation proceeds and the terms of the Gujarat settlement. We assume that the RE in its capacity as trustee of MPF has considered all feasible options for the recovery of the loans advanced by MPF to Bellpac, and is satisfied that the result of the litigation with Gujarat, being the terms of the proposed settlement, are in the best interests of MPF's members. In addition, we assume that the RE is satisfied that there is a need to reach agreement with the FMIF responsible entity about sharing the litigation settlement proceeds with the FMIF (because the overall settlement cannot occur without the agreement of the FMIF responsible entity - for example, it needs to release its security).
36. As noted in paragraph 26 above, the no-conflict rule provides that trustees must avoid a situation where their own interest may conflict with their duties as trustee. The no-profit rule stipulates that a trustee must not obtain an unauthorised profit from the trust.
37. In this case, there are two areas of conflict for the RE as trustee of the MPF. The first is between the RE as trustee of the MPF and the RE as responsible entity of the FMIF.

We assume that any decision regarding the terms of the Gujarat settlement and the split of the litigation proceeds will be made on the basis of what is in the best interests of MPF's members, and not for the purpose of benefitting the members of the FMIF. If the proposed dealings are considered by the RE to be on arm's length terms for the purposes of Chapter 2E/Part 5C.7 (see paragraphs 39 to 50 below) then this will presumably be an important factor used by the RE in reaching this conclusion.

38. The second area of conflict is between the RE as trustee of the MPF and the RE personally. We assume that the decision by the RE in respect of the split will not be made in order to benefit the RE (or any of its associates) personally, for example, by ensuring that the effect of splitting the proceeds in a certain way results in the RE receiving more

fees or some other benefit that would not have occurred had the split been done in a different way.

Issues for the RE as responsible entity of a registered scheme.

Related Party Transaction – Chapter 2E and Part 5C.7

39. Chapter 2E of the Corporations Act contains specific provisions where a public company gives a financial benefit to a "related party" of the public company.
40. Section 601LA of the Corporations Act applies the related party restrictions in Chapter 2E to responsible entities and members of registered schemes, subject to some modifications to take account of the difference in structure between a company and a registered scheme.
41. Section 208 (as modified by section 601LC) restricts the responsible entity from giving a financial benefit either out of scheme property or that could endanger scheme property, to the responsible entity or a related party, unless the responsible entity has obtained approval of the scheme's members in the way set out in sections 217 to 227, or the giving of the benefit falls within an exception set out in sections 210 to 216.
42. Section 208 therefore applies to financial benefits from the RE as responsible entity of the FMIF to the RE as trustee of the MPF.
43. In determining whether a financial benefit is given for the purposes of Chapter 2E, section 229(1) requires any consideration that is or may be given for the benefit to be disregarded. Section 229(2) provides that 'giving a financial benefit' includes making an agreement that has no binding force and giving a financial benefit that does not involve paying money (for example by conferring a financial advantage).
44. Entering into an agreement with the MPF to split the litigation proceeds in consideration for it releasing its first mortgage over the Bellpac Land will constitute the giving of a financial benefit.
45. One of the exceptions in section 208 is that member approval is not needed to give a financial benefit on terms that would be reasonable in the circumstances if the responsible entity and the related party were dealing at arm's length, or are less favourable to the related party than such terms. In the context of this transaction, member approval will not be needed if the financial benefit from the RE as responsible entity of the FMIF is on terms that would be reasonable in the circumstances if the RE as responsible entity of the FMIF and the RE as trustee of the MPF were dealing at arm's length, or are less favourable to the RE as trustee of the MPF than such terms (although if the terms were less favourable, this would raise issues for the RE as trustee for the MPF in reaching the conclusions noted in paragraphs 35 and 37 above).
46. ASIC has released a consultation paper (CP 142) about related party dealings, which includes Chapter 2E/Part 5C.7 dealings.

The consultation is being undertaken prior to ASIC preparing guidance to help companies and responsible entities decide whether member approval should be sought under Chapter 2E/Part 5C.7 for a related party transaction.

The proposed guidance will focus on:

- relevant factors to consider when deciding whether the 'arm's length' exception in s210 applies;
- the need to consider all relevant factors, not just individual factors in isolation; and
- the need to consider seeking member approval in cases of doubt about whether an exception applies.

Although the ASIC guidance has not yet been prepared (as the current paper is simply a consultation paper) and although such guidance will not be determinative of the actual legal position (as it will just be ASIC's views on the various issues, not a court's views) the issues discussed in the consultation paper are likely to be useful to the RE in deciding whether the arm's length exception in section 210 of the Corporations Act would apply.

We have therefore set out the relevant provisions of CP 142 in the schedule to this advice.

47. You will see from the relevant provisions of CP 142 that expert advice received by the RE is a very important factor (although not the only factor) in deciding whether a transaction is arm's length. For example, paragraph 42 of CP 142 notes that "If the report is prepared in accordance with RG 111 and RG 112 and concludes that the transaction is 'fair and reasonable' it is more likely that the transaction is on arm's length".
48. The RE has (on behalf of both FMIF and MPF) identified an independent expert, WMS Chartered Accountants, to provide a report on the transaction. WMS Chartered Accountants has referred to CP 142 in some detail in providing its report, and has noted that the report is specifically being provided to the RE for the purposes of Chapter 2E of the Corporations Act, and that the report may be used by the RE's directors in determining a fair and reasonable split of the litigation proceeds. The report also makes it clear that "there is significant reliable data from comparable transactions between parties dealing at arm's length to positively conclude a fair and reasonable split of the litigation proceeds to FMIF and MPF".
49. The WMS Chartered Accountants report concludes as follows:
- "In our opinion, the proposed split of 65% to FMIF and 35% to MPF is fair and reasonable having regard to comparable arm's length transactions".
50. Consequently, the conclusion in the WMS Chartered Accountants report will be an important factor in the RE's decision in respect of the split of the litigation proceeds. However, as ASIC makes clear in CP 142, the RE should not rely solely on the report. In particular:
- (a) The directors of the RE must make "their own independent assessment" of the relevant matters.
 - (b) Advice from WMS Chartered Accountants does not replace "careful judgement by the directors".

