SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 1076/17

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

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

STATEMENT OF FACTS OF THE PLAINTIFF

FILED PURSUANT TO SECTION 96(1) OF THE TRUSTS ACT 1973 (Qld)

Introduction

1. This statement of facts is filed in support of an application (CFI-9)[1] (**S 96 Application**) by the plaintiff, KordaMentha Pty Ltd (ACN 100 169 391) ("**Trustee**") in its capacity as trustee of the LM Managed Performance Fund ("**MPF**"), for directions pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**"), as to whether the Trustee would be justified in discontinuing this proceeding against the defendant, LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461) ("**LMIM**").

2. The Trustee has recently obtained similar directions under section 96 of the Trusts Act from:

   (a) Justice Boddice on 7 June 2018 in S5329/15 in relation to Supreme Court proceedings S8032/14 ("**First Proceeding**") and S8034/14 ("**Second Proceeding**"); and

   (b) Justice Douglas on 9 August 2018 in relation to Supreme Court proceeding S12716/15.

3. Annexure **1** to this statement of facts is a true copy of the orders made by Justice Boddice and Justice Douglas.

[1] In this statement of facts, CFI refers to the Court File Index an electronic copy of which appears on the website of the Supreme Court of Queensland.

4. The Trustee is the current trustee of the MPF (which is a unit trust), having, together with Calibre Capital Ltd (ACN 108 318 985) ("**Calibre**"), replaced LMIM as trustee of the MPF on 12 April 2013 by order of the then Chief Justice in Supreme Court of Queensland Proceeding. S2869/13.

5. Annexure **2** to this statement of facts is a true copy of that order.

6. In this statement of facts, LMIM in its former role as trustee of the MPF is referred to as **LMIM ATF the MPF**.

7. On 6 February 2017, the Trustee filed the claim and statement of claim (CFI-1) against LMIM, which was already in liquidation. However, the claim was not initially served.

8. Annexure **3** to this statement of facts is a true copy of the claim and statement of claim.

9. The principal relief sought against LMIM is for equitable compensation in the sum of $12,340,378 for breach of trust or, further or alternatively, a breach of the equitable duty of care owed to the unitholders of the MPF.

10. The Trustee alleges, in simple terms, that the amount of $12,340,378 was pre-paid by LMIM to its related management services company, called LM Administration Pty Ltd (In Liquidation) (ACN 055 691 426) ("**LMA**"), before any liability to pay had accrued. LMA, like LMIM, is insolvent and in liquidation. The Trustee cannot recover the $12,340,378 from LMA.

11. There is a possibility that LMIM's insurance policies might respond to the claim.

12. On 22 January 2018, the Trustee applied pursuant to s 500(2) of the *Corporations Act* 2001 (Cth) ("**Corporations Act**") for leave *nunc pro tunc* to commence and prosecute this proceeding.

13. On 1 February 2018, Atkinson J relevantly ordered, in summary:

    (a) Subject to further order, pursuant to section 500(2) of the Corporations Act, the plaintiff be granted leave *nunc pro tunc* to commence and to proceed with this Supreme Court of Queensland proceeding against LMIM, on the condition that any judgment against the defendant will not be enforced without further leave of the Court;

(b) The plaintiff serve the claim and statement of claim in this matter on or before 5 February 2018;

(c) The defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant's solicitors, Clayton Utz, that a defence and any counterclaim is required to be filed (**Written Notice**);[2]

(d) If the plaintiff does not give the Written Notice by 31 January 2019 then the leave to proceed is withdrawn.

14. Annexure **4** to this statement of facts is a true copy of the S 500 Order.

15. On 2 February 2018, the claim and statement was served on the defendant. The Trustee has not given the Written Notice so the defendant has not yet filed a defence.

16. Due to time constraints raised by a potential limitation issue, the Trustee did not obtain a direction under section 96 of the Trusts Act before filing the claim and statement of claim.

17. The Trustee will not give the Written Notice without first obtaining a direction under section 96 of the Trusts Act that it would be justified in continuing the proceeding.

Standing to sue

18. As the new trustee of the MPF, the Trustee has the capacity to sue the former trustee, LMIM ATF the MPF.[3]

Service of the S 96 Application on the members of the MPF

19. The MPF has in excess of 4,500 members the majority of whom reside overseas.

20. On 20 November 2018, Justice Applegarth made an order regarding service of the S 96 Application and supporting material upon the unitholders of the MPF ("**Service Order**").

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[2] Paragraphs 6(c) and (d) are not verbatim from the order.
[3] *Young v Murphy; Swinbank v Murphy* [1996] 1 VR 279.

21. Annexure **5** to this statement of facts is a true copy of the Service Order.

22. Compliance with the Service Order will be addressed by way of affidavit at the hearing of the S 96 Application.

The attitude of the liquidator of LMIM to the S 96 Application

23. On 8 November 2018, the Trustee's solicitors gave notice by email of the S 96 Application to the solicitors acting for the liquidator of LMIM.[4]

24. On 15 November 2018, the solicitors acting for the liquidator of LMIM wrote by email to the solicitors acting for the Trustee and stated, relevantly, that subject to the Trustee agreeing to pay LMIM's costs of the proceeding on the standard basis, that the liquidator neither consents to nor opposes the S 96 Application.[5]

25. On the same day, the Trustee's solicitors wrote by email to the solicitors acting for the liquidator of LMIM and confirmed that the Trustee will pay LMIM's costs of the proceeding on the standard basis, assuming the proceeding is discontinued.[6]

Relevant companies and individuals

26. The Trustee is the current corporate trustee of the MPF.

27. Annexure **6** to this statement of facts is a true copy of a historical company search of the Trustee obtained from the Australian Securities and Investments Commission's (**"ASIC"**) electronic database on 21 November 2018.

28. Mr Jarrod Villani is a partner of KordaMentha, the accounting firm representing the Trustee. Mr Villani is a chartered accountant. Mr Villani makes the decisions for the Trustee in relation to the MPF.

29. On 5 January 2015, Calibre retired as trustee of the MPF.

30. LMIM, since at least 1999, has carried on business as a professional trustee for reward, in which capacity it created and managed investment schemes.

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[4] Exhibit DOB-3 to the O'Brien affidavit filed 15 November 2018.
[5] Exhibit DOB-5 to the O'Brien affidavit filed 15 November 2018.
[6] Exhibit DOB-6 to the O'Brien affidavit filed 15 November 2018.

31. Annexure **7** to this statement of facts is true copy of a historical company search of LMIM obtained from ASIC's electronic database on 16 November 2018.

32. LMIM was the trustee of the MPF from in or about December 2001 until 12 April 2013. Pursuant to:

(a) trust deed dated December 2001 ("**the First Trust Deed**"), LMIM established the MPF, and became trustee of the MPF. The First Trust Deed was called the 'Constitution'. Annexure **8** is a true copy of the deed;

(b) Deed of Variation dated 11 November 2002 ("**the Second Trust Deed**"), LMIM deleted all parts of the First Trust Deed other than the parties, and replaced it with the terms set out in the Second Trust Deed (Recital B of the Second Trust Deed). Annexure **9** is a true copy of the deed;

(c) Deed of Variation dated 25 November 2009 ("**the Third Trust Deed**"), LMIM deleted clauses 1, 2.3, 2.4 and 3 to 27 of the Second Trust Deed, and replaced it with the terms set out in the Schedule to the Third Trust Deed (clause 1 of the Third Trust Deed). Annexure **10** is a true copy of the deed; and

(d) Supplemental Deed Poll dated 23 October 2012 ("**the Fourth Trust Deed**"), LMIM amended clauses of the Third Trust Deed (specifically, in respect of classes of units) as set out in the Schedule to the Fourth Trust Deed. Annexure **11** is a true copy of the deed.

33. Pursuant to the First, Second, Third and Fourth Trust Deeds (collectively the "**Trust Deed**"), LMIM agreed, among other things, to act as trustee of the scheme, and declared that it held the scheme fund and the scheme property on trust for the members.

34. LMIM is under the control of its liquidator, John Park of FTI Consulting.[7]

35. On 26 July 2013, LMA was wound up. The current liquidator of LMA is David Clout.

[7] The other original liquidator, Ginette Muller, ceased to act on 17 May 2017.

36. Annexure **12** to this statement of facts is a true copy of a historical company search of LMA obtained from ASIC's electronic database on 16 November 2018.

37. By an agreement in writing dated 1 July 2010 but commencing in operation on 1 July 2005 styled "*Service Agreement*" ("**Service Agreement**"), LMIM engaged LMA as trustee of the LM Administration Trust ("**LMAT**") to provide services to LMIM in connection with, among other things, the performance by LMIM of its duties as trustee of the MPF

38. Annexure **13** to this statement of facts is a true copy of the Service Agreement.

39. Mr David Whyte is the Court appointed receiver of a registered managed investment scheme known as the First Mortgage Investment Fund (ARSN 089 343 288) ("**FMIF**") of which LMIM remains the responsible entity under the Corporations Act.

Summary of the proceeding

Some factual background

40. The financial transactions between LMIM ATF the MPF and LMA were recorded in two management fee accounts (collectively the "**Account**"):

    (a) Account number 14000 which operated from 1 January 2009 to about December 2011; and

    (b) Account number 14005 which operated from about December 2011 to 19 March 2013.[8]

41. The Account was operated as a running account. The net balance standing to the credit of LMA as at 12 April 2013 was $12,340,378. [9]

42. Mr Villani and his staff have analysed the financial effects of the payments recorded in the Account. Mr Villani concluded that the financial effect of the payments was that LMIM had pre-paid $12,340,378 to LMA out of the MPF. As far as Mr Villani can tell, LMA had not yet provided any services under the Service Agreement to earn the amount of $12,340,378 .

[8] [45] to [46] of Mr Villani's affidavit filed 24 January 2018.
[9] [47] of Mr Villani's affidavit filed 24 January 2018.

43. Mr Villani's analysis of the numbers is corroborated by the evidence of Ms Kelly-Ann Trenfield, an official liquidator employed by FTI Consulting (Mr Park's firm), in another proceeding S3691/13.

44. On 2 May 2013, Ms Trenfield deposed that the then administrators of LMIM had re-estimated the outstanding value of the prepayment (made by LMIM to LMA) as at the date of 19 March 2013 to be $12,340,378.[10]

Relevant legal principles

45. A trustee must obey the terms of the trust: *Youyang Pty Ltd v Minter Ellison Morris Fetcher* (2003) 212 CLR 484 at 498, [32] per Gleeson CJ, McHugh, Gummow, Kirby and Hayne JJ.

46. Subject to the terms of the trust, in the conduct of trust business, a trustee owes a duty in equity to exercise the same care as an ordinary prudent person of business would exercise in the conduct of that business were it his or her own ("**prudent person duty**"): *Breen v Williams* (1996) 186 CLR 71 at 137 per Gummow J.

47. If the breach of trust or equitable duty by the trustee causes a loss, equitable compensation is a remedy: e.g. *Harris v Digital Pulse Pty Ltd* (2003) 56 NSWLR 298 at [281] per Heydon JA.

Key pleaded factual matters

48. On and from 25 November 2009,[11] LMIM was the "Manager" of the MPF.

49. Pursuant to clause 17.3 of the Trust Deed the Manager was entitled to be paid a management fee from Scheme Property of up to 10% per annum of the Net Fund Value in relation to the performance of its duties as detailed in the Trust Deed and "*the Law*" (defined by clause 1.1 to mean the *Corporations Act* 2001 (Cth)), which fee was to be calculated monthly and paid at such times as the Manager determined.[12]

50. Pursuant to clause 17.4 of the Trust Deed the Manager was entitled to fees for the following duties:

[10] [52] and [53] of Mr Villani's affidavit filed 24 January 2018.
[11] [6] of the of the statement of claim.
[12] [6](f) of the of the statement of claim.

(a) in relation to the subscription and withdrawal of units;

(b) in relation to the transfer or transmission of Units;

(c) in relation to arranging any finance facility in connection with the purchase of any asset of the Scheme;

(d) in relation to due diligence enquiries generally;

(e) in relation to the sale of real estate or assets of the Scheme Property;

(f) in relation to the promotion and management of the Scheme;

(g) in relation to the winding-up of the Scheme; and

(h) in relation to the performance of its duties and obligations pursuant to the Law and the Trust Deed.

51. Pursuant to clause 17.9 of the Trust Deed the Manager was entitled to recover fees and expenses from the Scheme provided such fees and expenses had been incurred in accordance with the Trust Deed.

52. Pursuant to clause 12.7(b) of the Trust Deed the Manager was empowered to engage any "*managers and other employees*".

53. Pursuant to clause 23.1(b)(ii), the Manager was obliged to resign as Manager if it became an externally-administered body corporate as defined by the *Corporations Act* 2001 (Cth).

54. The Service Agreement contained the following express provisions material to this proceeding:

(a) by clause 1.9 and item 2 of schedule 1, "*the Principal*" was defined to mean the defendant and any other company or person which may at any time after the commencement date merge with the Principal or take over or carry on either in whole or in part the business and the undertaking of the Principal;

(b) by clause 1.10 and item 3 of schedule 1, the "*the Service Provider*" was defined to mean LMA and any other company or person which may at any time after the commencement date merge with the Service Provider or take over or carry on either in whole or in part the business and undertaking of the Service Provider;

(c) by clauses 1.2, 3 and item 6 of schedule 1, the "*commencement date*" of the Service Agreement was 1 July 2005, and the Service Agreement continued in operation until any termination of the Service Agreement in accordance with clause 16;

(d) by clause 16.6, the Service Agreement was deemed to be terminated forthwith upon the appointment of an administrator to the Service Provider or the Principal under the provisions of the "*Corporations Law*" (which, on the proper construction of clause 16.6, was a reference to the *Corporations Act* 2001 (Cth)), or the Service Provider or the Principal entered into any arrangement, reconstruction or composition with its creditors or any of them proposes to do so;

(e) by clause 1.1 and item 4 of schedule 1, "*the business*" was defined to mean the business of funds management and any other business from time to time conducted by the Principal and which the Principal and the Service Provider may from time to time agree shall be subject to the provisions of the Service Agreement;

(f) by clause 1.11 and item 7 of schedule 1, "*the services*" was defined to mean a range of services including, relevantly, by item 7.3.1.4 of schedule 1, the provision of all administration funds management services on behalf of the Principal for which the Service Provider would be entitled to payment (on behalf of the Principal) of all management fees earned by the Principal in its business of operating managed investment schemes, which management fees would be paid directly to the Service Provider and were in addition to the quarterly service fee paid for all other services;

(g) by clause 1.1, "*the service fees*" was defined to mean the fees payable to the Service Provider pursuant to clause 5;

(h) by clause 5:

(i) the Principal was obliged, subject to any review of the method of calculation of the service fees pursuant to clause 14.1.1 of the Service Agreement, to pay to the Service Provider for the provision of the services the service fees set out in schedule 1;

(ii) the service fees were to be calculated quarterly, with the first of such quarterly payments being due and payable on the last day of the quarter;

(iii) the Service Provider acknowledged and agreed that in any review of the method of calculation of the service fees, it would not seek to have the service fees set at rates which exceeded commercial rates for the services on the date of the review;

(i) by item 8 of schedule 1, the service fees consisted of:

(i) 52% of the total expenses incurred by the Service Provider for the provision of the services, plus such percentage or proportionate amount of that cost as may be agreed between the Principal and the Service Provider;

(ii) all management fees on behalf of the Principal earned in the Principal's capacity as manager of all of its managed investment schemes, such management fees to be paid directly to the Service Provider; and

(j) by clause 6, the Service Provider was obliged for each quarter or part of a quarter during the term as soon as practicable after the last day of each quarter of the term to prepare and submit to the Principal a tax invoice for the service fees payable for each such quarter or part of a quarter.

55. On or about 19 March 2013:

(a) Mr Park and Ms Muller were appointed voluntary administrators of LMIM and LMA;

(b) LMIM was obliged to resign as trustee of the MPF;[13]

(c) the Service Agreement terminated.[14]

56. On 12 April 2013, the Trustee and Calibre replaced LMIM as trustee of the MPF.[15]

The pleaded duties owed by LMIM ATF the MPF

57. The Trustee alleges[16] that LMIM ATF the MPF was subject to the following legal obligations:

(a) an equitable duty to the beneficiaries (i.e. the unitholders) of the MPF to adhere to the terms of the Trust Deed;

(b) the prudent person duty.

The prepayment claim as pleaded

58. The Trustee alleges that LMIM ATF the MPF:[17]

(a) was not entitled to be paid or to recover from the assets of the MPF a management fee unless such fee had been incurred and was payable in accordance with the Trust Deed by:

(i) the antecedent performance by the defendant in its capacity as trustee of the MPF of its duties pursuant to the Trust Deed;

(ii) the defendant in its capacity as trustee of the MPF having calculated the management fee payable to it for the performance of such duties, retrospectively on a monthly basis; and

(b) was not entitled to be indemnified out of the assets of the MPF in respect of fees or expenses payable to any service providers, or to any agent or delegate appointed by the defendant in its capacity as trustee of the MPF, unless a liability for such fees or expenses had been incurred.

[13] [7] of the statement of claim.
[14] [13] of the statement of claim.
[15] [8] of the statement of claim.
[16] At [14] and [15] of the statement of claim.
[17] [16] of the statement of claim.

59. The Trustee further alleges that on the proper construction of the Service Agreement, and in particular pursuant to the provisions of the Service Agreement LMA was not entitled to be paid by the defendant (and the defendant was not obliged to pay to LMA) any part of the service fees attributable to management fees in respect of, relevantly, the MPF, unless the defendant in its capacity as trustee of the MPF (whether by itself or by LMA as its service provider, agent or delegate) had earned such management fees by the antecedent performance of duties pursuant to the Trust Deed.[18]

60. The Trustee then pleads the way in which the Account was operated and the factual conclusion that the net balance of the Account was the sum of $12,340,378 standing to the credit of LMA.[19]

61. The Trustee alleges that the way in which the Account operated was a breach of trust or further or alternatively, a breach by the defendant of the prudent person duty.[20]

62. Finally, the trustee alleges that in consequence of the defendant's breach of trust and, further or alternatively, the equitable duty of care, the MPF has suffered loss in the sum of $12,340,378.[21]

Prospects of the proceeding

63. Prior to commencing the proceeding, the Trustee obtained privileged and confidential advice ("**Confidential Advice**") from Andrew Crowe QC and David Turner of Counsel. Based upon that advice and his own investigations, Mr Villani believes that the Trustee has reasonable prospects of obtaining a favourable judgment in the proceeding.

64. The Trustee does not waive privilege in the Confidential Advice.

65. However, the recoverability of any such judgment presently depends on:

    (a) there being an insurance policy or policies that respond to the claim; and

    (b) the amount of the available cover left under those policies.

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[18] [17] of the statement of claim.
[19] [18] and [19] of the statement of claim.
[20] [20] of the statement of claim.
[21] [21] of the statement of claim.

Insurance policies

66. The Trustee knows there are insurance policies held by LMIM that *might* respond to the claim. However, the Trustee does not have a copy of those policies.

67. On 16 June 2016, the Trustee's solicitors wrote to Clayton Utz and gave notice of this claim against LMIM.[22]

68. As discussed, in paragraph 98 below, the Trustee knows that the amount of coverage remaining under those policies has been decreasing over the past few years and will continue to decrease.

Other relevant matters

The First Proceeding and the Second Proceeding

69. The First Proceeding and the Second Proceeding are relevant because, among other reasons, they serve to explain some of the bases upon which the Court will make directions under section 96 of the Trusts Act in the context of the MPF.

70. On 27 August 2014, the Trustee commenced the First Proceeding against LMIM for $5,128,071.34 plus interest and costs.

71. On 27 August 2014, Trustee also commenced the Second Proceeding against LMIM for $18,982,171.51 plus interest and costs.

72. On 18 August 2015, Justice Daubney heard the Trustee's application under section 96 of the Trusts Act in relation to the First Proceeding and the Second Proceeding ("**First Section 96 Application**").

73. Annexure **14** to the statement of facts is a true copy of the order made by Daubney J on 26 August 2015 in relation to the First Section 96 Application ("**Order**").

74. Annexure **15** to the statement of facts is a true copy of his Honour's reasons for making the Order, which are cited as *Kordamentha Pty Ltd v LM Investment Management Limited (Receivers and Managers Appointed); Re: KordaMentha Pty Ltd* [2015] QSC 376 ("**Reasons**")

[22] [68] of Mr Villani's affidavit filed 24 January 2018.

75. Subject to Order 2 of the Order, Daubney J directed at Orders 1.1 and 1.2, pursuant to section 96 of the Trusts Act that the Trustee would be justified in prosecuting the First Proceeding and the Second Proceeding.

76. Order 2 states that each of Orders 1.1 and 1.2 is conditional upon there being filed in each of the First Proceeding and the Second Proceeding respectively a Deed Poll executed by IMF Bentham Limited ("**IMF**") by which IMF agrees to pay adverse costs orders made against the Trustee in each proceeding during the term of the litigation funding made between the Trustee and IMF and to give the defendant(s) in each proceeding written notice of any termination of the litigation funding agreement within 7 days of such termination.

77. Daubney J stated at [17] of the Reasons:

> "In reaching my conclusion with respect to the appropriateness of making directions under s 96, I expressly do so on the basis that litigation funding will be provided on terms which are identical to those put before me in the confidential information. Should that situation change, and it be the case that the litigation funder will only provide funding on terms different from those put before me, then I consider that this would be a circumstance which would require the legal advisers for the Trustee, in proper discharge of their obligations as officers of the Court, to bring these matters back before the Court for further consideration."

78. The existence of a funding agreement for the First Proceeding and the Second Proceeding was important for two principal reasons:

(a) it enabled the Trustee reliably to fund its own costs of prosecuting the proceedings; and

(b) it provided the defendant in the proceedings with more certainty that any costs orders in its favour against the Trustee would be met.

79. On 17 April 2018, IMF gave notice to the Trustee, 14 days' notice of the termination of the funding agreement in relation to the First Proceeding and the Second Proceeding.

80. On 1 May 2018, the funding agreement with IMF terminated.

81. On the same day, the Trustee's solicitors wrote to Mr Whyte's solicitors and LMIM's solicitors to:

(a) give written notice of the termination of the funding agreement;

(b) advise that the Trustee intends to discontinue the First Proceeding and the Second Proceeding if so advised by the Supreme Court of Queensland acting pursuant to section 96 of the Trusts Act.

82. On 4 May 2015, the Trustee applied for directions under section 96 of the Trusts Act that it would be justified in discontinuing the First Proceeding and the Second Proceeding ("**Second Section 96 Application**").

83. On 7 June 2018, Justice Boddice heard the Trustee's Second Section 96 Application. On the same day, his Honour ordered, in effect, that pursuant to section 96 of the Trusts Act the Trustee is directed that it would be justified in discontinuing the First Proceeding and the Second Proceeding (the order is part of Annexure 1).

84. Annexure **16** is a true copy of the *ex tempore* reasons given by Boddice J.

85. Boddice J also made orders in relation to the costs of the First Proceeding and the Second Proceeding. In proceeding 5329/15 the costs and expenses of the applicant were ordered to be paid on an indemnity basis out of the LM Managed Performance Fund. In proceeding 8034/14 Boddice J ordered that upon the discontinuance of the proceeding by the plaintiff, the plaintiff would pay the defendants' costs up to the date of discontinuance on a standard basis.

86. On 7 June 2018, the Trustee discontinued the First Proceeding and the Second Proceeding. Annexure **17** is a true copy of the sealed discontinuance filed in each proceeding.

The FMIF Proceeding

87. On 19 December 2014, Mr Whyte commenced Supreme Court of Queensland Proceeding no. S12317/14 ("**FMIF Proceeding**") in which LMIM ATF the FMIF is

suing six current and former directors of LMIM, LMIM and the Trustee for, at most, $15,546,147 plus interest and costs.

