

SUPREME COURT OF QUEENSLAND

**REGISTRY: Brisbane
NUMBER: 3383 of 2013**

Applicants: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE

AND

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

AND

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

AND

Third Respondent: ROGER SHOTTON

AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

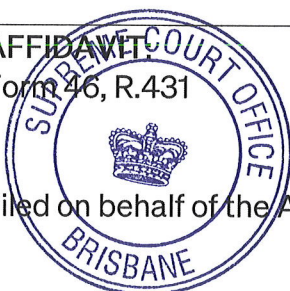
AFFIDAVIT OF DAVID WHYTE

29 JUNE 2022

VOLUME 3 OF 3

AFFIDAVIT
Form 46, R.431

Filed on behalf of the Applicant



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CERTIFICATE OF EXHIBIT

Exhibit "DW-127", pages 202 - 263 to the Affidavit of DAVID WHYTE sworn this 29th day of
June 2022


Deponent


Solicitor/~~A Justice of the Peace~~

CERTIFICATE OF EXHIBIT:
Form 47, R.435

Filed on behalf of the Applicant

02165324

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INDEX OF EXHIBITS

| No. | DW-127 | Date | Page No. |
|-----|--|---------|-----------|
| 1. | Hourly charge out rate schedules of the BDO practice groups across that applied during the Relevant Period | Various | 1-2 |
| 2. | Breakdown of time charged by BDO employees, including disbursements charged against my appointment | Various | 3-4 |
| 3. | Schedule of Work performed by staff of BDO during the Relevant Period | Various | 5 - 111 |
| 4. | Schedule of work performed - the Auditor's Claim | Undated | 112 - 115 |
| 5. | Schedule of work performed - the Ross Lamb bankruptcy | Undated | 116 |

| No. | DW-127 | Date | Page No. |
|-----|--|--------------------------|------------------------|
| 6. | Schedule of work performed – the Bellpac bonds proceedings | Undated | 117 |
| 7. | Schedule of work performed – Administrative and Non-Litigious | Undated | 118 - 193 |
| 8. | File summary search for Auditor's Claim | 10.6.2022 | 194 - 201 |
| 9. | Orders of Justice Dalton made in proceedings 2166/15 | 15.02.2022 07.04.2022 | 202 - 205 206 - 208 |
| 10. | ASIC Instrument 22-0124 | 11.03.2022 | 209 - 210 |
| 11. | 36th Report to Members | 20.12.2021 | 211 - 221 |
| 12. | 37th Report to Members | 31.03.2022 | 222 - 237 |
| 13. | Financial statements of the FMIF for the financial half year ending 31 December 2021 | 31.3.2022 | 238 - 263 |

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SUPREME COURT OF QUEENSLAND
25 FEB 2022
FILED
BRISBANE

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 2166/15

Plaintiff:

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

AND

First Defendant: **EY (ALSO KNOWN AS ERNST & YOUNG) (A FIRM)**

AND

Second Defendant: **PAULA MCLUSKIE**

AND

Third Defendant: **MICHAEL JAMES REID**

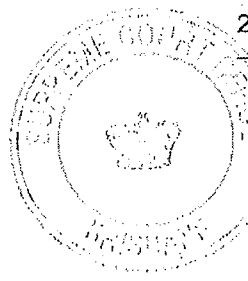
ORDER

Before: Justice Dalton
Date: 15 February 2022
Initiating Document: Commercial List Review

THE ORDERS OF THE COURT ARE THAT:

Plaintiff's Evidence

1. The Plaintiff have leave to rely on the supplementary expert valuation reports of:
 - (a) Mr Carroll, Mr Hurley, Mr Muchall and Mr Perkins filed on 1 November 2021;
 - (b) Mr Robertson and Mr Forbes filed on 8 November 2021;
 - (c) Mr Dundovic and Mr Hurley and Mr Forbes filed on 11 November 2021;
 - (d) Mr Hurley filed on 18 November 2021;
 - (e) Ms Burnet and Mr Muchall filed on 30 November 2021;
 - (f) Ms Burnet and Mr Perkins filed on 2 December 2021.
2. The Plaintiff has leave to rely on the Affidavit of Mr Perkins filed on 10 January 2022.



ORDER
Filed on behalf of the Plaintiff
Form 59
Uniform Civil Procedure Rules 1999
Rule 661

GADENS LAWYERS
Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SZC/TZH: 201413563

Defendants' Evidence

3. The Defendants are to file and serve any valuation reports of expert witnesses, on which they intend to rely, progressively from 28 February 2022, such that all such reports are filed and served by 31 March 2022.
4. The Defendants (subject to the claims of privilege against self-incrimination and/or self-exposure to a penalty of the Second and Third Defendants) are to serve any economic expert evidence in respect of liability on which they intend to rely by 30 June 2022.
5. The Defendants (subject to the claims of privilege against self-incrimination and/or self-exposure to a penalty of the Second and Third Defendants) are to serve any lay evidence in respect of liability, and any expert technical accounting evidence in respect of liability, on which they intend to rely by 30 June 2022.
6. The Defendants (subject to the claims of privilege against self-incrimination and self-exposure to a penalty of the Second and Third Defendants) are to serve any auditing expert evidence in respect of liability on which they intend to rely by 31 August 2022.
7. The Defendants (subject to the claims of privilege against self-incrimination and self-exposure to a penalty of the Second and Third Defendants) are to serve any expert evidence as to receivership and fund management on which they intend to rely by 21 September 2022.
8. The Defendants are to file and serve any reports of expert witnesses as to quantification of loss and damage by 28 October 2022.

Plaintiff's further lay evidence

9. The Plaintiff is by 18 March 2022 to file and serve any application to file and serve any further lay evidence (or alternatively to file and serve notification of the substance of further lay evidence which the Plaintiff anticipates is to be adduced from specified witnesses, from whom it is not possible to obtain affidavits or signed statements, who are to be subpoenaed to attend to give evidence at the hearing), except as to any further evidence arising from the need to formally prove documents arising from objections to evidence notified under paragraph 16 below, or responsive to the Defendants' lay or expert evidence.
10. The Plaintiff is by 18 March 2022 to file and serve any affidavit(s) in support of any such application.
11. The Defendants are by 25 March 2022 to notify the Plaintiff as to whether they consent to or oppose any such application.
12. In the event that any such application is filed and opposed, the parties are to approach the Court promptly for the allocation of a date after 15 April 2022 on which it is to be heard.
13. The Defendants are to file and serve any evidence in response to any such opposed application by 1 April 2022.
14. The Plaintiff is to file and serve written submissions in support of any such opposed application by 8 April 2022.
15. The Defendants are to file and serve written submissions in support of their opposition to any such opposed application by 15 April 2022.

Objections as to authenticity in relation to the Plaintiff's documentary evidence

16. The Defendants are by 30 June 2022 to notify the Plaintiff of any document in the lists of documents served pursuant to order 17(a) of the orders made on 20 October 2020 to which they object to the Plaintiff tendering at trial, on the basis that the document should not be treated as being what it purports to be.

Pleadings

17. On or before 18 March 2022, the Plaintiff serve on the Defendant any proposed amended pleading or further particulars.
18. On or before 28 March 2022, the Defendants give notice to the Plaintiff as to whether they consent to or oppose the filing of any proposed amended pleadings or particulars served in accordance with order 17.
19. In the event that the proposed amendments are opposed:
- (a) the Plaintiff is to file and serve any application for leave file the amended document(s) together with any supporting affidavit(s) by 31 March 2022;
 - (b) the parties are to promptly approach the Court for the allocation of a date after 8 April 2022 on which it is to be heard.
 - (c) The Defendants are to file and serve any evidence in opposition to any such opposed application by 11 April 2022.
 - (d) The Plaintiff is to file and serve written submissions in support of any such opposed application by 18 April 2022.
 - (e) The Defendants are to file and serve written submissions in opposition to any such opposed application by 26 April 2022.
20. In the event that the proposed amendments are not opposed, the Plaintiff has leave to file the proposed amended pleading and further particulars by 4 April 2022.

Disclosure Applications

21. The Plaintiff and the Defendants are each to file and serve any application regarding the inadequacy of the disclosure by the other, together with any supporting affidavit(s), by 18 March 2022.
22. In the event that any application is filed, the respondent(s) to the application is/are to promptly approach the Court for the allocation of a date on which it is to be heard after 15 April 2022.
23. The parties are to file and serve any evidence in response to any such opposed application by 1 April 2022;
24. The parties are to file and serve written submissions in support of any such opposed application by 8 April 2022.
25. The parties are to file and serve written submissions in response to any such opposed application by 15 April 2022.

Next Review

26. The matter is listed for a further Review at 9am on Thursday, 24 March 2022.

Signed:

The signature is a stylized, handwritten name in black ink. To its right is a circular official seal. The seal features a central emblem, possibly a coat of arms, surrounded by text in a circular border. The text is partially legible and appears to include 'DEPUTY REGISTRAR' and 'SHERIFF'S COURT'.

Deputy Registrar

303 BP

DRAFT
COPY
DO NOT
REMOVE

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 2166/15

Plaintiff:

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

AND

First Defendant: EY (ALSO KNOWN AS ERNST & YOUNG) (A FIRM)

AND

Second Defendant: PAULA MCLUSKIE

AND

Third Defendant: MICHAEL JAMES REID

ORDER

Before: Justice Dalton
Date: 7 April 2022
Initiating Document: Commercial List Review

THE ORDERS OF THE COURT ARE THAT:

Valuation Evidence

1. The date for the delivery of the Defendants' valuation evidence under order 3 of the orders made on 15 February 2022 be extended to 11 April 2022.
2. By 13 May 2022 each valuer is to specify, in writing signed by the valuer, and without further narrative, those points made in or those parts of, the valuation report prepared by a valuer for the other party dealing with the same subject property or properties with which the valuer agrees.
3. By 13 May 2022, the parties are to discuss and to seek to agree on the identity of a senior practitioner or practitioners, with availability to so act, to act as facilitator at one of more conclaves of the valuation expert witnesses in respect of the parts of the valuation reports identified by counsel pursuant to order 5 below.
4. By 24 June 2022 the parties are to identify any objections to the evidence of the other party's expert valuers.
5. By 17 June 2022, counsel for each party are to identify (and if possible seek to agree) those parts of the valuation reports, other than those referred to in order 2, which could usefully be discussed at a facilitated conclave of valuation experts.

6. By 15 July 2022, senior counsel for each party is:
 - (a) to meet to discuss and seek to resolve any objections to the expert valuation evidence;
 - (b) to produce and have their instructing solicitors file a schedule of objections that could not be resolved.
7. As promptly as possible after 17 June 2022, and concluding by no later than 16 September 2022:
 - (a) each of the parties' valuation expert witnesses are to meet with the opposing expert (if any) in a conclave facilitated by the individual or individuals agreed by the parties under order 3 above, to discuss and to seek to reach agreement on the issues identified by counsel for the parties pursuant to order 5 above;
 - (b) in respect of each property the subject of competing valuation evidence, the facilitator(s) of each conclave is to produce a report to be signed by the experts that identifies further matters, if any, on which the experts have agreed, a concise list of issues (without further narrative) on which they could not agree, and, in respect of those matters on which they could not agree, the key points of difference.
8. The plaintiff and the defendants are each respectively to pay 50% of the costs of the facilitator(s) of each conclave.

Plaintiff's further lay evidence

9. Orders 11 to 15 of the orders made on 15 February 2022 are vacated.
10. The Defendants are by 8 April 2022 to notify the Plaintiff as to whether they consent to or oppose the Plaintiff's Application filed 18 March 2022.
11. If the application is opposed, the parties are to approach the Court promptly after 13 April 2022 for the allocation of a mutually suitable date on or after 9 May 2022 on which it (and any other applications filed pursuant to order 17(a) below) is to be heard.
12. The Defendants are to file and serve any evidence in response to any such opposed application by 19 April 2022.
13. The Plaintiff is to file and serve written submissions in support of any such opposed application by 26 April 2022.
14. The Defendants are to file and serve written submissions in support of their opposition to any such opposed application by 3 May 2022.

Pleading

15. The date under order 18 of the orders made on 15 February 2022 by which the Defendants are to give notice to the Plaintiff as to whether they consent to or oppose the revised amended pleading and particulars served by the plaintiff be extended to 8 April 2022.
16. Order 19 of the orders made on 15 February 2022 be vacated.
17. In the event that the proposed amendments to the pleadings and particulars are opposed:
 - (a) the plaintiff is to file and serve any application for leave together with any supporting affidavits by 13 April 2022;
 - (b) the parties are to approach the Court promptly after 13 April 2022 for the allocation of a mutually suitable date on or after 9 May 2022 on which the opposed application is to be heard;

- (c) the defendants are to file and serve any evidence in response to any such opposed application by 19 April 2022;
- (d) the plaintiff is to file and serve written submissions in support of any such opposed application by 26 April 2022;
- (e) the defendants are to file and serve written submissions in support of their opposition to any such opposed application by 3 May 2022.

Next Review

18. The matter is listed for a further Review at 9.30am on ~~a date to be fixed by the Court on or after~~ 1 June 2022.

Signed:

**Australian Securities and Investments Commission
Corporations Act 2001 — Subsections 111AT(1) and 601QA(1) — Exemption**

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsections 111AT(1) and 601QA(1) of the Corporations Act 2001 (Act).

Title

2. This instrument is ASIC Instrument 22-0124.

Commencement

3. This instrument commences on the day it is signed.

Exemption

4. LM Investment Management Limited (in liquidation) (receiver appointed) ACN 077 208 461 in its capacity as the responsible entity (Responsible Entity) of LM First Mortgage Income Fund ARSN 089 343 288 (Scheme) does not have to comply with:
 - (a) the disclosing entity provisions in Part 2M.3 of the Act in relation to a financial year or half-year of the Scheme; and
 - (b) section 601HG of the Act in relation to a financial year of the Scheme.

Conditions

5. The Responsible Entity must comply with any obligation to which the exemption applies by no later than the last day of the deferral period.