Duties of a responsible entity

51. Section 601FC(1) requires the responsible entity of a registered scheme in exercising its powers and carrying out its duties to, amongst other things:

- (a) act honestly (s601FC(1)(a));
 - (b) act in the best interests of the members of the scheme and, if there is a conflict between the members' interests and its own interests, to give priority to the members' interests (s601FC(1)(c)); and
 - (c) comply with the scheme's compliance plan
52. The statutory duties in section 601FC(1)(a) and (c) are similar to the duties which the responsible entity would have at general law as a fiduciary and trustee (which are discussed in paragraphs 23 to 28 above).
53. The RE will therefore need to conclude that the proposed split of the litigation proceeds and the terms of the Gujarat settlement are in the best interests of the members of the FMIF.
54. The RE will also need to review the FMIF's compliance plan and ensure that any specific procedures set out in the compliance plan to manage conflicts of interest of this nature are followed. We have not reviewed the terms of the compliance plan.

Issues for the RE as an AFS Licensee

55. The RE holds an Australian financial services licence, which is relevant to its capacity as responsible entity and trustee of FMIF, and as trustee of MPF. As an AFS licensee the RE has the following general obligations under section 912A of the Corporations Act:
- (a) to do all things necessary to ensure that the financial services covered by its licence are provided efficiently, honestly and fairly (s912A(1)(a));
 - (b) to have adequate arrangements in place for managing conflicts of interest (s912A(1)(aa)).
56. The RE will need to be satisfied that the terms of the Gujarat settlement and the proposed split of litigation proceeds does not unfairly put the interests of one client (e.g. FMIF) ahead of the interests of its other client (e.g. MPF) or vice versa.
57. The RE will also need to ensure that it follows any procedures or policies it has established in accordance with section 912A(1)(aa) for managing conflicts of interest.

Issues for RE as public company

58. As noted above, Chapter 2E of the Corporations Act contains specific provisions where a public company (such as the RE) gives a financial benefit to a "related party" of the public company.

In particular, section 208 restricts such a financial benefit unless the public company has obtained approval of the public company's members in the ways set out in section 217 to 227, or the giving of the benefit falls within an exception set out in sections 210 to 216.

One of those exceptions is that member approval is not needed to give a financial benefit on terms that would be reasonable in the circumstances if the public company and the related party were dealing at arm's length, or are less favourable to the related party than such terms.

59. Although the financial benefit in this case is likely to come from the assets of the FMIF or the MPF rather than from the RE's personal assets, in the event that the RE's right to

indemnification out of the assets of the FMIF/MPF is reduced by the RE's fraud, negligence or wilful default, the benefit will come from its personal assets.

60. However, to the extent there is any separate operation of Chapter 2E (beyond its application under Part 5C.7) we consider that if the transactions are on arm's length terms for the purposes of Part 5C.7, they will also be on arm's length terms for the purposes of Chapter 2E.

Issues for Directors of RE

61. The Corporations Act and the general law impose a number of obligations on directors to ensure that they avoid conflicts of interest and act in accordance with their fiduciary responsibilities. These obligations include the following:
- (a) Section 180(1), which requires a director to exercise the degree of care and diligence that a reasonable person would exercise if they occupied the same position and had the same responsibilities within the company.
 - (b) Section 180(2), which provides that a director who makes a business judgement is taken to meet the requirements of section 180(1) if they make the judgement in good faith for a proper purpose, do not have a material personal interest in the subject matter, inform themselves about the subject matter to the extent they reasonably believe is appropriate, and rationally believe that the judgement is in the best interests of the corporation.
 - (c) Section 181(1), which requires the exercise of powers and duties in good faith in the best interests of the corporation, and for a proper purpose.
 - (d) Section 182(1), which prohibits a director from improperly using their position to gain an advantage for themselves or someone else, or cause detriment to the corporation.
 - (e) Section 191(1), which obliges a director with a material personal interest in a matter that relates to the affairs of the company to give the other directors notice of the interest, subject to certain exceptions.
 - (f) Section 195(1), which contains restrictions on a director of a public company with a material personal interest being present while a matter is being considered at a meeting, or voting on the matter, subject to certain exceptions.
 - (g) The general equitable principles or fiduciary doctrines that apply to directors, and which are reflected to some extent by the specific statutory rules noted above. These include general rules not to have a personal interest in a matter with which the company is dealing, not misuse their position (for example by making a personal gain) and not appropriate company property for their own or another person's benefit.
62. As the RE is the responsible entity of a registered scheme (in respect of the FMIF), the directors will also be bound by the additional duties of officers set out in section 601FD(1) of the Corporations Act. These duties include the obligations to:

- (a) act honestly and in the best interests of the scheme 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;
- (b) not make use of information acquired through being an officer of the responsible entity in order to gain an improper advantage for the officer or another person; and
- (c) not make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for another other person or to cause detriment to the members of the scheme.

It is likely that these statutory duties cannot be overridden by the constitution of the FMIF.

63. Generally, the directors of a trustee company do not themselves owe direct fiduciary obligations to the beneficiaries of the trust. However, section 601FD(2) of the Corporations Act provides that the duties outlined in section 601FD(1) override any conflicting duty an officer has under Part 2D.1 of the Corporations Act. Although this point has not yet been decided by case law, it is possible that section 601FD(2) will mean that directors of a responsible entity will have a direct fiduciary relationship with members of a registered scheme. This would mean that the directors would owe the scheme members all of the proscriptive fiduciary duties that arise as between the RE itself and the scheme members.
64. In any event, the fact the RE is a trustee can be relevant when considering the extent of compliance by the directors with their statutory and general law duties as directors. In addition, under the principle of accessory liability, a director of a trustee company may become subject to the same remedies that a member of the trust has against the trustee if the director has assisted the trustee to act in breach of trust.
65. Section 197 of the Corporations Act imposes personal liability on directors of a trustee company in certain circumstances where the trustee has acted in breach of trust, outside the scope of its powers, or where the trustee is denied a right of indemnity from the trust assets.

Previous Representations

66. We assume that the RE has not made any representations to the members in the FMIF or the MPF which are inconsistent with the proposal to split the litigation proceeds in the manner outlined in the report of WMS Chartered Accountants.

Future Disclosure

67. We assume that the RE will disclose the conflict to members in the FMIF and MPF in due course in accordance with its usual conflicts disclosure policies.