88. The FMIF Proceeding is relevant to this particular application because if Mr Whyte is successful, his claim has the potential to reduce the value of the MPF to nil.

Estimated value of the MPF

89. As at 21 November 2018, the Trustee holds cash at bank in the amount of $8,254,401.79.

90. Of that amount, $6,652,003.63 (“**Tax Refund**”) relates to money recently refunded by the Australian Taxation Office (“**ATO**”) to the Trustee in respect of withholding tax paid, and interest on that refund. The ATO paid the tax Refund to the Trustee on the basis that it would be distributed to the unitholders of the MPF.

91. The available cash after deducting the Tax Refund is $1,602,398.16.

92. The Trustee holds the Tax Refund on trust for the purpose of making a distribution to the unitholders of the MPF.

93. The only other significant assets held by the Trustee are the choses in action. These are contingent assets.

94. The Trustee expects cash outgoings (net of GST) over the next 12 months alone to be in excess of $750,000, which includes the following:

(a) remuneration for the Trustee;

(b) legal fees relating to ongoing litigation. In this respect it does not appear likely that the FMIF Proceeding is going to settle and the Trustee is going to have to continue to defend the claim to protect the remaining assets of the MPF;

(c) legal fees and other costs associated with the administration of the MPF and the distribution process.

95. Even if the cash outgoings do not exceed $750,000 outgoings will be significant.

Estimated value of the assets of LMIM

96. LMIM is in liquidation and the Trustee understands that LMIM will have no money of its own to meet any judgment against it.

97. The Trustee does not have a copy of the insurance policies but it is a matter of public record that LMIM has the benefit of insurance policies that *might* respond to the Trustee's claim if successful.

98. In relation to those insurance policies the Trustee further states:

(a) the insurance policies were drawn upon by the directors of LMIM to defend themselves in *Australian Securities and Investments Commission v Drake (No. 2)* (2016) 340 ALR 75 ("***Drake No. 2***");

(b) the insurance policies are being drawn upon by the directors of LMIM to defend themselves in the FMIF Proceeding;

(c) the directors' defence costs in the FMIF Proceeding will be significant; and

(d) the insurance might start to be drawn upon in a proceeding S2166/15 already commenced by Mr Whyte against Ernst & Young. It is the Trustee's understanding that current and former directors of LMIM might be joined to S2166/15 by Ernst & Young.

Financial inability to fund the proceeding

99. Mr David O'Brien, a partner of MinterEllison, estimates that the Trustee's costs of prosecuting this proceeding to the conclusion of a trial will be approximately $715,000 to $815,000 exclusive of GST.

100. In relation to the costs estimate a number of factors need to be mentioned:

(a) the proceeding is at early stage. No notice of intention to defend and defence has been filed;

(b) there has been no disclosure yet.

101. Even if the costs are less than the amount estimated, the costs will be significant.

102. The Trustee estimates that its remuneration for prosecuting this proceeding to the conclusion of a trial will be in the range of $250,000 to $350,000 exclusive of GST.

103. Mr O'Brien estimates that the Trustee's costs of defending the FMIF Proceeding will be approximately $715,000 to $865,000 exclusive of GST.

104. The FMIF Proceeding is much more advanced than this proceeding and would likely come to trial first, probably in 2019.

105. The Trustee estimates that its remuneration for defending the FMIF Proceeding will be approximately $150,000 - $250,000 exclusive of GST.

106. The Trustee is of the opinion that it cannot fund the prosecution of the proceeding out of the Trustee's own resources whilst also defending the FMIF Proceeding.

107. The Trustee has not received any offer from unitholders of the MPF to fund the proceeding.

108. The Trustee has not sought litigation funding in relation to the proceeding because it costs money to seek funding and the Trustee is of the opinion that such funding is unlikely to be forthcoming given that LMIM is in liquidation and there is uncertainty regarding whether LMIM's holds insurance policies that will respond and how much coverage remains.

Prospects of obtaining a s 96 direction to prosecute the proceeding

109. As mentioned, the Trustee will not give the Written Notice without first obtaining a direction under s 96 of the Trusts Act that it would be justified in prosecuting the proceeding.

110. The Trustee has formed the opinion that it is unlikely to obtain such a direction because:

(a) the Trustee does not have litigation funding and is unlikely to get it;

(b) the Trustee would have to withdraw its proof of debt with the consent of the liquidator of LMIM; and

(c) of the uncertainty surrounding whether the insurance policies respond and the amount of coverage remaining.

Possible settlement of the FMIF Proceeding

111. Very recently there have been some without prejudice discussions between the Trustee and Mr Whyte about the potential settlement of the FMIF Proceeding.

112. The Trustee cannot reveal the content of those discussions. The discussions are relevant because if the FMIF Proceeding did settle, it might be the case that the Trustee could afford to prosecute this proceeding.

113. However, as the settlement is only a possibility the Trustee has formed the opinion that it cannot delay the S 96 Application.

Proof of debt

114. The general starting point in a liquidation is that a creditor should lodge a proof of debt in the liquidation rather than be allowed to commence proceedings against the company in liquidation. However, in some situations (such as where there is a potential claim to which an insurance policy will respond) the court will grant leave to proceed against the company in liquidation instead of requiring the creditor to lodge a proof of debt.[23]

115. On 4 September 2018, the liquidator of LMIM called for proofs of debt (this was after Atkinson J had already granted leave under s 500(2) of the Corporations Act).

116. On 2 October 2018, the Trustee submitted, inter alia, a proof of debt for $12,340,378 relating to the factual and legal matters underlying this proceeding.

117. Annexure **18** to this statement of facts is a true copy of the proof of debt (without the attachment, being the claim and statement of claim in this proceeding).

118. Having lodged a proof of debt it is now appropriate for the proceeding to be discontinued.

[23] *Timbercorp Finance Pty Ltd (in Liq) v Vivian* (2016) 114 ACSR 198 at [21].

Costs of the discontinuance

119. The Trustee has agreed to pay LMIM's costs of the proceeding on the standard basis if the Court directs that the Trustee is justified in discontinuing the proceeding and the Trustee does discontinue.

120. As LMIM has not had to defend the proceeding, those costs should be reasonable.

The Trustee's opinion regarding the discontinuance

121. In all of the circumstances, the Trustee is of the opinion that it is in the best interests of the unitholders of the MPF for this proceeding to be discontinued.

Attitude of the members of the MPF

122. The Trustee does not yet know the attitude of any members of the MPF to the S 96 Application.

123. The Trustee will bring to the attention of this Honourable Court the attitude of any members of the MPF who communicate with the Trustee in that respect.

22 November 2018

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 1076/17

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

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

INDEX TO THE STATEMENT OF FACTS OF THE APPLICANT

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

ORDER

Before: Justice Boddice

Date: 7 June 2018

Initiating document: Application filed 4 May 2018

THE ORDER OF THE COURT IS THAT:

1. Pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**"), the Applicant is directed that it would be justified in discontinuing proceedings against the defendants to the relief claimed in the Claim and Third Further Amended Statement of Claim filed in Supreme Court of Queensland proceeding BS8032/14.

2. Pursuant to section 96 of the Trusts Act, the Applicant is directed that it would be justified in discontinuing proceedings against the defendants to the relief claimed in the Claim and Third Further Amended Statement of Claim filed in Supreme Court of Queensland proceeding BS8034/14.

ORDER

Filed on behalf of the applicant

Form 59 Rule 661

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference NYB DOB 407747729

ME_148190935_1

3. The costs and expenses of the applicant, LM Investment Management Limited (Receivers and Managers Appointed (In Liquidation) and Mr David Whyte in his capacity as court appointed receiver of the property of the LM First Mortgage Income Fund of and incidental to this application be paid on the indemnity basis out of the LM Managed Performance Fund.

Signed: OBuxovana
Deputy Registrar

SUPREME COURT OF QUEENSLAND BRISBANE

ME_148190935_1

- 1 AUG 2018

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 12716/15

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

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

ORDER

Before: Justice Douglas

Date: 9 August 2018

Initiating document: Application filed 5 July 2018

THE ORDER OF THE COURT IS THAT:

1. Pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**"), the plaintiff is directed that it would be justified in discontinuing this proceeding against the defendant.

2. Upon the discontinuance of this proceeding, the plaintiff pay the defendant's costs of the proceeding up to the date of discontinuance on the standard basis.

ORDER

Filed on behalf of the plaintiff

Form 59 Rule 661

MINTER ELLISON
Waterfront Place
1 Eagle Street
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Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference NYB DOB 407747963

ME_151444250_1

3. The costs and expenses of the plaintiff of and incidental to this application be paid on the indemnity basis out of the LM Managed Performance Fund.

Signed: ________________________
Deputy Registrar

ME_151444250_1

SUPREME COURT OF QUEENSLAND

Duplicate

REGISTRY: Brisbane
NUMBER: 2869/13

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED) ABN 68077 208 461 AND LM ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) ACN 055 691 426

Applicants	**JOHN RICHARD PARK AND GINETTE MULLER IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF LM INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED) AND LM ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED)**
Respondents	**THE MEMBERS OF THE MANAGED PERFORMANCE FUND**

ORDER

Judge:	de Jersey CJ
Date:	12 April 2013
Initiating document:	Originating Application filed 26 March 2013

The Court orders that:

1. LM Investment Management Limited (Administrators Appointed) is removed as trustee of the trust named The LM Managed Performance Fund.

2. Korda Mentha Pty Ltd (ACN 100 169 391) and Calibre Capital Pty Ltd (ABN 66 108 318 985) are appointed as joint and several trustees of the trust named The LM Managed Performance Fund.

3. Orders 1 and 2 are made without prejudice to any lien or charge, or any right of reimbursement or any right of indemnity that :

   (a) LM Investment Management Limited, as former trustee; and

SUPREME COURT OFFICE 75645v BRISBANE

Piper Alderman

(b) The Applicants in their capacity as joint and several administrators of LM Investment Management Limited,

may have against the assets of the trust.

4. The costs of both the applicants and the respondents shall be assessed on the indemnity basis and paid out of the assets of the trust.

REGISTRAR

27975645v1

Annexure 3

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 1076/17

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

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

CLAIM

The plaintiff claims:

1. Equitable compensation.
2. Interest pursuant to section 58 of the *Civil Proceedings Act* 2011 (Qld); and
3. Costs.

The plaintiff make this claim in reliance on the facts alleged in the attached Statement of Claim.

ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

And filed in the Brisbane Registry on 6 February 2017

SUPREME COURT OFFICE BRISBANE

Registrar

CLAIM

Filed on behalf of the Plaintiff

MinterEllison
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 Brisbane

Telephone (07) 3119 6000
Facsimile 3119 1000
Email nadia.braad@minterellison.com
Reference NYB DOB 1109005

Form 2 Rule 22
ME_128344070_1

To the defendant:	TAKE NOTICE that you are being sued by the plaintiff in the Court. If you intend to dispute this claim or wish to raise any counterclaim against the plaintiff, you must within 28 days of the service upon you of this claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the plaintiff address for service shown in this claim as soon as possible.
Address of Registry:	QEII Courts of Law Complex 415 George Street Brisbane Qld 400

If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that Notice.

PARTICULARS OF THE PLAINTIFF:

Name:	KordaMentha Pty Ltd (ACN 100 169 391) in its capacity as trustee of the LM Managed Performance Fund
Plaintiff's residential or business address:	Level 14, 12 Creek Street, Brisbane Qld 4000, Australia

Plaintiff's solicitors name:	Nadia Suzanne Braad
and firm name:	MinterEllison
Solicitor's business address:	Waterfront Place, 1 Eagle Street, BRISBANE QLD 4000
Address for Service:	Waterfront Place, 1 Eagle Street, BRISBANE QLD 4000
DX:	102 Brisbane
Telephone:	(07) 3119 6000
Fax:	(07) 3119 1000
Email address:	nadia.braad@minterellison.com

Signed: [signature]

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 6 February 2017

This claim is to be served on:	LM Investment Management Limited (Receivers and Managers Appionted)(in liquidation) (ACN 077 208 461)
of:	FTI Consulting, 'Corporate Centre One' Level 9, 2 Corporate Court, Bundall Qld 4217

ME_128344070_1

SUPREME COURT OF QUEENSLAND

REGISTRY	Brisbane
NUMBER	

Plaintiff:	**KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**
	AND
Defendant:	**LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**

Filed in the Brisbane registry on 6 February 2017

STATEMENT OF CLAIM

This claim in this proceeding is made in reliance on the following facts:

1. The plaintiff is and has been at all times material to this proceeding:

   (a) a company duly incorporated according to law; and

   (b) capable of suing in its corporate name.

2. The defendant:

   (a) is and has been at all times material to this proceeding, a company duly incorporated according to law;

   (b) is and has been at all times material to this proceeding, capable of being sued in its corporate name; and

---

STATEMENT OF CLAIM

Filed on behalf of the plaintiff

Form 16, Rules 22 and 146

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Reference 1109005

ME_136047720_1

(c) has at all times material to this proceeding since at least 1999, carried on business as a professional trustee for reward, in which capacity it established and managed a number of registered and unregistered managed investment schemes.

The MPF

3. By a trust deed dated December 2001 ("**Trust Deed**"), the defendant:

   (a) established a unit trust named "*The LM Managed Performance Fund*" ("**MPF**"); and

   (b) became the trustee of the MPF.

4. By a deed of variation dated 11 November 2002 ("**First Deed of Variation**"), the defendant in its capacity as trustee of the MPF varied the Trust Deed by:

   (a) deleting all parts of the Trust Deed other than the references to the parties; and

   (b) inserting the terms set out in the First Deed of Variation.

5. By a further deed of variation dated 25 November 2009 ("**Second Deed of Variation**"), the defendant in its capacity as trustee of the MPF varied the Trust Deed (as earlier varied by the First Deed of Variation) by:

   (a) deleting clauses 1, 2.3, 2.4 and 3 to 27 of the Trust Deed; and

   (b) inserting the provisions contained in the schedule to the Second Deed of Variation.

6. On and from 25 November 2009, the Trust Deed (as amended by the First Deed of Variation and the Second Deed of Variation) contained the following express provisions material to this proceeding:

   (a) by the definitions contained in clause 1.1:

      (i) the defendant was styled "*the Manager*";

      (ii) the trust created by the trust deed and to be known as the MPF was styled the "*Scheme*";

(iii) "*Scheme Property*" was defined to mean assets of the Scheme including but not limited to:

(A) contributions of money or money's worth to the Scheme;

(B) money borrowed or raised by the Manager for the purposes of the Scheme;

(C) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in subparagraphs 6(a)(iii)(A) or (B) above;

(D) the income and property derived, directly or indirectly from contributions, money or property referred to in subparagraphs 6(a)(iii)(A) to (C) above;

(iv) "*Unit*" was defined to mean an undivided interest in the Scheme Property created and issued under the Trust Deed;

(v) "*Net Fund Value*" was defined to mean the value of the Scheme Property less the Liabilities on the Valuation Date;

(vi) "*Liabilities*" was defined to mean at any time the aggregate of the following at that time as calculated by the Manager in accordance with the Accounting Standards (as defined by clauses 1.1 and 1.3):

(A) each liability, excluding Unit Holder Liability, of the Manager in respect of the Scheme or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability;

(B) each other amount payable out of the Scheme, excluding Unit Holder Liability or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability;

(C) other appropriate provisions in accordance with the applicable Accounting Standards;

(vii) "*Unit Holder Liability*" was defined to mean the liability of the Scheme to the Members for their undivided interest in the Scheme Property;

(viii) the "*Valuation Date*" was defined to mean the date which is the last day of each month or any date during each month at the Manager's discretion or the date on which the Manager determines there has been a material change in the value of the Scheme Property;

(b) by clause 2.1, the Manager agreed to act as trustee of the Scheme;

(c) by clause 2.2, the Manager declared that it held the Scheme Property on trust for the members of the Scheme;

(d) by clause 3.1, the beneficial interest in the Scheme was divided into Units;

(e) by clause 12.1, the Manager was vested with a range of powers, including all of the powers of a natural person to invest and borrow on the security of the Scheme Property;

(f) by clause 17.3, the Manager was entitled to be paid a management fee from Scheme Property up to 10% per annum of the Net Fund Value in relation to the performance of its duties as detailed in the Trust Deed and "*the Law*" (defined by clause 1.1 to mean the *Corporations Act* 2001 (Cth)), which fee was to be calculated monthly and paid at such times as the Manager determined;

(g) by clause 17.4, the Manager was entitled to fees for the following duties:

(i) in relation to the subscription and withdrawal of units;

(ii) in relation to the transfer or transmission of Units;

(iii) in relation to arranging any finance facility in connection with the purchase of any asset of the Scheme;

(iv) in relation to due diligence enquiries generally;

(v) in relation to the sale of real estate or assets of the Scheme Property;

(vi) in relation to the promotion and management of the Scheme;

(vii) in relation to the winding-up of the Scheme;

(viii) in relation to the performance of its duties and obligations pursuant to the Law and the Trust Deed;

(h) by clause 17.9, the Manager was entitled to recover fees and expenses from the Scheme provided such fees and expenses had been incurred in accordance with the Trust Deed;

(i) by clause 17.6, the Manager was entitled to be indemnified out of Scheme Property for, relevantly, expenses incurred in relation to the performance of its duties, including:

(i) by clause 17.6(d), fees and expenses incurred in respect of any service providers of the Scheme;

(ii) by clause 17.6(v), fees and expenses of any agent or delegate appointed by the Manager;

(j) by clause 12.7(b), the Manager was empowered to engage any "*managers and other employees*"; and

(k) by clause 23.1(b)(ii), the Manager was obliged to resign as Manager if it became an externally-administered body corporate as defined by the *Corporations Act* 2001 (Cth);

7. On or about 19 March 2013:

(a) Mr John Richard Park and Ms Ginette Dawn Muller were appointed voluntary administrators of the defendant; and

(b) in the premises and pursuant to clause 23.1(b)(ii) of the Trust Deed pleaded in subparagraph 6(k) above, the defendant was obliged to resign as trustee of the MPF.

8. By order of this Honourable Court made on 12 April 2013:

   (a) the defendant was removed as trustee of the MPF; and

   (b) KordaMentha Pty Ltd (ACN 100 169 391) and Calibre Capital Limited (ACN 108 318 985) were appointed trustees of the MPF.

9. On 5 January 2015, Calibre Capital Limited (ACN 108 318 985) resigned as trustee of the MPF, leaving KordaMentha Pty Ltd (ACN 100 169 391) as sole trustee of the MPF.

10. KordaMentha Pty Ltd (ACN 100 169 391) is and has been at all times since 5 January 2015 the sole trustee of the MPF.

The Service Agreement

11. By an agreement in writing dated 1 July 2010 but commencing in operation on 1 July 2005 styled "*Service Agreement*" ("**Service Agreement**"), the defendant engaged LM Administration Pty Ltd (ACN 055 691 426) as trustee of the LM Administration Trust ("**LMA**") to provide services to the defendant in connection with, among other things, the performance by the defendant of its duties as trustee of the MPF.

12. The Service Agreement contained the following express provisions material to this proceeding:

   (a) by clause 1.9 and item 2 of schedule 1, "*the Principal*" was defined to mean the defendant and any other company or person which may at any time after the commencement date merge with the Principal or take over or carry on either in whole or in part the business and the undertaking of the Principal;

   (b) by clause 1.10 and item 3 of schedule 1, the "*the Service Provider*" was defined to mean LMA and any other company or person which may at any time after the commencement date merge with the Service Provider or take over or carry on either in whole or in part the business and undertaking of the Service Provider;

   (c) by clauses 1.2, 3 and item 6 of schedule 1, the "*commencement date*" of the Service Agreement was 1 July 2005, and the Service Agreement continued in operation until any termination of the Service Agreement in accordance with clause 16;

(d) by clause 16.6, the Service Agreement was deemed to be terminated forthwith upon the appointment of an administrator to the Service Provider or the Principal under the provisions of the "*Corporations Law*" (which, on the proper construction of clause 16.6, was a reference to the *Corporations Act* 2001 (Cth)), or the Service Provider or the Principal entered into any arrangement, reconstruction or composition with its creditors or any of them proposes to do so;

(e) by clause 1.1 and item 4 of schedule 1, "*the business*" was defined to mean the business of funds management and any other business from time to time conducted by the Principal and which the Principal and the Service Provider may from time to time agree shall be subject to the provisions of the Service Agreement;

(f) by clause 1.11 and item 7 of schedule 1, "*the services*" was defined to mean a range of services including, relevantly, by item 7.3.1.4 of schedule 1, the provision of all administration funds management services on behalf of the Principal for which the Service Provider would be entitled to payment (on behalf of the Principal) of all management fees earned by the Principal in its business of operating managed investment schemes, which management fees would be paid directly to the Service Provider and were in addition to the quarterly service fee paid for all other services;

(g) by clause 1.1, "*the service fees*" was defined to mean the fees payable to the Service Provider pursuant to clause 5;

(h) by clause 5:

(i) the Principal was obliged, subject to any review of the method of calculation of the service fees pursuant to clause 14.1.1 of the Service Agreement, to pay to the Service Provider for the provision of the services the service fees set out in schedule 1;

(ii) the service fees were to be calculated quarterly, with the first of such quarterly payments being due and payable on the last day of the quarter;

(iii) the Service Provider acknowledged and agreed that in any review of the method of calculation of the service fees, it would not seek to have the service fees set at rates which exceeded commercial rates for the services on the date of the review;

(i) by item 8 of schedule 1, the service fees consisted of:

(i) 52% of the total expenses incurred by the Service Provider for the provision of the services, plus such percentage or proportionate amount of that cost as may be agreed between the Principal and the Service Provider;

(ii) all management fees on behalf of the Principal earned in the Principal's capacity as manager of all of its managed investment schemes, such management fees to be paid directly to the Service Provider; and

(j) by clause 6, the Service Provider was obliged for each quarter or part of a quarter during the term as soon as practicable after the last day of each quarter of the term to prepare and submit to the Principal a tax invoice for the service fees payable for each such quarter or part of a quarter.

13. On or about 19 March 2013:

(a) Mr John Richard Park and Ms Ginette Dawn Muller were appointed voluntary administrators of LM Administration Pty Ltd (ACN 055 691 426), in addition to their appointment as voluntary administrators of the defendant as pleaded in subparagraph 7(a) above; and

(b) in the premises and pursuant to clause 16.6 of the Service Agreement pleaded in subparagraph 12(d) above, the Service Agreement terminated.

Duties owed by the defendant in its capacity as trustee of the MPF

14. At all times material to this proceeding, the defendant in its capacity as trustee of the MPF owed an equitable duty to the beneficiaries of the MPF to adhere to the

terms of the trust constituted by the MPF as set out in the Trust Deed as varied from time to time.

15. Further, at all times material to this proceeding, the defendant in its capacity as trustee of the MPF owed an equitable duty to the beneficiaries of the MPF to exercise the same care that an ordinary, prudent person of business would exercise in the conduct of that business were it his or her own ("**equitable duty of care**").

Prepayment claim

16. On the proper construction of the Trust Deed as varied from time to time, and in particular pursuant to the provisions of the Trust Deed pleaded in paragraph 6 above, the defendant in its capacity as trustee of the MPF:

    (a) was not entitled to be paid or to recover from the assets of the MPF a management fee unless such fee had been incurred and was payable in accordance with the Trust Deed by:

        (i) the antecedent performance by the defendant in its capacity as trustee of the MPF of its duties pursuant to the Trust Deed;

        (ii) the defendant in its capacity as trustee of the MPF having calculated the management fee payable to it for the performance of such duties, retrospectively on a monthly basis; and

    (b) was not entitled to be indemnified out of the assets of the MPF in respect of fees or expenses payable to any service providers, or to any agent or delegate appointed by the defendant in its capacity as trustee of the MPF, unless a liability for such fees or expenses had been incurred.