Where exemption applies

6. The exemption applies where the Responsible Person does, or causes to be done (or, where the Responsible Person fails to do so, the Responsible Entity although not being required to do, within 28 days of becoming aware that the Responsible Person has failed to do so, does, or causes to be done), the following:
 - (a) publishes in a prominent place on the website maintained by the Responsible Person for the Scheme (or, in the case of the Responsible Entity, the Responsible Entity publishes on a website maintained by it for the purpose of providing information to members of the Scheme), a copy of this instrument accompanied by a notice explaining the relief granted by this instrument;
 - (b) prepares and makes available to members of the Scheme within 3 months after the end of each relevant period, a report for the relevant period which includes the following information unless disclosure of that information would be prejudicial to the winding up:

- (i) information about the progress and status of the winding up of the Scheme, including details (as applicable) of:
 - A. the actions taken during the period;
 - B. the actions required to complete the winding up;
 - C. the actions proposed to be taken in the next 12 months;
 - D. the expected time to complete the winding up; and
- (ii) the financial position of the Scheme as at the last day of the relevant period (based on available information);
- (iii) financial information about receipts for the scheme during the period; and
- (iv) the following information at the end of the period:
 - A. the value of scheme property; and
 - B. any potential return to members of the Scheme; and
- (c) maintains adequate arrangements to answer, within a reasonable period of time and without charge to the member, any reasonable questions asked by members of the Scheme about the winding up of the Scheme.

7. The exemption ceases to apply on 15 March 2024.

Interpretation

8. In this instrument:

deferral period means the period starting on the date this instrument is signed and ending on 15 March 2024.

disclosing entity provisions has the meaning given by section 111AR of the Act.

relevant period, in relation to a report, means each period of 6 months starting on 1 January 2022.

Responsible Person means the person appointed under subsection 601NF(1) of the Act to take responsibility for ensuring that the Scheme is wound up in accordance with its constitution.

Dated this 11th day of March 2022.



Signed by Marie-Christine De Greeff
as a delegate of the Australian Securities and Investments Commission



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TO THE INVESTOR AS ADDRESSED

20 December 2021

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)
ARSN 089 343 288 ('the Fund' or 'FMIF')

1. Introduction

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I now provide my 36th update to investors, which provides details of the progress made in the winding up of the Fund since my last report to investors dated 30 September 2021. This report should be read in conjunction with my previous reports, which are available on the website www.lmfimf.com.

2. Progress and Status of the Winding Up

2.1 Legal Actions/Potential Recoveries

2.1.1 Proceedings against the MPF, LMIM and the Directors of LMIM

I refer to my previous updates to investors in relation to proceedings against a number of parties, including the MPF Trustee and a number of directors of LMIM, in respect of loss allegedly suffered by the FMIF as a result of an amount paid to the MPF in the Bellpac litigation matter. The claim was for approximately \$15.5M plus interest.

As previously advised, the Judge dismissed my claim on 22 November 2019.

Costs were awarded in favour of the defendants.

On 20 December 2019 I filed an appeal of the decision. The progress of the appeal was awaiting the outcome of an application for judicial advice. The Court declined to provide me with judicial advice. After careful consideration, taking into account all of the relevant circumstances, I discontinued the appeal. The directors' costs of the proceedings, the appeal and the judicial advice application are yet to be determined.

2.1.2 Claim against the former auditors (EY Proceeding)

I refer to my previous updates to investors and provide a brief summary of the proceedings and the key events since my last report, as follows:

- The proceedings were commenced against the former auditors of the Fund, EY claiming damages for negligence and breach of contract in relation to the audits and reviews of the financial statements for each half year period from 30 June 2008 to 30 June 2012 and in relation to the

compliance plan audits for FY2008 to FY2012. This includes claims in relation to EY failing to properly impair the loans granted by the Fund and where up to date valuations were not obtained;

- The claims, at their highest, have been calculated at up to \$249.6M;
- The EY Proceeding is an extremely complex legal proceeding due to, among other things:
 - The scope, complexity and breadth of the allegations made against EY covering nine financial statement audits/reviews and five compliance plan audits. The most recent version of the Statement of Claim runs to approximately 137 pages with over 600 pages of consolidated particulars. The most recent version of the Defence runs to approximately 230 pages with the reply to the defence amounting to 81 pages;
 - The extent of disclosure required - over 300,000 documents have been disclosed by the plaintiff in the case;
 - The scope and complexity of expert evidence required to support the claim. A total of forty five expert reports (excluding supplementary reports) have been delivered in support of the claim, many of which are very lengthy, from multiple fields of expertise including financial statements audit (in excess of 2,000 pages), compliance plan audit (in excess of 600 pages), valuation, investor behaviour, funds management, finance and banking experts. To give an example of the complexity of the expert evidence, the expert valuation evidence required was 28 valuation reports, each of which valued a total of six retirement villages, completed residential and commercial properties, part completed properties and land held as security for twenty three loans made by the FMIF, as at approximately nine different dates at six monthly intervals between 30 June 2008 and 30 December 2012.
- A substantial amount of work has been completed since my last report in respect of:
 - Completion of seventeen supplementary valuation reports for additional dates to assist with the loss and damages expert's report;
 - Completion of the loss and damages expert's report for the 30 June 2008 audit calculating the loss at up to \$249.6M;
- The final expert report in respect of the calculation of the loss and damage for a number of other counterfactual dates is currently being prepared and is due to be delivered by 24 December 2021. At that time all expert reports and lay evidence will have been completed by the Fund and the defendants will then be required to undertake significant work in response;
- The defendants are required to file and serve any expert valuation reports and lay evidence on which they intend to rely by 28 February 2022;
- A further review of the proceedings by the Court is due to be held on 15 February 2022;
- At the upcoming review by the Court in February 2022, it is expected that the time for the defendants to deliver their remaining expert and lay evidence will be timetabled and which, when completed, will be followed by a trial. At this stage the timing of the trial has not yet been set by the Court.

- The timing of the trial will be subject to a number of variables, some of which are not within my control, including whether EY delivers its expert evidence within the timeframes directed by the Court, and the availability of trial dates. Inquiries of the Court as to the availability of trial dates will be made at the appropriate time. I hope to be in a position to provide an update in relation to the anticipated timing of the trial of the EY Proceeding after the next review by the Court.

2.1.3 Bellpac Proceedings - Wollongong Coal Ltd (WCL)

I refer to my previous updates to investors and provide a brief summary as follows:

- The liquidator of Bellpac received the settlement amount of \$2 million from WCL in relation to the claim for redemption of the \$2 million Bonds held in WCL. A partial distribution of \$1M was received from the Bellpac liquidator in October 2019;
- The defendants' appeal of the decision of the Court which acknowledged that Bellpac (under the control of a liquidator) is the true owner of the \$8 million convertible bonds was unsuccessful;
- In January 2016, the Bellpac Liquidator applied for the conversion of the \$8 million Bonds to shares. As WCL did not issue all of the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds converted to shares outside of the required time;
- The Bellpac liquidator and WCL entered into a binding heads of agreement (HOA) relating to the settlement of the litigation commenced against WCL. The terms of the heads of agreement included that WCL pay to Bellpac a settlement sum of \$6.3 million in return for certain releases and Bellpac returning or cancelling the WCL shares issued to Bellpac;
- The conditions precedent to the settlement with WCL included obtaining necessary approvals to undertake the settlement transactions. In this regard:
 - The Bellpac Liquidator obtained creditor approval to enter into the settlement with WCL;
 - The Court declined to exercise its discretion on WCL's application for approval to acquire and or cancel Bellpac's holding of WCL shares. WCL was therefore required to seek shareholder approval.

The remaining condition precedent (Sunset Date) to the settlement with WCL was extended a number of times over the last four years and WCL paid \$3M towards the settlement into their solicitors' trust account, to be released upon receiving shareholder approval of the settlement.

Delays were encountered in calling the meeting of shareholders, including WCL entering into a scheme of arrangement which was terminated after failing to meet certain conditions, but which was subsequently reinstated. A revised binding heads of agreement was executed on 9 June 2020 with the conditions precedent to be satisfied by 31 October 2020.

As the conditions precedent were not going to be satisfied by 31 October 2020, the Bellpac liquidator entered into further negotiations to try and conclude a settlement. As a result of those negotiations, a further deed of settlement was entered into on 30 October 2020 with \$2.76M payable upon obtaining creditors approval and a further \$600,000 payable within six months if WCL opted to buy-back the shares held in WCL.

Creditors approved the revised deed of settlement at a meeting held on 18 November 2020 and \$2.75M was subsequently distributed to the Fund (\$2.5M on 27 November 2020 and \$250k on 11 March 2021).

WCL did not exercise the option to buy back the shares for \$600,000 within the six month period.



Following a rights issue by WCL to raise \$32M and which was completed on 29 September 2021, Bellpac's shareholding has reduced from approximately 25% of the total shares on issue to approximately 0.75%.

I do not intend reporting any further on this matter unless an offer is received for the Bellpac shareholding.

2.1.4 Claims against guarantors

There is one remaining matter which can be summarised, as follows:

- PTAL as custodian of the FMIF obtained judgment against a guarantor, for approximately \$3 million, plus interest and costs. The trustee in bankruptcy identified potential recoveries for the benefit of creditors of the bankrupt estate, of which the Fund is a major creditor. The bankrupt, along with other parties, contributed land to a development. The land was subdivided, developed and sold, and the net proceeds of sale in the sum of approximately \$12 million was held in a solicitors trust account on an interim basis, protected by certain undertakings given by the solicitor holding the funds.
- The trustee claimed an entitlement in respect of all or at least a substantial portion of the funds held in the solicitors trust account; however, other parties to the dispute allege that associated entities of the bankrupt are entitled to the funds.
- I instructed PTAL as custodian of the FMIF to enter into a Deed of Indemnity to fund a public examination and any agreed recovery proceedings in respect of this matter. A public examination was held in the Federal Court in November 2019. Subsequently, demands were served on several parties. The trustee held two mediations with several parties in relation to the dispute and there were ongoing settlement negotiations which culminated in a settlement being reached on 1 September 2021.
- The gross return to the bankrupt estate from the settlement will be between \$2,882,181 and \$3,832,181, depending upon the outcome of a taxation objection. The Trustee has estimated that the net return to the bankrupt estate, after deducting AFSA realisations charge, repayment of the funding provided by the FMIF, and the current and former Trustee's unpaid remuneration and expenses, will be approximately \$1,004,711 to \$1,964,161, not including allowances for the Trustee's future remuneration and expenses, or any taxation liabilities arising from the settlement.
- The taxation objection has been lodged and it is expected a decision will be made early in the New Year. Following that, and under the Deed of Indemnity, the Trustee is required to make an application to Court seeking an order giving the FMIF a priority over other creditors. The amount payable to the FMIF from the bankrupt estate will depend upon the outcome of this application.

2.1.5 Liquidators of LMIM (FTI Consulting)

2.1.5.1 Remuneration claim and expenses claim

I refer to my previous reports to investors.

The judgement regarding and orders made in relation to FTI's first remuneration claim and indemnity claim are available on the websites www.lmfimif.com and www.lminvestmentadministration.com.



The judgement and orders made with respect to FTI's second remuneration claim are summarised in paragraph 2.1.5.2 of my report to investors dated 31 March 2020.

2.1.5.2 Third FTI Remuneration Application

On 12 February 2021, Mr Park filed an application in the Court for approval and payment from the FMIF of his remuneration for the period 1 July 2018 to 31 October 2020 in the sum of \$260,633.12 (including GST), made up of Category 1 remuneration (remuneration that is specifically referable to the FMIF) of \$182,661.60 (including GST), and Category 2 Remuneration (remuneration that relates to all of the funds of which LMIM is the Responsible Entity and that is apportioned between the relevant funds) of \$77,971.52 (including GST).

The application was heard on 31 May 2021. I did not appear. The Court approved the payment to Mr Park of remuneration of \$243,236.90 (including GST) from property of the FMIF for the period 1 July 2018 to 31 October 2020, made up of Category 1 remuneration of \$170,809.20 (including GST) and Category 2 remuneration of \$72,427.70 (including GST).

2.1.5.3 Indemnity claim against the Fund and proof of debt process

The proof of debt process and claims notified to me, or potential claims by LMIM for indemnity from the FMIF, with respect to debts or claims of creditors of LMIM, are summarised in paragraph 2.1.5.3 of my report to investors dated 31 March 2020.

There have been no developments in relation to these indemnity claims since my last report to investors.

2.1.5.4 Expenses

On 5 August 2021, FTI informed BDO that the remuneration, and expenses claims by the Liquidator, that had not been submitted to the Court for approval or paid as at 30 June 2021, were as follows:

- Legal costs attributable to FMIF - \$183,615.51 (including GST); and
- Remuneration attributable to FMIF - \$20,111.30 (including GST).

However, these figures may be subject to change and are subject to Court approval.

It is expected that further remuneration and expenses claims will be made by the Liquidator during the course of the winding up.

2.1.5.6 Claim filed against LMIM

The claims made in this proceeding and the key steps to date in the proceeding, are summarised in paragraph 2.1.5.6 of my report to investors dated 19 December 2019. The current status of this claim is that it remains stayed until further order. I will keep investors updated as to any developments in relation to this claim.

3. Management Accounts

As advised in my previous report, the management accounts for the year ended 30 June 2021 are available on the website www.lmfimf.com.

The management accounts for the half-year ending 31 December 2021 will be uploaded to the website www.lmfimf.com by 31 March 2022.



4.1 Estimated Return to Investors

4.1.1 Based on current cash at bank and excluding future recoveries and costs

I provide an estimated remaining return to Investors of 4.1 cents per unit as at 30 November 2021, and a total estimated return of 10.6 cents per unit taking into account the interim distribution paid of 6.5 cents per unit, calculated as follows:

| Description | \$ Amount |
|---|-------------------|
| Estimated net amount of assets available to investors as at 30 November 2021 (\$) | 17,662,433 |
| Benefit of Feeder Fund settlement of amounts withheld* | 2,281,249* |
| Total estimated amount available to investors | 19,943,682 |
| Total investor units (AUD Equivalent as at date of appointment) | 492,125,624 |
| Estimated return in the dollar | 4.1 cents |
| Add: Distributions to date | 6.5 cents |
| Total estimated return in the dollar | 10.6 cents |

If further recoveries are made this will increase the amount due from the Feeder Funds settlement.

Please note that the estimate and prior estimates do not take into account future operating costs and future Receiver's fees or any legal recoveries against borrowers or other third parties.