Tax Issues

68. We confirm that we have not considered any tax issues as part of this advice.

Other Issues

69. We confirm that we have not considered any other issues as part of this advice apart from those matters specifically addressed. For example:
- (a) This advice has not considered the merits of the proposed Gujarat settlement.

- (b) We have not considered any issues arising from the preferential payment being pursued by Bellpac's liquidators, the legal proceedings by MPF against Alfred Wong, or the call option for the Bellpac Land that may be granted to the FMIF and MPF, and have not considered any conflicts issues that may arise from such matters.
- (c) We have not considered whether it is possible at law for a trustee of one trust to contract with itself as trustee of another trust (although we note that would clearly be permissible if a third party is also a party to the contract).
- (d) We have not considered the correctness of the WMS Chartered Accountants report.
- (e) We have relied on the background set out in the report from WMS Chartered Accountants.

Please contact us if you would like to discuss the above matters in further detail.

Regards



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Schedule

The following matters have been taken from ASIC Consultation Paper 142, and the paragraph numbers noted below are the numbers used in that Paper.

ASIC's Summary of Legal Framework

16 The case law on the meaning of 'arm's length' suggests that this phrase refers to a relationship between parties where neither bears the other any special duty or obligation, they are unrelated, uninfluenced and each acts in its own interests.

Note: See *Orrong Strategies Pty Ltd v Village Roadshow Ltd [2007] VSC 1 (Orrong)*, *Australian Securities and Investments Commission (ASIC) v Australian Investors Forum Pty Ltd & Ors (No 2) [2005] NSWSC 267 (ASIC v Australian Investors Forum)* and *ACI Operations Pty Ltd v Berri Limited [2005] VSC 201 (Berri)*.

17 This meaning of 'arm's length' is supported in recent case law that applies the phrase as it appears in taxation and other legislation.

Note: See *Granby Pty Ltd v Federal Commissioner of Taxation (1995) 129 ALR 503 (Granby)*, *Trustee for the Estate of the Late AW Furse No 5 Will Trust v FCT (1990) 21 ATR 1123 (Furse)* and *Australian Trade Commission v WA Meat Exports Pty Ltd (1987) 75 ALR 287*.

18 While case law in the United Kingdom also explores the meaning of 'arm's length', the exception in s210 is different from the exceptions to the requirement for member approval for similar transactions in other jurisdictions.

19 Specifically, *ASIC v Australian Investors Forum* (at para 456) indicates that in determining the objective standards that would characterise arm's length terms, courts should consider the transaction terms that would result if:

- (a) the parties to the transaction were unrelated in any way (e.g. financially, through ties of family, affection or dependence);
- (b) the parties were free from any undue influence, control or pressure;
- (c) through its relevant decision-makers, each party was sufficiently knowledgeable about the circumstances of the transaction, sufficiently experienced in business and sufficiently well advised to be able to form a sound judgement as to what was in its interests; and
- (d) each party was concerned only to achieve the best available commercial result for itself in all the circumstances.

20 In deciding whether the exception applies, the terms on which the financial benefit is given should be compared to the objective range of possible terms that these unrelated, uninfluenced and self-interested parties would reasonably arrive at in the circumstances: see *ASIC v Australian Investors Forum* and *Orrong*.

21 In determining what outcomes unrelated parties would reasonably achieve, the following points should also be considered:

- (a) commercial prudence should be applied and expert guidance may be required in considering the terms of the related party transaction (see *ASIC v Australian Investors Forum*) and ascertaining common market practice; and

(b) if the terms of the financial benefit are unusual or extraordinary, or excessively generous, then it is less likely that the terms can be considered 'reasonable' and so would not be arm's length terms for the purposes of s210: see *Orrong, Furse, Re HIH Insurance Ltd (in prov liq)* and *HIH Casualty and General Insurance Ltd (in prov liq)*; *ASIC v Adler and Others* [2002] NSWSC 171 (*ASIC v Adler*).

ASIC's Proposal for determining the application of the arms' length exception (section 210)

B1 We propose to provide guidance in RG 76 about factors that companies and responsible entities should take into account in deciding whether this exception applies. We propose that companies should take into account all of the following factors:

- (a) how the terms of the overall transaction compare with those of any comparable transactions between parties dealing on an arm's length basis in similar circumstances (see paragraphs 24–29);
- (b) the nature and content of the bargaining process, including whether the company followed robust protocols to ensure that conflicts of interest were appropriately managed in negotiating and structuring the transaction (see paragraphs 30–35);
- (c) the impact of the transaction on the company (e.g. the impact of dealing on those terms on the financial position and performance of the company) and non-associated members (see paragraphs 36–37);
- (d) any other options available to the company (see paragraph 38); and
- (e) any expert advice received by the company on the transaction (see paragraphs 39–43).

ASIC's Explanation of above Proposal

22 The following sections explain each of the factors listed in our proposal. We propose that companies and responsible entities should take into account all of the factors that are relevant in the circumstances. Companies should not make an assessment of whether the transaction is on arm's length terms based on a single factor in isolation from each of the other factors.

23 For example, it would be insufficient for a company to make this assessment based only on the nature of the bargaining process without considering other relevant factors, such as comparable transactions and other available options.

Comparable transactions

24 A good indicator of arm's length terms is whether the terms of similar transactions completed in similar circumstances but between unrelated parties in a contract for legitimate commercial bargain are comparable to the proposed related party transaction terms: see *Furse*. Companies should seek to establish the contractual terms that prevail in the open market for similar transactions between unrelated parties. Common experience and usual terms of trade can be taken as a guide: see *ASIC v Australian Investors Forum*.

25 Common sense and commercial prudence should be applied and expert guidance may be required when considering the terms of the related party transaction (see *ASIC v Australian Investors Forum*) to determine the terms on which unrelated parties would contract in the same circumstances.

26 In assessing the terms of the related party transaction, consideration also needs to be given to whether any key provisions such as consideration, warranties, indemnities, term and termination

are excessively onerous or excessively generous, such that the terms do not appear to be arm's length in comparison with the terms achieved by other parties on the open market in similar circumstances: see *Orrong*. This assessment should include a consideration of whether the contract or agreement adequately protects the interests of the company giving the financial benefit: see *ASIC v Adler*.