17. Further, on the proper construction of the Service Agreement, and in particular pursuant to the provisions of the Service Agreement pleaded in paragraph 12 above, LMA was not entitled to be paid by the defendant (and the defendant was not obliged to pay to LMA) any part of the service fees attributable to management fees in respect of, relevantly, the MPF, unless the defendant in its capacity as trustee of the MPF (whether by itself or by LMA as its service provider, agent or delegate) had earned such management fees by the antecedent performance of duties pursuant to the Trust Deed.

18. In the period 1 January 2009 to 12 April 2013, by the operation of management fee account number 14000 (operated from about 1 January 2009 to about December 2011) and subsequently management fee account number 14005 (operated from about December 2011 to 19 March 2013, following the transfer of the balance of account number 14000 to account number 14005 in about December 2011) (referred to below compendiously as "**the Account**"):

(a) the defendant caused a series of payments to be made to LMA out of the assets of the MPF by way of credit entries in the Account in favour of LMA, purportedly for management fees pursuant to the provisions of the Trust Deed and the Service Agreement;

(b) the defendant caused a series of entries to be made in the Account as expenses chargeable to the MPF purportedly for management fees payable out of the assets of the MPF in favour of LMA; and

(c) further miscellaneous sums were debited and credited to the Account as set out in the particulars below,

in consequence of which, as at 12 April 2013, the net balance of the Account was the sum of $12,340,378 standing to the credit of LMA, representing a surplus sum of moneys paid to LMA out of the assets of the MPF, purportedly for management fees, over and above any entitlement of LMA to such management fees.

Particulars

(i) Particulars of the payments and entries pleaded above are set out in:

(A) **Schedule 1**, entitled "*Management Fees prepaid to LMA – Annual Assessment*";

(B) **Schedule 2**, entitled "*Management Fees prepaid to LMA – Monthly Breakdown*";

(ii) As at 1 January 2009, the balance of the Account was $5,368 standing to the credit of LMA;

(iii) In the period 1 January 2009 to 12 April 2013:

(A) payments in the aggregate sum of $51,790,589 were made to LMA out of the assets of the MPF by way of credit entries in the Account in favour of LMA, purportedly for management fees pursuant to the provisions of the Trust Deed and the Service Agreement (described in Schedule 1 and Schedule 2 as "*Payment made from MPF to LMA*");

(B) entries were made in the Account as expenses chargeable to the MPF purportedly for management fees payable out of the assets of the MPF in favour of LMA in the aggregate sum of $27,249,250 (including GST) (described in Schedule 1 and Schedule 2 as "*Management/development fee expense*");

(C) payments in the aggregate sum of $2,137,340 were made to the MPF by way of credit entries in favour of the MPF against LMA (described in Schedule 1 and Schedule 2 as "*Repayment to MPF*");

(D) payments in the aggregate sum of $8,446,272 were made to or on account of LMA out of the assets of the MPF by way of debit entries against the MPF in respect of development fees purportedly payable in connection with a property known as "*Maddison Estate*" (described in Schedule 1 and Schedule 2 as "*Maddison Estate development fee*"). The legal basis for the making of these payments (if any) will be identified following disclosure in this proceeding;

(E) further payments were made from the Account to or on account of LMA in the aggregate sum of $1,735,503, and from LMA to the MPF in the aggregate sum of $112,786, leaving a balance in favour of LMA of $1,622,717 (described in Schedule 1 and Schedule 2 as "*Other accounting adjustment*"). The legal basis for the making of these payments (if any) will be identified following disclosure in this proceeding.

19. The Account was operated by way of a running account in which the payments made to LMA out of the assets of the MPF pleaded in subparagraph 18(a) above:

(a) were not referable to particular entries in the Account for expenses charged to the MPF for management fees pleaded in subparagraph 18(b) above;

(b) were on each occasion paid at a time when the result of the payment was to cause a surplus of the sum of such payments over and above the sum of the expenses charged to the MPF for management fees pleaded in subparagraph 18(b) above, such that the management fees were being pre-paid in advance;

(c) were on each occasion paid to LMA:

(i) in breach of the Trust Deed on its proper construction as pleaded in paragraph 16 above;

(ii) in circumstances where LMA had no entitlement to such payments pursuant to the Service Agreement on its proper construction as pleaded in paragraph 17 above; and

(d) resulted as at 12 April 2013 in management fees having been pre-paid in the sum of $12,340,378 as pleaded in paragraph 18 above.

20. In the premises, the conduct of the defendant pleaded in paragraphs 18 and 19 above constituted:

(a) a breach of trust by the defendant; and

(b) further or alternatively, a breach by the defendant of the equitable duty of care, by reason that no prudent person of business in the conduct of the defendant's trusteeship of the MPF would have engaged in the conduct pleaded in paragraphs 18 and 19 above.

21. In the premises, in consequence of the defendant's breach of trust and, further or alternatively, the equitable duty of care, the MPF has suffered loss in the sum of $12,340,378.

The plaintiff claims the following relief as against the defendant:

1. Equitable compensation in the sum of $12,340,378.

2. Interest pursuant to section 58 of the *Civil Proceedings Act* 2011 (Qld); and

3. Costs.

Signed: Minter Ellison

Description: MINTER ELLISON

Solicitors for the plaintiff

Dated: 6 February 2017

This pleading was settled by Mr Crowe QC and Mr Turner of Counsel.

NOTICE AS TO DEFENCE

Your defence must be attached to your notice of intention to defend.

Schedule 1

LM Managed Performance Fund

	FY09	FY10	FY11	FY12	FY13	Total
Payment made from MPF to LMA	2,850,405	6,121,775	3,305,341	31,745,329	7,767,739	51,790,589
Management / development fee expense	(499,250)	-	(1,500,000)	(12,200,000)	(13,050,000)	(27,249,250)
Other adjustments to running balance account						
Repayment to MPF	(1,700,000)	-	(147,340)	-	(290,000)	(2,137,340)
Maddison Estate development fee	-	(1,646,272)	-	(3,960,000)	(2,840,000)	(8,446,272)
Other accounting adjustment	-	(1,735,503)	112,786	-	-	(1,622,716)
	(1,700,000)	(3,381,775)	(34,554)	(3,960,000)	(3,130,000)	(12,206,329)
Opening balance (account 14000 / 14005)	5,368	656,522	3,396,522	5,167,310	20,752,639	5,368
Net prepaid management fees in year	651,154	2,740,000	1,770,787	15,585,329	(8,412,261)	12,335,010
Prepaid management fees closing balance	656,522	3,396,522	5,167,310	20,752,639	12,340,378	12,340,378
Expense amount	465,909	-	1,397,727	11,368,182	12,397,500	25,629,318
GST component	33,341	-	102,273	831,818	652,500	1,619,932
	499,250	-	1,500,000	12,200,000	13,050,000	27,249,250

Schedule 2

LM Managed Performance Fund
Management fees prepaid to LMA - Annual Assessment

Monthly breakdown

FY09

	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Total
	1	2	3	4	5	6	
Payment made from MPF to LMA	160,951	241,954	225,500	500,000	1,142,000	580,000	2,850,405
Management / development fee expense	-	-	-	-	-	(499,250)	(499,250)
Other adjustments to running balance account							
Repayment to MPF	-	-	-	(1,200,000)	(500,000)	-	(1,700,000)
Maddison Estate development fee	-	-	-	-	-	-	-
Other accounting adjustment	-	-	-	-	-	-	-
	-	-	-	(1,200,000)	(500,000)	-	(1,700,000)
Opening balance (account 14000 / 14005)	5,358	166,319	408,273	633,773	(66,227)	575,773	5,368
Net prepaid management fees in year	160,951	241,954	225,500	(700,000)	642,000	80,750	651,154
Prepaid management fees closing balance	166,319	408,273	633,773	(66,227)	575,773	656,522	656,522

FY10

	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Total
	7	8	9	10	11	12	1	2	3	4	5	6	
Payment made from MPF to LMA	805,000	307,000	700,000	412,000	80,000	436,000	291,000	1,550,000	1,540,775	-	-	-	6,121,775
Management / development fee expense	-	-	-	-	-	-	-	-	-	-	-	-	-
Other adjustments to running balance account													
Repayment to MPF	-	-	-	-	-	-	-	-	-	-	-	-	-
Maddison Estate development fee	-	-	-	-	-	-	-	-	(1,646,272)	-	-	-	(1,646,272)
Other accounting adjustment	-	-	-	-	-	-	(280,000)	-	(1,455,503)	-	-	-	(1,735,503)
	-	-	-	-	-	-	(280,000)	-	(3,101,775)	-	-	-	(3,381,775)
Opening balance (account 14000 / 14005)	656,522	1,461,522	1,768,522	2,468,522	2,880,522	2,960,522	3,396,522	3,407,522	4,957,522	3,396,522	3,396,522	3,396,522	655,522
Net prepaid management fees in year	805,000	307,000	700,000	412,000	80,000	436,000	11,000	1,550,000	(1,551,000)	-	-	-	2,740,000
Prepaid management fees closing balance	1,461,522	1,768,522	2,468,522	2,880,522	2,960,522	3,396,522	3,407,522	4,957,522	3,396,522	3,396,522	3,396,522	3,396,522	3,386,522

LM Managed Performance Fund
Management fees prepaid to LMA - Annual Assessment

FY11

	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Total
	7	8	9	10	11	12	1	2	3	4	5	6	
Payment made from MPF to LMA	-	-	-	-	-	-	-	-	-	-	767,000	2,538,341	3,305,341
Management / development fee expense	-	-	-	-	-	-	-	-	-	-	-	(1,500,000)	(1,500,000)
Other adjustments to running balance account													
Repayment to MPF	-	-	-	-	-	-	-	-	-	-	-	(147,340)	(147,340)
Maddison Estate development fee	-	-	-	-	-	-	-	-	-	-	-	-	-
Other accounting adjustment	-	-	-	-	-	-	-	-	-	-	112,786	-	112,786
	-	-	-	-	-	-	-	-	-	-	112,786	(147,340)	(34,554)
Opening balance (account 14000 / 14005)	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	4,276,309	3,396,522
Net prepaid management fees in year	-	-	-	-	-	-	-	-	-	-	879,786	891,001	1,770,787
Prepaid management fees closing balance	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	3,396,522	4,276,309	5,167,310	5,167,310

FY12

	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Total
	7	8	9	10	11	12	1	2	3	4	5	6	
Payment made from MPF to LMA	500,000	2,309,000	2,739,000	3,306,000	3,304,000	1,788,000	2,794,000	3,816,902	3,622,908	2,796,029	2,843,490	1,926,000	31,745,329
Management / development fee expense	-	-	-	-	-	-	-	-	-	-	-	(12,200,000)	(12,200,000)
Other adjustments to running balance account													
Repayment to MPF	-	-	-	-	-	-	-	-	-	-	-	-	-
Maddison Estate development fee	-	-	-	-	-	(5,000,000)	-	-	-	(1,333,333)	(333,333)	2,706,667	(3,960,000)
Other accounting adjustment	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	(5,000,000)	-	-	-	(1,333,333)	(333,333)	2,706,667	(3,960,000)
Opening balance (account 14000 / 14005)	5,167,310	5,667,310	7,976,310	10,715,310	14,021,310	17,325,310	14,113,310	16,907,310	20,724,211	24,347,119	25,809,815	28,319,972	5,167,310
Net prepaid management fees in year	500,000	2,309,000	2,739,000	3,306,000	3,304,000	(3,212,000)	2,794,000	3,816,902	3,622,908	1,462,696	2,510,157	(7,567,333)	15,595,329
Prepaid management fees closing balance	5,667,310	7,976,310	10,715,310	14,021,310	17,325,310	14,113,310	16,907,310	20,724,211	24,347,119	25,809,815	28,319,972	20,752,639	20,752,639

LM Managed Performance Fund

Management fees prepaid to LMA - Annual Assessment

FY13

	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	Total
	7	8	9	10	11	12	1	2	3	4	
Payment made from MPF to LMA	283,855	-	734,950	1,452,068	575,000	773,968	885,000	2,274,899	788,000	-	7,767,739
Management / development fee expense	-	-	(3,200,000)	(1,000,000)	(1,500,000)	(1,650,000)	(3,800,000)	(1,900,000)	-	-	(13,050,000)
Other adjustments to running balance account											
Repayment to MPF	-	-	-	-	-	-	(290,000)	-	-	-	(290,000)
Maddison Estate development fee	(330,000)	(330,000)	(330,000)	(330,000)	(330,000)	(330,000)	(530,000)	(330,000)	-	-	(2,840,000)
Other accounting adjustment	-	-	-	-	-	-	-	-	-	-	-
	(330,000)	(330,000)	(330,000)	(330,000)	(330,000)	(330,000)	(820,000)	(330,000)	-	-	(3,130,000)
Opening balance (account 14000 / 14005)	20,752,639	20,706,494	20,376,494	17,581,444	17,703,511	16,448,511	15,242,479	11,507,479	11,552,378	12,340,378	20,752,639
Net prepaid management fees in year	(46,145)	(330,000)	(2,795,050)	122,068	(1,255,000)	(1,206,032)	(3,735,000)	44,899	788,000	-	(8,412,261)
Prepaid management fees closing balance	20,706,494	20,376,494	17,581,444	17,703,511	16,448,511	15,242,479	11,507,479	11,552,378	12,340,378	12,340,378	12,340,378

SUPREME COURT OF QUEENSLAND

REGISTRY	Brisbane
NUMBER	1076 of 2017

Plaintiff **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

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

ORDER

Before: Justice Atkinson

Date: 1 February 2018

Initiating document: Application filed 22 January 2018

THE ORDER OF THE COURT IS THAT:

1. Subject to further order, pursuant to section 500(2) of the *Corporations Act* 2001 (Cth), the plaintiff be granted leave *nunc pro tunc* to commence and to proceed with this Supreme Court of Queensland proceeding against the defendant, LM Investment Management Limited (Receivers & Managers Appointed) (In Liquidation) (ACN 077 208 461), on the condition that any judgment against the defendant will not be enforced without further leave of the Court.

2. The plaintiff serve the claim and statement of claim in this matter on or before 5 February 2018.

3. The defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant's solicitors, Clayton Utz, that a defence and any counterclaim is required to be filed.

4. Nothing in this order affects the ability of the defendant or any insurer of the defendant to argue at any trial of the proceeding or on any application to revoke the leave granted under paragraph 1, that an insurance policy does not respond to the claim.

5. The applicant plaintiff's costs and expenses of and incidental to this application be paid on the indemnity basis out of the LM Managed Performance Fund.

ORDER

Filed on behalf of the Plaintiff

Form 59 Rule 661

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NYB DOB 1109005

ME_144499765_2

6. If the plaintiff does not give notice in accordance with paragraph 3 by 31 January 2019 then the leave to proceed in paragraph 1 is withdrawn.

7. Liberty to apply on 3 clear days' notice.

Signed: DBucovano

Deputy Registrar

SUPREME COURT OFFICE BRISBANE

Annexure 5

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY	Brisbane
NUMBER	1076/17

Plaintiff: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

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

ORDER

Before: Justice Applegarth

Date: 20 November 2018

Initiating document: Application filed 8 November 2018

THE ORDER OF THE COURT IS THAT:

1. The plaintiff serve the application for direction under section 96 of the *Trusts Act* 1973 (Qld) on unitholders of the Managed Performance Fund (**"MPF"**) in accordance with this order.

2. By 4.00pm on 22 November 2018, the plaintiff is to email to the MPF unitholders a notice informing them that the plaintiff has applied (**"S 96 Application"**) to this Honourable Court for direction under section 96 of the *Trusts Act* 1973 (Qld) to discontinue this proceeding, and that they may view all substantive Court documents upon which the plaintiff intends to rely in support of its S 96

ORDER

Filed on behalf of the plaintiff

Form 59 Rule 661

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference DOB 1109005

SUPREME COURT OFFICE BRISBANE

ME_154988791_2

Application on the web-site the address of which is: http://www.kordamentha.com/creditor-information/australia/109 ("**Website**").

3. Where the plaintiff receives a response to an email that indicates the email was not received and the plaintiff has a postal address for any relevant MPF unitholder or unitholders, the plaintiff is to post the email to the postal address of the MPF unitholder.

4. Service of the S 96 Application be deemed to be effective on each of the MPF unitholders as of 29 November 2018.

5. Before sending the emails referred to in paragraph 2 of this order, the plaintiff is to upload to the Website, copies of:

   (a) the S 96 Application;

   (b) the application for directions about service;

   (c) the affidavit of Jarrod Villani filed 14 November 2018;

   (d) the affidavit of David Thomas O'Brien filed 15 November 2018;

   (e) this order;

   (f) the Statement of Facts to be prepared pursuant to section 96 (1) of the *Trusts Act* 1973 (Qld); and

   (g) any substantive affidavits (including all the exhibits) that the plaintiff intends to reply upon in support of its S 96 Application.

6. Where the plaintiff proposes to rely on further material in support of its S 96 Application, it may serve that material by uploading the material to the Website, sending letters to a postal address to unitholders to whom order 3 applies, and otherwise by email to the unitholders.

7. The plaintiff is not required to take further steps to serve MPF unitholders whose email addresses return permanent undeliverable receipts and for which the plaintiff does not have a postal address.

8. The plaintiff's costs and expenses of and incidental to its application for this order be paid on the indemnity basis out of the MPF.

9. The plaintiff is to serve a copy of this order on LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461).

Signed:

SUPREME COURT OFFICE BRISBANE

DEPUTY REGISTRAR

ME_154988791_2

Annexure 6

ASIC & Business Names

ORGANISATIONAL SEARCH ON KORDAMENTHA PTY LTD

Historical Extract

This information was extracted from ASIC database on 21 November 2018 at 06:15PM

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

100 169 391	**KORDAMENTHA PTY LTD**	**DOCUMENT NO.**
	100 169 391	
ABN	43 100 169 391	
Registered in	VIC	
Date Registered	10-Apr-2002	
Review Date	10-Apr-2019	

Current Organisation Details

Name	KORDAMENTHA PTY LTD	017546648
Name Start	15-Aug-2002	
Status	REGISTERED	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	

Ceased/Former Organisation Details

Details Start	10-Apr-2002	0E7209488
Details End	14-Aug-2002	
Name	KORDA MENTHA & COLLEAGUES PTY LTD	
Name Start	10-Apr-2002	
Status	REGISTERED	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	

Current Registered Office

Address	LEVEL 31, 525 COLLINS STREET, MELBOURNE, VIC, 3000	7E9346260
Start Date	21-Aug-2017	

Ceased/Former Registered Office

Address	LEVEL 24, 333 COLLINS STREET, MELBOURNE, VIC, 3000	018555276
Start Date	23-Oct-2002	
End Date	20-Aug-2017	

Address	LEVEL 10, 350 COLLINS STREET, MELBOURNE, VIC, 3000	0E7209488
Start Date	10-Apr-2002	
End Date	22-Oct-2002	

Current Principal Place of Business

Address	LEVEL 31, 525 COLLINS STREET, MELBOURNE, VIC, 3000	7E9346260
Start Date	14-Aug-2017	

Ceased/Former Principal Place of Business

Address	LEVEL 24, 333 COLLINS STREET, MELBOURNE, VIC, 3000	018555276
Start Date	21-Oct-2002	
End Date	13-Aug-2017	

Address	LEVEL 10, 350 COLLINS STREET, MELBOURNE, VIC, 3000	0E7209488
Start Date	10-Apr-2002	
End Date	20-Oct-2002	

Current Director

Officer Name	MARK ANTHONY KORDA	018866408
ABN	Not available	
Birth Details	25-Mar-1957 MELBOURNE VIC	
Address	'(MARK KORDA)' LEVEL 31, 525S COLLINS STREET, MELBOURNE, VIC, 3000	
Appointment Date	10-Apr-2002	

Officer Name	MARK FRANCIS XAVIER MENTHA	018866409
ABN	Not available	
Birth Details	25-Dec-1959 COBRAM VIC	
Address	'(MARK MENTHA)' LEVEL 31, 525S COLLINS STREET, MELBOURNE, VIC, 3000	
Appointment Date	10-Apr-2002	

Current Secretary

Officer Name	MARK ANTHONY KORDA	018866408
ABN	Not available	
Birth Details	25-Mar-1957 MELBOURNE VIC	
Address	'(MARK KORDA)' LEVEL 31, 525S COLLINS STREET, MELBOURNE, VIC, 3000	
Appointment Date	10-Apr-2002	

Ceased/Former Secretary

Officer Name	CAROLYN ANN ASHBY	7E6597621

ABN	Not available	
Birth Details	24-Jul-1971 PRESTON VIC	
Address	115 WHITTLESEA-KINGLAKE ROAD, KINGLAKE, VIC, 3763	
Appointment Date	15-Dec-2014	
Cease Date	01-May-2017	

Officer Name	CAROLYN ANN ASHBY	1F0476707
ABN	Not available	
Birth Details	24-Jul-1971 PRESTON VIC	
Address	115 WHITTLESEA-KINGLAKE ROAD, KINGLAKE, VIC, 3763	
Appointment Date	13-Dec-2013	
Cease Date	03-Feb-2014	

Officer Name	CAROLYN ANN ASHBY	028382566
ABN	Not available	
Birth Details	24-Jul-1971 MELBOURNE VIC	
Address	115 WHITTLESEA-KINGLAKE ROAD, KINGLAKE, VIC, 3763	
Appointment Date	19-Dec-2012	
Cease Date	30-Jan-2013	

Current Issued Capital

Type	Current	10016939M
Class	ORD ORDINARY	(AR 2002)

Number of Shares/Interests issued	100
Total amount paid/taken to be paid	$100.00
Total amount due and payable	$0.00

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

Current Members

Class	ORD			7E9346260
No. Held	50			
Beneficially Owned	NO	Fully paid	YES	

Name	KMMKIV PTY LTD
ACN	134 280 112
ABN	Not available
Address	LEVEL 31, 525 COLLINS STREET, MELBOURNE, VIC, 3000
Joint Holding	NO

Class	ORD			7E9346260
No. Held	50			
Beneficially Owned	NO	Fully paid	YES	

Name	KMMMIV PTY LTD			
ACN	134 330 386			
ABN	Not available			
Address	LEVEL 31, 525 COLLINS STREET, MELBOURNE, VIC, 3000			
Joint Holding	NO			

Ceased/Former Members

Class	ORD			10016939M
No. Held	50			(AR 2002)
Beneficially Owned	YES	Fully paid	YES	

Name	KORDA, MARK ANTHONY
ACN	Not available
ABN	Not available
Address	'(MARK KORDA)' LEVEL 31, 525S COLLINS STREET, MELBOURNE, VIC, 3000
Joint Holding	NO

Class	ORD			10016939M
No. Held	50			(AR 2002)
Beneficially Owned	YES	Fully paid	YES	

Name	MENTHA, MARK FRANCIS XAVIER
ACN	Not available
ABN	Not available
Address	'(MARK MENTHA)' LEVEL 31, 525S COLLINS STREET, MELBOURNE, VIC, 3000
Joint Holding	NO

Charges

ASIC Charge Number	1569616	Charge status	Satisfied
Date registered	07-Jan-2008	Time registered	16:15:00
Charge type	Fixed		
Date Created	24-Dec-2007		

Chargee **ESANDA FINANCE CORPORATION LIMITED**
004 346 043

Lodged	Form Type	Processed	No. Pages	
18-Feb-2011	312	18-Feb-2011	2	027074425

312 NOTIFICATION OF
312A DISCHARGE

Document Details

Received	Form Type	Processed	No. Pages	Effective	
14-Aug-2017	484	14-Aug-2017	2	14-Aug-2017	7E9346260