The Feeder Fund settlement will reduce the amount of cash to be paid to the Feeder Funds. Based on the amounts in the above table, I attach at Annexure 1 calculations showing the net amounts payable to the Feeder Funds, as follows:

| Feeder Fund | Estimated Return |
|---|------------------|
| LM Currency Protected Australian Income Fund ("CPAIF") | 2.2 cents |
| LM Institutional Currency Protected Australian Income Fund ("ICPAIF") | 2.2 cents |
| LM Wholesale First Mortgage Income Fund ("WFMIF") | 3.2 cents |

These are the amounts that would be paid to the responsible entities of each of the Feeder Funds, the costs and expenses of the Feeder Funds would need to be distributed from the net cash that is paid to each of the Feeder Funds before distributions are made to Feeder Fund investors.



4.2 Further Distributions to Investors

The Court authorised and empowered me on 2 October 2019 to make an interim capital distribution of 6.5 cents per unit to investors of the LM First Mortgage Income Fund. I confirm the interim distribution was paid to investors in October 2019.

Once the above matters in section 2 have been finalised, I intend to pay, subject to court approval, the final distribution to investors.

4.3 Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor in the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if investors could nominate an email address as their preferred method to receive correspondence. Investors may update their details as outlined in Section 4.4 below. For those investors that do not have an email address, correspondence will continue to be sent to you via post.

My next report to investors will be issued by 31 March 2022.

4.4 Investors Queries

For any changes to investors details, please review the Useful Forms/Procedures tab on the website www.lmfimf.com which includes information regarding the following procedures:

- Change of Contact Address/Bank Account Details
- Change of Contact Address/Bank Accounts Details of a Deceased Estate
- Change of Trustee of Self-Managed Super Fund
- Transfer of Unit Holding from a Super Fund/ Trustee Company to Personal Name(s)
- Transfer of Unit Holding from a Deceased Estate to a Sole Survivor
- Transfer from a Deceased Estate to a Beneficiary of an Estate

It is a requirement that advisors or other third parties acting on behalf of Unit Holders are doing so pursuant to a relevant Authority/Power of Attorney. Please ensure that a relevant Authority/Power of Attorney accompanies the abovementioned documents as necessary (if an Authority/Power of Attorney has not previously been provided).

It is preferable that all questions about the winding up, or communications are sent via email to enquiries@lmfmif.com with original documents to be mailed as required to:

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227



5 Receiver's Remuneration and Expenses

There have been sixteen applications to Court to date to approve my remuneration since the date of my appointment on 8 August 2013.

The sixteenth application for the approval of my remuneration for the period 1 May 2021 to 31 October 2021 was heard by the Court on 16 December 2021. The Court ordered that my remuneration claim for this period be fixed in the amount of \$924,169.40 (inclusive of GST), in relation to my role as the person responsible for ensuring the FMIF is wound up in accordance with its constitution.

A copy of all documentation in relation to my previous applications can be found on the website www.lmfimf.com.

In addition to the remuneration previously approved by the Court and the sixteenth application set out above, I calculate that, on a time basis, I have incurred further remuneration of \$74,191.00 (exclusive of GST) plus disbursements of \$2.88 (exclusive of GST) from 1 to 30 November 2021 as detailed in the attached summary.

6 Queries

Should unit holders wish to advise of any changes in details or require further information, please contact BDO as follows:

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfimf.com

Yours sincerely

David Whyte
Receiver



ANNEXURE 1
ESTIMATED RETURN TO FEEDER FUNDS

| Feeder Fund | Number of Units | Estimated Return to Feeder Funds as at 30 November 2021 | | |
|--------------|--------------------|---|-----------------------|----------------------|
| | | Distribution (\$) | Amounts withheld (\$) | Net Amount Paid (\$) |
| CPAIF | 120,702,630 | 4,332,028 | 1,732,811 | 2,599,217 |
| ICPAIF | 9,350,802 | 335,601 | 134,240 | 335,601 |
| WFMIF | 99,488,929 | 3,570,667 | 414,197 | 3,156,469 |
| Total | 229,542,361 | 8,238,296 | 2,281,248 | 6,091,287 |



REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2021 to 30 November 2021
LM First Mortgage Income Fund (Receiver Appointed)

| Employee | Position | Rate | Totals | | Assets | | Creditors | | Trade On | | Dividends | | Administration | |
|------------------|-------------------------------|------|----------------------------|------------------|-------------|------------------|-------------|------------------|-------------|-----------------|------------|--------------|----------------|------------------|
| | | | hrs | \$ | hrs | \$ | hrs | \$ | hrs | \$ | hrs | \$ | hrs | \$ |
| Clark Jarrold | Partner | 650 | 21.8 | 14,170.00 | 21.8 | 14,170.00 | | | | | | | 14.6 | 9,271.00 |
| Gerry Collins | Partner | 635 | 14.6 | 9,271.00 | | | | | 0.9 | 571.50 | | | 12.8 | 8,128.00 |
| David Whyte | Partner | 635 | 23.8 | 15,113.00 | 10.1 | 6,413.50 | | | | | | | 0.3 | 162.00 |
| Charles Haines | Associate | 540 | 2.7 | 1,458.00 | | | 2.4 | 1,296.00 | | | | | | |
| Jayden Coulston | Senior Manager | 515 | 0.2 | 103.00 | | | 0.2 | 103.00 | | | | | | |
| Ryan Whyte | Senior Accountant | 340 | 50.2 | 17,068.00 | 10.4 | 3,536.00 | 27.8 | 9,452.00 | 10.3 | 3,502.00 | | | 1.7 | 578.00 |
| Jordan Devery | Accountant | 285 | 17.4 | 4,959.00 | | | 14.6 | 4,161.00 | 2.8 | 798.00 | | | | |
| Nigel Wenck | Graduate Accountant | 230 | 46.2 | 10,626.00 | | | 46.1 | 10,603.00 | | | 0.1 | 23.00 | | |
| Sarah Cunningham | Accounting Assistant | 230 | 1.5 | 345.00 | | | | | | | | | 1.5 | 345.00 |
| Maira Hatbingsh | Professional Services Support | 110 | 9.8 | 1,078.00 | 0.1 | 11.00 | | | | | | | 9.7 | 1,067.00 |
| TOTALS | | | 188.2 | 74,151.00 | 42.4 | 24,130.50 | 91.1 | 25,615.00 | 14.0 | 4,871.50 | 0.1 | 23.00 | 40.6 | 19,351.00 |
| | | | GST | 7,419.10 | | | | | | | | | | |
| | | | TOTAL INC GST | 81,610.10 | | | | | | | | | | |
| | | | AVERAGE HOURLY RATE | 394 | 589 | 281 | 348 | 230 | 482 | | | | | |

Note: All amounts exclude GST unless otherwise noted



Disbursements for the period 1 November 2021 to 30 November 2021

LM First Mortgage Income Fund (Receiver Appointed)

| Expense Type | Amount (\$ ex GST) |
|----------------------|-----------------------|
| Postage | 2.88 |
| TOTAL | 2.88 |
| GST | 0.29 |
| TOTAL INC GST | 3.17 |



Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

TO THE INVESTOR AS ADDRESSED

31 March 2022

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)
ARSN 089 343 288 ('the Fund' or 'FMIF')

1. Introduction

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I now provide my 37th update report to investors. This report is prepared in accordance with the deferral granted by the Australian Securities and Investments Commission (ASIC Exemption) in relation to financial reporting obligations of the Fund. In this regard, the ASIC Exemption requires a report to be made available to investors for each period of six months starting on 1 January 2016, within three months of the end of each period, which includes the following information:

- (i) Information about the progress and status of the winding up of the Fund, including details of:
 - A. The actions taken during the period;
 - B. The actions required to complete the winding up;
 - C. The actions proposed to be taken in the next 12 months; and
 - D. The expected time to complete the winding up.
- (ii) The financial position of the Fund as at the last day of the relevant period (based on available information);
- (iii) Financial information about receipts (and payments) of the Fund during the period; and
- (iv) The following information at the end of the period:
 - A. The value of the Fund's property; and
 - B. The potential return to investors.

This report covers, the period 1 July 2021 to 31 December 2021 (the Period).

On 11 March 2022 ASIC extended the deferral of financial reporting obligations of the Fund until 15 March 2024. A copy of the relief instrument is available for viewing at www.lmfimf.com.

2. Progress and Status of the Winding Up

2.1 Legal Actions/Potential Recoveries

2.1.1 Proceedings against the MPF, LMIM and the Directors of LMIM

I refer to my previous updates to investors in relation to proceedings against a number of parties, including the MPF Trustee and a number of directors of LMIM, in respect of loss allegedly suffered by the FMIF as a result of an amount paid to the MPF in the Bellpac litigation matter. The claim was for approximately \$15.5M plus interest.

As previously advised, the Judge dismissed my claim on 22 November 2019.

Costs were awarded in favour of the defendants.

On 20 December 2019 I filed an appeal of the decision. The progress of the appeal was awaiting the outcome of an application for judicial advice. The Court declined to provide me with judicial advice. After careful consideration, taking into account all of the relevant circumstances, I discontinued the appeal. The directors' costs of the proceedings, the appeal and the judicial advice application are yet to be determined.

2.1.2 Claim against the former auditors (EY Proceeding)

I refer to my previous updates to investors and provide a brief summary of the proceedings and the key events since my last report, as follows:

- The proceedings were commenced against the former auditors of the Fund, EY claiming damages for negligence and breach of contract in relation to the audits and reviews of the financial statements for each half year period from 30 June 2008 to 30 June 2012 and in relation to the compliance plan audits for FY2008 to FY2012. This includes claims in relation to EY failing to properly impair the loans granted by the Fund and where up to date valuations were not obtained;
- The claims, at their highest, have been calculated at up to \$249.6M;
- The EY Proceeding is an extremely complex legal proceeding due to, among other things:
 - The scope, complexity and breadth of the allegations made against EY covering nine financial statement audits/reviews and five compliance plan audits;
 - The extent of disclosure required - over 450,000 documents have been disclosed by the plaintiff in the case;
 - The scope and complexity of expert evidence required to support the claim. A total of sixty five expert reports (including supplementary reports) have been delivered in support of the claim, many of which are very lengthy, from multiple fields of expertise including financial statements audit (in excess of 2,000 pages), compliance plan audit (in excess of 600 pages), valuation, investor behaviour, funds management, finance and banking experts. To give an example of the complexity of the expert evidence, the expert valuation evidence required was 28 valuation reports, each of which valued a total of six retirement villages, completed residential and commercial properties, part completed properties and land held as security for twenty three loans made by the FMIF, as at approximately nine different dates at six monthly intervals between 30 June 2008 and 30 December 2012.



- A substantial amount of work has been completed since my last report in respect of:
 - Delivery of the final expert report in respect of the calculation of loss and damage for the subsequent financial statement and compliance plan audits up to and including the 30 June 2012 audit. The loss was calculated as follows:

| Engagement | Calculated Loss |
|--|-----------------|
| - 30 June 2009 Financial Statements Audit - 2009 Financial Year Compliance Plan Audit | \$249.43M |
| - 31 December 2009 Financial Statements Review | \$224.96M |
| - 30 June 2010 Financial Statements Audit - 2010 Financial Year Compliance Plan Audit | \$202.75M |
| - 30 June 2011 Financial Statements Audit - 2011 Financial Year Compliance Plan Audit | \$122.46M |
| - 31 December 2011 Financial Statements Review | \$28.43M |
| - 30 June 2012 Financial Statements Audit | \$12.75M |

- Preparation for and attendance at a review hearing on 15 February 2022, at which the Court made a number of case management orders including timetabling the delivery of the defendants' evidence, both lay and expert, for the duration of the proceeding.
 - Preparation and filing of an application in respect of the plaintiff's lay evidence, pursuant to the Orders of the Court dated 15 February 2022.
 - Drafting and service of an amended Statement of Claim which runs to approximately 166 pages with 66 pages of further particulars.
 - Preparation of a trial plan of the proceedings and attendance at a review on 24 March 2022 at which the Court considered the trial plan and went on to order that the valuation experts of the parties should consult with one another to seek to limit the issues in dispute.
- All expert reports and lay evidence have now been completed by the Fund;
 - The defendants are required to file and serve their expert and lay evidence progressively, such that it is complete by 28 October 2022.
 - A further review of the proceedings is due to be held at a date, to be fixed by the Court, on or after 1 June 2022;
 - The timing of the trial will be subject to a number of variables, some of which are not within my control, including whether EY delivers its expert evidence within the timeframes directed by the Court, and the availability of EY's experts to attend a trial. The Court has indicated that the trial will commence in 2023. I hope to be in a position to provide an update in relation to the anticipated timing of the trial of the EY Proceeding after the next review by the Court.



2.1.3 Bellpac Proceedings - Wollongong Coal Ltd (WCL)

I refer to my previous updates to investors and provide a brief summary as follows:

- The liquidator of Bellpac received the settlement amount of \$2 million from WCL in relation to the claim for redemption of the \$2 million Bonds held in WCL. A partial distribution of \$1M was received from the Bellpac liquidator in October 2019;
- The defendants' appeal of the decision of the Court which acknowledged that Bellpac (under the control of a liquidator) is the true owner of the \$8 million convertible bonds was unsuccessful;
- In January 2016, the Bellpac Liquidator applied for the conversion of the \$8 million Bonds to shares. As WCL did not issue all of the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds converted to shares outside of the required time;
- The Bellpac liquidator and WCL entered into a binding heads of agreement (HOA) relating to the settlement of the litigation commenced against WCL. The terms of the heads of agreement included that WCL pay to Bellpac a settlement sum of \$6.3 million in return for certain releases and Bellpac returning or cancelling the WCL shares issued to Bellpac;
- The conditions precedent to the settlement with WCL included obtaining necessary approvals to undertake the settlement transactions. In this regard:
 - The Bellpac Liquidator obtained creditor approval to enter into the settlement with WCL;
 - The Court declined to exercise its discretion on WCL's application for approval to acquire and or cancel Bellpac's holding of WCL shares. WCL was therefore required to seek shareholder approval.

The remaining condition precedent (Sunset Date) to the settlement with WCL was extended a number of times over the last four years and WCL paid \$3M towards the settlement into their solicitors' trust account, to be released upon receiving shareholder approval of the settlement.

Delays were encountered in calling the meeting of shareholders, including WCL entering into a scheme of arrangement which was terminated after failing to meet certain conditions, but which was subsequently reinstated. A revised binding heads of agreement was executed on 9 June 2020 with the conditions precedent to be satisfied by 31 October 2020.