27 Where the terms of the financial benefit are unusual or extraordinary, or excessively generous, then they are less likely to be considered 'reasonable' and therefore not arm's length terms for the purposes of s210: see *Orrong and Furse*. We consider that this will also be the case where the circumstances of the transaction are unusual and where the terms are excessively onerous. Extreme or unlikely outcomes should be considered to be unreasonable and therefore not used in the comparison.

28 We also consider that if the terms are unusual, extraordinary or excessively onerous or generous, it is less likely that there will be a transaction that is comparable to the proposed related party transaction.

29 If there is no reliable data about comparable transactions between parties dealing at arm's length, then it will be more difficult to determine the hypothetical reasonable arm's length terms that could be reached by unrelated parties. This raises the issue of how directors can conclude that the transaction is on arm's length terms.

Note: See Proposal B2 for a discussion about obtaining member approval when it is uncertain whether the exception in s210 applies.

Bargaining process

30 Consideration of the nature and content of the bargaining process, including how the transaction was initiated, structured, negotiated and disclosed to directors, is also relevant in determining whether the terms of a proposed transaction are arm's length.

31 If the parties have dealt with each other as unrelated parties would normally do, and engaged in a process of real bargaining, it is more likely that the outcome of their dealings can be considered to be arm's length terms: see *Furse and Granby*. It is not necessary to show that the parties negotiated on an arm's length basis to decide whether the terms of a proposed transaction are arm's length terms for the purposes of s210 (in fact, due to their relationship, they may not have done so).

32 However, factors relating to how the parties conducted themselves in forming the terms of the transaction will be relevant to assessing whether the outcome of their negotiations reasonably could have been achieved by uninfluenced, self-interested parties in the circumstances. These factors include:

(a) whether the proposed transaction is contractual in nature, including whether it is documented in binding form (see *Orrong*, *ASIC v Australian Investors Forum* and *ASIC v Adler*);

(b) the involvement in the negotiations of professional advisers representing or advising each party (see *Orrong*); and

(c) the nature of the negotiation process, including length and sincerity, whether there was 'hard' or 'real' bargaining (e.g. a disinterested bargaining process that is characteristic of strangers, who are

each applying their independent separate wills), and whether any of the terms were negotiated at all (see Orrong, Furse, Berri and Granby).

33 If a director of the company has a material personal interest in the related party transaction and has participated in, or been privy to, negotiations with the related party, this aspect of the bargaining process and its potential impact on the terms of the transaction should be taken into account when assessing whether the terms are arm's length.

34 It may also be relevant to consider the public company's bargaining position. This is not only determined by reference to the knowledge and experience the company has, including through its advisers, but also by the relevant circumstances in which the transaction is contemplated. Circumstances include the company's desire and need to complete the transaction.

35 For example, a company in financial distress with no other viable alternatives may agree to more onerous terms or a lower price in order to obtain a loan or a capital injection. However, consideration of a company's bargaining position as one factor alone should not be used as justification for characterising non-arm's length terms as arm's length terms in the circumstances of a very strong or very weak bargaining position.

Impact on company

36 An assessment of whether the terms of a transaction would be reasonable if the company was dealing at arm's length also needs to consider the implications of dealing on those terms on the financial position and performance of the company as well as the implications for the non-associated members. This includes the short-term and long-term implications. When dealing at arm's length, companies acting in their own interests generally have the option not to proceed, or to conduct business in a different way, if the terms do not satisfy their performance expectations.

37 This includes considering whether:

- (a) there is a negative effect on the company's financial position or performance that is not balanced by sufficient positive effects, such that the terms would not be reasonable in the circumstances if the parties were dealing at arm's length;
- (b) the transaction fits within the company's business plan or impacts on whether the company is able to pursue its business plan; and
- (c) the terms are fair, given the expected return on the asset, the risks to which the asset is exposed and the relative liquidity of the asset.

Other options available to the company

38 If the proposed related party transaction is one of a number of alternatives open to the company:

- (a) the terms of these alternatives can provide a good comparison for what terms can reasonably be obtained between unrelated parties in the circumstances; and
- (b) if the terms of the proposed transaction are less favourable to the related party than the terms of these alternatives, the arm's length exception is more likely to apply.

Expert advice

39 Directors should ensure they have, or have access to, enough knowledge or expertise to assess proposed related party transactions—where necessary, they should obtain appropriate

professional and expert advice from any appropriately qualified person: see ASIC v Australian Investors Forum.

40 However, directors relying on information, professional advice or expert advice provided by others must make their own independent assessment of the information: see s189. Advice does not replace careful judgement by the directors.

41 Sometimes a public company will obtain an independent expert report on the transaction for some other purpose, such as the ASX Listing Rules.

42 If the report is prepared in accordance with RG 111 and RG 112 and concludes that the transaction is:

- (a) 'fair and reasonable'—it is more likely that the transaction is on arm's length terms;
- (b) 'not fair but reasonable'—the transaction is less likely to be 'arm's length', absent any other mitigating factors.

Note 1: See Section C for our proposed guidance on independent expert reports for related party transactions.

Note 2: Under RG 111.56 (in Attachment 1 to CP 143), an expert should not take into account any special value of the 'target' to a particular 'bidder' (e.g. synergies that are not available to other bidders) when determining fairness. However, special value may be part of the 'circumstances' relevant to considering whether the terms of the transaction are arm's length. In this situation, companies will need to be mindful that the price an expert has determined to be 'fair' may not include special value and, therefore, may be different from the hypothetical price unrelated parties might agree to in the 'circumstances': see paragraphs 48–50 for comments on the 'circumstances'.

43 The directors, of course, will need to be satisfied that it is appropriate to rely on the expert report, including that the opinion in the report is directly relevant to the decision at hand.

Rationale

44 While the arm's length exception in s210 can be interpreted broadly, it is important that it is applied correctly so that members are given an appropriate opportunity to vote on a proposed related party transaction where the terms of that transaction are not truly arm's length terms.

45 Our proposal aims to provide some certainty about how companies should apply the arm's length exception from the requirement to seek member approval under Ch 2E. Our recent review of the related party arrangements of public companies suggests that there are varying views about both:

- (a) the scope of the arm's length exception; and
- (b) how to assess whether this exception applies, including what information is relevant to this assessment.