484 Change to Company Details

484B	Change of Registered Address				
484C	Change of Principal Place of Business (Address)				
484A2	Change Member Name or Address				
08-May-2017	484	08-May-2017	2	08-May-2017	7E9030130
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
15-Dec-2014	484	15-Dec-2014	2	15-Dec-2014	7E6597621
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
05-Feb-2014	484	06-Feb-2014	4	06-Feb-2014	028875648
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
19-Dec-2013	484	20-Dec-2013	3	20-Dec-2013	1F0476707
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
04-Feb-2013	484	05-Feb-2013	4	05-Feb-2013	028325436
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
19-Dec-2012	484	20-Dec-2012	4	20-Dec-2012	028382566
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
18-Feb-2011	312	18-Feb-2011	2	18-Feb-2011	027074425
312A	Notification of Discharge				
19-Oct-2009	484	20-Oct-2009	5	20-Oct-2009	1F0251266
484N	Change to Company Details Changes to (Members) Share Holdings				
07-Jan-2008	309	07-Jan-2008	6	24-Dec-2007	7E1426252
309A	Notification of Details of a Charge				
28-Jan-2003	304	05-Mar-2003	2	20-Jan-2003	018866409
304C	Notification of Change of Name or Address of Officeholder				
28-Jan-2003	304	05-Mar-2003	2	20-Jan-2003	018866408
304C	Notification of Change of Name or Address of Officeholder				
28-Jan-2003	316	05-Mar-2003	3	23-Jan-2003	10016939M (AR 2002)
316L	Annual Return Annual Return - Proprietary Company				
16-Oct-2002	203	22-Oct-2002	1	21-Oct-2002	018555276
203	Notification Of				
203A	Change of Address				
203G	Change of Address - Principal Place of Business				
15-Aug-2002	205	15-Aug-2002	1	01-Aug-2002	017546648
205A	Notification of Resolution Changing Company Name				
10-Apr-2002	201	10-Apr-2002	3	10-Apr-2002	0E7209488

201C	Application For Registration as a Proprietary Company

Annual Returns

Year	Return Due Date	Extended Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
2002	31-Jan-2003					N

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

Address	GPO BOX 2183, MELBOURNE, VIC, 3001
Start Date	11-May-2011
End Date	14-Sep-2011

*** End of Extract ***

Annexure 7

ASIC & Business Names

ORGANISATIONAL SEARCH ON LM INVESTMENT MANAGEMENT LIMITED

Historical Extract

This information was extracted from ASIC database on 16 November 2018 at 05:05PM

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

077 208 461	**LM INVESTMENT MANAGEMENT LIMITED**	**DOCUMENT NO.**
	077 208 461	
ABN	68 077 208 461	
Registered in	QLD	
Date Registered	31-Jan-1997	
Review Date	31-Jan-2019	

Current Organisation Details

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

Ceased/Former Organisation Details

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

Type	AUSTRALIAN PUBLIC COMPANY	
Class	LIMITED BY SHARES	
Subclass	UNLISTED PUBLIC COMPANY	
Disclosing Entity	NO	

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

Current Registered Office

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

Ceased/Former Registered Office

Address	22 MARKET STREET, BRISBANE, QLD, 4000	7E8301918
Start Date	07-Sep-2016	
End Date	16-Apr-2018	

Address	FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT, BUNDALL, QLD, 4217	7E5105009
Start Date	29-Mar-2013	
End Date	06-Sep-2016	

Address	LEVEL 4 RSL CENTRE, 9 BEACH ROAD, SURFERS PARADISE, QLD, 4217	010807638
Start Date	10-Feb-1997	
End Date	28-Mar-2013	

Address	C/- TOP SHELF COMPANY SERVICES, SUITE 1, 31 CROMBIE AVENUE, BUNDALL, QLD, 4217	011664971
Start Date	31-Jan-1997	
End Date	09-Feb-1997	

Current Principal Place of Business

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

Current Director

Officer Name	EGHARD VAN DER HOVEN	1F0109176
ABN	Not available	

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

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

Ceased/Former Director

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

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

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

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

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

Officer Name	LISA MAREE DARCY	019612584
ABN	Not available	

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

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

Ceased/Former Secretary

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

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

Current Appointed Auditor

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

Ceased/Former Appointed Auditor

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

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

Current Receiver Manager

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

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

Officer Name	ANTHONY NORMAN CONNELLY	7E8533489
ABN	Not available	
Address	MCGRATHNICOL, LEVEL 7, 175 EAGLE STREET, BRISBANE, QLD, 4000	
Appointment Date	11-Jul-2013	

Officer Name	JOSEPH DAVID HAYES	7E9540373
ABN	Not available	
Address	MCGRATHNICOL, LEVEL 12, 20 MARTIN PLACE, SYDNEY, NSW, 2000	
Appointment Date	11-Jul-2013	

Ceased/Former Receiver Manager

Officer Name	GAYLE DICKERSON	7E7499212
ABN	Not available	
Address	LEVEL 17, 383 KENT STREET, SYDNEY, NSW, 2000	
Appointment Date	16-Nov-2015	
Cease Date	22-Mar-2017	

Officer Name	GAYLE DICKERSON	7E7499219
ABN	Not available	
Address	LEVEL 17, 383 KENT STREET, SYDNEY, NSW, 2000	
Appointment Date	16-Nov-2015	
Cease Date	22-Mar-2017	

Current Appointed Liquidator (Creditors Voluntary Winding up)

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

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

Ceased/Former Appointed Liquidator (Creditors Voluntary Winding up)

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

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

Ceased/Former Administrator of a Company Under Administration

Officer Name	JOHN RICHARD PARK	7E5097309

ABN	Not available	
Address	FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT, BUNDALL, QLD, 4217	
Appointment Date	19-Mar-2013	
Cease Date	01-Aug-2013	

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

Current Issued Capital

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

Ceased/Former Issued Capital

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

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

Documents Relating to External Administration and/or Appointment

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

Received	Form Type	Processed	No. Pages	Effective	
28-Aug-2018	524	28-Aug-2018	6	31-Jul-2018	7EAD55571
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
28-Aug-2018	1500	28-Aug-2018	7	31-Jul-2018	7EAD55548
1500	ANNUAL REPORT TO CREDITORS				
10-Aug-2018	524	10-Aug-2018	8	10-Jul-2018	7EAD01030
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				

27-Mar-2018 506 27-Mar-2018 3 27-Mar-2018 8E0036963
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE
OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR
SCHEME ADMINISTRATOR

27-Mar-2018 506 27-Mar-2018 3 27-Mar-2018 8E0036963
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE
OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR
SCHEME ADMINISTRATOR

21-Feb-2018 524 21-Feb-2018 7 31-Jan-2018 7E9924425
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF
CREDITORS'
VOLUNTARY WINDING UP

07-Feb-2018 524 07-Feb-2018 10 10-Jan-2018 7E9879600
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

14-Dec-2017 524 14-Dec-2017 4 15-Nov-2017 7E9748006
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

14-Dec-2017 524 14-Dec-2017 4 15-Nov-2017 7E9748001
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

31-Oct-2017 1500 31-Oct-2017 9 31-Jul-2017 7E9596480
1500 ANNUAL REPORT TO CREDITORS

13-Oct-2017 506 13-Oct-2017 4 13-Oct-2017 7E9540373
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE
OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR
SCHEME ADMINISTRATOR

13-Oct-2017 506 13-Oct-2017 4 13-Oct-2017 7E9540329
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTIFICATION OF CHANGE
OF ADDRESS OF AN EXTERNAL ADMINISTRATOR OR CONTROLLER OR
SCHEME ADMINISTRATOR

07-Aug-2017 524 07-Aug-2017 7 31-Jul-2017 7E9326646
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF
CREDITORS'
VOLUNTARY WINDING UP

04-Aug-2017 524 04-Aug-2017 12 10-Jul-2017 7E9323009
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

31-May-2017 524 31-May-2017 4 15-May-2017 7E9105252
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&

MANAGER

31-May-2017 524 31-May-2017 4 15-May-2017 7E9105153
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

17-May-2017 505 17-May-2017 2 17-May-2017 7E9059324
505R NOTIFICATION OF RESIGNATION OR REMOVAL OF
LIQUIDATOR/PROVISIONAL LIQUIDATOR

23-Mar-2017 505 23-Mar-2017 2 22-Mar-2017 7E8903471
505L NOTIFICATION OF RECEIVER MANAGER CEASING TO ACT

10-Feb-2017 524 10-Feb-2017 13 10-Jan-2017 7E8758304
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

01-Feb-2017 524 01-Feb-2017 8 31-Jan-2017 7E8729133
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF
CREDITORS'
VOLUNTARY WINDING UP

14-Dec-2016 524 14-Dec-2016 5 15-Nov-2016 7E8619169
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER
Altered by 030 037 264

14-Dec-2016 524 14-Dec-2016 5 15-Nov-2016 7E8619155
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER
Altered by 030 037 263

17-Nov-2016 506 17-Nov-2016 3 17-Nov-2016 7E8533489
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF
ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)

19-Oct-2016 1500 19-Oct-2016 7 31-Jul-2016 7E8444965
1500 ANNUAL REPORT TO CREDITORS

31-Aug-2016 506 31-Aug-2016 2 31-Aug-2016 7E8301988
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF
ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)

31-Aug-2016 506 31-Aug-2016 2 31-Aug-2016 7E8301988
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF
ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)

31-Aug-2016 524 31-Aug-2016 8 31-Jul-2016 7E8299488
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF
CREDITORS'
VOLUNTARY WINDING UP

30-Aug-2016 506 30-Aug-2016 2 30-Aug-2016 7E8296775
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF

ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)

30-Aug-2016 506 30-Aug-2016 2 30-Aug-2016 7E8296775
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF
ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)

01-Aug-2016 524 01-Aug-2016 13 10-Jul-2016 7E8208403
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

01-Aug-2016 524 01-Aug-2016 13 10-Jul-2016 7E8208238
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER
Cancelled by 7E8 208 339

14-Jun-2016 524 14-Jun-2016 5 15-May-2016 7E8048351
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

14-Jun-2016 524 14-Jun-2016 5 15-May-2016 7E8048329
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

06-Jun-2016 506 06-Jun-2016 5 06-Jun-2016 7E8028043
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF
ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)

25-Feb-2016 524 25-Feb-2016 12 31-Jan-2016 7E7732426
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF
CREDITORS'
VOLUNTARY WINDING UP

08-Feb-2016 524 08-Feb-2016 14 10-Jan-2016 7E7680279
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER
&
MANAGER

22-Dec-2015 507 22-Dec-2015 19 16-Nov-2015 7E7581574
507G REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO
A
RECEIVER/MANAGER

22-Dec-2015 507 22-Dec-2015 19 16-Nov-2015 7E7581556
507G REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO
A
RECEIVER/MANAGER

21-Dec-2015 507 21-Dec-2015 13 17-Dec-2015 7E7576501
507F REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)

21-Dec-2015 507 21-Dec-2015 13 17-Dec-2015 7E7576493
507F REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)

18-Dec-2015 507 18-Dec-2015 13 11-Dec-2015 7E7569104
507F REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)

18-Dec-2015 507 18-Dec-2015 13 11-Dec-2015 7E7569099
507F REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)

25-Nov-2015 504 11-Dec-2015 4 16-Nov-2015 029448783
504C NOTIFICATION OF APPOINTMENT OF A BY APPOINTEE RE APPT OF CONTROLLER (OTHER THAN A RECEIVER)

25-Nov-2015 504 11-Dec-2015 4 16-Nov-2015 029448782
504C NOTIFICATION OF APPOINTMENT OF A BY APPOINTEE RE APPT OF CONTROLLER (OTHER THAN A RECEIVER)

25-Nov-2015 505 25-Nov-2015 14 16-Nov-2015 7E7499219
505B NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER

25-Nov-2015 505 25-Nov-2015 13 16-Nov-2015 7E7499212
505B NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER

22-Oct-2015 1500 22-Oct-2015 7 31-Jul-2015 7E7405798
1500 ANNUAL REPORT TO CREDITORS

19-Aug-2015 524 19-Aug-2015 13 31-Jul-2015 7E7226815
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS'
VOLUNTARY WINDING UP

10-Aug-2015 524 10-Aug-2015 16 10-Jul-2015 7E7202909
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER &
MANAGER
Altered by 029 296 876

26-Feb-2015 524 26-Feb-2015 11 31-Jan-2015 7E6754368
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS'
VOLUNTARY WINDING UP

10-Feb-2015 524 10-Feb-2015 15 10-Jan-2015 7E6712227
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER &
MANAGER

23-Jan-2015 506 23-Jan-2015 2 23-Jan-2015 7E6673956
506L NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)

30-Oct-2014 1500 30-Oct-2014 9 31-Jul-2014 7E6483251
1500 ANNUAL REPORT TO CREDITORS

25-Aug-2014 524 25-Aug-2014 13 31-Jul-2014 7E6312669
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS'
VOLUNTARY WINDING UP

11-Aug-2014 524 11-Aug-2014 13 10-Jul-2014 7E6278230
524N PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER &
MANAGER

26-Feb-2014	524	26-Feb-2014	13	31-Jan-2014	7E5867779
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
10-Feb-2014	524	10-Feb-2014	12	10-Jan-2014	7E5824920
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
30-Sep-2013	507	30-Sep-2013	62	26-Sep-2013	7E5546426
507F	REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)				
06-Sep-2013	507	06-Sep-2013	21	11-Jul-2013	7E5494220
507G	REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER				
02-Sep-2013	524	02-Sep-2013	14	31-Jul-2013	7E5481607
524Z	PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF FINAL ACCOUNTS OF ADMINISTRATOR				
23-Aug-2013	5011	23-Aug-2013	6	31-Jul-2013	7E5462841
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
13-Aug-2013	5011	13-Aug-2013	43	01-Aug-2013	7E5436451
5011B	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A				
02-Aug-2013	505	02-Aug-2013	2	01-Aug-2013	7E5415403
505J	NOTIFICATION OF APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)				
02-Aug-2013	509D	02-Aug-2013	2	01-Aug-2013	7E5415398
509DA	NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)				
12-Jul-2013	505	12-Jul-2013	2	11-Jul-2013	7E5366580
505B	NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER				
11-Jul-2013	504	25-Jul-2013	4	11-Jul-2013	028593214
504B	NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER				
13-May-2013	5011	13-May-2013	4	26-Apr-2013	7E5211783
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
12-Apr-2013	5011	12-Apr-2013	45	02-Apr-2013	7E5149299
5011B	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A				

Altered by 028 521 226

19-Mar-2013	505	19-Mar-2013	2	19-Mar-2013	7E5097309

505U NOTIFICATION OF APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)

Charges

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

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

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

312 NOTIFICATION OF
312A DISCHARGE

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

Chargee **EQUITY TRUSTEES LIMITED**
004 031 298

Lodged	Form Type	Processed	No. Pages	
07-Oct-2002	312	07-Oct-2002	1	018185734

312 NOTIFICATION OF
312A DISCHARGE

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

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

Lodged	Form Type	Processed	No. Pages	
14-Jan-2005	312	14-Jan-2005	2	020952408

312 NOTIFICATION OF
312A DISCHARGE

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

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

Lodged	Form Type	Processed	No. Pages

15-Oct-2003	312	15-Oct-2003	2	019255683

312 NOTIFICATION OF
312A DISCHARGE

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

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

Lodged	Form Type	Processed	No. Pages	
09-Mar-2007	312	09-Mar-2007	1	023342173

312 NOTIFICATION OF
312A DISCHARGE

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

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

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

312 NOTIFICATION OF
312A DISCHARGE

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

Chargee **ATLAS TRUST COMPANY JERSEY LIMITED**
102 363 637

Chargee **FAIRBAIRN TRUST COMPANY LIMITED**
102 363 655

Chargee **THE CHRISTINA LEE TRUST**
102 363 673

Chargee **CRISP, PATSY FAY**

Chargee **REX, GM**

Chargee **MCGREGOR, MARGOT MG**

Chargee **MERSON, BRIAN**

Chargee **SCALLAN, GARY ANTON LISHER**

Chargee **SCALLAN, ROY**

Chargee **SCALLAN, PAULINE ANN**

Chargee **SAUNDERS, PYLLIS BEULAH**

Lodged	Form Type	Processed	No. Pages

10-Oct-2003	312	10-Oct-2003	1	019255598

312 NOTIFICATION OF
312A DISCHARGE

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

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

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

312 NOTIFICATION OF
312A DISCHARGE

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

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

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

312 NOTIFICATION OF
312A DISCHARGE

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

Chargee **THE TRUST COMPANY (PTAL) LIMITED**
008 412 913

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

312 NOTIFICATION OF
312A DISCHARGE

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

Chargee **THE TRUST COMPANY (PTAL) LIMITED**
008 412 913

Lodged	Form Type	Processed	No. Pages	
24-Feb-2009	312	25-Feb-2009	2	025382062

312 NOTIFICATION OF

312A DISCHARGE

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

Chargee **THE TRUST COMPANY (PTAL) LIMITED**
008 412 913

Lodged	Form Type	Processed	No. Pages	
23-Mar-2009	312	24-Mar-2009	2	025477873

312 NOTIFICATION OF

312A DISCHARGE

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

Chargee **THE TRUST COMPANY (PTAL) LIMITED**
008 412 913

Lodged	Form Type	Processed	No. Pages	
11-Jul-2011	312	25-Jul-2011	2	027651856

312 NOTIFICATION OF

312A DISCHARGE

ASIC Charge Number	1850770	Charge status	Satisfied
Date registered	10-Sep-2009	Time registered	12:39:00
Charge type	Both Fixed & Floating		
Date Created	07-Sep-2009		

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

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

312 NOTIFICATION OF

312A DISCHARGE

Document Details

Received	Form Type	Processed	No. Pages	Effective	
03-Oct-2018	FS67	03-Oct-2018	1	03-Oct-2018	030378956

FS67 Order Suspending Afs Licence

10-Apr-2018	484	10-Apr-2018	2	10-Apr-2018	8E0071298

484B Change to Company Details Change of Registered Address

15-Mar-2018	126	15-Mar-2018	2	15-Mar-2018	501518061

126 Instrument of Exemption From Disclosing Entity Provisions

15-Mar-2018	5120	15-Mar-2018	2	15-Mar-2018	501518062

5120 Notice of Exemption Re Managed Investment Scheme

31-May-2017 902 06-Jun-2017 11 15-Nov-2016 030037263
902 Supplementary Document
Alters 7E8 619 155

31-May-2017 902 06-Jun-2017 11 15-Nov-2016 030037264
902 Supplementary Document
Alters 7E8 619 169

03-Apr-2017 FS67 03-Apr-2017 1 03-Apr-2017 029944919
FS67 Order Suspending Afs Licence

31-Aug-2016 484 31-Aug-2016 2 31-Aug-2016 7E8301918
484B Change to Company Details Change of Registered Address

01-Aug-2016 106 01-Aug-2016 2 01-Aug-2016 7E8208339
106 Notice of Cancellation or Revocation of a Lodged Document
Cancels 7E8 208 238

17-Aug-2015 902 28-Aug-2015 15 10-Jul-2015 029296876
902 Supplementary Document
Alters 7E7 202 909

10-Apr-2015 FS67 10-Apr-2015 1 10-Apr-2015 028731665
FS67 Order Suspending Afs Licence

05-Aug-2013 484 0 05-Aug-2013 1F0478329
484E Change to Company Details Appointment or Cessation of A Company Officeholder
Document under requisition

02-Aug-2013 484 0 02-Aug-2013 028687053
484E Change to Company Details Appointment or Cessation of A Company Officeholder
Document under requisition

08-Jul-2013 484 29-Jul-2013 3 08-Jul-2013 1F0336384
484E Change to Company Details Appointment or Cessation of A Company Officeholder

20-Jun-2013 484 20-Jun-2013 2 20-Jun-2013 7E5304606
484E CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER

15-May-2013 FS90 15-May-2013 1 19-Mar-2013 7E5217844
FS90A NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE

01-May-2013 902 05-Jun-2013 47 02-Apr-2013 028521226
902 SUPPLEMENTARY DOCUMENT
Alters 7E5 149 299

10-Apr-2013 FS67 10-Apr-2013 1 10-Apr-2013 028227992
FS67 ORDER SUSPENDING AFS LICENCE

22-Mar-2013 484 22-Mar-2013 2 22-Mar-2013 7E5105009

484B CHANGE TO COMPANY DETAILS CHANGE OF REGISTERED ADDRESS

28-Feb-2013	5122	01-Mar-2013	1	28-Feb-2013	020500750
5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME				
17-Jan-2013	FS90	17-Jan-2013	1	16-Jan-2013	7E4965053
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
03-Dec-2012	FS90	03-Dec-2012	2	04-Oct-2012	7E4885393
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
28-Nov-2012	878	28-Nov-2012	1	28-Nov-2012	027957724
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
07-Nov-2012	FS88	07-Nov-2012	3	07-Nov-2012	7E4833611
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
02-Nov-2012	878	02-Nov-2012	2	02-Nov-2012	7E4824597
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
02-Nov-2012	FS88	02-Nov-2012	3	02-Nov-2012	7E4824598
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
22-Oct-2012	484	22-Oct-2012	2	22-Oct-2012	7E4797015
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
05-Oct-2012	388	09-Nov-2012	44	30-Jun-2012	028208422
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2012)
07-Sep-2012	484	07-Sep-2012	2	07-Sep-2012	7E4705266
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
07-Sep-2012	FS02	07-Sep-2012	26	07-Sep-2012	0L0310250
FS02	COPY OF AFS LICENCE				
06-Sep-2012	FS90	06-Sep-2012	2	31-Aug-2012	7E4701411
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	18-Jul-2012	7E4678949
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	16-Aug-2012	7E4678937
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	21-Jun-2012	7E4678920
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				

27-Aug-2012	FS90	27-Aug-2012	2	21-Jun-2012	7E4678906
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	18-Apr-2012	7E4678887
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	26-Apr-2012	7E4678876
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	15-Feb-2012	7E4678848
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	05-Dec-2011	7E4678833
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS90	27-Aug-2012	2	04-Oct-2011	7E4677637
FS90A	NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE				
27-Aug-2012	FS88	27-Aug-2012	3	27-Aug-2012	7E4677593
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
09-Aug-2012	484	09-Aug-2012	2	09-Aug-2012	7E4644566
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
13-Jul-2012	484	13-Jul-2012	2	13-Jul-2012	7E4588883
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
05-Jul-2012	878	05-Jul-2012	1	05-Jul-2012	027956096
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
29-Jun-2012	878	29-Jun-2012	2	29-Jun-2012	7E4554303
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
29-Jun-2012	FS88	29-Jun-2012	3	29-Jun-2012	7E4554304
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
15-Jun-2012	FS02	15-Jun-2012	26	15-Jun-2012	0L0310084
FS02	COPY OF AFS LICENCE				
04-Jun-2012	878	04-Jun-2012	1	04-Jun-2012	027954654
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
04-Jun-2012	878	04-Jun-2012	1	04-Jun-2012	027954653
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				