As the conditions precedent were not going to be satisfied by 31 October 2020, the Bellpac liquidator entered into further negotiations to try and conclude a settlement. As a result of those negotiations, a further deed of settlement was entered into on 30 October 2020 with \$2.76M payable upon obtaining creditors approval and a further \$600,000 payable within six months if WCL opted to buy-back the shares held in WCL.

Creditors approved the revised deed of settlement at a meeting held on 18 November 2020 and \$2.75M was subsequently distributed to the Fund (\$2.5M on 27 November 2020 and \$250k on 11 March 2021).

WCL did not exercise the option to buy back the shares for \$600,000 within the six month period.

Following a rights issue by WCL to raise \$32M and which was completed on 29 September 2021, Bellpac's shareholding has reduced from approximately 25% of the total shares on issue to approximately 0.75%.

The Bellpac liquidator has received a notice of compulsory acquisition of shares under section 664C of the Corporations Act 2001 from the 90%+ shareholder, Jindal Steel and Power (Mauritius) Limited.

At the offer price of \$0.0001 per share this equates to \$247,206.37 for the shares held by the liquidator. Any objections to the compulsory acquisition are to be lodged by 23 April 2022. The Bellpac liquidator does not intend lodging any objections and will accept the offer price.

2.1.4 Claims against guarantors

There is one remaining matter which can be summarised, as follows:

- PTAL as custodian of the FMIF obtained judgment against a guarantor, for approximately \$3 million, plus interest and costs. The trustee in bankruptcy identified potential recoveries for the benefit of creditors of the bankrupt estate, of which the Fund is a major creditor. The bankrupt, along with other parties, contributed land to a development. The land was subdivided, developed and sold, and the net proceeds of sale in the sum of approximately \$12 million was held in a solicitors trust account on an interim basis, protected by certain undertakings given by the solicitor holding the funds.
- The trustee claimed an entitlement in respect of all or at least a substantial portion of the funds held in the solicitors trust account; however, other parties to the dispute allege that associated entities of the bankrupt are entitled to the funds.
- I instructed PTAL as custodian of the FMIF to enter into a Deed of Indemnity to fund a public examination and any agreed recovery proceedings in respect of this matter. A public examination was held in the Federal Court in November 2019. Subsequently, demands were served on several parties. The trustee held two mediations with several parties in relation to the dispute and there were ongoing settlement negotiations which culminated in a settlement being reached on 1 September 2021.
- The gross return to the bankrupt estate from the settlement will be between \$2,882,181 and \$3,832,181, depending upon the outcome of a taxation objection. The Trustee has estimated that the net return to the bankrupt estate, after deducting AFSA realisations charge, repayment of the funding provided by the FMIF, and the current and former Trustee's unpaid remuneration and expenses, will be approximately \$1,004,711 to \$1,964,161, not including allowances for the Trustee's future remuneration and expenses, or any taxation liabilities arising from the settlement.

The taxation objection has been lodged and it is expected a decision will be made shortly. Following that, and under the Deed of Indemnity, the Trustee is required to make an application to Court seeking an order giving the FMIF a priority over other creditors. The amount payable to the FMIF from the bankrupt estate will depend upon the outcome of this application.

2.1.5 Liquidators of LMIM (FTI Consulting)

2.1.5.1 Remuneration claim and expenses claim

I refer to my previous reports to investors.

The judgement regarding and orders made in relation to FTI's first remuneration claim and indemnity claim are available on the websites www.lmfimif.com and www.lminvestmentadministration.com.

The judgement and orders made with respect to FTI's second remuneration claim are summarised in paragraph 2.1.5.2 of my report to investors dated 31 March 2020.



The judgement and orders made with respect to FTI's third remuneration claim are summarised in paragraph 2.1.5.2 of my report to investors dated 20 December 2021.

2.1.5.2 Fourth FTI Remuneration Application and Expenses Application

On 15 February 2022, Mr Park filed an application in the Court for approval and payment from the FMIF of his remuneration for the period 1 November 2020 to 30 November 2021 in the sum of \$33,071.31 (including GST), made up of Category 1 remuneration (remuneration that is specifically referable to the FMIF) of \$18,315.00 (including GST), and Category 2 Remuneration (remuneration that relates to all of the funds of which LMIM is the Responsible Entity and that is apportioned between the relevant funds) of \$14,756.31 (including GST).

On 7 March 2022, Mr Park filed an application in the Court for approval and payment from the FMIF of expenses totalling \$50,579.73 plus his costs of the application.

Both applications are set down to be heard on 6 May 2022. Further details can be found on the websites www.lmfimf.com and www.lminvestmenadministration.com

2.1.5.3 Indemnity claim against the Fund and proof of debt process

The proof of debt process and claims notified to me, or potential claims by LMIM for indemnity from the FMIF, with respect to debts or claims of creditors of LMIM, are summarised in paragraph 2.1.5.3 of my report to investors dated 31 March 2020.

There have been no developments in relation to these indemnity claims since my last report to investors.

2.1.5.4 Claim filed against LMIM

The claims made in this proceeding and the key steps to date in the proceeding, are summarised in paragraph 2.1.5.6 of my report to investors dated 19 December 2019. The current status of this claim is that it remains stayed until further order. I will keep investors updated as to any developments in relation to this claim.

3. Financial Position of the Fund

The management accounts for the half-year ended 31 December 2021 are available on the website www.lmfimf.com on the page titled 'Financial Statements & Other Key Documents'.

A summary of the financial position of the Fund as at 31 December 2021 is provided below.

| Description | 31 December 2021 |
|---------------------------|-------------------|
| ASSETS | \$ |
| Cash and cash equivalents | 22,350,651 |
| Receivables | 164,578 |
| Loans & Receivables | 1,254,711 |
| TOTAL ASSETS | 23,769,940 |
| LIABILITIES | |



| Description | 31 December 2021 |
|---|-------------------|
| Payables and accrued expenses | 5,193,281 |
| Distributions payable | 2,934,173 |
| Total liabilities excluding net assets attributable to unitholders | 8,127,454 |
| NET ASSETS | 15,642,486 |

These figures are subject to the disclaimers and qualifications set out in the management accounts.

3.1 Fund Assets

The total assets of the Fund as at 31 December 2021 were \$23,769,940.

The balance includes cash at bank of \$22,350,651, receivables of \$164,578 and loans and receivables of \$1,254,711.

3.2 Fund Liabilities

The total liabilities of the Fund as at 31 December 2021 were \$8,127,454, consisting of payables of \$5,193,281 and distributions payable of \$2,934,173.

The distributions payable balance is made up of:

- \$1,372,036 relates to distributions that appear to have been declared prior to the date of the Court Receiver's appointment which were not paid, or have not cleared or were returned unclaimed. These liabilities have not been verified and Court approval or directions may be required before any payment is made.
- \$1,562,137 relates to distributions that were returned/unclaimed from the interim capital distribution to investors paid by BDO in October 2019 in accordance with the Court order dated 2 October 2019.

The Payables and accrued expenses balance of \$5,193,281 primarily consists of an accrual in respect of the cost orders for the Director's proceedings, legal fees, receiver's fees and fees and expenses claimed by FTI, which remain unpaid as at 31 December 2021.

Some of these liabilities have not been verified, or may be subject to Court approval being obtained.

3.3 Net Assets Attributable to Unit Holders

Net assets attributable to unit holders as at 31 December 2021 were \$15,642,486.

The net assets of the Fund and number of units on issue as at 31 December 2021 and 30 June 2021 is detailed in the table below.

| Description | 31 December 2021 | 30 June 2021 |
|--|------------------|--------------|
| Estimated net amount of assets available to investors (\$) | 15,642,486 | 19,737,372 |
| Total investor units (# of units) | 492,125,624 | 492,125,624 |



Estimated net asset amount per unit available to investors as at period end (cents in the dollar) 3.2 cents 4 cents

The above table does not include the estimated benefit of the Feeder Funds settlement up to the amount of the net amount of assets as at 31 December 2021. Therefore, below is an estimate that includes the benefit of the Feeder Funds settlement up to the amount of the net amount of assets at 31 December 2021.

| Description | 31 December 2021 |
|---|------------------|
| Estimated net amount of assets available to investors as at period end (\$) | 15,642,486 |
| Benefit of Feeder Fund settlement of amounts withheld | 2,020,356 |
| Total investor units (AUD Equivalent as at appointment being 8 August 2013) | 492,125,624 |
| Estimated return in the dollar | 3.6 cents |

If further recoveries are made this will increase the amount due from the Feeder Funds settlement.

Please note that the estimate and prior estimates do not take into account future operating costs and future Receiver's fees or any legal recoveries against borrowers, guarantors or other third parties.

The Feeder Fund settlement will reduce the amount of cash to be paid to the Feeder Funds. Based on the amounts in the above table, I attach at Annexure 1 calculations showing the estimated return to the Feeder Funds, as follows:

| Feeder Fund | Estimated return |
|---|------------------|
| LM Currency Protected Australian Income Fund ("CPAIF") | 1.9 cents |
| LM Institutional Currency Protected Australian Income Fund ("ICPAIF") | 1.9 cents |
| LM Wholesale First Mortgage Income Fund ("WFMIF") | 2.8 cents |

These are the amounts that would be paid to the responsible entities of each of the Feeder Funds, the costs and expenses of the Feeder Funds would need to be paid from the net cash that is paid to each of the Feeder Funds before distributions are made to Feeder Fund investors.

4. Receipts and Payments of the Fund

All receipts and payments for the Fund since McGrathNicol's appointment on 10 July 2013 until their retirement on 10 December 2018 are on the website www.lmfimf.com under Financial Statements & Other Key Documents.

Following McGrath Nicol's retirement and relinquishment of control of the bank accounts, I have taken over responsibility for all receipts and payments and will upload copies of the Receipts and Payments lodged with ASIC to the www.lmfimf.com website from time to time.

The receipts and payments of the Fund, for the period 1 July 2021 to 31 December 2021 is summarised in the table below.



| Description | \$ |
|---|--------------------|
| Receipts | |
| Interest | 73,317 |
| GST received | 483,467 |
| Cost order - proceedings 3508/2015 | 20,000 |
| Bankrupt Estate of Ross Lamb (Reimbursement of costs) | 810,020 |
| Return of unclaimed Interim Capital Distribution to investors | 29,066 |
| Total receipts | 1,415,870 |
| Payments | |
| Bank charges | (78) |
| Receivers fees and disbursements (BDO) | (1,387,612) |
| Court Application Expenses | (15,769) |
| Custodian fees | (11,000) |
| Legal and other fees | (5,069,976) |
| IT expenses | (56,463) |
| Printing and stationary | (12,783) |
| Record management and storage | (7,126) |
| Total payments | (6,560,807) |
| Net receipts/(payments) | (5,144,937) |

5. Investor Information

5.1 Estimated Return to Investors

5.1.1 Unit Price as at 31 December 2021

The estimated unit price as at 31 December 2021 is 3.2 cents.

| Description | \$ |
|--------------------------------|-------------|
| Total Net Value of Fund Assets | 15,642,486 |
| Total Number of Units | 492,125,624 |
| Unit Price Estimate | 3.2 cents |



I attach a copy of a letter confirming the unit price as at 31 December 2021, which may be forwarded to Centrelink to assist with the review of investors' pensions.

5.2 Further Distributions to Investors

The Court authorised and empowered me on 2 October 2019 to make an interim capital distribution of 6.5 cents per unit to investors of the LM First Mortgage Income Fund. I confirm the interim distribution was paid to investors in October 2019.

Once the above matters in section 2 have been finalised, I intend to pay, subject to court approval, the final distribution to investors.

5.3 Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor in the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if investors could nominate an email address as their preferred method to receive correspondence. Investors may update their details as outlined in Section 5.4 below. For those investors that do not have an email address, correspondence will continue to be sent to you via post.

My next report to investors will be issued by 30 June 2022.

5.4 Investors Queries

Arrangements are in place to ensure that any reasonable questions asked by members of the FMIF, about the winding up of the FMIF, will be answered within a reasonable period of time (generally seven days) and without charge to the investor.

For any changes to investors details, please review the Useful Forms/Procedures tab on the website www.lmfimf.com which includes information regarding the following procedures:

- Change of Contact Address/Bank Account Details
- Change of Contact Address/Bank Accounts Details of a Deceased Estate
- Change of Trustee of Self-Managed Super Fund
- Transfer of Unit Holding from a Super Fund/ Trustee Company to Personal Name(s)
- Transfer of Unit Holding from a Deceased Estate to a Sole Survivor
- Transfer from a Deceased Estate to a Beneficiary of an Estate

It is a requirement that advisors or other third parties acting on behalf of Unit Holders are doing so pursuant to a relevant Authority/Power of Attorney. Please ensure that a relevant Authority/Power of Attorney accompanies the abovementioned documents as necessary (if an Authority/Power of Attorney has not previously been provided).

It is preferable that all questions about the winding up, or communications are sent via email to enquiries@lmfmif.com with original documents to be mailed as required to:

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227

6. Receiver's Remuneration and Expenses

There have been sixteen applications to Court to date to approve my remuneration since the date of my appointment on 8 August 2013.

The sixteenth application for the approval of my remuneration for the period 1 May 2021 to 31 October 2021 was heard by the Court on 16 December 2021. The Court ordered that my remuneration claim for this period be fixed in the amount of \$924,169.40 (inclusive of GST), in relation to my role as the person responsible for ensuring the FMIF is wound up in accordance with its constitution.

A copy of all documentation in relation to my applications can be found on the website www.lmfimif.com.

In addition to the remuneration previously approved, I calculate that, on a time basis, I have incurred further remuneration of \$235,285.00 (exclusive of GST) plus disbursements of \$60.56 (exclusive of GST) from 1 November 2021 to 28 February 2022 as detailed in the attached summary.

6.1 Actions taken during the Period

I provide below a summary of actions taken during the period from 1 July 2021 to 31 December 2021:

- Work undertaken in relation to the litigation matters detailed at Section 2.1 of this report;
- Maintaining the financial records of the Fund and preparation of management accounts for the year ended 30 June 2021 and the half-year ended 31 December 2021;
- Undertaking the investor management function for approximately 4,600 investors including answering queries on the winding up of the Fund and maintaining the investment database, including any change in details or transfer of units;
- Preparing affidavit and supporting material for an application to Court for approval of the receiver's remuneration for the period 1 May 2021 to 31 October 2021;
- Attending to compliance with ASIC's grant of relief from the requirements of a half year review and annual audit of the financial reports and compliance plan;
- Preparation of unit price calculations as at 30 June 2021 and 31 December 2021; and
- Preparation of update reports to investors in September 2021 and December 2021.