46 For example, our recent review indicated that:

- (a) some companies failed to consider whether interested directors had participated in, or been privy to, negotiations with the related party when assessing whether the terms of a related party transaction were arm's length; and

(b) in a number of instances, companies appeared to give insufficient consideration to the application of the s210 exception and often only referred to one of the above factors, rather than other relevant factors.

47 For expert reports, our review showed that in most cases where an independent expert had concluded that the transaction was:

(a) 'fair and reasonable'—many of the proposed factors discussed above for consideration when assessing whether the terms of the transaction were arm's length were present (however, some companies still obtained member approval for s208 purposes); and

(b) 'not fair but reasonable'—member approval was obtained for the purposes of s208.

48 We consider that all the circumstances in which the related party transaction occurs are relevant. To determine whether the exception in s210 applies, a comparison should be made between the terms on which the financial benefit is given and the objective range of possible terms that unrelated, uninfluenced and self-interested parties would reasonably arrive at in the circumstances.

49 The 'circumstances' could include, but are not limited to:

(a) whether there are alternative transactions open to the company that are not with related parties;

(b) prevailing economic conditions and their impact on the parties and their relevant industries; and

(c) any special value to the transaction (e.g. synergies available to the related party that may not be available to other purchasers).

Note: This is separate to the assessment of fair value of consideration by experts that does not take special value into account if it is only available to a particular purchaser: see paragraph 42.

50 When considering the 'circumstances' in which the hypothetical unrelated parties would be transacting, we consider that, generally, all circumstances of the related party transaction that have a bearing on determining the terms are relevant, except for the fact of their relationship. This is because recent case law requires that the related party transaction terms be compared with non-related party transaction terms, and so to include the parties' relationship as part of the 'circumstances' could defeat the purpose of the test. Where the related party is an officer who has an interest in the transaction, companies should consider whether appropriate safeguards and checks are included in the terms of the agreement: see *ASIC v Adler*.

51 The application of aspects of this proposal is illustrated by the following examples.

Example 1

LawsonCo manufactures and sells pencils to wholesalers. It has established standard terms and pricing for its pencils, which have been negotiated through a process of 'hard' or 'real' bargaining with the major wholesalers through professional advisers. The pricing is reviewed on a half-yearly basis to ensure the company remains competitive.

BanjoCo wishes to purchase pencils from LawsonCo. Ms Matilda is a director and major shareholder of BanjoCo. She is also a director of LawsonCo. Therefore, Ms Matilda and BanjoCo are both related parties of LawsonCo. Ms Matilda approaches LawsonCo to negotiate a pencil purchase agreement.

Ms Matilda proposes terms that include a long term of supply to BanjoCo, higher standards of specifications for the pencils and a lower price.

LawsonCo does not accept all of Ms Matilda's proposed terms, citing its standard terms and pricing that it has established. However, it does agree during negotiations to supply pencils for the proposed longer term.

Before entering into the agreement to sell pencils to BanjoCo, LawsonCo's directors (excluding Ms Matilda) consider whether member approval is needed to provide the financial benefit to a related party. The directors take into account:

- comparable agreements that LawsonCo has with its other pencil buyers and wholesalers, including the fact that the standard terms have been used but slightly varied to extend the length of supply;
- the nature of the negotiating process, including that this was minimal and was initiated by the related party director;
- the positive impact that the additional revenue from a new supply agreement, for a longer than usual term, would have on the company's profits;
- the fact that there have been no recent approaches for new supply arrangements other than from Ms Matilda, and meeting this additional supply fits with LawsonCo's existing business strategy and poses no significant opportunity cost; and
- that no expert advice was obtained regarding this proposed transaction.

The directors of LawsonCo decide not to obtain member approval under Ch 2E because they are satisfied that the terms are 'arm's length', after taking into account all of these factors and despite not obtaining expert advice.

If LawsonCo had accepted all of Ms Matilda's proposed terms, this could have involved giving a benefit that was not on 'arm's length' terms. This is because in these circumstances, such an agreement would not be as comparable to other agreements, would not have been produced by a process of real bargaining and could potentially have a negative impact on LawsonCo's financial performance if the pencils could be sold to other wholesalers at the higher, standard price.

Example 2

CashCo Ltd is looking to expand its existing business as a resort operator. One of its directors is CEO and controlling shareholder of AssetCo, which owns a resort in Vanuatu. The CEO of AssetCo suggests to the other directors of CashCo that buying AssetCo would be a good way to expand CashCo's business.

After only giving cursory consideration to the other options, CashCo begins to negotiate the acquisition of AssetCo. It establishes protocols to manage conflicts of interest, which include using separate corporate advisers and lawyers. The CEO of AssetCo is given access to documents showing how much CashCo might be willing to pay for AssetCo. The CEO uses this information to obtain the best possible sale price for the shareholders of AssetCo.

Before entering into a binding agreement to acquire AssetCo, the directors of CashCo consider whether to obtain member approval under Ch 2E. In deciding whether the arm's length exception applies, the directors take into account that the transaction originated from a related party and that the related party, who is interested in the outcome of the negotiations, had access to commercial

information not normally available to non-related parties, and that the company had not fully explored other options.

After taking this into account and weighing up all the relevant factors, CashCo decides to make it a condition precedent of the purchase agreement that approval is obtained from its members under Ch 2E.

ASIC's Proposal for seeking member approval where there is doubt

B2 We propose to provide guidance in RG 76 that companies and responsible entities should consider seeking member approval under Ch 2E in cases where, having taken into account all of the factors in Proposal B1, there is doubt about whether the transaction is on arm's length terms.

ASIC's Explanation of above Proposal

52 This approach is consistent with the text of Ch 2E and judicial comments on the operation of the related party provisions, which indicate the default position is that the companies should obtain member approval to give a related party benefit unless an exception applies.

53 When there are potential conflicts of interest, directors have a heightened obligation to ensure that the necessary corporate approvals, such as member approval, are obtained: see ASIC v Adler.

54 The application of aspects of this proposal is illustrated by the following example.

Example 3

BusinessCo Ltd operates a construction business. It has an existing contractual arrangement with ServiceCo, a related party, under which ServiceCo supplies administrative and advisory services.