01-Jun-2012	FS88	01-Jun-2012	3	01-Jun-2012	7E4492354
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
01-Jun-2012	878	01-Jun-2012	2	01-Jun-2012	7E4492353
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
01-Jun-2012	878	01-Jun-2012	2	01-Jun-2012	7E4492327
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
01-Jun-2012	FS88	01-Jun-2012	3	01-Jun-2012	7E4492328
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
30-May-2012	878	30-May-2012	1	30-May-2012	027954594
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
28-May-2012	878	28-May-2012	2	28-May-2012	7E4479732
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
28-May-2012	FS88	28-May-2012	3	28-May-2012	7E4479733
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
30-Mar-2012	878	30-Mar-2012	2	30-Mar-2012	7E4369372
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
30-Mar-2012	FS88	30-Mar-2012	3	30-Mar-2012	7E4369373
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
30-Mar-2012	878	30-Mar-2012	2	30-Mar-2012	7E4369336
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
30-Mar-2012	FS88	30-Mar-2012	3	30-Mar-2012	7E4369337
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
29-Mar-2012	484	29-Mar-2012	2	29-Mar-2012	7E4367220
484E	CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
27-Jan-2012	878	27-Jan-2012	2	27-Jan-2012	7E4240824
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
27-Jan-2012	FS88	27-Jan-2012	3	27-Jan-2012	7E4240825
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
27-Jan-2012	878	27-Jan-2012	2	27-Jan-2012	7E4240743
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
27-Jan-2012	FS88	27-Jan-2012	3	27-Jan-2012	7E4240744
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
17-Nov-2011	484	17-Nov-2011	2	17-Nov-2011	7E4097067
484A1	CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS				

15-Nov-2011	878	15-Nov-2011	2	15-Nov-2011	7E4091788
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
15-Nov-2011	FS88	15-Nov-2011	3	15-Nov-2011	7E4091789
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
27-Oct-2011	484	27-Oct-2011	2	27-Oct-2011	7E4048590
484A1	CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS				
30-Sep-2011	388	13-Oct-2011	54	30-Jun-2011	026442958
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2011)
16-Sep-2011	878	16-Sep-2011	2	16-Sep-2011	7E3954068
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
16-Sep-2011	FS88	16-Sep-2011	3	16-Sep-2011	7E3954069
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
01-Sep-2011	878	01-Sep-2011	2	01-Sep-2011	7E3920691
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
01-Sep-2011	FS88	01-Sep-2011	3	01-Sep-2011	7E3920692
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
18-Jul-2011	878	18-Jul-2011	2	18-Jul-2011	7E3819934
878	NOTICE OF AUSTRALIAN OFFER UNDER FOREIGN RECOGNITION SCHEME				
18-Jul-2011	FS88	18-Jul-2011	3	18-Jul-2011	7E3819935
FS88A	PDS IN-USE NOTICE - BY AFS LICENSEE				
20-May-2011	FS89	20-May-2011	1	20-May-2011	7E3682315
FS89A	NOTICE OF CHANGE TO FEES AND CHARGES IN A PDS - BY AFS LICENSEE				
30-Mar-2011	5122	31-Mar-2011	1	30-Mar-2011	020500654
5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME				
30-Mar-2011	FS02	30-Mar-2011	26	30-Mar-2011	0L0309025
FS02	COPY OF AFS LICENCE				
10-Nov-2010	309	11-Nov-2010	33	22-Oct-2010	027320265
309A	NOTIFICATION OF DETAILS OF A CHARGE				
10-Nov-2010	309	11-Nov-2010	33	22-Oct-2010	027320264
309A	NOTIFICATION OF DETAILS OF A CHARGE				
01-Oct-2010	388	08-Nov-2010	63	30-Jun-2010	027353763
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2010)
30-Jul-2010	350	03-Aug-2010	3	30-Jul-2010	026641595
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY				

PROVISIONAL CHARGE
Alters 025 130 504

13-Jul-2010 309 13-Jul-2010 36 01-Jul-2010 025130504
309A NOTIFICATION OF DETAILS OF A CHARGE
Altered by 026 641 595

02-Jul-2010 312 05-Jul-2010 6 02-Jul-2010 026600340
312C NOTIFICATION OF RELEASE OF PROPERTY

02-Jul-2010 312 05-Jul-2010 6 02-Jul-2010 026600337
312C NOTIFICATION OF RELEASE OF PROPERTY

02-Jul-2010 312 05-Jul-2010 3 02-Jul-2010 026600336
312C NOTIFICATION OF RELEASE OF PROPERTY

15-Apr-2010 FS88 15-Apr-2010 3 15-Apr-2010 7E2831759
FS88A PDS IN-USE NOTICE - BY AFS LICENSEE

15-Apr-2010 484 15-Apr-2010 2 15-Apr-2010 7E2830546
484 CHANGE TO COMPANY DETAILS
484O CHANGES TO SHARE STRUCTURE
484G NOTIFICATION OF SHARE ISSUE

25-Mar-2010 484 26-Mar-2010 3 25-Mar-2010 1F0292823
484A1 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS

23-Mar-2010 FS02 23-Mar-2010 25 23-Mar-2010 0L0307664
FS02 COPY OF AFS LICENCE

17-Mar-2010 2205 19-Mar-2010 7 30-Sep-2009 026421806
2205B NOTIFICATION OF RESOLUTION RELATING TO SHARES CONVERT SHARES
INTO LARGER OR SMALLER NUMBER

12-Mar-2010 FS90 12-Mar-2010 2 12-Mar-2010 7E2762221
FS90A NOTICE THAT A PRODUCT IN A PDS HAS CEASED TO BE AVAILABLE - BY AFS LICENSEE

11-Nov-2009 5120 12-Nov-2009 7 11-Nov-2009 020500491
5120 NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME

11-Nov-2009 5120 18-Nov-2009 0 11-Nov-2009 020500486
5120 NOTICE OF EXEMPTION RE MANAGED INVESTMENT SCHEME

28-Oct-2009 350 29-Oct-2009 2 28-Oct-2009 024981690
350 CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE
Alters 025 004 000

30-Sep-2009 388 27-Oct-2009 59 30-Jun-2009 023417762 (FR 2009)
388A FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY

10-Sep-2009 312 11-Sep-2009 3 10-Sep-2009 025003997
312C NOTIFICATION OF RELEASE OF PROPERTY

10-Sep-2009	311	11-Sep-2009	29	04-Sep-2009	025003998

311B NOTIFICATION OF CHANGE TO DETAILS OF CHARGE

10-Sep-2009	309	11-Sep-2009	43	07-Sep-2009	025004000

309A NOTIFICATION OF DETAILS OF A CHARGE

Altered by 024 981 690

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

Annual Returns

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

Financial Reports

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

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

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

*** End of Extract ***

Annexure 8

LM INVESTMENT MANAGEMENT LIMITED
ACN 077 208 461

AND

THE MEMBERS AS THEY ARE CONSTITUTED
FROM TIME TO TIME OF THE
THE LM MANAGED PERFORMANCE FUND

CONSTITUTION

HICKEY LAWYERS
Level 6, Corporate Centre One
Corner Bundall Road and Slatyer Avenue
BUNDALL QLD 4217

PH: (07) 5574 1000
FAX: (07) 5574 1130

1358-1

DEED made this day of December 2001

BETWEEN: LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 a company duly incorporated in Queensland having its registered office at Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise in the State of Queensland (the"Manager")

AND: All those persons who from time to time apply for Units and are accepted as Unitholders of the Scheme ("the Members")

WHEREAS:

A. The Manager wishes to establish a unit trust called The LM Managed Performance Fund. (the "Scheme")

B. By applying to invest in the Scheme through an Offer Document a person will become a Member and be bound by this Constitution.

C. This Constitution is made with the intent that the benefits and obligations hereof will enure not only to the Manager but also to the extent provided herein to every person who is or becomes a Member.

IT IS AGREED:

1. **DICTIONARY AND INTERPRETATION**

1.1 **Dictionary of Terms**

In this Constitution:

"Accounting Standards" means the accounting standards and practices determined under clause 1.3;

"Applicant" anyone who submits an application for Unit/s in the Scheme in accordance with the Offer Document;

"Application Form" an application in writing for Unit/s in the Scheme attached to the Offer Document.

"Application Money" the amount received from an Applicant when lodging the application in respect of the Unit/s applied for in accordance with the Offer Document;

"ASIC" the Australian Securities and Investments Commission;

"Auditor" means the auditor of the Scheme appointed by the Manager.

"Business Day" any day on which trading banks are open for business on the Gold Coast, Queensland;

"Class" means a class of Units, being Units which have the same rights.

"Constitution" this document including any Schedule, Annexure or Amendments to it

"Distributable Income" means as detailed in Clause 10.3;

"Distribution Period" means the period referred to in Clause 11.1

"Dollars", **"A$"** and **"$"** mean the lawful currency of the Commonwealth of Australia;

"Extraordinary Resolution" has the same meaning as in the Law.

"Financial Year" means:

(a) the period from the Commencement Date to midnight on the next 30 June;

(b) each subsequent period of 12 months ending at midnight on each 30 June preceding the Vesting Date; and

(c) the period beginning at midnight on the 30 June immediately preceding the Vesting Date and ending on the Vesting Date;

"Investment Confirmation Statement" means a statement issued by the Manager to a Member pursuant to clause 5.7;

"Issue Price" means the price at which a Unit is issued as detailed in clause 6;

"**Law**" means the Corporations Act 2001;

"**Liabilities**" means at any time the aggregate of the following at that time as calculated by the Manager:

(a) Each liability of the Manager in respect of the Scheme or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.

(b) Each other amount payable out of the Scheme Fund or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.

(c) Other appropriate provisions in accordance with the applicable Accounting Standards.

"**LMA**" means LM Administration Pty Ltd ACN 055 691 426

"**Manager**" means LM Investment Management Limited ACN 077 208 461

"**Member**" in relation to a Unit, means the person registered as the holder of that Unit (including joint holders).

"**Net Fund Value**" at any time, means the value of the Scheme Fund less the liabilities at that time;

"**Offer Document**" means an Offer Document or any Supplementary Offer Document issued by the Manager in relation to the Scheme.

"**Power**" means any right, power, authority, discretion or remedy conferred on the Manager by this Constitution or any applicable law;

"Redemption Price" means the Redemption Price calculated in accordance with clause 7.4;

"**Register**" means the register of Members maintained by the Manager under clause 20;

"**Scheme**" means the trust created by this Deed to be known as The LM Managed Performance Fund;

"Scheme Fund" means assets of the Scheme including but not limited to:

(a) contributions of money or money's worth to the Scheme; and

(b) money borrowed or raised by the Manager for the purposes of the Scheme; and

(c) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a) or (b); and

(d) the income and property derived, directly or indirectly from contributions, money or property referred to in paragraph (a), (b) or (c).

"Tax Act" means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth);

"Unit" means an undivided interest in the Scheme Fund created and issued under this Constitution; and

"Valuation Date" means the date which is the last day of each quarter or any date during each quarter at the Manager's discretion or the date on which the Manager determines there has been a material change in the value of the Scheme Fund.

"Vesting Date" means the date of termination of the Scheme under clause 14.

1.2 **Interpretation**

(a) Reference to:

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) an associate of a person means another person who is associated with that person by application of any of the provisions of Division 2 of Part 1.2 of the *Corporations Act 2001*;

(v) a party includes the party's executors, administrators, successors and permitted assigns;

(vi) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:

- that Statutory Provision as amended or re-enacted from time to time; and
- a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vii) "pay" includes transfer, convey and assign; and

(viii) "income" is not limited to "assessable income" as defined in ITAA.

(b) "Including" and similar expressions are not words of limitation

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(d) Headings are for convenience only and do not form part of this Deed or affect its interpretation.

(e) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(f) A reference to dealing with a Unit includes any subscription, redemption, sale, assignment, encumbrance, or other disposition whether by act or omission and whether affecting the legal or equitable interest in the Unit.

1.3 **Accounting Standards**

In respect of any accounting practice relevant to this Constitution, the following accounting standards apply as if the Scheme were a company:

(a) the accounting standards required under the Law.

(b) if no accounting standard applies under clause 1.3(a), the accounting practice determined by the Manager.

2. ESTABLISHMENT OF SCHEME

2.1 **Appointment of Responsible Entity**

The Manager agrees to act as trustee of the Scheme.

2.2 **Declaration of Trust**

The Manager declares that it holds the Scheme Fund on trust for the Members.

2.3 **Name of Scheme**

The name of the Scheme is The LM Managed Performance Fund or any other name that the Manager may determine from time to time.

2.4 **Initial Issue**

LMA has paid $1.00 to the Manager to establish the Scheme Fund and the Manager has issued LMA or its nominee one Unit in return for that payment.

3. UNITS AND MEMBERS

3.1 **Units**

The beneficial interest in the Scheme Fund will be divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations of Members under this Constitution.

3.2 **Classes**

Different Classes of Units may be issued. If the Manager determines in relation to particular Units, the terms of issue of those Units may eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units.

3.3 **Fractions**

Fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit.

3.4 **Equal value**

At any time, all the Units in a Class are of equal value.

3.5 **Interest**

A Unit confers an interest in the Scheme Fund as a whole. No Unit confers any interest in any particular asset of the Scheme Fund.

3.6 **Consolidation and re-division**

(a) Subject to clause 3.6(b) the Manager may at any time divide the Scheme Fund into any number of Units other than the number into which the Scheme Fund is for the time being divided.

(b) A division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Member to the Units on Issue in the Class.

3.7 **Rights attaching to Units**

(a) A Member holds a Unit subject to the rights and obligations attaching to that Unit.

(b) Each Member agrees not to:

(i) interfere with any rights or powers of the Manager under this Constitution;

(ii) purport to exercise a right in respect of the Scheme Fund or claim any interest in an asset of the Scheme Fund (for example, by lodging a caveat affecting an asset of the Scheme Fund); or

(iii) require an asset of the Scheme Fund to be transferred to the Member.

3.8 **Conditions**

The Manager may impose such conditions on the issue of Units as it determines including that the Member may not give effect to any mortgage, charge, lien, or other encumbrances other than as expressly permitted by the Manager.

4. **BINDING ON ALL PARTIES**

4.1 This Constitution is binding on the Manager and on all Members of the Scheme as they are constituted from time to time.

4.2 By executing the Application Form attached to the Offer Document or any subsequent document the Members as are constituted from time to time agree to be bound by the terms and conditions of this Constitution.

5. **ISSUE OF UNITS**

5.1 **Offer**

The Manager may at any time:

(a) offer Units for subscription or sale; or

(b) invite persons to make offers to subscribe for or buy Units.

5.2 **Form of Application**

Each Application for Units:-

(a) must be made by Application Form attached to an Offer Document or any subsequent document ; and

(b) must be accompanied by Application Moneys as required by any relevant Offer Document or any subsequent document;

5.3 **Acceptance or rejection**

The Manager may, without giving any reason:

(a) accept an Application;

(b) reject an Application; or

(c) reject part of the Application.

5.4 **Uncleared funds**

Units issued against Application Money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not subsequently cleared.

5.5 **Issue of Units**

Units are taken to be issued when:

(a) the Application Money for the Issue Price is received by the Manager; and

(b) the Manager accepts the Application and the Units are entered in the Register, or at such other time as the Manager determines.

5.6 **Number of Units Issued**

The number of Units issued at any time in respect of an Application for Units will be calculated as follows:

(a) by dividing the Application Moneys paid by the applicable Issue Price at that time;

(b) by rounding down to the nearest unit.

5.7 **Investment Confirmation Statement**

The evidence of a Members holding in the Scheme will be the latest extract from the Register as provided from time to time to a Member by the Manager in a Investment Confirmation Statement.

5.8 Notwithstanding clauses 5.1 - 5.6, the Manager may, in its discretion, allot Units on terms and conditions it thinks fit.

6. **ISSUE PRICE**

The issue price of a Unit will be calculated as follows:

$$\frac{(\text{ Net Fund Value })}{(\text{ Number of Units Issued })}$$

calculated on the last Valuation Date prior to the date of issue.

7. **TERM OF INVESTMENT AND REDEMPTION OF UNITS**

7.1 **Minimum Term and Conditions**

The minimum term of the investment and conditions attaching to the redemption of the Units (withdrawal of funds) are detailed in the Offer Document under which

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the Member applied for Units. The minimum term and the minimum notice period for redemption requests may be varied by the Manager from time to time.

7.2 **Notice to Redeem**

Subject to clause 7.1 a Member may request a redemption of all or part of its Units in the manner prescribed by the Offer Document.

7.3 **No Obligation**

(a) Subject to the provisions of clause 7.2 and 7.3(b) the Manager will agree to a Members request for redemption of Units.

(b) The Manager is not obliged to agree to any request for redemption of Units for such periods as it in its sole discretion determines where:-

(i) The Scheme's cash reserves fall below 5% of the value of the Scheme's Issued Units; or

(ii) In any calender month the Manager receives net redemption requests equal to 10% or more of the value of the Scheme's Issued Units; or

(iii) Any other event or circumstances arises which the Manager considers in its absolute discretion may be detrimental to the interests of the Members in the Scheme.

7.4 **Redemption Price**

The Redemption Price of each Unit pursuant to clause 7 shall be calculated as follows:

$$\frac{(\text{ Net Fund Value })}{(\text{ Number of Units issued })}$$

calculated on the last Valuation Date prior to the date of redemption.

7.5 **Redemption by the Manager**

The Manager may redeem any Units at any time without notice of such redemption to the relevant Unit Holders.

7.6 **Payment**

(a) The Manager must pay to the holder of a redeemed Unit so much of the Distributable Income for the Distribution Period as the Manager considers is reasonably attributed to the Unit for the period from the commencement of the then current Distribution Period to the date of the redemption.

(b) The Manager must pay to the holder of the redeemed Units the Redemption Price for each redeemed Unit plus the amount referred to in clause 7.6(a) within one month after the Manager's obligation to pay the Redemption Price under clause 7.7 arises.

7.7 **Cancellation of Units**

Upon the redemption of Units, the Units must be cancelled and the name of the holder must be removed from the Register as a holder of those Units and the Manager's obligation to pay the Redemption Price and the amount referred to in clause 7.6(a) per Unit for each redeemed Unit arises.

8. **TRANSFER OF UNITS**

8.1 **Transferability of Units**

(a) Subject to this Constitution, a Unit may be transferred by instrument in writing, in any form authorised by Law or in any other form that the Manager approves.

(b) A Transferor of Units remains the holder of the Units transferred until the transfer is registered.

8.2 **Registration of Transfers**

(a) The following documents must be lodged for registration at the registered office of the Manager or the location of the Register:

(i) the instrument of transfer; and

(ii) any other information that the Manager may require to establish the transferor's right to transfer the Units.

(b) On compliance with clause 8.2(a), the Manager will, subject to the powers of the Manager to refuse registration, register the transferee as a Member.

8.3 **Where registration may be refused**

Where permitted to do so by Law or this Constitution, the Manager may refuse to register any transfer of Units.

8.4 **Where registration must be refused**

If the transferee is not a Member the Manager must not consent to the registration until the Manager is satisfied that the transferee has read or had the opportunity to read this Constitution and has agreed to be bound by its provisions.

8.5 **Notice of non-registration**

If the Manager declines to register any transfer of Units, the Manager must within 5 Business Days after the transfer was lodged with the Manager give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration.

8.6 **Suspension of transfers**

The registration of transfers of Units may be suspended at any time and for any period as the Manager from time to time decides.

9. **TRANSMISSION OF UNITS**

9.1 Entitlement to Units on death

(a) If a Member dies:

(i) the survivor or survivors, where the Member was a joint holder; and

(ii) the legal personal representatives of the deceased, where the Member was a sole holder,

will be the only persons recognised by the Manager as having any title to the Member's interest in the Units.

(b) The Manager may require evidence of a Member's death and grant of probate as it thinks fit.

(c) This clause does not release the estate of the deceased joint Member from any liability in respect of a Unit that had been jointly held by the Member with other persons.

9.2 **Registration of persons entitled**

(a) Subject to the Bankruptcy Act 1966 and to the production of any information that is properly required by the Manager, a person becoming entitled to a Unit in consequence of the death or bankruptcy (or other legal disability) of a Member may elect to:

(i) be registered personally as a Member; or

(ii) have another person registered as the Member.

(b) All the limitations, restrictions and provisions of this Constitution relating to:

(i) the right to transfer Units;

(ii) the registration of the transfer of Units;

apply to any relevant transfer as if the death or bankruptcy or legal disability of the Unit Member had not occurred and the notice or transfer were a transfer signed by that Member.

9.3 **Distributions and other rights**

(a) If a Member dies or suffers a legal disability, the Member's legal personal representative or the trustee of the Member's estate (as the case may be) is, on the production of all information as is properly required by the Manager, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Scheme or to voting or otherwise) as the Member would have been entitled to if the Member had not died or suffered a legal disability.

(b) Where two or more persons are jointly entitled to any Unit as a result of the death of a Member, they will, for the purposes of this Constitution, be taken to be joint holders of the Unit.

10. DISTRIBUTABLE INCOME

10.1 **Income of the Scheme Fund**

The income of the Scheme Fund for each Financial Year will be determined in accordance with applicable Accounting Standards.

10.2 **Expenses and provisions of the Scheme Fund**

For each Financial Year:

(a) the Expenses of the Scheme Fund will be determined in accordance with the applicable Accounting Standards; and

(b) provisions or other transfers to or from reserves may be made in relation to such items as the Manager considers appropriate in accordance with the applicable Accounting Standards including, but not limited to, provisions for income equalisation.

10.3 **Distributable Income**

The Distributable Income of the Scheme Fund is Income of the Scheme Fund less Expenses and provisions of the Scheme Fund.

11. DISTRIBUTIONS

11.1 **Distribution Period**

The Distribution Period is one calendar month or as otherwise determined by the Manager in its absolute discretion.

11.2 **Distributions**

(a) The Manager must distribute the Distributable Income relating to each Distribution Period within 7 days of the end of each Distribution Period.

(b) For each Distribution Period a Member is entitled to that proportion of the Distributable Income as is equal to the number of Units held by the Member on the last day of the Distribution Period divided by the number of Units on the Register on that date.

11.3 **Present entitlement**

Unless otherwise agreed by the Manager and subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the Members on the Register will be presently entitled to the Distributable Income of the Scheme Fund on the last day of each Distribution Period.

11.4 **Capital distributions**

The Manager may distribute capital of the Scheme Fund to the Members. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Member on a date determined by the Manager divided by the number of Units on the Register on that date. A distribution may be in cash or by way of bonus Units.

11.5 **Grossed up Tax amounts**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Members in proportion to the Distributable Income for a Distribution Period as the case may be, which is referable to a dividend or other income to which they are presently entitled.

11.6 **Reinvestment of Distributable Income**

(a) The Manager may invite Members to reinvest any or all of their distributable income entitlement by way of application for additional Units in the Scheme.

(b) The terms of any such offer of reinvestment will be determined by the Manager in its discretion and may be withdrawn or varied by the Manager at any time.

(c) The Manager may determine that unless the Member specifically directs otherwise they will be deemed to have accepted the reinvestment offer.

(d) The Units issued as a result of an offer to reinvest will be deemed to have been issued on the first day of the next Distribution Period immediately following the Distribution Period in respect of which the distributable income being reinvested was payable.

12. **NATURE OF MANAGER POWERS**

12.1 The Manager has all the powers:

(a) of a natural person to invest and borrow on security of the Scheme Fund;

(b) in respect of the Scheme and the Scheme Fund that it is possible under the Law to confer on a Manager and on a Trustee;

(c) as though it were the absolute owner of the Scheme Fund and acting in its personal capacity; or

(d) necessary for fulfilling its obligations under this Constitution and under the Law.

12.2 Without limiting the generality of clause 12. 1, the Manager may:

(a) purchase, sell, lease, improve, encumber, sub-divide, hire, licence, exchange, develop, grant leases and licenses and enter into any other agreement or dealing including the surrender or termination of any dealing in relation to any property forming or which is to form part of the Scheme Fund, on any terms the Manager thinks fit;

(b) repair, renovate, demolish, build or alter any improvement to any property forming part of the Scheme Fund;

(c) determine any rental to be paid for the use of any property;

(d) exercise all powers and obligations in relation to any investment forming part of the Scheme Fund, including but not limited to:

(i) attending and voting at meetings;

(ii) appointing proxies for meetings;

(iii) taking up a rights issue; and

(iv) paying calls under any contract.