6.2 Proposed actions to be taken in the next 12 months

I provide below a summary of the proposed actions to be taken in the next 12 months in relation to the winding up of the Fund:

- Take steps to progress the various ongoing litigation matters outlined in this report;
- Continue to monitor progress of and assist the Bellpac liquidator to achieve finalisation of the recovery in the \$8M bonds claim;
- Receive and then resolve or have determined FTI's further claims against the Fund;
- Maintain the accounts of the Fund and prepare management accounts for the year ending 30 June 2022 and half-year ending 31 December 2021;
- Maintain the investor management database;
- Report to investors on a quarterly basis; and



- Make applications to Court for remuneration approval.

Please note that the timing to finalise some of the above matters will be subject to the progress of court proceedings.

6.3 Key actions required to complete the winding up of the Fund

I provide below a summary of the key actions required to complete the winding up of the Fund:

- Finalise all litigation currently on foot;
- Resolve or have determined FTI's further remuneration or indemnity claims against the Fund;
- Discharge all liabilities of the Fund;
- Obtain approval from the Court to process a final distribution to investors;
- Prepare final accounts for the Fund;
- Arrange for an auditor to audit the final accounts of the Fund after the Fund is wound up; and
- Obtain court orders in relation to the finalisation of my role in relation to the Fund.

The completion of the winding up of the Fund will largely be dependent on the finalisation of the EY proceedings. I am required by the conditions of the ASIC relief to make an estimate of the expected time to complete the winding up. My best estimate of the timing to complete the winding up on the available information is between nine months (if a settlement is reached with EY pre-trial) and if the trial proceeds it will depend on a number of matters including the dates for the trial and time to hand down judgement. It could be further delayed if an appeal was lodged.

There are a number of variables, including some highlighted above, which may affect the timing taken for completion of the winding up. The main variable is the timeframe for resolution or determination of the EY Proceeding. In this regard, I note that timing for the trial of the EY proceeding is presently uncertain because trial dates have not yet been allocated and may depend on a number of factors, many of which are not within my control, including those identified in section 2.1.2 above.

7. Queries

Should unit holders wish to advise of any changes in details or require further information, please contact BDO as follows:

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours sincerely

David Whyte
Receiver



ANNEXURE 1
ESTIMATED RETURN TO FEEDER FUNDS

| Feeder Fund | Number of Units | Further Estimated Return to Feeder Funds as at 31 December 2021 | | | Net Cents per Unit |
|--------------|--------------------|---|-----------------------|----------------------|--------------------|
| | | Distribution (\$) | Amounts withheld (\$) | Net Amount Paid (\$) | |
| CPAIF | 120,702,630 | 3,836,600 | 1,534,640 | 2,301,960 | 1.9 |
| ICPAIF | 9,350,802 | 297,220 | 118,888 | 178,332 | 1.9 |
| WFMIF | 99,488,929 | 3,162,311 | 366,828 | 2,795,482 | 2.8 |
| Total | 229,542,361 | 7,296,131 | 2,020,356 | 5,275,774 | |



REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2021 to 28 February 2022
 LM First Mortgage Income Fund (Receiver Appointed)

| Employee | Position | Rate | Totals | | Assets | | Creditors | | Trade On | | Dividends | | Administration | |
|------------------|-------------------------------|------|----------------------------|-------------------|--------------|------------------|--------------|------------------|-------------|------------------|------------|--------------|----------------|------------------|
| | | | Hrs | \$ | Hrs | \$ | Hrs | \$ | Hrs | \$ | Hrs | \$ | Hrs | \$ |
| David Whyte | Partner | 655 | 8.1 | 5,305.50 | 3.6 | 2,358.00 | 0.7 | 458.50 | 3.8 | 2,489.00 | | | 18.8 | 11,938.00 |
| Clark Jarrold | Partner | 650 | 48.5 | 31,525.00 | 48.5 | 31,525.00 | | | 2.0 | 1,270.00 | | | 14.6 | 9,271.00 |
| David Whyte | Partner | 635 | 62.3 | 39,560.50 | 40.6 | 25,781.00 | 0.9 | 571.50 | | | | | 0.2 | 111.00 |
| Gerry Collins | Partner | 635 | 14.6 | 9,271.00 | | | 0.8 | 444.00 | | | | | 0.3 | 162.00 |
| Charles Haines | Associate | 555 | 1.0 | 555.00 | | | 2.4 | 1,296.00 | | | | | | |
| Charles Haines | Associate | 540 | 2.7 | 1,458.00 | | | 4.9 | 2,597.00 | | | | | | |
| Jayden Coulston | Senior Manager | 530 | 4.9 | 2,597.00 | | | 1.2 | 618.00 | | | | | 0.1 | 51.50 |
| Jayden Coulston | Senior Manager | 515 | 1.3 | 669.50 | | | 28.8 | 11,232.00 | 52.7 | 20,553.00 | | | 10.6 | 4,134.00 |
| Ryan Whyte | Senior Accountant | 390 | 92.1 | 35,919.00 | | | 67.0 | 23,450.00 | 24.0 | 8,160.00 | | | 4.4 | 1,496.00 |
| Jordan Devery | Senior Accountant | 350 | 67.0 | 23,450.00 | | | 45.7 | 15,538.00 | 2.8 | 798.00 | | | | |
| Ryan Whyte | Senior Accountant | 340 | 114.8 | 39,032.00 | 40.7 | 13,838.00 | 25.7 | 7,324.50 | | | | | 1.8 | 432.00 |
| Jordan Devery | Senior Accountant | 285 | 28.5 | 8,122.50 | | | 49.1 | 11,784.00 | | | | | | |
| Sarah Cunningham | Accounting Assistant | 240 | 1.8 | 432.00 | | | 91.9 | 21,137.00 | | | | | 2.9 | 667.00 |
| Nigel Wenck | Graduate Accountant | 240 | 49.1 | 11,784.00 | | | | | | | | | 13.6 | 1,564.00 |
| Nigel Wenck | Graduate Accountant | 230 | 92.2 | 21,206.00 | | | | | | | | | 19.6 | 2,156.00 |
| Sarah Cunningham | Accounting Assistant | 230 | 2.9 | 667.00 | | | | | | | | | | |
| Moira Hattingh | Professional Services Support | 115 | 13.6 | 1,564.00 | | | | | | | | | | |
| Moira Hattingh | Professional Services Support | 110 | 19.7 | 2,167.00 | 0.1 | 11.00 | | | | | | | | |
| TOTALS | | | 625.1 | 235,385.00 | 133.5 | 73,513.00 | 319.1 | 96,450.50 | 85.3 | 33,270.00 | 0.3 | 69.00 | 86.9 | 31,982.50 |
| | | | GST | 23,228.50 | | | | | | | | | | |
| | | | TOTAL INC GST | 258,613.50 | | | | | | | | | | |
| | | | AVERAGE HOURLY RATE | 376 | | 551 | | 302 | | 390 | | 230 | | 368 |

Note: All amounts exclude GST unless otherwise noted



Disbursements for the period 1 November 2021 to 28 February 2022

LM First Mortgage Income Fund (Receiver Appointed)

| Expense Type | Amount (\$ ex GST) |
|----------------------|-----------------------|
| Postage | 10.56 |
| InfoTrack | 50.00 |
| TOTAL | 60.56 |
| GST | 6.06 |
| TOTAL INC GST | 66.62 |



Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

31 March 2021

TO WHOM IT MAY CONCERN

**LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)
ARSN 089 343 288 ('the Fund' or 'FMIF')**

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I provide an update on the estimated unit price of the fund as at 31 December 2021, calculated as follows:

| Description | \$ |
|---|--------------------|
| Total Value of Fund Assets as at 31 December 2021 | 23,769,940 |
| Less Creditors and Other Payables | 8,127,454 |
| Total Net Value of Fund Assets | 15,642,486 |
| Total Number of Units | 492,125,624 |
| Unit Price Estimate | 3.2 cents |

Should you have any queries in respect of the above, please contact my office on (07) 3237 5999 or enquiries@lmfmif.com.au.

Yours faithfully,

David Whyte
Receiver



Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

31 March 2021

TO INVESTORS

Dear Member

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

I attach the unaudited accounts for the Fund for the half-year ended 31 December 2021.

The accounts have been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The accounts have been reviewed by the BDO audit team. However, their work does not constitute a full audit and therefore, the accounts are provided on an unaudited basis.

Should members require further information, please contact BDO on the details provided below.

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours sincerely

David Whyte
Court Appointed Receiver

Disclaimer:

The 31 December 2021 financial statements were compiled by BDO Business Restructuring Pty Ltd however we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVER APPOINTED)
ABN: 66 482 247 488**

Report for the half-year ended 31 December 2021

Disclaimer

The 31 December 2021 financial statements were compiled by BDO Business Restructuring Pty Ltd but we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

LM FIRST MORTGAGE INCOME FUND

(RECEIVER APPOINTED)

ABN: 66 482 247 488

Financial Statements for the half-year ended 31 December 2021

CONTENTS

| | |
|--|---|
| Statement of comprehensive income | 3 |
| Statement of financial position | 4 |
| Statement of changes in net assets attributable to unitholders | 5 |
| Statement of cash flows | 6 |
| Notes to the financial statements for the half-year ended 31 December 2021 | 7 |

The Responsible Entity of LM First Mortgage Income Fund (Receiver Appointed) is LM Investment Management Limited (ABN 68 077 208 461) (In Liquidation) (Receivers and Managers Appointed).

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

STATEMENT OF COMPREHENSIVE INCOME

For the half-year ended 31 December 2021

| | Note | 31 December 2021 \$ | 31 December 2020 \$ |
|---|-------|------------------------|------------------------|
| Income | | | |
| Interest revenue - cash assets | 12(a) | 82,309 | 178,935 |
| LMA Operational Costs Reimbursement | | - | 176,363 |
| Reimbursement of costs | 12(b) | 810,020 | - |
| | | 892,329 | 355,298 |
| Expenses | | | |
| Custodian fees & legal fees | 9 | 11,000 | 11,000 |
| Net Impairment losses/(gains) on mortgage loans | 6 | (1,254,711) | (2,500,000) |
| Adjustment on foreign exchange accounts | | - | - |
| Other expenses | 4 | 6,230,926 | 4,877,595 |
| Total expenses excluding distributions to unitholders | | 4,987,215 | 2,388,595 |
| | | (4,094,886) | (2,033,297) |
| Net profit (loss) before non-capital distributions to unitholders | | | |
| Net non-capital distributions paid/payable to unitholders | | - | - |
| Net profit (loss) after non-capital distributions to unitholders | | (4,094,886) | (2,033,297) |
| Other comprehensive income | | - | - |
| Net profit (loss) after non-capital distributions to unitholders | | (4,094,886) | (2,033,297) |
| Income tax expense | | - | - |
| Changes in net assets attributable to unitholders after income tax expense | | (4,094,886) | (2,033,297) |

The Statement of Comprehensive Income is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

STATEMENT OF FINANCIAL POSITION

As at 31 December 2021

| | Note | 31 December 2021 | 30 June 2021 |
|---|------|-------------------|-------------------|
| ASSETS | | \$ | \$ |
| Cash and cash equivalents | 11 | 22,350,651 | 27,506,519 |
| Receivables | 10 | 164,578 | 178,407 |
| Loans & Receivables | 6 | 1,254,711 | - |
| TOTAL ASSETS | | 23,769,940 | 27,684,926 |
| LIABILITIES | | | |
| Payables and accrued expenses | 7 | 5,193,281 | 5,031,515 |
| Distributions payable | 3 | 2,934,173 | 2,916,039 |
| Total liabilities excluding net assets attributable to unitholders | | 8,127,454 | 7,947,554 |
| NET ASSETS | | 15,642,486 | 19,737,372 |
| Represented by: | | | |
| Net assets attributable to unitholders | 5 | 15,642,486 | 19,737,372 |
| (calculated in accordance with IFRS) | | | |

The Statement of Financial Position is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)
STATEMENT OF CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS
For the half-year ended 31 December 2021

| | Note | 31 December 2021 \$ | 30 June 2021 \$ |
|---|------|------------------------|--------------------|
| TOTAL | | | |
| Opening balance | | 19,737,372 | 26,907,315 |
| Units issued during the year | 5 | - | - |
| Units redeemed during the year | 5 | - | - |
| Units issued on reinvestment of distributions | | - | - |
| Changes in net assets attributable to unitholders | | (4,094,886) | (7,169,943) |
| Closing Balance | | 15,642,486 | 19,737,372 |

The Statement of Changes in Net Assets Attributable to Unitholders is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

STATEMENT OF CASH FLOWS

For the half-year ended 31 December 2021

| | Note | 31 December 2021 | 31 December 2020 |
|---|--------|--------------------|--------------------|
| | | \$ | \$ |
| Cash flows from operating activities | | | |
| Interest received | | 82,309 | 182,775 |
| Reimbursement of costs received | | 810,020 | - |
| Payments for other operating expenses | | (6,080,161) | (4,001,589) |
| GST and withholding tax (paid)/received | | 13,829 | 82,592 |
| Net cash inflow/(outflow) from operating activities | 11 (b) | (5,174,003) | (3,736,222) |
| Cash flows from investing activities | | | |
| Payments for secured mortgage loans | 6 (b) | - | - |
| Receipts from settled mortgage loans | 6 (b) | - | 2,500,000 |
| Net cash inflow/(outflow) from investing activities | | - | 2,500,000 |
| Cash flows from financing activities | | | |
| Distributions returned (paid) | 3 | 18,135 | (84,059) |
| Net cash flows from financing activities | | 18,135 | (84,059) |
| Net increase/(decrease) in cash and cash equivalents | | (5,155,868) | (2,131,613) |
| Cash and cash equivalents at beginning of year | | 27,506,519 | 34,324,670 |
| Cash and cash equivalents at end of year | 11 (a) | 22,350,651 | 33,004,389 |

The Statement of Cashflows is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

1. CORPORATE INFORMATION

During the period March 2013 to August 2013, a series of insolvency events occurred in respect of both the Fund and the Responsible Entity for the Fund, these are detailed in the table below:

| Date | Appointment |
|---------------|--|
| 19 March 2013 | John Park and Ginette Muller of FTI Consulting appointed as Administrators of LM Investment Management Ltd ("LMIM") being the Responsible Entity for the Fund. |
| 11 July 2013 | Joseph Hayes and Anthony Connelly of McGrathNicol appointed as Receivers and Managers of LMIM as the Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) ('LMFMIF', 'FMIF', 'Scheme' or the 'Fund') by Deutsche Bank. On 10 December 2018, Mr Hayes and Mr Connelly retired. |
| 1 August 2013 | John Park and Ginette Muller of FTI Consulting appointed as liquidators of LMIM. On 17 May 2017, Ms Muller ceased to be liquidator. |
| 8 August 2013 | David Whyte of BDO appointed by the Court as Receiver of the assets of the Fund and as the person responsible for ensuring the Fund is wound up in accordance with its Constitution. |

The Scheme is an Australian registered Scheme, constituted on 13 April 1999.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all periods presented, unless otherwise stated in the following text.