BusinessCo proposes to terminate this arrangement. It is entitled to do so without penalty; however, termination of the arrangement may trigger a default under a financing contract that BusinessCo has with another related party, which could cause financial detriment to BusinessCo's business.

To counter the detriment, BusinessCo negotiates a cash payment to ServiceCo to secure its assistance in implementing the proposal. BusinessCo and ServiceCo each appoint separate corporate advisers and lawyers. Protocols are followed to ensure that no directors with an actual or potential conflict of interest have access to confidential information on the negotiations or influence in the decision-making process.

After an in-principle agreement is reached, the directors of BusinessCo consider whether member approval is needed under Ch 2E. The directors take into account the following:

- BusinessCo and its professional advisers are unable to identify any comparable transactions entered into by unrelated parties dealing on arm's length terms;
- the nature of the negotiating process, including that this was minimal, but that negotiations had been conducted through separate professional advisers;
- the impact the cash payment and the default event would have on the company's profits, as well as the potential impact of termination and termination without the cash payment;
- the fact that other alternatives (such as renegotiating the arrangement to be terminated and other methods of minimising the financial detriment) had not been fully canvassed in this case; and

• the fact that expert advice had not been obtained regarding the amount of the financial benefit in the context of this transaction, including whether it is fair and reasonable.

In considering these factors, the directors give particular weight to the fact that no comparable transactions between unrelated parties could be identified. The directors are uncertain about whether the transaction is on arm's length terms and, therefore, decide to seek member approval for the transaction under Ch 2E.

"SC-43"

DEED POLL

PETER CHARLES DRAKE

LISA MAREE DARCY

EGHARD VAN DER HOVEN

FRANCENE MAREE MULDER

JOHN FRANCIS O'SULLIVAN

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THIS DEED POLL is made the day of 2011

PARTIES:

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SIMON JEREMY TICKNER of 2242 The Parkway, Sanctuary Cove in the State of Queensland

("Directors")

BACKGROUND

- A. LM is the responsible entity of the FMIF and the trustee of the MPF. FMIF is a registered managed investment scheme. MPF is an unregistered managed investment scheme.
- B. The Relevant Funds have made loans to Bellpac and another entity and have taken security over Bellpac land. FMIF's loan is secured by a first registered mortgage which was granted to The Trust Company (PTAL) Limited in its capacity as custodian of the FMIF and MPF's loans are secured by a second registered mortgage. As at the date of this Deed, the loan amount (including interest) owing to FMIF by Bellpac is approximately \$45.5 Million and to MPF by Bellpac is approximately \$22 Million.
- C. Gujarat has a mining lease over most of the Bellpac Land which allows it to use the land for the purpose of mining without Bellpac's consent. The lease term expires in 2023, but this term is able to be extended by Gujarat under legislation, and Gujarat's website indicates the mine on the Bellpac Land has an expected life of 30 years.
- D. Bellpac was originally both the land owner and lessee under the mining lease however, in approximately 2004 Bellpac sold the mining lease to Gujarat pursuant to various documents. It was intended that Gujarat would relinquish the mining lease and rehabilitate the land by December, 2007, thereby making the land available for a residential subdivision proposed by Bellpac. This did not come to fruition and Bellpac entered into litigation with Gujarat, which was ultimately settled. Gujarat allegedly reneged on its obligations under the settlement arrangements despite the fact that the arrangements purportedly released Gujarat from certain of its obligations under the 2004 purchase documents, including the obligation to pay Bellpac compensation under the mining legislation.

- E. As a result of the disputes between Bellpac and Gujarat, the FMIF and MPF facilities fell into arrears.
- F. LM appointed receivers, and then a liquidator, to Bellpac. Shortly after the appointment of the receivers, LM attended a meeting with Gujarat at which Gujarat indicated that in their view that had the right to continue to occupy the Bellpac Land for the term of the mining lease without being obliged to pay compensation, and that they would only be prepared to pay \$7m for the Bellpac Land.
- G. At that point, LM assessed the recoverability of the loans and the options available to it. It took the view that, at a practical level the land was unsaleable while Gujarat remained in occupation and LM was receiving nothing from Gujarat to offset holding costs or interest. LM considered Gujarat to be the only likely buyer of the Bellpac Land. Accordingly, LM issued proceedings against Gujarat claiming under the 2004 purchase documents and the settlement arrangements with the objective of forcing Gujarat into a position where it would purchase the Bellpac Land for a reasonable price.
- H. Shortly after LM commenced the litigation, redemptions from the FMIF were frozen which resulted in no new funds flowing in from investors and an obligation to remit borrower's payments to LM's former funder, the Commonwealth Bank. FMIF was in the position of being unable to provide funding for the litigation and of being unable to satisfy any adverse costs orders that might have been made against LM. Accordingly, the MPF has contributed the majority of the funding for the litigation (and certain other actions designed to recover funds from Gujarat or put pressure on it) amounting to approximately 91% of the total funding (the FMIF has contributed the remaining 9%)
- I. The FMIF and the MPF did not enter into any formal agreement to split the proceeds recovered by the litigation however it was the 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.
- J. The main litigation against Gujarat proceeded to mediation and an in principle agreement was reached between the parties pursuant to which LM will, inter alia, sell the Bellpac Land to Gujarat and settle the litigation with Gujarat for a total consideration of \$45.5m and LM will pay \$1.3m to another party, Coalfields, to secure the withdrawal of certain caveats.
- K. LM considers the proposed settlement arrangement with Gujarat to be the best possible result it could have obtained on behalf of both FMIF and MPF.

- L. **LM** (on behalf of both FMIF and MPF) instructed WMS Chartered Accountants to provide an opinion as to what would be a fair and reasonable split of the likely litigation proceeds to be received by FMIF and MPF. LM has confirmed that WMS Chartered Accountants is independent from it, its directors and controllers.
- M. WMS Chartered Accountants provided the WMS Report. The WMS Report concludes that:
- "In our opinion, the proposed split of 65% to FMIF and 35% to MPF is fair and reasonable having regard to comparable arm's length transactions".

OPERATIVE PROVISIONS:

The parties agree in consideration of, among other things, the mutual promises contained in this Deed:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Bellpac Land means the land that is described in the Schedule.