(e) exercise any Power and perform all obligations in relation to any property forming part of the Scheme Fund as if the Manager is the beneficial owner of the property;

(f) accept a conveyance or transfer of any property as part of the Scheme Fund;

(g) enter into possession of and manage any property interests of the Scheme Fund.

12.3 Without limiting the generality of clause 12.1, the Manager may:

(a) invest in any "securities" as defined in Section 92(1) of the Law:

(i) whether or not a trustee could properly acquire the security; and

(ii) on personal credit, with or without security;

(b) invest any money on loan to, or on deposit with, any person (including a Member or Related Corporation):

(i) with or without interest;

(ii) with or without security; and

(iii) repayable on any terms the Manager thinks fit;

(c) enter into swap transactions, futures contracts, forward rate agreements, foreign exchange agreements;

(d) grant or take up an option to acquire property; and

invest in or make a loan to any managed investment fund or scheme, including any managed investment fund or scheme that the Manager is the responsible entity of.

12.4 The Manager may invest any money required to be invested on loan to or on deposit with any Member or Related Corporation on any terms the Manager thinks fit.

12.5 The Manager may:

(a) exchange any investment for any other investment authorised under this Constitution;

(b) vary the terms of any investment or the security given for that investment; and

(c) surrender any investments.

12.6 The Manager may:

(a) use the income or capital of the Scheme Fund to carry on any trade or business, either as a sole trader or in partnership;

(b) engage any managers and other employees;

(c) enter into any arrangement for sharing profits, co-operation, joint venture or reciprocal concessions;

(d) act in relation to the trade or business as if the Manager were beneficially entitled to it;

(e) set aside an amount out of the Scheme Fund which, in the Manager's opinion, is sufficient to meet any debt or obligation;

(f) open and operate an account with any financial institution;

(g) sign, draw, endorse or execute in a manner determined by the Manager:

(i) any cheque or other negotiable or transferable instrument; and

(ii) any receipt for money paid to the Manager;

(h) borrow or raise money with or without giving security over the Scheme Fund or any part of it on any terms including any rate of interest and any fees and expenses as the Manager thinks fit;

(i) make, draw, accept, endorse, discount, sell, purchase, negotiate and otherwise deal with any promissary note, bill of exchange, commercial bill, bill of lading, warrant, debenture, certificate of deposit or other transferable document or financial instrument for any purpose the Manager thinks fit;

(j) encumber the Scheme Fund in favour of any person in relation to any obligation of the Manager on behalf of the Scheme;

(k) to the extent permitted by law:

(i) guarantee the payment of money or the performance of any other obligation; and

(ii) grant any indemnity in respect of any obligation;

to any person whether or not in relation to the obligations of a Member or for the benefit of the Scheme.

12.7 Without limiting the generality of clause 12.1, the Manager may:

(a) make any claim or demand or take any action on behalf of a Member of the Scheme;

(b) refer any dispute affecting the assets of the Scheme to arbitration, other than a dispute involving a Member; and

(c) settle on any terms any matter which arises in relation to the Scheme (if the Manager settles any matter the settlement is binding on all persons interested in the Scheme, including all Members).

12.8 To the extent allowed by law:

(a) any restriction or prohibition imposed upon the Manager in relation to the investment from time to time of the Scheme Fund or any part thereof is hereby excluded from the obligations imposed.

(b) without derogating from the generality of the foregoing this exclusion specifically applies to any "Prudent Person Rule" or the like which may be implied by any future enactment of legislation.

12.9 To the extent allowed by law:

(a) the Manager may borrow or raise money with or without security over the Scheme Fund or any part of it on any terms, including any rate of interest and any fees and expenses as the Manager thinks fit;

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

12.10 The Manager may use Scheme Funds to assist it with its working capital requirements.

13. **COMPLAINTS PROCEDURES**

13.1 Complaints may be made in writing or by telephone to the Compliance Officer of the Manager.

13.2 If, after the expiry of thirty days from the date on which the Member first notified the Compliance Officer of its complaint the Member feels that their Complaint has not been satisfactorily resolved the Compliance Officer will refer the complaint to the Board of the Manager for resolution.

14 **TERM OF SCHEME**

The Scheme begins on the Commencement Date and is to be wound up on the earlier to occur of:

14.1 the date which is eighty years from the Commencement Date; and

14.2 any earlier date which the Manager, in its absolute discretion may appoint as the Vesting Date.

The Scheme shall only be wound up in accordance with the Law and this Constitution.

15. **WINDING UP THE SCHEME**

15.1 If the manager wishes to wind up the Scheme pursuant to clause 14, the Manager must give to the Members of the Scheme a notice in writing explaining the proposal to wind up the Scheme.

15.2 The Manager shall not accept any further applications for Units in the Scheme or make any further loans from the Scheme Fund at a time after the Manager has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.

15.3 The Manager shall manage the Scheme until such time as all winding up procedures have been completed.

15.4 Subject to the provisions of this clause 15 upon winding up of the Scheme the Manager must:

(a) realise the assets of the Scheme Fund;

(b) pay all liabilities of the Manager in its capacity as Trustee of the Scheme including, but not limited to, liabilities owed to any Member who is a creditor of the Scheme;

(c) subject to any special rights or restrictions attached to any Unit, distribute the net proceeds of realisation among the Members in the same proportion specified in Clause 11.4;

(d) The Members must pay the costs and expenses of a distribution of assets under clause 15.4(c) in the same proportion specified in Clause 11.4.

(e) The Manager may postpone the realisation of the Scheme Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.

(f) The Manager may retain for as long as it thinks fit any part of the Scheme Fund which in its opinion may be required to meet any actual or contingent liability of the Scheme.

(g) The Manager must distribute among the Members in accordance with clause 15.6 anything retained under clause 15.4(f) which is subsequently not required.

15.5 If on completion of the winding up of a registered Scheme, the Manager or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property the Manager or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property to the ASIC to be dealt with pursuant to Part 9.7 of the Law.

15.6 **Capital Guarantee**

(a) Peter Charles Drake has provided a Guarantee to the Manager in its capacity as Trustee for the Members pursuant to which he personally guarantees the payment of each Member's entitlements calculated to the Vesting Date in the event of any shortfall in the assets of the Scheme if the Scheme is wound up. This Guarantee will only apply to Members who are registered as Unit Holders in the Register on the date on which the Scheme is wound up and Peter Charles Drake will only be required to make payment of any claims which are made under the Guarantee on a date 12 months from the Vesting Date of the Scheme.

(b) LM Investment Management Limited ACN 077 208 461 guarantees the payment of each Members entitlements calculated to the Vesting Date in the event of any shortfall in the assets of the Scheme if the Scheme is wound up. This guarantee will only apply to Members who are registered as Unit Holders in the Register on the date on which the Scheme is wound up. LM Investment Management Limited ACN 077 208 461 will ensure that all amounts which are guaranteed under this clause are paid to qualifying Members within 12 months from the Vesting Date of the Scheme.

16. **VALUE OF THE SCHEME FUND**

16.1 **Valuation of the Scheme Fund**

The Manager may cause the Scheme Fund to be valued at any time in accordance with the Valuation Policy of the Manager.

17. **FEES, TAXES, COSTS AND EXPENSES**

17.1 **Taxes:**

The Manager may use the Scheme Fund to pay any Tax or other obligation, liability or expense required by any applicable law in relation to:

(a) this Constitution;

(b) any amount incurred or payable by the Manager;

(c) a gift or settlement effected by this Constitution;

(d) the exercise by the Manager of any Power; or

(e) money or investments held by or on behalf of the Manager under this Constitution.

17.2 **Payment of Debts:**

The Manager may set aside any money from the Scheme Fund which, in the Manager's opinion, is sufficient to meet any present or future obligation of the Scheme Fund.

17.3 **Fees:**

The Manager is entitled to be paid fees from the Scheme Fund in the amounts as detailed in the Offer Document or in any Offer Document and in relation to the performance of its duties as detailed in this Constitution and the Law.

17.4 The Manager shall be entitled to fees for the following duties:

(a) In relation to the subscription and redemption of units;

(b) In relation to the transfer or transmission of Units;

(c) In relation to arranging any finance facility in connection with the purchase of any asset of the Scheme;

(d) In relation to due diligence enquiries generally;

(e) In relation to the sale of real estate or assets of the Scheme Fund;

(f) In relation to the promotion and management of the Scheme. This fee is payable monthly;

(g) In relation to the winding-up of the Scheme;

(h) In relation to the performance of its duties and obligations pursuant to the Law and this Constitution.

17.5 The Manager is entitled to be paid a success fee calculated in relation to a Distribution Period or Financial Year as the difference between the net profit of the Scheme and the net distribution or forecast to be paid to Members by the Manager during that Distribution Period or Financial Year.

17.6 **Costs and Expenses**

The Manager shall be indemnified out of Scheme Property for liabilities or expenses incurred in relation to the performance of its duties; including:

(a) Auditor's fees;

(b) Legal fees and outgoings

(c) Barrister/QC - Legal Counsel Fees;

(d) Fees and expenses incurred in respect of any service providers and/or employees of the Scheme;

(e) All costs, charges and expenses incurred in connection with the acquisition, custody, transfer or disposal of any asset of the Scheme Fund or investments (for example commissions, brokerage, legal fees, bank charges and stamp duty);

(f) Independent expert's or consultant's fees including but not limited to marketing agents, property specialists, surveyors, quantity surveyors, town planners, engineers;

(g) Property report/property consultants fees;

(h) Real estate agent's sales commissions;

(i) Costs of maintenance of any asset of the Scheme Fund;

(j) Outstanding accounts relating to any asset of the Scheme_Fund such as council rates;

(k) Locksmith for changing locks of any asset of the Scheme_Fund as appropriate;

(l) Insurance (property and contents);

(m) Removalists for removal of borrower's property as appropriate;

(n) Security guards to attend any asset of the Scheme Fund as appropriate;

(o) Building and/or property inspection report fees - i.e. building, town planning experts and the like;

(p) all ASIC charges;

(q) all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;

(r) all costs and expenses incurred in producing Offer Documents and Supplementary Offer Documents or any other disclosure document required by the Law;

(s) reasonable costs incurred in protecting or preserving all assets offered as security;

(t) all liability, loss, cost, expense or damage arising from the proper performance of its duties in connection with the Scheme performed by the Manager or by any agent appointed pursuant to the Law;

(u) any liability, loss, cost, expense or damage arising from the lawful exercise by the Manager and the Custodian of their rights under the Power of Attorney contained in clause 19;

(v) Fees and expenses of any agent or delegate appointed by the Manager;

(w) Bank and government duties and charges on the operation of bank accounts;

(x) Costs, charges and expenses incurred in connection with borrowing money on behalf of the Scheme under the Constitution;

(y) Insurances directly or indirectly protecting the Scheme Fund;

(z) Fees and charges of any regulatory or statutory authority;

(aa) Taxes in respect of the Scheme but not Taxes of the Manager [save and except any goods and services or similar tax ("GST")] which are payable by the Manager on its own account;

(bb) Costs of printing and postage of cheques, advices, reports, notices and other documents produced during the management of the Scheme;

(cc) Expenses incurred in connection with maintaining accounting records and registers of the Scheme and of the Scheme Auditors;

(dd) Costs and disbursements incurred in the preparation and lodgement of returns under the Law, Tax Act or any other laws for the Scheme;

(ee) Costs of convening and holding meetings of Members;

(ff) Costs and disbursements incurred by or on behalf of the Manager in connection with its retirement and the appointment of a substitute;

(gg) Costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings;

(hh) Costs of any insurance premiums insuring against the costs of legal proceedings (whether successful or not);

(ii) Costs of advertising the availability of funds for lending;

(jj) Brokerage and underwriting fees;

(kk) If and when the Manager becomes responsible to pay any GST in respect of any services provided to the Scheme or any payments in respect of GST to be made by the Members or the Manager in respect of the Scheme or under the terms of this Constitution then the Manager shall be entitled to be indemnified in respect of such GST from the Scheme Fund;

17.7 In the event that the Manager has not performed its duties, the lack of entitlement to payment of fees pursuant to clause 17.3 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause shall be interpreted to mean that the Manager is not entitled to be paid fees and expenses for work properly performed.

17.8 In the event of any dispute regarding the payment of fees and expenses, the Manager shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the Manager shall be repaid forthwith upon the identification of the overpayment.

17.9 The Manager is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution.

17.10 All fees payable to the Manager include any goods and services tax.

18. INDEMNITY AND LIABILITY

18.1 The following clauses apply to the extent permitted by law:

(a) The Manager is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:

(i) otherwise than in accordance with this Constitution and its duties; and

(ii) without a belief held in good faith that it was acting in accordance with this Constitution or its duties.

In any case the liability of the Manager in relation to the Scheme is limited to the Scheme Property, from which the Manager is entitled to be, and is in fact, indemnified.

(b) In particular, the Manager is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

(i) it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Manager;

(ii) it acted as required by Law; or

(iii) it relied in good faith upon any signature, marking or documents.

(c) In addition to any indemnity under any Law, the Manager has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the Manager has acted negligently, fraudulently or in breach of trust.

(d) The Manager is not liable to account to any Member for any payments made by the Manager in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia for taxes or other statutory charges.

19. POWERS OF ATTORNEY

19.1 Each Member by execution of the Application Form or the transfer by which he/she/it acquires Units in the Scheme appoints the Manager and any director officer attorney or substitute nominated by the Manager severally for this purpose as its attorney and agent with the right:

(a) at any time to:

(i) sign any document in relation to any subscription and redemption agreement;

(ii) sign any document in relation to the transfer or transmission of Units;

(iii) sign any variation of this Constitution;

(iv) sign any document required by ASIC to be executed by a Member in respect of the Scheme.

(b) at the request in writing of the Manager the Member must execute separate Powers of Attorney in a form reasonably required by the Manager appointing the Manager as its attorney for the purpose of this clause.

(c) any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty;

19.2 Each Member indemnifies and shall keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under the Power of Attorney.

20. THE REGISTER

20.1 Keeping registers

The Manager must establish and keep a register of Members, and if applicable, the other registers required by the Law.

20.2 Information In registers

To the extent applicable, the registers must be kept in accordance with, and contain the information required by the Law. Otherwise, the Manager may decide what information is included in the registers. If the Law applies, the Manager has the powers conferred under the Law in relation to the register.

20.3 Changes

Every Member must promptly notify the Manager of any change of name or address and the Manager must alter the relevant register accordingly.

21. NOTICES

21.1. A notice or other communication connected with this Constitution has no legal effect unless it is in writing.

21.2. Notices may be:-

(i) sent by post, postage prepaid to the address for the Member in the Manager's register of interests; or

(ii) sent by facsimile to the facsimile number of the Member; or

(iii) sent by email to the email address for the Member in the Managers register of interests; or

(iv) otherwise delivered at the address of the addressee of the Member as is subsequently notified.

21.3 A Notice must be treated as given and received:

(i) if sent by the Manager;

a by post, on the second business day (at the address to which it is posted) after posting;

b by facsimile before 5.00 pm on a business day at the date of receipt, on the day it is sent and otherwise on the next Business Day at the place of delivery;

c by email on the date the sending machine indicates that the notice or other document was sent.

(ii) If sent by the Member by post , facsimile or email, upon receipt of such notice by the Manager.

21.4 A Notice sent or delivered by the Manager in a manner provided by clause 21.2 must be treated as validly given to and received by the member even if:

(i) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(ii)the notice is returned unclaimed.

21.5 Any Notice by a party may be given and may be signed by the solicitor for the party.

21.6 Any Notice to a Member may be given to the solicitor for the Member by any of the means listed in clause 21.2 to the solicitor's business address , email address or facsimile number as the case may be.

22. LIABILITY OF MEMBERS

22.1 The liability of each Member, whether actual, contingent or prospective, is limited to the unpaid Issue Price of his/her/its Units except if the Manager and the relevant Member agree otherwise in writing that the liability of a Member may be further limited or waived.

22.2 A creditor or other person claiming against the Manager as trustee of the Scheme has no recourse against a Member and no Member is personally liable to indemnify the Manager, any creditor of the Manager or any person claiming against the Manager in respect of any actual, contingent, prospective or other liability of the Manager in relation to the Scheme Fund.

23. APPOINTMENT AND REMOVAL OF TRUSTEE

23.1 **Retirement or Resignation of Trustee**

(a) The Manager may retire upon giving 3 months' notice to the Members of its desire to do so.

(b) The Manager must resign:

(i) if it is removed as provided by law;

(ii) if (being a corporation) it becomes an externally-administered body corporate as defined in the *Corporations Act 2001;* or

(iii) if (being a natural person) he or she is found to be of unsound mind or becomes bankrupt.

23.2 **Unit Holders May Appoint New Trustee**

The holders of not less than 50% of the Units on Issue may by notice in writing appoint a new Manager to fill a vacancy in the office of Manager.

23.3 **Transfer of Records**

Upon the resignation, retirement, or removal of the Manager, the Manager must hand to the new Trustee all books, records, documents and other matters pertaining to the Scheme and at the expense of the Scheme do all things necessary to transfer legal title and the assets of the Scheme to the new Trustee.

23.4 **Deed of Adoption by New Trustee**

The new Trustee appointed under clause 23.2 must execute a deed in a form approved by the holders of not less than 50% of the Units on Issue by which the new Trustee undertakes to the Members to carry out the obligations of the Trustee under this Deed.

24. CHANGING THE CONSTITUTION

24.1 This Constitution may be modified or repealed or replaced with a new Constitution by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights or is deemed necessary to conduct the affairs of the Scheme.

24.2 The Manager must send a copy of the Scheme's Constitution to a Member of the Scheme within seven (7) days if the Member:

(a) asks the Manager in writing for the copy; and

(b) pays any fee (up to the prescribed amount) required by the Manager

25. ACCOUNTS

25.1 The accounts of the Scheme must be kept and prepared by the Manager in accordance with applicable Accounting Standards.

25.2 The Manager must prepare and make available to Members the financial statements of the Scheme for each financial year.

25.3 The Manager may make the financial statements available to Members by either publishing the statements on the Manager's internet site, emailing the statements to individual Members or by sending the statements to individual Members by facsimile or prepaid post.

25.4 The Manager is not obliged to have the financial statements audited.

26. OTHER ACTIVITIES AND OBLIGATIONS OF THE MANAGER

26.1 **Other activities**

Subject to the Law, nothing in this Constitution restricts the Manager (or its associates) from:

(a) dealing with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity);

(b) being interested in any contract or transaction with itself (as manager, trustee or responsible entity of another trust or managed investment scheme or in another capacity) or with any Member or retaining for its own benefit profits or benefits derived from any such contract or transaction; or

(c) acting in the same or similar capacity in relation to any other trust or managed investment scheme.

26.2 Other Obligations All obligations of the Manager which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

27. GOVERNING LAW

This Deed is governed by the Laws of the State of Queensland.

EXECUTED AS A DEED:

GIVEN under the Common Seal of LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 by authority of a resolution of the Board of Directors under the hands of a Director and the Secretary who certify that they are the proper officers to affix this seal	)))))))	.... Director .... Director/Secretary

LM INVESTMENT MANAGEMENT LIMITED A.C.N. 077 208 461 THE COMMON SEAL OF

LM INVESTMENT MANAGEMENT LIMITED
ACN 077 208 461

AND

THE MEMBERS AS THEY ARE CONSTITUTED
FROM TIME TO TIME OF THE
THE LM MANAGED PERFORMANCE FUND

DEED OF VARIATION
TO THE CONSTITUTION
DATED 4 DECEMBER 2001

Superseded

474801/S1

Queensland Duty Not Payable
Signed: 22/11/02

DEED of Variation made this 11th day of November 2002

BETWEEN: LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 a company duly incorporated in Queensland having its registered office at Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise in the State of Queensland (the"Manager")

AND: All those persons who from time to time apply for Units and are accepted as Unitholders of the Scheme ("the Members")

WHEREAS:

A. By Deed dated 4 December 2001 the Manager established a unit trust called The LM Managed Performance Fund. (the "Scheme").

B. The Deed dated 4 December 2001 is varied by deleting all parts of the Deed other than the parties and replacing it with the terms set out in this Deed of Variation.

C. This Constitution is made with the intent that the benefits and obligations hereof will enure not only to the Manager but also to the extent provided herein to every person who is or becomes a Member.

IT IS AGREED:

1. **DICTIONARY AND INTERPRETATION**

1.1 **Dictionary of Terms**

In this Constitution:

"Accounting Standards" means the accounting standards and practices determined under clause 1.3;

"Applicant" anyone who submits an application for Unit/s in the Scheme in accordance with the Offer Document;

"Application Form" an application in writing for Unit/s in the Scheme attached to the Offer Document.

"Application Money" the amount received from an Applicant when lodging the application in respect of the Unit/s applied for in accordance with the Offer Document;

"ASIC" the Australian Securities and Investments Commission;

"Auditor" means the auditor of the Scheme appointed by the Manager.

"Authorised Investors" means:

(a) Investors who invest a minimum amount of $500,000.00 in the Scheme; or

(b) Investors who invest less than $500,000.00 in the Scheme and provide a certificate from their accountant confirming that their net assets are not less than $250,000.00 or that their net income exceeds $250,000.00 per annum for each of the last two financial years; or

(c) Offers made through a licenced dealer who certifies that the Investor has sufficient previous experience relating to investments in securities; or

(d) Certain professional Investors such as financial corporations.

"Business Day" any day on which trading banks are open for business on the Gold Coast, Queensland;

"Class" means a class of Units, being Units which have the same rights.

"Constitution" this document including any Schedule, Annexure or Amendments to it

"Distributable Income" means as detailed in Clause 10.3;

"Distribution Period" means the period referred to in Clause 11.1

"Dollars", "A$"** and **"$" mean the lawful currency of the Commonwealth of Australia;

"Extraordinary Resolution" has the same meaning as in the Law.

"Financial Year" means:

(a) the period from the Commencement Date to midnight on the next 30 June;

(b) each subsequent period of 12 months ending at midnight on each 30 June preceding the Vesting Date; and

(c) the period beginning at midnight on the 30 June immediately preceding the Vesting Date and ending on the Vesting Date;

"Investment Confirmation Statement" means a statement issued by the Manager to a Member pursuant to clause 5.7;

"Issue Price" means the price at which a Unit is issued as detailed in clause 6;

"Law" means the Corporations Act 2001;

"Liabilities" means at any time the aggregate of the following at that time as calculated by the Manager:

(a) Each liability of the Manager in respect of the Scheme or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.

(b) Each other amount payable out of the Scheme Fund or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability.

(c) Other appropriate provisions in accordance with the applicable Accounting Standards.

"**LMM**" means Law Mortgage Management Pty Ltd ACN 055 691 426;

"**Manager**" means LM Investment Management Limited ACN 077 208 461

"**Member**" in relation to a Unit, means the person registered as the holder of that Unit (including joint holders).

"**Offer Document**" means an Offer Document or any Supplementary Offer Document issued by the Manager in relation to the Scheme.

"**Power**" means any right, power, authority, discretion or remedy conferred on the Manager by this Constitution or any applicable law;

"**Register**" means the register of Members maintained by the Manager under clause 20;

"**Scheme**" means the trust created by this Deed to be known as The LM Managed Performance Fund;

"**Scheme Fund**" means assets of the Scheme including but not limited to:

(a) contributions of money or money's worth to the Scheme; and

(b) money borrowed or raised by the Manager for the purposes of the Scheme; and

(c) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a) or (b); and

(d) the income and property derived, directly or indirectly from contributions, money or property referred to in paragraph (a), (b) or (c).