(a) Basis of accounting

This financial report has been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The financial report has also been prepared on a historical cost basis, except for financial assets and financial liabilities held at fair value through profit or loss, that have been measured at fair value.

The Statement of financial position is presented in decreasing order of liquidity and does not distinguish between current and non-current items. The amount expected to be recovered or settled within twelve months in relation to the balances cannot be reliably determined.

The financial report is presented in Australian Dollars (\$).

Statement of compliance

The financial statements have been prepared in accordance with the recognition and measurement requirements of the Australian Accounting Standards as issued by the Australian Accounting Standards Board and International Financial Reporting Standards as issued by the International Accounting Standards Board except for AASB 9, *Financial Instruments*. The Scheme has not adopted AASB 9 for this financial report given its wind up status, there was no benefit from doing so.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(a) Basis of accounting (Continued)

Status of investment in fund

During the 2009 year, the Responsible Entity closed the Scheme to new investors and suspended withdrawals subject to certain exceptions. Redemptions were suspended at this time, per the Constitution, as the Responsible Entity considered the suspension of the withdrawals to be in the best interest of the members of the Scheme.

The Scheme is now in the process of being formally wound up with redemptions and hardship provisions remaining suspended.

Liquidation Basis

Previous financial statements have been prepared on a going concern basis.

The financial statements for the periods ended 30 June 2013 onwards have not been prepared on a going concern basis due to the appointment of Administrators to the Responsible Entity for the Fund on 19 March 2013 and subsequently Liquidators on 1 August 2013 and the appointment of Receivers and Managers and Court Appointed Receiver and person responsible for ensuring it is wound up in accordance with its Constitution as detailed in Note 1. Accordingly, the financial statements for those periods have been prepared on a liquidation basis.

(b) New accounting standards and interpretations

Australian Accounting Standards and Interpretations that have recently been issued or amended but are not yet effective have not been adopted by the Scheme for the reporting period. The impact of these standards and interpretations are not expected to have a material impact on the Scheme have not been included.

(c) Significant accounting judgements, estimates and assumptions

In the process of applying accounting policies, judgements and estimations have been made which have had an impact on the amounts recognised in the accounts. The key estimates and assumptions that have a significant risk of causing material adjustment to the carrying amounts of certain assets and liabilities within the next annual reporting period are:

Allowance for impairment loss on loans and receivables

The Scheme determines whether loans are impaired on an ongoing basis. Individually assessed provisions are raised where there is objective evidence of impairment, where the Scheme does not expect to receive all of the cash flows contractually due. Individually assessed provisions are made against individual facilities.

(d) Cash and cash equivalents

Cash and cash equivalents includes cash in hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts. For the purposes of the Statement of cash flows, cash and cash equivalents as defined above, net of outstanding bank overdrafts.

(e) Distribution income

Distribution income is recognised when the Scheme's right to receive income is established.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(f) Interest income

Interest income is recognised as the interest accrues using the effective interest rate method, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial instrument to the net carrying amount of the financial asset. Interest ceases to be recognised when a loan is in default and the principal is impaired.

(g) Default management fees

Income from default management fees is recognised in line with the executed agreement with the borrower when an event of default occurs.

(h) Changes in the fair value of investments

Gains or losses on investments held for trading are calculated as the difference between the fair value at sale, or at year end, and the fair value at the previous valuation point. This includes both realised and unrealised gains and losses.

(i) Fees, commissions and other expenses

Except where included in the effective interest calculation (for financial instruments carried at amortised cost), fees and commissions are recognised on an accrual basis. Audit and compliance fees are included with 'other expenses' and are recorded on an accrual basis.

(j) Financial instruments

Financial instruments in the scope of *AASB 139 Financial Instruments* are classified as either financial assets or financial liabilities at fair value through profit or loss, loans and receivables, held-to-maturity investments, available-for-sale investments or other financial liabilities as appropriate.

When financial assets are recognised initially, they are measured at fair value, plus, in the case of investments not at fair value through profit or loss, directly attributable transactions costs. The Scheme determines the classification of its financial assets at initial recognition.

All regular way purchases and sales of financial assets are recognised on the trade date i.e. the date that the Scheme commits to purchase the asset. Regular way purchases or sales are purchases or sales of financial assets under contracts that require delivery of the assets within the period established generally by regulation or convention in the marketplace.

i. Loans and receivables

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are initially measured at fair value including transaction costs directly attributable to the financial asset. After initial recognition, loans and receivables are carried at amortised cost using the effective interest method. Gains and losses are recognised in profit or loss when receivables are derecognised or impaired, as well as through the amortisation process.

Loans and receivables are assessed for impairment at each reporting period. An allowance is made for credit losses when there is objective evidence that the Scheme will not be able to collect the loans and receivables. Impairment losses are written off when identified. Losses expected as a result of future events are not recognised. If a provision for impairment

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(j) Financial instruments

has been recognised in relation to the loan, write-offs for bad debts are made against the provision. If no provision for impairment has previously been recognised, write-offs for bad debts are recognised as an expense in the statement of comprehensive income.

A provision is made of loans in arrears where the collectability of the debts is considered doubtful by estimation of expected losses in relation to loan portfolios where specific identification is impracticable.

The components of impaired assets are as follows:

“Loans in arrears” are loans and advances for which there is reasonable doubt that the Scheme will be able to collect all amounts of principal and interest in accordance with the terms of the agreement.

“Assets acquired through the enforcement of security” are assets acquired in full or partial settlement of a loan or similar facility through the enforcement of security arrangements.

When it is determined that interest is not recoverable on certain impaired loans, the interest is suspended and not brought into income. Should the analysis of the collectability subsequently change the interest will be brought into income at the time it is determined to be collectable.

(k) Payables

Payables are carried at amortised costs and represent liabilities for goods and services provided to the Scheme prior to the end of the financial year and half year that are unpaid and arise when the Scheme becomes obliged to make future payments in respect of the purchases of these goods and services.

The distribution amount payable to investors as at the reporting date is a carried forward balance from a period prior to the appointment of the Court Appointed Receiver. This balance is recognised separately on the statement of financial position as unitholders are presently entitled, subject to verification and any directions made by the Court, to the distributable income as at 30 June 2014 under the Scheme's constitution.

(l) Increase/decrease in net assets attributable to unitholders

Non-distributable income is transferred directly to net assets attributable to unitholders and may consist of unrealised changes in the net fair value of investments, accrued income not yet assessable, expenses accrued for which are not yet deductible, net capital losses and tax free or tax deferred income. Net capital gains on the realisation of any investments (including any adjustments for tax deferred income previously taken directly to net assets attributable to unitholders) and accrued income not yet assessable will be included in the determination of distributable income in the same year in which it becomes assessable for tax. Excess and undistributed income is also transferred directly to net assets attributable to unitholders.

(m) Distributions

The remaining return to investors is currently estimated at 3.2 cents per unit and excludes the interim distribution to investors of 6.5 cents made in October 2019. This is before taking into account future costs and recoveries from legal proceedings on foot. Mr Whyte believes the final return to investors will be higher than the current estimate.

Mr Whyte applied to the Court for authorisation to make an interim distribution to investors, which is a condition precedent to the settlement of the proceedings against the Feeder Funds of the Fund (**Distribution Application**). Mr Whyte also applied

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(m) Distributions (Continued)

to the Court for judicial advice in relation to a settlement of the proceedings against the Feeder Funds (**Judicial Advice Application**), which was another condition precedent to the settlement. The two applications were heard in Court on 13 March 2019 and on 2 and 3 May 2019 with the decisions reserved. The Court has now handed down its decision in respect of the Judicial Advice Application. Mr Whyte was successful in obtaining judicial advice from the Court that he was justified in settling the proceedings against the Feeder Funds and in causing the Fund to perform the settlement. However, the Distribution Application remained reserved by the Court. Mr Whyte was provided authority to make the interim capital distribution in accordance with a Court order on 2 October 2019. An interim capital distribution to investors of the LM First Mortgage Income Fund was paid to investors in October 2019 in the amount of 6.5 cents per unit.

(n) Goods and services tax (GST)

The GST incurred on the costs of various services provided to the Responsible Entity by third parties such as audit fees, custodial services and investment management fees have been passed onto the Scheme. The Scheme qualifies for Reduced Input Tax Credits (RITC's) at a rate of 55%.

Investment management fees, custodial fees and other expenses have been recognised in the statement of comprehensive income net of the amount of GST recoverable from the Australian Taxation Office (ATO). Accounts payable are inclusive of GST. The net amount of GST recoverable from the ATO is included in the statement of cash flows on a gross basis.

The GST component of cash flows arising from investing and financing activities recoverable or payable to the ATO is classified as an operating cash flow.

(o) Applications and redemptions

Applications received for units in the Scheme are recorded when units are issued in the Scheme. Redemptions from the Scheme are recorded when the cancellation of units redeemed occurs. Unit redemption prices are determined by reference to the net assets of the Scheme divided by the number of units on issue.

Applications received in foreign currency denominations are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Foreign currency denominated unitholder funds are translated into the Schemes functional currency at balance date, using the spot rate prevailing at that date. Gains and losses arising from foreign exchange translation are recorded in the Statement of Comprehensive Income in the period in which they arise.

(p) Taxation

Under current legislation, the Scheme is not subject to income tax provided the distributable income of the Scheme is fully distributed either by way of cash or reinvestment (i.e. unitholders are presently entitled to the income of the Scheme).

(q) Interest-bearing loans and borrowings

All loans and borrowings are initially recognised at cost, being the fair value of the consideration received net of issue costs associated with the borrowing. After initial recognition, interest-bearing loans and borrowings are subsequently measured at amortised cost using the effective interest method. Amortised cost is calculated by taking into account any issue costs, and any discount or premium on settlement.

(r) Foreign currency translations

The Scheme's transactions in foreign currencies previously comprised applications and withdrawals of foreign currency unitholder funds and payment of distributions. Transactions in foreign currencies were initially recorded in the functional

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(r) Foreign currency translations (Continued)

currency by applying the exchange rates ruling at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are retranslated at the rate of exchange prevailing at the balance sheet date, and exchange rate gains and losses are recognised in the statement of comprehensive income.

(s) Determination of fair value

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

The fair value for financial instruments not traded in an active market is determined using appropriate valuation techniques. Valuation techniques include: using recent arm's length market transactions; reference to the current market value of another instrument that is substantially the same; discounted cash flow analysis and option pricing models making as much use of available and supportable market data as possible.

(t) Estimated net asset amount per unit available to investors

The estimated amount of net assets available to investors are subject to the uncertainties indicated in this financial report.

The net assets of the fund and number of units on issue at the end of each of the periods is detailed in the table below:

| | 31 December 2021 | 30 June 2021 |
|---|------------------|--------------|
| Estimated net amount of assets available to investors as at the period end (\$) | 15,642,486 | 19,737,372 |
| Total investor units (# of units) | 492,125,624 | 492,125,624 |
| Estimated net asset amount per unit available to investors as at the period end (cents in the dollar)* | 0.032 | 0.040 |

- Estimated return to investors

The estimated net asset amount per unit available to investors as set out above is subject to the resolution of a number of ongoing proceedings, including the amount to be paid under a deed of settlement with the Feeder Funds which is dependent on the final amounts to be distributed to members. Please refer to Note 13 below for further details regarding the litigation matters.

3. DISTRIBUTIONS PAYABLE

The distributions payable balance is made up of:

- \$1,372,036 (30 June 2021: \$1,372,036) relates to distributions that appear to have been declared prior to the date of the Court Receiver's appointment which were not paid, or have not cleared or were returned unclaimed. These liabilities have not been verified and Court approval or directions may be required before any payment is made.
- \$1,562,137 (30 June 2021: \$1,544,003) relates to distributions that were returned/unclaimed from the interim capital distribution to investors paid by BDO in October 2019 in accordance with the Court order dated 2 October 2019. The increase in this period was due to a number of unrepresented bank cheques being stopped and the funds returned to the Fund's bank account.

I am required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the auditor claim.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

There were no distributions to unitholders for the years ended 30 June 2019, 30 June 2018, 30 June 2017, 30 June 2016 and 30 June 2015.

4. OTHER EXPENSES

| | 31 December 2021 | 31 December 2020 |
|---|------------------|------------------|
| | \$ | \$ |
| Other Expenses | | |
| Court Appointed Receiver's fees & outlays (BDO) * | 921,729 | 1,108,667 |
| Legal Fees | 5,199,446 | 3,609,931 |
| Liquidators' of LMIM expenses (FTI) | 34,297 | 75,956 |
| Other expenses | 75,454 | 83,041 |
| Total | 6,230,926 | 4,877,595 |

*Denotes expenses which are subject to approval by the Court.