Bellpac Settlement means the principal agreement that has been reached between LM and Gujarat pursuant to which LM will inter alia sell the Bellpac Land to Gujarat and settle the litigation with Gujarat for a total consideration \$45.5 Million and the RE will pay \$1.3m to Coalfields to secure the withdrawal of certain caveats.

Compliance Plans means the compliance plans of MPF and FMIF

Constitution means the constitution of FMIF.

Directors means Peter Charles Drake, Lisa Maree Darcy, Eghard Van Der Hoven, Francene Maree Mulder, John Francis O'sullivan and Simon Jeremy Tickner.

FMIF means LM First Mortgage Income Fund ARSN 089 343 288.

FMIF Mortgage means the real property mortgages dated 21 March 2003 granted by Bellpac Pty Ltd ACN 101 713 017 (Receivers and Managers Appointed) (in Liquidation) in favour of the Trust Company (PTAL) Limited ACN 008 412 913 and registered in the New South Wales Land and Property Information Office as registered dealing number 9481438R and Book 4382 no. 489.

FMIF RE means LM in its capacity as responsible entity for the LM First Mortgage Income Fund ARSN 089 343 288.

Gujarat means Gujarat NRE Coking Coal Limited ACN 111 244 896.

LM means LM Investment Management Limited ACN 077 208 461.

MPF means LM Managed Performance Fund.

MPF Mortgage means the real property mortgages dated 17 December 2004 granted by Bellpac Pty Ltd ACN 101 713 017 in favour of LM Investment Management Limited ACN 077 208 461 and registered in the New South Wales Land and Property Information Office as registered dealing number AB211547W.

MPF Trustee means LM in its capacity as trustee for the LM Managed Performance Fund.

Proceeds Split means the proposal between FMIF and MPF under which it is proposed to split the proceeds that it has recovered from the litigation in the ratio of 65% of the proceeds to the FMIF and 35% of the proceeds to MPF.

RE means a Responsible Entity as that term is defined in the Corporations Act 2001.

Relevant Funds means both the LM First Mortgage Income Fund ARSN 089 343 288 and the LM Managed Performance Fund and where the context permits any one of them.

Schedule means the Schedule to this Deed.

Scheme has the same meaning as in the Corporations Act 2001.

Settlement Proposals means the Bellpac Settlement and the Proceeds Split.

Trust Deed means the Trust Deed of the MPF.

WMS Report means the WMS Report dated 7 March 2011.

1.2 Interpretation

In this document, unless the context otherwise requires:

- (a) Words importing the singular are taken to include the plural and vice versa.
- (b) References to laws include all laws amending, consolidating or replacing the laws referred to.
- (c) Headings do not form a part of this document and are inserted only for convenience of reference.

2. DIRECTORS CONSIDERATIONS

2.1. The Directors gave careful consideration to:-

- (a) the circumstances that are described in the Background to this Deed.
- (b) possible conflicts that may arise as a result of the Settlement Proposals flowing from LM preferring the interest of one of the Relevant Funds against the other;
- (c) procedures in the Constitution, the Trust Deed and the Compliance Plans (and any other procedures that are in place) in respect of conflicts of interest;
- (d) general law and statutory duties that relate to directors under the Corporations Act 2001;
- (e) the issues raised by and considerations suggested in the ASIC Regulatory Guide 76 which deals with related party dealings which includes chapter 2.E Part 5C.7 dealings including but not limited to:-
 - i. directors meetings – voting restrictions
 - ii. exceptions in chapter 2E of the Corporations Act 2001 to the requirements to obtain member approval for giving a financial benefit to a related party;
 - iii. how the terms of the overall transaction compare with those of any comparable transactions on an arm's length basis;
 - iv. the nature and content of the bargaining process between the Relevant Funds;
 - v. the impact of the Settlement Proposals on the Relevant Funds;

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- vi. and other options available to the Relevant Funds; and
- vii. any expert advice received by the Relevant Funds in relation to the Settlement Proposals.

3. DIRECTORS CONCLUSIONS

- 3.1. After giving full and comprehensive consideration to all of the relevant issues, the Directors have concluded that:-
- (a) the interests of LM as RE of FMIF do not conflict with its duties as trustee of the MPF and LM will not obtain an unauthorised profit from either of the Relevant Funds if the Settlement Proposals were to proceed.
 - (b) there is a need for the FMIF RE to reach agreement with the MPF Trustee about sharing the litigation settlement proceeds with the MPF because the overall settlement cannot occur without the agreement of the MPF Trustee.
 - (c) nothing in the Constitution or the Trust Deed restricts LM from dealing with itself as trustee or RE of another trust (or Scheme), from being interested in any contract or transaction with itself as trustee (or RE) of another trust or Scheme or acting in the same or similar capacity in relation to any other trust or Scheme.
 - (d) the Trust Deed confers on LM all of the powers in respect of trust property that it requires to deal with any property and to exercise all powers of the mortgagee pursuant to the terms and conditions of the MPF Mortgage.
 - (e) the Constitution confers on LM all of the powers in respect of FMIF scheme property that it requires to deal with any property and to exercise all powers of a mortgagee pursuant to the terms and conditions of the FMIF Mortgage.
 - (f) the Settlement Proposals are permitted by the Trust Deed and the Compliance Plan and are fair to the Relevant Funds given the expected return on the assets.
 - (g) apart from the Settlement Proposals there is currently no other reasonable alternative open to either of the Relevant Funds in achieving a reasonable outcome for each of the Relevant Funds.
 - (h) the Settlement Proposals are in the best interests of each Relevant Fund's members.
 - (i) the approval by LM of the Settlement Proposals will not be made in order to benefit LM (or any of its associates) personally.
 - (j) LM as trustee of MPF will comply with its general law fiduciary duties as a trustee if it agrees to the Settlement Proposals pursuant to which MPF will be obliged to release its security over the Bellpac Land.
 - (k) LM as RE of FMIF will comply with its general law fiduciary duties as RE if it agrees to the Settlement Proposals.
 - (l) the acceptance of the Settlement Proposals will have no negative effect on either of the Relevant Funds' financial positions or performance that is not balanced by sufficient positive effects such that the terms of the Settlement Proposals are not unreasonable in the circumstances if the parties were dealing at arm's length.
 - (m) the Settlement Proposals would be reasonable in the circumstances if LM as RE of the FMIF and LM as Trustee of the MPF were dealing at arm's length – the Directors have come to this conclusion on the basis of their own experience and previous dealings in

relation to comparable transactions as well as the WMS Report. The proposed Proceeds Split is similar to that which would prevail in the open market for similar transactions between unrelated parties and is not extraordinary or excessively generous - in giving consideration to this issue, the Directors considered the litigation funding practices in the open market.