"**Special Resolution**" has the same meaning as in the Law.

"**Tax Act**" means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth);

"**Transaction Fee**" means:-

(a) when calculating the issue price of a Unit, the Manager's estimate of the total Expenses related to issuing the Units of the Scheme limited to a maximum of 3% of the value of the Units applied for in any one transaction;

(excluding the actual cost of the Units of the Scheme); or

(b) to the extent permitted by the Law if applicable a lesser amount (including zero) determined by the Manager.

"**Unit**" means an undivided interest in the Scheme Fund created and issued under this Constitution; and

"**Vesting Date**" means the date of termination of the Scheme under clause 14.

1.2 **Interpretation**

(a) Reference to:

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) an associate of a person means another person who is associated with that person by application of any of the provisions of Division 2 of Part 1.2 of the *Corporations Law*;

(v) a party includes the party's executors, administrators, successors and permitted assigns;

(vi) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:

- that Statutory Provision as amended or re-enacted from time to time; and
- a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vii) "pay" includes transfer, convey and assign; and

(viii) "income" is not limited to "assessable income" as defined in ITAA.

(b) "Including" and similar expressions are not words of limitation

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(d) Headings are for convenience only and do not form part of this Deed or affect its interpretation.

(e) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(f) A reference to dealing with a Unit includes any subscription, redemption, sale, assignment, encumbrance, or other disposition whether by act or omission and whether affecting the legal or equitable interest in the Unit.

1.3 **Accounting Standards**

In respect of any accounting practice relevant to this Constitution, the following accounting standards apply as if the Scheme were a company:

(1) the accounting standards required under the Law.

(2) if no accounting standard applies under clause 1.3(a), the accounting practice determined by the Manager.

2. ESTABLISHMENT OF SCHEME

2.1 **Appointment of Responsible Entity**

The Manager agrees to act as trustee of the Scheme.

2.2 **Declaration of Trust**

The Manager declares that it holds the Scheme Fund on trust for the Members.

2.3 **Name of Scheme**

The name of the Scheme is The LM Managed Performance Fund or any other name that the Manager may determine from time to time.

2.2 **Initial Issue**

The Scheme commences at such time when LMM or its nominee pays $1.00 to the Manager to establish the Scheme Fund. The Manager must issue to LMM or its nominee 1 Unit in return for that payment.

3. UNITS AND MEMBERS

3.1 **Units**

The beneficial interest in the Scheme Fund will be divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations of Members under this Constitution.

3.2 **Classes**

Different Classes of Units may be issued. If the Manager determines in relation to particular Units, the terms of issue of those Units may eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units.

3.3 **Fractions**

Fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit.

3.4 **Equal value**

At any time, all the Units in a Class are of equal value.

3.5 **Interest**

A Unit confers an interest in the Scheme Fund as a whole. No Unit confers any interest in any particular asset of the Scheme Fund.

3.6 **Consolidation and re-division**

(1) Subject to clause 3.6(b) the Manager may at any time divide the Scheme Fund into any number of Units other than the number into which the Scheme Fund is for the time being divided.

(2) A division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Member to the Units on Issue in the Class.

3.7 **Rights attaching to Units**

(1) A Member holds a Unit subject to the rights and obligations attaching to that Unit.

(2) Each Member agrees not to:

(1) interfere with any rights or powers of the Manager under this Constitution;

(2) purport to exercise a right in respect of the Scheme Fund or claim any interest in an asset of the Scheme Fund (for example, by lodging a caveat affecting an asset of the Scheme Fund); or

(3) require an asset of the Scheme Fund to be transferred to the Member.

3.8 **Conditions**

The Manager may impose such conditions on the issue of Units as it determines including that the Member may not give effect to any mortgage, charge, lien, or other encumbrances other than as expressly permitted by the Manager.

4. **BINDING ON ALL PARTIES**

4.1 This Constitution is binding on the Manager and on all Members of the Scheme as they are constituted from time to time.

4.1 By executing the Application Form attached to the Offer Document the Members as are constituted from time to time agree to be bound by the terms and conditions of this Constitution.

5. **ISSUE OF UNITS**

5.1 **Offer**

The Manager may at any time:

(1) offer Units for subscription or sale; or

(2) invite persons to make offers to subscribe for or buy Units.

5.2 **Form of Application**

Each Application for Units:-

(1) must be made by Application Form attached to an Offer Document; and

(2) must be accompanied by Application Moneys as required by any relevant Offer Document;

(3) may only made by an Authorised Investor.

5.3 **Acceptance or rejection**

The Manager may, without giving any reason:

(1) accept an Application;

(2) reject an Application; or

(3) reject part of the Application.

5.4 **Uncleared funds**

Units issued against Application Money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not subsequently cleared.

5.5 **Issue of Units**

Units are taken to be issued when:

(1) the Application Money for the Issue Price is received by the Manager; and

(2) the Manager accepts the Application and the Units are entered in the Register, or at such other time as the Manager determines.

5.6 **Number of Units Issued**

The number of Units to be issued to an Applicant will be the amount of the Application Money less the Transaction Fee, rounded down to the nearest whole number.

5.7 **Investment Confirmation Statement**

The evidence of a Members holding in the Scheme will be the latest extract from the Register as provided from time to time to a Member by the Manager in a Investment Confirmation Statement.

5.8 Notwithstanding clauses 5.1 - 5.6, the Manager may, in its discretion, allot Units on terms and conditions it thinks fit.

6. ISSUE PRICE

The issue price of a Unit shall be $1.00.

7. TERM OF INVESTMENT AND REDEMPTION OF UNITS

7.1 **Minimum Term and Conditions**

The minimum term of the investment and conditions attaching to the redemption of the Units (withdrawal of funds) are detailed in the Offer Document under which the Member applied for Units. The minimum notice period for redemption requests may be varied by the Manager from time to time by written notice to Members.

7.2 **Notice to Redeem**

Subject to clause 7.1 a Member may request a redemption of all or part of its Units in the manner prescribed by the Offer Document.

7.3 **No Obligation**

(a) Subject to the provisions of clause 7.2 and 7.3(b) the Manager will agree to a Members request for redemption of Units.

(b) The Manager is not obliged to agree to any request for redemption of Units for such periods as it in its sole discretion determines where:-

(i) The Scheme's cash reserves fall below 5% of the value of the Scheme's Issued Units; or

(ii) In any calendar month the Manager receives net redemption requests equal to 10% or more of the value of the Scheme's Issued Units; or

(iii) Any other event or circumstances arises which the Manager considers in its absolute discretion may be detrimental to the interests of the Members in the Scheme.

7.4 **Redemption by the Manager**

The Manager may redeem any Units at any time by giving notice of such redemption to the relevant Unit Holders.

7.5 **Payment**

(a) The Manager must pay to the holder of a redeemed Unit so much of the Distributable Income for the Distribution Period as the Manager considers is reasonably attributed to the Unit for the period from the commencement of the then current Distribution Period to the date of the redemption.

(b) The Manager must pay to the holder of the redeemed Units the redemption price of $1.00 per Unit for each redeemed Unit plus the amount referred to in clause 7.5(a) within one month after the Manager's obligation to pay the redemption price under clause 7.6 arises.

7.6 **Cancellation of Units**

Upon the redemption of Units, the Units must be cancelled and the name of the holder must be removed from the Register as a holder of those Units and the Manager's obligation to pay the redemption price and the amount referred to in clause 7.5(a) per Unit for each redeemed Unit arises.

8. **TRANSFER OF UNITS**

8.1 **Transferability of Units**

(1) Subject to this Constitution, a Unit may be transferred by instrument in writing, in any form authorised by Law or in any other form that the Manager approves.

(2) A Transferor of Units remains the holder of the Units transferred until the transfer is registered.

8.2 **Registration of Transfers**

(1) The following documents must be lodged for registration at the registered office of the Manager or the location of the Register:

(1) the instrument of transfer; and

(2) any other information that the Manager may require to establish the transferor's right to transfer the Units.

(2) On compliance with clause 8.2(a), the Manager will, subject to the powers of the Manager to refuse registration, register the transferee as a Member.

8.3 **Where registration may be refused**

Where permitted to do so by Law or this Constitution, the Manager may refuse to register any transfer of Units.

8.4 **Where registration must be refused**

If:

(1) the Manager has notice that the transferor of Units has entered into any borrowing or other form of financial accommodation to provide all or part of the funds to subscribe for or acquire a Unit and has not received confirmation from the financier that the financier consents to the transfer of those Units; or

(2) the transferor has given a power of attorney in favour of the Manager in the form set out in an application form accompanying the Offer Document and the transferee has not executed and provided to the Manager a similar form of power of attorney (with such adaptations as are necessary) in favour of the Manager, the Manager must refuse to register same and must continue to treat the seller or transferor as the case may be as the registered holder for all purposes and the purported sale, purchase, disposal or transfer shall be of no effect, or

(3) if the transferee is not a Member the Manager must not consent to the registration until the Manager is satisfied that the transferee has read or had the opportunity to read this Constitution and has agreed to be bound by its provisions.

8.5 **Notice of non-registration**

If the Manager declines to register any transfer of Units, the Manager must within 5 Business Days after the transfer was lodged with the Manager give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration.

8.6 **Suspension of transfers**

The registration of transfers of Units may be suspended at any time and for any period as the Manager from time to time decides. However, the aggregate of those periods must not exceed 30 days in any calendar year.

9. **TRANSMISSION OF UNITS**

9.1 **Entitlement to Units on death**

(1) If a Member dies:

(1) the survivor or survivors, where the Member was a joint holder; and

(2) the legal personal representatives of the deceased, where the Member was a sole holder,

will be the only persons recognised by the Manager as having any title to the Member's interest in the Units.

(2) The Manager may require evidence of a Member's death and grant of probate as it thinks fit.

(3) This clause does not release the estate of the deceased joint Member from any liability in respect of a Unit that had been jointly held by the Member with other persons.

9.2 **Registration of persons entitled**

(1) Subject to the Bankruptcy Act 1966 and to the production of any information that is properly required by the Manager, a person becoming entitled to a Unit in consequence of the death or bankruptcy (or other legal disability) of a Member may elect to:

(1) be registered personally as a Member; or

(2) have another person registered as the Member.

(2) All the limitations, restrictions and provisions of this Constitution relating to:

(1) the right to transfer Units;

(2) the registration of the transfer of Units;

apply to any relevant transfer as if the death or bankruptcy or legal disability of the Unit Member had not occurred and the notice or transfer were a transfer signed by that Member.

9.3 **Distributions and other rights**

(1) If a Member dies or suffers a legal disability, the Member's legal personal representative or the trustee of the Member's estate (as the case may be) is, on the production of all information as is properly required by the Manager, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Scheme or to voting or otherwise) as the Member would have been entitled to if the Member had not died or suffered a legal disability.

(2) Where two or more persons are jointly entitled to any Unit as a result of the death of a Member, they will, for the purposes of this Constitution, be taken to be joint holders of the Unit.

10. **DISTRIBUTABLE INCOME**

10.1 **Income of the Scheme Fund**

The income of the Scheme Fund for each Financial Year will be determined in accordance with applicable Accounting Standards.

10.2 **Expenses and provisions of the Scheme Fund**

For each Financial Year:

(1) the Expenses of the Scheme Fund will be determined in accordance with the applicable Accounting Standards; and

(2) provisions or other transfers to or from reserves may be made in relation to such items as the Manager considers appropriate in accordance with the applicable Accounting Standards including, but not limited to, provisions for income equalisation.

10.3 **Distributable Income**

The Distributable Income of the Scheme Fund is Income of the Scheme Fund less Expenses and provisions of the Scheme Fund.

11. **DISTRIBUTIONS**

11.1 **Distribution Period**

The Distribution Period is one calendar month or as otherwise determined by the Manager in its absolute discretion.

11.2 **Distributions**

(a) The Manager must distribute the Distributable Income relating to each Distribution Period within 7 days of the end of each Distribution Period.

(b) For each Distribution Period a Member is entitled to that proportion of the Distributable Income as is equal to the number of Units held by the Member on the last day of the Distribution Period divided by the number of Units on the Register on that date.

11.3 **Present entitlement**

Unless otherwise agreed by the Manager and subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the Members on the Register will be presently entitled to the Distributable Income of the Scheme Fund on the last day of each Distribution Period.

11.4 **Capital distributions**

The Manager may distribute capital of the Scheme Fund to the Members.

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Member on a date determined by the Manager divided by the number of Units on the Register on that date. A distribution may be in cash or by way of bonus Units.

11.5 **Grossed up Tax amounts**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Members in proportion to the Distributable Income for a Distribution Period as the case may be, which is referable to a dividend or other income to which they are presently entitled.

11.6 **Reinvestment of Distributable Income**

(1) The Manager may invite Members to reinvest any or all of their distributable income entitlement by way of application for additional Units in the Scheme.

(2) The terms of any such offer of reinvestment will be determined by the Manager in its discretion and may be withdrawn or varied by the Manager at any time.

(3) The Manager may determine that unless the Member specifically directs otherwise they will be deemed to have accepted the reinvestment offer.

(4) The Units issued as a result of an offer to reinvest will be deemed to have been issued on the first day of the next Distribution Period immediately following the Distribution Period in respect of which the distributable income being reinvested was payable.

12. NATURE OF MANAGER POWERS

12.1 The Manager has all the powers:

(1) of a natural person to invest and borrow on security of the Scheme Fund;

(2) in respect of the Scheme and the Scheme Fund that it is possible under the Law to confer on a Manager and on a Trustee;

(3) as though it were the absolute owner of the Scheme Fund and acting in its personal capacity; or

(4) necessary for fulfilling its obligations under this Constitution and under the Law.

12.2 Without limiting the generality of clause 12. 1, the Manager may:

(5) purchase, sell, lease, improve, encumber, sub-divide, hire, licence, exchange, develop, grant leases and licenses and enter into any other agreement or dealing including the surrender or termination of any dealing in relation to any property forming or which is to form part of the Scheme Fund, on any terms the Manager thinks fit;

(6) repair, renovate, demolish, build or alter any improvement to any property forming part of the Scheme Fund;

(7) determine any rental to be paid for the use of any property;

(8) exercise all powers and obligations in relation to any investment forming part of the Scheme Fund, including but not limited to:

  (1) attending and voting at meetings;

  (2) appointing proxies for meetings;

  (3) taking up a rights issue; and

  (4) paying calls under any contract.

(9) exercise any Power and perform all obligations in relation to any property forming part of the Scheme Fund as if the Manager is the beneficial owner of the property;

(10) accept a conveyance or transfer of any property as part of the Scheme Fund;

(11) enter into possession of and manage any property interests of the Scheme Fund.

12.3 Without limiting the generality of clause 12.1, the Manager may:

(12) invest in any "securities" as defined in Section 92(1) of the Law:

  (1) whether or not a trustee could properly acquire the security; and

  (2) on personal credit, with or without security;

(13) invest any money on loan to, or on deposit with, any person (including a Member or Related Corporation):

  (1) with or without interest;

  (2) with or without security; and

  (3) repayable on any terms the Manager thinks fit;

(14) enter into swap transactions, futures contracts, forward rate agreements, foreign exchange agreements;

(15) grant or take up an option to acquire property; and

(16) invest in or make a loan to any managed investment fund or scheme, including any managed investment fund or scheme that the Manager is the responsible entity of.

12.4 Clause 12.3 applies whether the Manager's purpose in making the investment:

(17) is to create a capital accretion or to produce income or other profits;

(18) is partly for a purpose referred to in clause 12.4(a);

(19) is for any other purpose that the Manager considers benefits the Scheme; or

(20) is for any purpose that the Manager considers directly or indirectly benefits any Member,

12.5 The Manager may invest any money required to be invested on loan to or on deposit with any Member or Related Corporation on any terms the Manager thinks fit.

12.6 The Manager may:

(21) exchange any investment for any other investment authorised under this Constitution;

(22) vary the terms of any investment or the security given for that investment; and

(23) surrender any investments.

12.7 Without limiting the generality of clause 12.1, the Manager may:

(24) use the income or capital of the Scheme Fund to carry on any trade or business, either as a sole trader or in partnership;

(25) engage any managers and other employees;

(26) enter into any arrangement for sharing profits, co-operation, joint venture or reciprocal concessions;

(27) act in relation to the trade or business as if the Manager were beneficially entitled to it;

(28) set aside an amount out of the Scheme Fund which, in the Manager's opinion, is sufficient to meet any debt or obligation;

(29) open and operate an account with any financial institution;

(30) sign, draw, endorse or execute in a manner determined by the Manager:

(1) any cheque or other negotiable or transferable instrument; and

(2) any receipt for money paid to the Manager;

(31) borrow or raise money with or without giving security over the Scheme Fund or any part of it on any terms including any rate of interest and any fees and expenses as the Manager thinks fit;

(32) make, draw, accept, endorse, discount, sell, purchase, negotiate and otherwise deal with any promissory note, bill of exchange, commercial bill, bill of lading, warrant, debenture, certificate of deposit or other transferable document or financial instrument for any purpose the Manager thinks fit;

(33) encumber the Scheme Fund in favour of any person in relation to any obligation of the Manager on behalf of the Scheme;

(34) to the extent permitted by law:

(1) guarantee the payment of money or the performance of any other obligation; and

(2) grant any indemnity in respect of any obligation;

to any person whether or not in relation to the obligations of a Member or for the benefit of the Scheme.

12.8 Without limiting the generality of clause 12.1, the Manager may:

(35) make any claim or demand or take any action on behalf of a Member of the Scheme;

(36) refer any dispute affecting the assets of the Scheme to arbitration, other than a dispute involving a Member; and

(37) settle on any terms any matter which arises in relation to the Scheme (if the Manager settles any matter the settlement is binding on all persons interested in the Scheme, including all Members).

12.9 To the extent allowed by law:

(38) any restriction or prohibition imposed upon the Manager in relation to the investment from time to time of the Scheme Fund or any part thereof is hereby excluded from the obligations imposed.

(39) without derogating from the generality of the foregoing this exclusion specifically applies to any "Prudent Person Rule" or the like which may be implied by any future enactment of legislation.

12.10 To the extent allowed by law:

(40) the Manager may borrow or raise money with or without security over the Scheme Fund or any part of it on any terms, including any rate of interest and any fees and expenses as the Manager thinks fit;

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

12.11 The Manager may use Scheme Funds to assist it with its working capital requirements.

13. COMPLAINTS PROCEDURES

13.1 Complaints may be made in writing or by telephone to the Compliance Officer of the Manager.

13.2 If, after the expiry of thirty days from the date on which the Member first notified the Compliance Officer of its complaint the Member feels that their Complaint has not been satisfactorily resolved the Compliance Officer will refer the complaint to the Board of the Manager for resolution.

14. TERM OF SCHEME

The Scheme begins on the Commencement Date and is to be wound up on the earlier to occur of:

(a) the date which is eighty years from the Commencement Date; and

(b) any earlier date which the Manager, in its absolute discretion may appoint as the Vesting Date.

15. WINDING UP THE SCHEME

15.1 The Scheme shall only be wound up in accordance with the Law and this Constitution.

15.2 The Manager must wind up the Scheme in the following circumstances:-

(a) if the term of the Scheme as detailed in this Constitution has expired;

(b) the Members pass an Extraordinary Resolution directing the

Manager to wind up the Scheme;

(c) the Court makes an order directing the Manager to wind up the Scheme.

(d) the Members pass an Extraordinary Resolution to remove the Manager but do not at the same time pass an Extraordinary Resolution choosing a company to be the new Manager that consents to becoming the Scheme's Manager;

15.3 (a) If the Manager considers that the purpose of the Scheme:

(1) has been accomplished; or

(2) cannot be accomplished,

it may take steps to wind up the Scheme.

(b) If the Manager wishes to wind up the Scheme pursuant to clause 15.3(a), the Manager must give to the Members of the Scheme a notice in writing;

(i) explaining the proposal to wind up the Scheme, including explaining how the Scheme's purpose has been accomplished or why that purpose cannot be accomplished; and

(ii) informing the Members of their rights to take action under Division 1 of Part 2G.4 of the Law for the calling of a Members' meeting to consider the proposed winding up of the Scheme and to vote on an Extraordinary Resolution Members propose about the winding up of the Scheme; and

(iii) informing the Members that the Manager is permitted to wind up the Scheme unless a meeting is called to consider the proposed winding up of the Scheme within 28 days of the Manager giving the notice to the Members;

(c) if no meeting is called within that 28 days to consider the proposed winding up, the Manager may wind up the Scheme.

15.4 The Manager shall not accept any further applications for Units in the Scheme or make any further loans from the Scheme Fund at a time after the Manager has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.

15.5 The Manager shall manage the Scheme until such time as all winding up procedures have been completed.

15.6 Subject to the provisions of this clause 15 upon winding up of the Scheme the Manager must:

(42) realise the assets of the Scheme Fund;

(43) pay all liabilities of the Manager in its capacity as Trustee of the Scheme including, but not limited to, liabilities owed to any Member who is a creditor of the Scheme;

(44) subject to any special rights or restrictions attached to any Unit, distribute the net proceeds of realisation among the Members in the same proportion specified in Clause 11.4;

(45) The Members must pay the costs and expenses of a distribution of assets under clause 15.6(c) in the same proportion specified in Clause 11.4.

(46) The Manager may postpone the realisation of the Scheme Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.

(47) The Manager may retain for as long as it thinks fit any part of the Scheme Fund which in its opinion may be required to meet any actual or contingent liability of the Scheme.

(48) The Manager must distribute among the Members in accordance with clause 15.6 anything retained under clause 15.6(f) which is subsequently not required.

15.7 If on completion of the winding up of a registered Scheme, the Manager or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property the Manager or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property to the ASIC to be dealt with pursuant to Part 9.7 of the Law.

15.8 **Capital Guarantee**

LM Investment Management Limited ACN 077 208 461 guarantees the payment of each Members entitlements in the event of any shortfall in the assets of the Scheme if the Scheme is wound up where the Member become a Member of the Scheme on or before 4 November 2002. This guarantee will only apply to Members who are registered as Unit Holders in the Register on 4 November 2002 and remain Members on the date on which the Scheme is wound up. LM Investment Management Limited ACN 077 208 461 will ensure that all amounts which are guaranteed under this clause are paid to qualifying Members within 12 months of the date on which the Scheme is wound up.

16. **VALUE OF THE SCHEME FUND**

16.1 **Valuation of the Scheme Fund**

The Manager may cause the Scheme Fund to be valued at any time in accordance with the Valuation Policy of the Manager.

17. **FEES, TAXES, COSTS AND EXPENSES**

17.1 **Taxes:**

The Manager may use the Scheme Fund to pay any Tax or other obligation, liability or expense required by any applicable law in relation to:

(a) this Constitution;

(b) any amount incurred or payable by the Manager;

(c) a gift or settlement effected by this Constitution;

(d) the exercise by the Manager of any Power; or

(e) money or investments held by or on behalf of the Manager under this Constitution.

17.2 **Payment of Debts:**

The Manager may set aside any money from the Scheme Fund which, in the Manager's opinion, is sufficient to meet any present or future obligation of the Scheme Fund.

17.3 **Fees:**

The Manager is entitled to be paid fees from the Scheme Fund in the amounts as detailed in the Offer Document or in any Offer Document and in relation to the performance of its duties as detailed in this Constitution and the Law.

17.4 The Manager shall be entitled to fees for the following duties:

(49) In relation to the subscription and redemption of units;

(50) In relation to the transfer or transmission of Units;

(51) In relation to arranging any finance facility in connection with the purchase of any asset of the Scheme;

(d) In relation to due diligence enquiries generally;

(e) In relation to the sale of real estate or assets of the Scheme Fund;

(f) In relation to the promotion and management of the Scheme. This fee is payable monthly;

(g) In relation to the winding-up of the Scheme;

(h) In relation to the performance of its duties and obligations pursuant to the Law and this Constitution.