Court Appointed Receiver's fees & outlays (BDO)

| | 31 December 2021 | 31 December 2020 |
|--|------------------|------------------|
| | \$ | \$ |
| The Court Appointed Receiver's fees & outlays are represented by the following amounts: | | |
| Court Appointed Receiver's investigations, litigation and other non-operating costs | 672,862 | 720,634 |
| Operating Costs of the Fund | 248,867 | 388,033 |
| Total | 921,729 | 1,108,667 |

The Court Appointed Receiver's investigations and other non-operating costs include time costs in relation to the claim against the former auditors of the Fund, and other litigation matters.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

Movements in the net assets attributable to unitholders during the year were as follows:

| Net assets attributable to unitholders | 31 December 2021 | 30 June 2021 |
|---|-------------------------|---------------------|
| | \$ | \$ |
| Opening balance | 492,125,624 | 478,100,385 |
| Adjustment to unitholder funds- refer to Note 5 (i) | - | 14,025,239 |
| Adjusted balance | 492,125,624 | 492,125,624 |
| Units issued during the year | - | - |
| Units redeemed during the year | - | - |
| Units issued upon reinvestment of distributions | - | - |
| Net capital distributions declared | - | - |
| Changes in net assets attributable to unitholders after income tax expense for current period | (4,094,886) | (7,169,943) |
| Other cumulative movement in changes in net assets | (472,388,252) | (465,218,309) |
| Net assets attributable to unitholders | 15,642,486 | 19,737,372 |
| Net capital distributions declared | - | - |
| Net distributions | - | - |
| Gross capital distribution declared | - | - |
| Less amounts withheld | - | - |
| Net capital distributions declared | - | - |
| Distributions | - | - |
| Net capital distribution declared | - | - |
| Less amounts unable to be credited to unitholder's bank account and recognised as Distributions Payable | - | - |
| Distributions paid in cash | - | - |

Class A

Class A consists of unitholders who are entitled to receive the declared distribution rate. There are a number of subclasses attached to class A. These consist of the following products with varying terms:

- 1) Flexi Account investment option
- 2) Fixed Term investment option
- 3) LM Savings Plan investment option

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS (continued)

Class B

Class B consists of related Scheme unitholders.

Class C

Class C consists of unitholders who invested in foreign currencies and are entitled to receive the declared distribution rate.

Subject to the comments relating to the status of the Scheme in note 2(t) above, unitholders are entitled to one vote per unit at unitholders' meetings and as the Scheme is being wound up, unitholders rank after creditors and are equally entitled to the proceeds of the winding up procedure.

(i) Adjustment to the investor funds

Given the discrepancies identified as detailed in Notes 2(r) and 2(t) above in regard to the units of investors who subscribed in a foreign currency and previous capital distributions, and having the benefit of a court order about the calculation of distributions to foreign currency investors, Mr Whyte has recalculated the units as at the commencement of the winding up of the Fund being 8 August 2013 in the Australian Dollar equivalent amounting to \$492,125,624.

6. LOANS AND RECEIVABLES

| | 31 December 2021 | 30 June 2021 |
|--------------------------|------------------|--------------|
| | \$ | \$ |
| Secured mortgage loans | 3,312,766 | 2,308,055 |
| Provision for impairment | (2,058,055) | (2,308,055) |
| | <u>1,254,711</u> | <u>-</u> |

Loans and receivables are initially measured at the fair value including transaction costs and subsequently measured at amortised cost after initial recognition. Loans and Receivables are assessed for impairment at each reporting date. Where impairment indicators exist, the recoverable amount of the loan will be determined and compared to its carrying amount to determine whether any impairment losses exists. Impairment losses are recognised when the recoverable amount under the individual loan is less than the carrying amount of that loan.

Material uncertainty regarding recoverability of Loans and Receivables

For loans in default, an impairment indicator arises which requires the recoverable amount of that loan to be determined. The recoverable amount for each individual loan in default has been determined from independent valuations and/or the assets forming the security for the loans. The valuations are based on current market conditions and provide for appropriate exposure to the market and an orderly realisation of assets forming the security for the loans.

In determining the recoverable amounts, there are uncertainties involved in assessing the market values and the ability to realise those market values, particularly where the market is not active. Consequently, it is likely that there may be differences between the amounts at which the Loans and Receivables are recorded in the financial statements at the year end, and the amounts that are actually realised. Such differences may be material. Accordingly, there is a material uncertainty regarding recoverability of Loans and Receivables.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

(a) Provisions for impairment

The impairment loss expense relating to loans and receivables comprises:

| | 31 December 2021 | 30 June 2021 |
|---|-------------------------|-------------------------|
| | \$ | \$ |
| Opening balance | 2,308,055 | 5,058,055 |
| Impairment losses provided for (recoveries) during the period | (250,000) | (2,750,000) |
| Impairment losses realised during the period | - | - |
| Closing balance | <u>2,058,055</u> | <u>2,308,055</u> |
| Total provision for impairment | <u><u>2,058,055</u></u> | <u><u>2,308,055</u></u> |

(b) Movement in default loans

| | 31 December 2021 | 30 June 2021 |
|-------------------------------------|-------------------------|------------------|
| | \$ | \$ |
| Gross default loans opening balance | 2,308,055 | 5,058,055 |
| New and increased default loans | - | - |
| Balances written on / (off) | 1,004,711 | - |
| Repaid | - | (2,750,000) |
| Gross default loans closing balance | <u>3,312,766</u> | <u>2,308,055</u> |
| Specific provision | (2,058,055) | (2,308,055) |
| Net default loans | <u><u>1,254,711</u></u> | <u><u>-</u></u> |

7. PAYABLES AND ACCRUED EXPENSES

Payables and accrued expenses are carried at cost or estimated and represent liabilities for goods and services or estimated liabilities of the Fund prior to the period end but have not yet been paid.

| | 31 December 2021 | 30 June 2021 |
|---------------------------------------|------------------|--------------|
| | \$ | \$ |
| Accounts payable and accrued expenses | 5,193,281 | 5,031,515 |

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

8. INTEREST BEARING LOANS AND BORROWINGS

Interest bearing loans and borrowings relates to facilities with external providers. In July 2010, the RE entered into a new facility with an external financier, Deutsche Bank. Deutsche Bank holds a fixed and floating charge over the assets of the Fund.

As indicated in Note 1, McGrathNicol were appointed as Receivers and Managers of the Fund by Deutsche Bank as a result of a default of the finance facility by the Fund for this secured loan.

There has been a progressive sell down of the assets of the Fund, which enabled \$14.1M of the loan to be repaid during the 2013 financial year and \$21.5M between July and December 2013. The facility was repaid in full in January 2014. The Receivers appointed by Deutsche Bank retired on 10 December 2018.

9. RELATED PARTIES

| | 31 December 2021 | 31 December 2020 |
|-------------------------------------|------------------|------------------|
| | \$ | \$ |
| <i>Custodian</i> | | |
| Custodian's fees paid by the Scheme | 11,000 | 11,000 |
| Total | 11,000 | 11,000 |

10. RECEIVABLES

| | 31 December 2021 | 30 June 2021 |
|---------------------|------------------|----------------|
| | \$ | \$ |
| Interest receivable | 28,653 | 19,662 |
| GST receivable | 135,925 | 158,745 |
| | 164,578 | 178,407 |

11. CASH AND CASH EQUIVALENTS

(a) Reconciliation of cash and cash equivalents

For the purposes of the Statement of Financial Position, the cash and cash equivalents comprise of cash at bank and in hand. The cash at bank earns interest at floating rates based on the daily bank deposit rates, however, the majority of the cash balance is invested on term deposit with a bank. The cash at bank figure includes monies held in foreign exchange accounts.

| | 31 December 2021 | 30 June 2021 |
|--------------|------------------|--------------|
| | \$ | \$ |
| Cash at bank | 22,350,651 | 27,506,519 |

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

(b) Reconciliation of change in net assets attributable to unitholders to net cash flows from operating activities

| | 31 December 2021 | 31 December 2020 |
|---|--------------------|--------------------|
| | \$ | \$ |
| Change in net assets attributable to unitholders | (4,094,886) | (2,033,297) |
| <i>Adjustments for:</i> | | |
| Non-cash impairment expense | - | (2,500,000) |
| Non-cash accrued expense reduction | - | - |
| (Gains)/loss on foreign exchange contracts | - | - |
| BDO Capital Distribution to investors | - | - |
| (increase)/decrease in other receivables | 13,829 | 86,432 |
| Increase/(decrease) in payables | (1,092,946) | 710,643 |
| Net cash flows from/(used in) operating activities | (5,174,003) | (3,736,222) |

12. INCOME

(a) Interest revenue

Interest revenue relates to interest received on funds held in bank accounts.

Interest on loans is suspended and not brought to account when it is considered that the amounts are not ultimately recoverable from the remaining security for the loans.

(b) Reimbursement of costs

This relates to reimbursement of the costs paid by the Fund to the Bankrupt Trustee of a guarantor to fund the costs of a public examination and to pursue recoveries against a guarantor. Further information on this matter is detailed in note 13 under Claims against guarantors.

13. LITIGATION MATTERS

Claim against the former auditors (EY Proceeding)

A public examination (PE) of the former auditors, certain directors, former directors (Directors) and staff of LM Investment Management Limited (In Liquidation) was conducted over a period of 9 days in June 2015 and a further 9 days in October 2015.

Following the PEs, a further amended statement of claim was filed by David Whyte in the Supreme Court of Queensland and served on the former auditors of the Fund on 14 April 2016.

The former auditors' solicitors lodged and served on David Whyte an application and supporting affidavit on 27 April 2016 seeking to strike-out certain parts of the statement of claim. The hearing of the strike out application was adjourned to a date to be fixed by consent to enable appropriate directions to be made for the parties to exchange and file any further affidavit material and written submissions in advance of the hearing of the strike out application.

On 30 May 2016, David Whyte filed an application to place the proceedings on the Court's commercial list. This application was also adjourned to a date to be fixed.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

13. LITIGATION MATTERS (Continued)

Claim against the former auditors (EY Proceeding) (Continued)

On 2 August 2016, David Whyte filed a second further amended statement of claim. The parties filed submissions and further affidavit evidence as required by the orders and at the hearing of the strike out application and the commercial list application on 15 December 2016, the Court granted the application to place the proceedings on the commercial list and reserved its decision on the strike out application.

The reserved decision from the hearing of the strike out application was handed down on 8 May 2017 and the decision was not appealed. In that decision, the Court declined to strike out all of the parts of the claim that the former auditors sought to strike out. However, it did make orders striking out certain causes of action and orders were made that the statement of claim be amended to delete those causes of action.

In accordance with the Court's judgment, a further amended statement of claim was filed on 20 November 2017 and served on the former auditors. This statement of claim included further particulars of the loss and damage claimed, which has been calculated (at its highest) in excess of \$200 million.

Further particulars of loss and damage were also served on the auditors on 12 January 2018.

The amended statement of claim filed on 20 November 2017 included a claim for compensation from the former auditors under section 1325 of the Corporations Act. As a consequence, steps were taken to amend the Claim, which required an application for leave to be made to the Court.

On 29 May 2018, the Court made Orders timetabling the filing of the proposed application to amend the Claim, as well as for the auditors to make a request for further and better particulars of the further amended statement of claim filed on 20 November 2017.

A request for further particulars of the further amended statement of claim was received on 19 June 2018. The response to this request was required to be filed and served by 19 October 2018.

Two further amendments to the statement of claim were filed on 5 July 2018 and 7 August 2018.

The Application for leave to amend the Claim was filed on 10 August 2018. The hearing of the application was held on 27 September 2018.

On 8 October 2018 the Court gave judgment, in which it granted the plaintiff leave to file its amended claim, struck out one paragraph of the further amended statement of claim with leave to replead certain paragraphs and otherwise timetabled the ongoing conduct of the proceedings, including the filing of a further amended statement of claim.

In accordance with orders made on 13 November 2018, Mr Whyte caused a 6FASOC to be served on 30 November 2018. He also served a response to the defendants' request for particulars on 3 December 2018 and 18 January 2019.

The parties engaged in a mediation on 4 March 2019. No resolution of the proceedings was reached at that mediation.

The defendants have also now filed and served third parties notices on the Feeder Funds, as well as directors, former directors, former officers and a former in-house counsel of LMIM.

Subsequent orders have been made by the Court timetabling the ongoing conduct of the Proceedings.

In accordance with these orders:

- on 10 June 2019 the defendants applied to be excused from certain pleading requirements under the Court rules in relation to their defence on the basis of a claim for privilege (**Relief Application**);

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

13. LITIGATION MATTERS (Continued)

Claim against the former auditors (EY Proceeding) (Continued)

- on 21 June 2019, the defendants applied for leave to proceed against LMIM under section 500 of the *Corporations Act 2001* (Cth) (**Leave Application**); and
- on 21 June 2019, Mr Whyte applied to be joined to the proceedings constituted by the Third Party Notice filed by the defendants (**Representation Application**).
- Each of the Relief Application, the Leave Application and the Representation Application were heard by the Supreme Court on 26 July 2019.
- On 4 October 2019 the Court delivered judgement together with an order that:
 - The defendants application for leave to proceed against LMIM be dismissed;
 - The third party notice be struck out against the first, second, third and fourth parties (namely, LMIM and the Feeder Funds);
 - The third party statement of claim be struck out;
 - The first, second, third and fourth third parties be removed as parties to the proceeding, and
 - Leave be granted to the defendants to re-plead the third party statement of claim against the remaining third parties.
- On 17 October 2019 the Court delivered judgement in relation to the cost of the applications decided on 4 October 2019 and an order was made that:
 - the defendants pay my costs in relation to the leave application, and
 - I pay the costs of LMIM in respect of the representation application, such costs to be indemnified from the FMIF with both LMIM's costs together with my own costs to be costs in the proceeding.
- On 21 November 2019 at a review hearing the Court ordered that:
 - Privilege Claims – I was to file material to strike out the defendants' privilege claims by 29 November 2019 and a hearing is to be listed for my application with submissions to be filed and served five days before the hearing date.
 - Leave Application – I was to confirm any opposition to the defendants' Leave Application by 6 December 2019 and the application is to be listed for hearing with submissions to be filed and served five days before the hearing date.
 - Pleadings – by Friday 29 November 2019 the defendants were to serve any draft counterclaim. The defendants are also to provide their further and better particulars by 20 December 2019 and I am to file any reply and answer to the counterclaim by Friday 28 February 2020.
 - Disclosure – All parties are to seek to agree a disclosure protocol and provide it to the Court by Friday 20 December 2019. Failing agreement each party is to provide their own proposed protocols to the Court.
 - Expert evidence – all parties are to provide to the Court either a joint proposal or respective proposals as to the preparation of reports by expert witnesses by 6 December 2019.
- Since the review hearing on 21 November 2019:
 - My material was filed on 29 November 2019 in support of my application to strike out the defendant's privilege claims.
 - The defendants served a draft counterclaim on 29 November 2019.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

13. LITIGATION MATTERS (Continued)

Claim against the former auditors (EY Proceeding) (Continued)

- On 6 December 2019 I confirmed I would not oppose the defendants' Leave Application.
- Proposals in relation to expert evidence were provided to the Court on 13 December 2019.
- My application to strike out the Privilege Claims was heard on 14 February 2020 (the Privilege Application).