(n) in light of the independent expert advice as well as a report that has been prepared in accordance with RG111 and RG112 has been received the Settlement Proposals are fair and reasonable and are approved.

4. DIRECTORS ACTIONS

4.1 In reaching their decisions, the Directors have:-

- (a) acted honestly;
- (b) acted in the best interests of the members of the relevant schemes; and
- (c) complied with the relevant schemes' compliance plans.

5. RECITALS

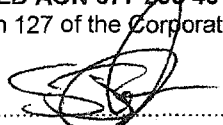
The parties agree that the recitals form part of the Deed and are binding on the parties.

6. GOVERNING LAW AND JURISDICTION

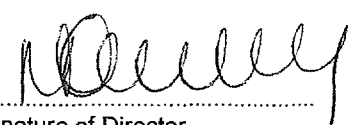
6.1 This Deed is governed by the laws of Queensland.

EXECUTED and delivered as a Deed in Queensland on the date set out above.

EXECUTED by **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461** in accordance with section 127 of the Corporations Act 2001 (Cth):

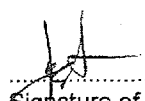


 Signature of Director/Secretary
Simon Jeremy Turner
 Full name of Director/Secretary




 Signature of Director
LISA MAREE DARCY
 Full name of Director

SIGNED SEALED AND DELIVERED by **LISA MAREE DARCY** in the presence of:




 Signature of Witness
Benjamin Kingdon
Super Paradise Q 4217



Print name and address of witness

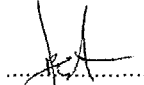
SIGNED SEALED AND DELIVERED by **EGHARD VAN DER HOVEN** in the presence of:


.....
Signature of Witness

Bonwyn Knight
.....
Sufers Paradise Q427
.....
Print name and address of witness

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SIGNED SEALED AND DELIVERED by **PETER CHARLES DRAKE** in the presence of:


.....
Signature of Witness

Bonwyn Knight
.....
Sufers Paradise Q427
.....
Print name and address of witness

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SIGNED SEALED AND DELIVERED by **FRANCENE MAREE MULDER** in the presence of:


.....
Signature of Witness

Bonwyn Knight
.....
Sufers Paradise
.....
Print name and address of witness

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)
M. Mulder
.....
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SIGNED SEALED AND DELIVERED by **JOHN FRANCIS O'SULLIVAN** in the presence of:

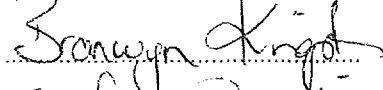
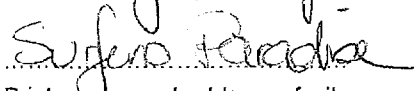
.....
Signature of Witness

.....
Print name and address of witness

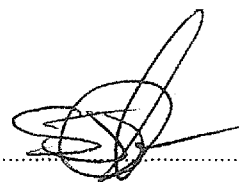
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SIGNED SEALED AND DELIVERED by SIMON)
JEREMY TICKNER in the presence of:)


.....)
Signature of Witness)


.....)

.....)

Print name and address of witness


.....
.....

SCHEDULE

The land comprised in Certificates of Title Folio Identifiers:

1.1 Folio identifier auto consol 5333-243

Schedule of Parcels

- (a) 3/60975 being Lot 3 in DP60975
- (b) 30/751301 being Lot 30 in DP751301 in Crown Plan 228.672
- (c) 31/751301 being Lot 31 in DP751301 in Crown Plan 228.672
- (d) 32/751301 being Lot 32 in DP751301 in Crown Plan 228.672
- (e) 63/751301 being Lot 63 in DP751301 in Crown Plan 228.672
- (f) 68/751301 being Lot 68 in DP751301 in Crown Plan 195.672
- (g) 69/751301 being Lot 69 in DP751301 in Crown Plan 228.672
- (h) 70/751301 being Lot 70 in DP751301 in Crown Plan 228.672
- (i) 71/751301 being Lot 71 in DP751301 in Crown Plan 229.672
- (j) 1/1046069 being Lot 1 in DP1046069
- (k) 2/1046069 being Lot 2 in DP1046069
- (l) 1/1046070 being Lot 1 in DP1046070

1.2 130/751301 being Lot 130 in DP 751301 in Crown Plan 307.1521

1.3 31/1006012 being Lot 31 in DP1006012

1.4 Folio identifier auto consol 1833-110

Schedule of Parcels

- (a) 1/1052074 being Lot 1 in DP1052074
- (b) 2/1052074 being Lot 2 in DP1052074
- (c) 3/1052074 being Lot 3 in DP1052074
- (d) 4/1052074 being Lot 4 in DP1052074

1.5 1/630761 being Lot 1 in DP630761

1.6 1/986675 being Lot 1 in DP986675

1.7 1/986676 being Lot 1 in DP986676

1.8 1/534522 being Lot 1 in DP534522

1.9 Folio identifier auto consol 1644-66

Schedule of Parcels

- (a) 95/4414 being Lot 95 in DP4414
- (b) 96/4414 being Lot 96 in DP4414

1.10 151/667029 being Lot 151 in DP667029

1.11 1/225021 being Lot 1 in DP225021

1.12 2/225021 being Lot 2 in DP225021

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- 1.13 3/225021 being Lot 3 in DP225021
- 1.14 4/225021 being Lot 4 in DP225021
- 1.15 1/77407 being Lot 1 in DP77407
- 1.16 Folio identifier auto consol 8643-188

Schedule of Parcels

- (a) 34/751301 being Lot 34 in DP751301 in Crown Plan 265.672
- (b) 6/793358 being Lot 6 in DP793358
- 1.17 66/751301 being Lot 66 in DP751301
- 1.18 67/751301 being Lot 67 in DP751301
- 1.19 1/652833 being Lot 1 in DP652833
- 1.20 6001/1077301 being Lot 6001 in DP1077301