Following the hearing of the Privilege Application, the parties were required to provide a schedule to the Court of the various parts of the defence where privilege was claimed and the arguments for and against the maintaining of the privilege claimed. That schedule was provided to the Court on Friday, 20 March 2020. Also following that hearing, the Full Court of the Federal Court of Australia handed down a decision in a case regarding privilege which impacts on the Privilege Application. As a result, supplementary submissions were delivered to the Court addressing matters raised in the Full Court decision. After the Court has given judgment in regard to the Privilege Application, further directions will be made for the progress of the claim.

Pursuant to an Order of the Court dated 28 February 2020, a Seventh Further Amended Statement of Claim (the **7FASOC**) was filed with consent of the defendants on 16 March 2020. The defendants filed their amended defence to the 7FASOC on 18 June 2020.

An Answer to the defendants' Counterclaim was filed on 23 April 2020.

In June 2020 the parties agreed on a document plan and document exchange protocol for the purpose of disclosure. On 23 July 2020, the Court made orders regarding the document plan and document exchange protocol.

On 20 October 2020 the Court made orders striking out certain paragraphs of the Defence and granting the defendants leave to make an application to plead in respect of the paragraphs struck out.

On 28 October 2020 the plaintiff filed its Eight Further Amended Statement of Claim (the **8FASOC**).

Following an application by Mr Whyte to be relived from certain undertakings to the Court, an order was made on 2 November 2020 reliving Mr Whyte from certain undertakings to allow further discovery to be attended to.

On 11 December 2020 further orders were made by the Court providing for further case management, including extending the time for the defendants to file an application for leave to plead their defence, for the plaintiff to provide further particulars of the 8FASOC, for the provision of security for costs by the plaintiff, providing further time for the undertaking of discovery by the plaintiff and the defendants, and to extend the time for the filing of expert evidence by the plaintiff.

On 9 February 2021 further orders were made by the Court for further case management, including extending the time further for the defendants to file an application to plead their defence, extending the time for the filing of certain expert evidence by the plaintiff and extending the time for the parties to provide further disclosure. Further disclosure has been made by the plaintiff.

At a review hearing on 8 March 2021 further orders were made to progress the proceedings including consideration as to whether or not leave is to be given to file the defendants defence, to finalise disclosure and for the provision of lay evidence and further expert reports. The matter was set down for further review on 7 June 2021.

At a review hearing on 7 June 2021 timetabling orders were made for the plaintiff's delivery of the reply to the defence, delivery of further disclosure and delivery by the plaintiff of further expert and lay evidence. Following the review, the reply was filed and served, further disclosure provided, and a large number of expert reports filed and served together with delivery of a significant amount of lay evidence.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

13. LITIGATION MATTERS (Continued)

Claim against the former auditors (EY Proceeding) (Continued)

At a review hearing on 13 August 2021 timetabling orders were made for the defendants to deliver expert and lay evidence by 13 December 2021 and for further reviews by the Court to occur on 2 and 15 December 2021.

On 8 October 2021 further orders were made by the Court extending the time for the plaintiff to file their expert evidence as to loss and damage and any further lay evidence, and for the defendants to file their valuation evidence and any lay evidence. The further reviews listed to occur on 2 and 15 December 2021 were vacated, and the matter was set down for a further review on 15 February 2022. From 1 November 2021, the plaintiff filed and served a number of supplementary expert valuation reports, two expert reports as to loss and damage and associated affidavits.

At a review hearing on 15 February 2022 further case management orders were made by the Court, including timetabling the delivery of the defendants' evidence, both lay and expert, for the duration of the proceeding, timetabling a disclosure application and a lay evidence application, for the service of an amended pleading and further particulars and the timetabling of an application in respect of any objections to the amended pleading, and for objections from the defendants as to the authenticity of the plaintiff's documentary evidence. The plaintiff was also granted leave to rely on a number of supplementary expert valuation reports and an affidavit related to the valuation reports. The matter was set down for a further review on 24 March 2022. Following the review, the plaintiff filed an application in respect of further lay evidence, and served the Ninth Amended Statement of Claim and Amended Particulars on the defendants.

At a review hearing on 24 March 2022, the Court ordered the valuation experts of the parties to attend facilitated conclaves and for senior counsel for each party to seek to resolve any objections to the expert valuation evidence. The timetabling of the lay evidence application was also extended, and the matter was set down for a further review at a time on or after 1 June 2022.

Wollongong Coal Ltd (WCL) – Convertible Bonds

There are \$8 million in convertible bonds in Wollongong Coal Limited (WCL) which was the subject of a successful application to the Federal Court acknowledging that Bellpac Pty Ltd (In Liquidation) (Bellpac) (under the control of its liquidators) is the true owner.

The defendants appealed the decision, which was unsuccessful, however, on 12 July 2016, the defendants made application for special leave to the High Court of Australia to appeal the decision of the Federal Court. On 10 November 2016, the High Court refused to grant special leave to the defendants, and dismissed their application with costs.

In January 2016, the Bellpac Liquidator applied for the conversion of the \$8 million Bonds to shares. As WCL did not issue all of the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds converted to shares outside of the required time.

The Bellpac liquidator and WCL entered into a binding heads of agreement (HOA) relating to the settlement of the litigation commenced against WCL. The terms of the heads of agreement included that WCL pay to Bellpac a settlement sum of \$6.3 million in return for certain releases and Bellpac returning or cancelling the WCL shares issued to Bellpac.

The conditions precedent to the settlement with WCL included obtaining necessary approvals to undertake the settlement transactions. In this regard:

- The Bellpac Liquidator obtained creditor approval to enter into the settlement with WCL;
- The Court declined to exercise its discretion on WCL's application for approval to acquire and or cancel Bellpac's holding of WCL shares. WCL was therefore required to seek shareholder approval.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

13. LITIGATION MATTERS (Continued)

Wollongong Coal Ltd (WCL) – Convertible Bonds (Continued)

The remaining condition precedent (Sunset Date) to the settlement with WCL was extended a number of times over the last four years and WCL paid \$3M towards the settlement into their solicitors' trust account, to be released upon receiving shareholder approval of the settlement.

Delays were encountered in calling the meeting of shareholders, including WCL entering into a scheme of arrangement which was terminated after failing to meet certain conditions, but which was subsequently reinstated. A revised binding heads of agreement was executed on 9 June 2020 with the conditions precedent to be satisfied by 31 October 2020.

As the conditions precedent were not going to be satisfied by 31 October 2020, the Bellpac liquidator entered into further negotiations to try and conclude a settlement. As a result of those negotiations, a further deed of settlement was entered into on 30 October 2020 with \$2.76M payable upon obtaining creditors approval and a further \$600,000 payable within six months if WCL opts to buy-back the shares held in WCL.

Creditors approved the revised deed of settlement at a meeting held on 18 November 2020 and \$2.75M was subsequently distributed to the Fund (\$2.5M on 27 November 2020 and \$250K on 11 March 2021). WCL did not opt to buy back the shares within the six month period.

The Bellpac liquidator has received a notice of compulsory acquisition of shares under section 664C of the Corporations Act 2001 from the 90%+ shareholder, Jindal Steel and Power (Mauritius) Limited. At the offer price of \$0.0001 per share this equates to \$247,206.37 for the shares held by the liquidator. Any objections to the compulsory acquisition are to be lodged by 23 April 2022. The Bellpac liquidator does not intend lodging any objections and will accept the offer price.

FTI Applications/Indemnity Claims

Mr Park of FTI Consulting is the Liquidator of LMIM (FTI).

Creditor Indemnity Claims

If a debt or claim is admitted by the Liquidator in the winding up of LMIM and a claim for indemnity out of the FMIF with respect to such debt or claim is identified (**Creditor Indemnity Claim**), a summary of the process as outlined in the Orders made on 17 December 2015 is as follows:

Creditor Indemnity Claims (Continued)

1. The Liquidator must notify Mr Whyte within 14 days of the Liquidator identifying any claim for indemnity against the assets of the Fund;
Within 14 days Mr Whyte may seek further information in relation to the claim;
2. Within 30 days of receipt of the claim from the Liquidator or from receipt of further information requested, Mr Whyte is required to, accept the claim, reject the claim, accept part of it and reject part of the claim; and give the Liquidator written notice of the decision;
3. Mr Whyte is required to give the Liquidator written reasons for rejecting any part of a claim within 7 days after giving notice of his decision;
4. Within 28 days of receiving a notice of rejection, the Liquidator may apply to the Court for directions in relation to the rejection and advise the creditor of Mr Whyte's decision and other specified matters.

The Liquidator notified Mr Whyte that he has identified Creditor Indemnity Claims with respect to a proof of debt lodged by Norton Rose for the sum of \$315,601.21 (**Norton Rose Proof**) and a proof of debt lodged by EY in the sum of \$158,896.51 (**First EY Proof**).

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

13. LITIGATION MATTERS (Continued)

FTI Applications/Indemnity Claims (Continued)

Mr Whyte has written to the Liquidator rejecting the Creditor Indemnity Claim made in respect of the claim notified by the Norton Rose Proof. Mr Whyte is awaiting the provision of further information in relation to the First EY Proof before the time period for him to accept or reject that Creditor Indemnity Claims begins to run.

A counter-claim for costs has been made by EY in the EY Proceeding against LMIM as responsible entity of the FMIF, which, if successful, has the potential to exceed any judgment in the EY Proceeding itself by the difference between indemnity costs and a standard costs order.

Third FTI Remuneration Application

On 12 February 2021, Mr Park filed an application in the Court for approval and payment from the FMIF of his remuneration for the period 1 July 2018 to 31 October 2020 in the sum of \$260,633.12 (including GST), made up of Category 1 remuneration (remuneration that is specifically referable to the FMIF) of \$182,661.60 (including GST), and Category 2 remuneration (remuneration that relates to all of the funds of which LMIM is the Responsible Entity and that is apportioned between the relevant funds) of \$77,971.52 (including GST).

On 1 June 2021, the Court ordered that Mr Park be paid the sum of \$243,236.90 (including GST) from the FMIF for his remuneration as Liquidator, such sum to include \$170,809.20 (including GST) for Category 1 remuneration for the period 1 July 2018 to 31 October 2020, and \$72,427.70 (including GST) for Category 2 remuneration for the period 1 July 2018 to 31 October 2020.

FTI Remuneration and Expenses Claims as at 31 December 2021

On 21 January 2022, FTI informed BDO that the remuneration, and expenses claims by the Liquidator, that had not been submitted to the Court for approval or paid as at 31 December 2021, were as follows:

- Legal costs attributable to FMIF - \$193,668.23 (excluding GST); and
- Remuneration attributable to FMIF - \$30,064.83 (excluding GST).

However, these figures may be subject to change and are subject to Court approval.

It is expected that further remuneration and expenses claims will be made by the Liquidator during the course of the winding up.

Court Appointed Receiver's Remuneration

On 14 July 2021, the Court appointed Receiver filed an application to Court for approval of his remuneration for the period 1 November 2020 to 30 April 2021 in the sum of \$1,383,829.15 (including GST). On 13 August 2021, the Court approved this application.

On 2 December 2021, the Court Appointed Receiver filed an application to Court for approval of his remuneration for the period 1 May 2021 to 31 October 2021 in the sum of \$924,169.40 (including GST). On 16 December 2021, the Court approved this application.

The remuneration of the Court Appointed Receiver, that had not been submitted to the Court for approval or paid as at 31 December 2021 was approximately \$157,617.60 (excluding GST). This figure may be subject to change and is subject to Court approval. Further applications for approval of remuneration will be made by the Court Appointed Receiver during the course of the winding up.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the half-year ended 31 December 2021

13. LITIGATION MATTERS (Continued)

FTI Applications/Indemnity Claims (Continued)

LMIM Claim

A statement of claim filed in November 2016 to preserve claims in relation to certain transactions and avoid possible expiry of statutory limitation periods has been served on LMIM. The claims are for various alleged breaches of trust in relation to certain transactions including the prepayment of management fees out of property of the FMIF to LM Administration Pty Ltd, and loan management fees paid to LMIM or its service entity LM Administration Pty Ltd that it is alleged were not authorised by the Constitution of the FMIF. On 25 July 2018, the Court granted leave to proceed with this claim and ordered that the claim be stayed until further order. The claim remains stayed until further order.

Claim against Guarantor

PTAL as custodian of the FMIF obtained judgment against a guarantor, for approximately \$3 million, plus interest and costs. The trustee in bankruptcy identified potential recoveries for the benefit of creditors of the bankrupt estate, of which the Fund is a major creditor. The bankrupt, along with other parties, contributed land to a development. The land was subdivided, developed and sold, and the net proceeds of sale in the sum of approximately \$12 million was paid into a solicitors' trust account on an interim basis, protected by certain undertakings given by the solicitors holding the funds. The trustee claimed an entitlement in respect of all or at least a substantial portion of the funds held in the solicitors' trust account; however, other parties to the dispute alleged that associated entities of the bankrupt are entitled to the funds.

PTAL as custodian of the FMIF entered into a Deed of Indemnity to fund a public examination and any agreed recovery proceedings in respect of this matter. A public examination was held in the Federal Court in November 2019. Subsequently, demands were served on several parties. The trustee held two mediations with several parties in relation to the dispute, which culminated in a settlement being reached on 1 September 2021. The gross return to the bankrupt estate from the settlement will be between \$2,882,181 and \$3,832,181, depending upon the outcome of a taxation objection. The Trustee has estimated that the net return to the bankrupt estate, after deducting AFSA realisations charge, repayment of the funding provided by the FMIF, and the current and former Trustee's unpaid remuneration and expenses, will be approximately \$1,004,711 to \$1,964,161, not including allowances for the Trustee's future remuneration and expenses, or any taxation liabilities arising from the settlement. Under the Deed of Indemnity, the Trustee is required to make an application to Court seeking an order giving the FMIF a priority over other creditors. The amount payable to the FMIF will depend upon the outcome of this application.