17.5 The Manager is entitled to be paid a success fee calculated in relation to a reporting period as the difference between the net profit of the Scheme and the net distributor forecast to be paid to Members by the Manager during that reporting period.

17.6 **Costs and Expenses**

The Manager shall be indemnified out of Scheme Property for liabilities or expenses incurred in relation to the performance of its duties; including:

(52) Auditor's fees;

(53) Legal fees and outgoings

(54) Barrister/QC - Legal Counsel Fees;

(55) Fees and expenses incurred in respect of any service providers and/or employees of the Scheme;

(56) All costs, charges and expenses incurred in connection with the acquisition, custody, transfer or disposal of any asset of the Scheme Fund or investments (for example commissions, brokerage, legal fees, bank charges and stamp duty);

(57) Independent expert's or consultant's fees including but not limited to marketing agents, property specialists, surveyors, quantity surveyors, town planners, engineers;

(58) Property report/property consultants fees;

(h) Real estate agent's sales commissions;

(i) Costs of maintenance of any asset of the Scheme Fund;

(j) Outstanding accounts relating to any asset of the Scheme_Fund such as council rates;

(k) Locksmith for changing locks of any asset of the Scheme_Fund as appropriate;

(l) Insurance (property and contents);

(m) Removalists for removal of borrower's property as appropriate;

(n) Security guards to attend any asset of the Scheme Fund as appropriate;

(o) Building and/or property inspection report fees - i.e. building, town planning experts and the like;

(p) all ASIC charges;

(q) all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;

(r) all costs and expenses incurred in producing Offer Documents and Supplementary Offer Documents or any other disclosure document required by the Law;

(s) reasonable costs incurred in protecting or preserving all assets offered as security;

(t) all liability, loss, cost, expense or damage arising from the proper performance of its duties in connection with the Scheme performed by the Manager or by any agent appointed pursuant to the Law;

(u) any liability, loss, cost, expense or damage arising from the lawful exercise by the Manager and the Custodian of their rights under the Power of Attorney contained in clause 19;

(v) Fees and expenses of any agent or delegate appointed by the Manager;

(w) Bank and government duties and charges on the operation of bank accounts;

(x) Costs, charges and expenses incurred in connection with borrowing money on behalf of the Scheme under the Constitution;

(y) Insurances directly or indirectly protecting the Scheme Fund;

(z) Fees and charges of any regulatory or statutory authority;

(aa) Taxes in respect of the Scheme but not Taxes of the Manager [save and except any goods and services or similar tax ("GST")] which are payable by the Manager on its own account;

(bb) Costs of printing and postage of cheques, advices, reports, notices and other documents produced during the management of the

Scheme;

(cc) Expenses incurred in connection with maintaining accounting records and registers of the Scheme and of the Scheme Auditors;

(dd) Costs and disbursements incurred in the preparation and lodgment of returns under the Law, Tax Act or any other laws for the Scheme;

(ee) Costs of convening and holding meetings of Members;

(ff) Costs and disbursements incurred by or on behalf of the Manager in connection with its retirement and the appointment of a substitute;

(gg) Costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings;

(hh) Costs of any insurance premiums insuring against the costs of legal proceedings (whether successful or not);

(ii) Costs of advertising the availability of funds for lending;

(jj) Brokerage and underwriting fees;

(kk) If and when the Manager becomes responsible to pay any GST in respect of any services provided to the Scheme or any payments in respect of GST to be made by the Members or the Manager in respect of the Scheme or under the terms of this Constitution then the Manager shall be entitled to be indemnified in respect of such GST from the Scheme Fund;

17.7 In the event that the Manager has not performed its duties, the lack of entitlement to payment of fees pursuant to clause 17.3 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause shall be interpreted to mean that the Manager is not entitled to be paid fees and expenses for work properly performed.

17.8 In the event of any dispute regarding the payment of fees and expenses, the Manager shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the Manager shall be repaid forthwith upon the identification of the overpayment.

17.9 The Manager is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution.

17.10 All fees payable to the Manager are net of any goods and services tax.

18. **INDEMNITY AND LIABILITY**

18.1 The following clauses apply to the extent permitted by law:

(1) The Manager is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:

(1) otherwise than in accordance with this Constitution and its duties; and

(2) without a belief held in good faith that it was acting in accordance with this Constitution or its duties.

In any case the liability of the Manager in relation to the Scheme is limited to the Scheme Property, from which the Manager is entitled to be, and is in fact, indemnified.

(2) In particular, the Manager is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

(1) it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Manager;

(2) it acted as required by Law; or

(3) it relied in good faith upon any signature, marking or documents.

(3) In addition to any indemnity under any Law, the Manager has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the Manager has acted negligently, fraudulently or in breach of trust.

(4) The Manager is not liable to account to any Member for any payments made by the Manager in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia for taxes or other statutory charges.

13. **POWERS OF ATTORNEY**

13.1 Each Member by execution of the Application Form or the transfer by which he/she/it acquires Units in the Scheme appoints the Manager and any director officer attorney or substitute nominated by the Manager severally for this purpose as its attorney and agent with the right:

(1) at any time to:

(1) sign any document in relation to any subscription and

redemption agreement;

(2) sign any document in relation to the transfer or transmission of Units;

(3) sign any variation of this Constitution;

(4) sign any document required by ASIC to be executed by a Member in respect of the Scheme.

(2) at the request in writing of the Manager the Member must execute separate Powers of Attorney in a form reasonably required by the Manager appointing the Manager as its attorney for the purpose of this clause.

(3) any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty;

13.2 Each Member indemnifies and shall keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under the Power of Attorney.

14. **THE REGISTER**

14.1 **Keeping registers**

The Manager must establish and keep a register of Members, and if applicable, the other registers required by the Law.

14.2 **Information In registers**

To the extent applicable, the registers must be kept in accordance with, and contain the information required by the Law. Otherwise, the Manager may decide what information is included in the registers. If the Law applies, the Manager has the powers conferred under the Law in relation to the register.

14.3 **Changes**

Every Member must promptly notify the Manager of any change of name or address and the Manager must alter the relevant register accordingly.

15. **NOTICES**

15.1 A notice or other communication connected with this Constitution has no legal effect unless it is in writing.

15.2 In addition to any other method of service provided by law, the Notice must be:

(i) sent by post, postage prepaid, to the address for the Member in the Manager's register of interests;

(ii) sent by facsimile to the facsimile number of the Member; or

(iii) otherwise delivered at the address of the addressee of the Member as is subsequently notified.

15.3 A Notice must be treated as given and received:

(i) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;

(ii) if sent by facsimile before 5.00 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of delivery.

15.4 Despite clause 21.3(ii) a facsimile is not treated as given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.

15.5 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:

(1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(2) the notice is returned unclaimed.

15.6 Any Notice by a party may be given and may be signed by the solicitor for the party.

16.7 Any Notice to a party may be given to the solicitor for the party by any of the means listed in clause 21.2 to the solicitor's business address or facsimile number as the case may be.

16. **LIABILITY OF MEMBERS**

(a) The liability of each Member, whether actual, contingent or prospective, is limited to the unpaid Issue Price of his/her/its Units except if the Manager and the relevant Member agree otherwise in writing that the liability of a Member may be further limited or waived.

(b) A creditor or other person claiming against the Manager as trustee of the Scheme has no recourse against a Member and no Member is personally liable to indemnify the Manager, any creditor of the Manager or any person claiming against the Manager in respect of any actual, contingent, prospective or other liability of the Manager in relation to the Scheme

Fund.

17. **APPOINTMENT AND REMOVAL OF TRUSTEE**

17.1 **Retirement or Resignation of Trustee**

(a) The Manager may retire upon giving 3 months' notice to the Members of its desire to do so.

(b) The Manager must resign:

(i) if it is removed as provided by law;

(ii) if (being a corporation) it becomes an externally-administered body corporate as defined in the *Corporations Law;* or

(iii) if (being a natural person) he or she is found to be of unsound mind or becomes bankrupt.

17.2 **Unit Holders May Appoint New Trustee**

The holders of not less than 50% of the Units on Issue may by notice in writing appoint a new Manager to fill a vacancy in the office of Manager.

17.3 **Transfer of Records**

Upon the resignation, retirement, or removal of the Manager, the Manager must hand to the new Trustee all books, records, documents and other matters pertaining to the Scheme and at the expense of the Scheme do all things necessary to transfer legal title and the assets of the Scheme to the new Trustee.

17.4 **Deed of Adoption by New Trustee**

The new Trustee appointed under clause 23.2 must execute a deed in a form approved by the holders of not less than 50% of the Units on Issue by which the new Trustee undertakes to the Members to carry out the obligations of the Trustee under this Deed.

18. **CHANGING THE CONSTITUTION**

18.1 This Constitution may be modified or repealed or replaced with a new Constitution by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights or is deemed necessary to conduct the affairs of the Scheme.

18.2 The Manager must send a copy of the Scheme's Constitution to a Member of the Scheme within seven (7) days if the Member:

(a) asks the Manager in writing for the copy; and

(b) pays any fee (up to the prescribed amount) required by the

Manager

19. **STATEMENTS, ACCOUNTS AND AUDIT**

19.1 **Appointment of auditors**

The Manager must appoint an Auditor to regularly audit the accounts in relation to the Scheme and perform the other duties required of the Scheme's auditors under this Constitution and the Law.

19.2 **Retirement of auditors**

The Scheme Auditor may retire or be removed in accordance with the Law.

19.3 **Remuneration of Auditor**

The remuneration of the Scheme Auditor will be fixed by the Manager.

19.4 **Accounts and Reports**

(a) The accounts of the Scheme must be kept and prepared by the Manager in accordance with applicable Accounting Standards and the Law.

(b) The Manager must prepare and make available to Members the financial statements of the Scheme for each financial year.

(c) The Manager may make the financial statements available to Members by either publishing the statements on the Manager's internet site, emailing the statements to individual Members or by sending the statements to individual Members by facsimile or prepaid post.

19.5 **Audit**

The Manager will cause the Scheme Auditor to audit and report on the accounts;

20. **OTHER ACTIVITIES AND OBLIGATIONS OF THE MANAGER**

20.1 **Other activities**

Subject to the Law, nothing in this Constitution restricts the Manager (or its associates) from:

(a) dealing with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity);

(b) being interested in any contract or transaction with itself (as manager, trustee or responsible entity of another trust or managed investment scheme or in another capacity) or with any Member or retaining for its own benefit profits or benefits derived from any such contract or transaction; or

(c) acting in the same or similar capacity in relation to any other trust or managed investment scheme.

20.2 Other Obligations All obligations of the Manager which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

21. **GOVERNING LAW**

This Deed is governed by the Laws of the State of Queensland. The Manager and the Members submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

EXECUTED AS A DEED:

GIVEN under the Common Seal of LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 by authority of a resolution of the Board of Directors under the hands of a Director and the Secretary who certify that they are the proper officers to affix this seal	)))))))))	.... ~~Director~~ .... Director/~~Secretary~~

LM INVESTMENT MANAGEMENT LIMITED A.C.N. 077 208 461 THE COMMON SEAL OF

474801/S20

Lawyers | McCullough Robertson

Deed poll

LM Managed Performance Fund

1784202v2

Version: 1

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Email info@mccullough.com.au | Web www.mccullough.com.au | ABN 42 721 345 951

Deed poll

Dated 25 November 2009

By

Manager **LM Investment Management Limited ACN 077 208 461**

of Level 4, 9 Beach Road Surfers Paradise, Queensland

In favour of

Members

Background

A The Manager is the trustee of the Scheme.

B Clause 24.1 of the Constitution allows the Manager to modify, repeal or replace the Constitution if the Manager reasonable considers the change will not adversely affect Members' rights.

C The Manager is satisfied the changes contemplated by this supplemental deed do not adversely affect Members' rights. This document is made with the intent that the Manager and each Member will be bound by it.

Agreed terms

1 Amendment

The Constitution is amended by deleting clauses 1, 2.3, 2.4, 3 through to 27 and inserting the provisions in the schedule to this supplemental deed.

2 Trust not Confirmed

(a) Nothing expressly or impliedly contained in this supplemental deed (including the recitals) is effective to confirm, declare or otherwise acknowledge the trust declared under the original constitution, or to impress any new or additional trusts upon property held on trust as at the date of this supplemental deed.

(b) Nothing in this supplemental deed should be interpreted as creating any new or further trust and at all times, the Scheme remains a simple trust.

3 Manager and Members bound

The Manager and the Members are bound by the terms of the Constitution as amended by this supplemental deed.

Schedule

DICTIONARY AND INTERPRETATION

1.1 **Dictionary of Terms**

In this Constitution:

"**A Class Unit**" means a unit in the Scheme that has its Issue Price and Withdrawal Price calculated in a specific manner;

"**B Class Unit**" means a unit in the Scheme that has its Issue Price and Withdrawal Price calculated in a specific manner;

"**Accounting Standards**" means the accounting standards and practices determined under clause 1.3;

"**Applicant**" anyone who submits an application for Unit/s in the Scheme in accordance with the Information Memorandum;

"**Application Form**" an application in writing for Unit/s in the Scheme attached to the Information Memorandum;

"**Application Money**" the amount received from an Applicant when lodging the application in respect of the Unit/s applied for in accordance with the Information Memorandum;

"**ASIC**" the Australian Securities and Investments Commission;

"**Auditor**" means the auditor of the Scheme appointed by the Manager;

"**Authorised Investors**" means:

(1) An investor residing in a jurisdiction other than Australia; or

(2) If the investor resides in Australia:

(a) Investors who invest a minimum amount of $500,000.00 in the Scheme; or

(b) Investors who invest less than $500,000.00 in the Scheme and provide a certificate from their qualified accountant under the Law confirming that their net assets are not less than $2,500,000 or that their gross income is not less than $250,000 per annum for each of the last two financial years; or

(c) Certain professional and sophisticated Investors defined under the Law;

"**Business Day**" any day on which trading banks are generally open for business on the Gold Coast, Queensland;

"**Class**" means a class of Units, being Units which have the same rights;

"**Commencement Date**" means the date the Scheme was first established;

"**Constitution**" the trust deed for the Scheme including any Schedule, Annexure or Amendments to it;

"**Director**" means a person appointed as a director of the Manager;

"**Distributable Income**" means as detailed in Clause 10.3;

"**Distribution Period**" means the period referred to in Clause 11.1;

"**Dollars**", "**A$**" and "**$**" mean the lawful currency of the Commonwealth of Australia;

"**Extraordinary Resolution**" has the same meaning as in the Law;

"**Financial Year**" means:

(a) the period from the Commencement Date to midnight on the next 30 June;

(b) each subsequent period of 12 months ending at midnight on each 30 June preceding the Vesting Date; and

(c) the period beginning at midnight on the 30 June immediately preceding the Vesting Date and ending on the Vesting Date;

"**Foreign Currency**" means a lawful currency other than the currency of the Commonwealth of Australia;

"**Information Memorandum**" means an Information Memorandum or any Supplementary Information Memorandum issued by the Manager in relation to the Scheme;

"**Investment Confirmation Statement**" means a statement issued by the Manager to a Member pursuant to clause 5.9;

"**Investment Term**" means the fixed investment term selected by the Member (initial investment term) when they invest in the Scheme and includes any subsequent fixed term for the investment where the investment is rolled over for that subsequent term but does not include any fixed term under a Savings Plan Option Investment (and the initial fixed investment term and each subsequent fixed term will each be a separate Investment Term, and not a longer combined Investment Term);

"**Issue Price**" means the price at which a Unit is issued as detailed in clause 6;

"**Law**" means the Corporations Act 2001;

"**Liabilities**" means at any time the aggregate of the following at that time as calculated by the Manager in accordance with the Accounting Standards:

(a) Each liability, excluding Unit Holder Liability, of the Manager in respect of the Scheme or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability;

(b) Each other amount payable out of the Scheme, excluding Unit Holder Liability or, where appropriate, a proper provision in accordance with the applicable Accounting Standards in respect of that liability; and

(c) Other appropriate provisions in accordance with the applicable Accounting Standards;

"**LMM**" means Law Mortgage Management Pty Ltd ACN 055 691 426;

"**Manager**" means LM Investment Management Limited ABN 68 077 208 461;

"**Member**" in relation to a Unit, means the person registered as the holder of that Unit (including joint holders);

"**Minimum Subscription**" means the amount stated in the Information Memorandum as the Minimum Subscription;

"**Net Fund Value**" means the value of the Scheme Property less the Liabilities on the Valuation Date;

"**Power**" means any right, power, authority, discretion or remedy conferred on the Manager by this Constitution or any applicable law;

"**Register**" means the register of Members maintained by the Manager under clause 20;

"**Savings Plan Option Investment**" means an investment described as the "LM Savings Plan Option" in the Information Memorandum, with terms and conditions as disclosed in the Information Memorandum;

"**Scheme**" means the trust created by this Deed to be known as The LM Managed Performance Fund;

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

(a) contributions of money or money's worth to the Scheme; and

(b) money borrowed or raised by the Manager for the purposes of the

Scheme; and

(c) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a) or (b); and

(d) the income and property derived, directly or indirectly from contributions, money or property referred to in paragraph (a), (b) or (c);

"**Special Resolution**" has the same meaning as in the Law;

"**Subscription Account**" means a bank account holding the Application Money;

"**Tax**" includes, but is not limited to:

(a) stamp duty, excise and penalties relating to these amounts which are imposed on the Manager in respect of any assets in the Scheme;

(b) taxes and duties and penalties relating to these items imposed as a result of any payment made to or by the Manager under this Constitution;

(c) taxes imposed or assessed upon:

(i) any Application Money;

(ii) distributions of Income to Members, capital gains, profits or any other amounts in respect of the Scheme; or

(iii) the Manager in respect of its capacity as the Manager of the Scheme;

(d) financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Scheme, and every kind of tax, duty, rate, levy, deduction and charge including any GST;

"**Tax Act**" means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth);

"**Unit**" means an undivided interest in the Scheme Property created and issued under this Constitution and unless the context is clearly otherwise includes A Class Units and B Class Units;

"**Unit Holder Liability**" means the liability of the Scheme to the Members for their undivided interest in the Scheme Property;

"Valuation Date" means the date which is the last day of each month or any date during each month at the Manager's discretion or the date on which the Manager determines there has been a material change in the value of the Scheme Property;

"Vesting Date" means the date of termination of the Scheme under clause 14;

"Withdrawal Notice" means a notice in writing, given:

(a) at least 90 days before the expiry of the relevant Investment Term; or

(b) for a Savings Plan Option investment, the period commencing 90 days after the first 12 month period of the Savings Plan Option Investment has expired, and continuing throughout the term of the Savings Plan Option Investment. After the initial 12 month investment period, only 2 such notices may be given within any 12 month period, and any notices in excess of this number will not be valid unless otherwise determined by the RE in its discretion; or

(d) any other time period as determined by the Manager;

by a Member and received by the Manager stating the Member's name, the number of Units the Member wishes to have redeemed, and any other information reasonably required by the Manager;

"Withdrawal Price" means the price at which a Unit is redeemed as detailed in clause 7.7.

1.2 **Interpretation**

(a) Reference to:

(i) one gender includes the others;

(ii) the singular includes the plural and the plural includes the singular;

(iii) a person includes a body corporate;

(iv) an associate of a person means another person who is associated with that person by application of any of the provisions of Division 2 of Part 1.2 of the *Corporations Law*;

(v) a party includes the party's executors, administrators, successors and permitted assigns;

(vi) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:

- that Statutory Provision as amended or re-enacted from time to time; and
- a statute, regulation or provision enacted in replacement of that Statutory Provision;

(vii) "pay" includes transfer, convey and assign; and

(viii) "income" is not limited to "assessable income" as defined in ITAA.

(b) "Including" and similar expressions are not words of limitation

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning. .

(d) Headings are for convenience only and do not form part of this Deed or affect its interpretation.

(e) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.

(f) A reference to dealing with a Unit includes any subscription, withdrawal, sale, assignment, encumbrance, or other disposition whether by act or omission and whether affecting the legal or equitable interest in the Unit.

1.3 **Accounting Standards**

In respect of any accounting practice relevant to this Constitution, the following accounting standards apply as if the Scheme were a company:

(1) the accounting standards required under the Law.

(2) if no accounting standard applies under clause 1.3(a), the accounting practice determined by the Manager.

2. ESTABLISHMENT OF SCHEME

2.1 **Appointment of the Manager**

[Not Altered not reproduced]

2.2 **Declaration of Trust**

[Not Altered not reproduced]

2.3 **Name of Scheme**

The name of the Scheme is The LM Managed Performance Fund or any other name that the Manager may determine from time to time.

2.4 **Initial Issue**

The Scheme commences at such time when LMM or its nominee pays $1.00 to the Manager to establish the Scheme. The Manager must issue to LMM or its nominee 1 Unit in return for that payment.

3. UNITS AND MEMBERS

3.1 **Units**

The beneficial interest in the Scheme will be divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations of Members under this Constitution.

3.2 **Classes**

Different Classes of Units may be issued. If the Manager determines in relation to particular Units, the terms of issue of those Units may eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units.

3.3 **Fractions**

Fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit.

3.4 **Equal value**

At any time, all the Units in a Class are of equal value.

3.5 **Interest**

A Unit confers an interest in the Scheme Property as a whole. No Unit confers any interest in any particular asset of the Scheme Property.

3.6 **Consolidation and re-division**

(a) Subject to clause 3.6(b) the Manager may at any time divide the Scheme Property into any number of Units other than the number into which the Scheme Property is for the time being divided.

(b) A division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Member to the Units on Issue in the Class.

3.7 **Rights attaching to Units**

(a) A Member holds a Unit subject to the rights and obligations attaching to that Unit.

(b) Each Member agrees not to:

(i) interfere with any rights or powers of the Manager under this Constitution;

(ii) purport to exercise a right in respect of the Scheme Property or claim any interest in an asset of the Scheme (for example, by lodging a caveat affecting an asset of the Scheme); or

(iii) require an asset of the Scheme to be transferred to the Member.

3.8 **Conditions**

The Manager may impose such conditions on the issue of Units as it determines including that the Member may not give effect to any mortgage, charge, lien, or other encumbrances other than as expressly permitted by the Manager.

4. **BINDING ON ALL PARTIES**

4.1 This Constitution is binding on the Manager and on all Members of the Scheme as they are constituted from time to time.

4.2 By executing the Application Form attached to the Information Memorandum the Members as are constituted from time to time agree to be bound by the terms and conditions of this Constitution.

5. **ISSUE OF UNITS**

5.1 **Offer**

The Manager may at any time:

(a) offer Units for subscription or sale; or

(b) invite persons to make offers to subscribe for or buy Units.

5.2 **Minimum subscription**

(a) The Manager may set a Minimum Subscription for the pool of funds of any one currency for the Scheme at its discretion.

(b) The Manager will hold Application Money in a Subscription Account until the Minimum Subscription for the pool of funds is received.

5.3 **Insufficient Application Money received**

The Manager will return or cause to be returned all Application Money to the persons who paid such Application Money, less any taxes and bank charges payable if:

(a) insufficient Application Money to meet the Minimum Subscription stipulated in Clause 5.2, or

(b) the Manager withdraws an Information Memorandum (which the Manager is entitled to do) before sufficient Application Money is received, or

(c) the Manager does not believe there will be sufficient funds available to achieve the aims of the Scheme contemplated in this Constitution or the Information Memorandum.

5.4 **Form of Application**

Each Application for Units:-

(a) must be made by Application Form attached to an Information Memorandum; and

(b) must be accompanied by Application Moneys as required by any relevant Information Memorandum;

(c) may only made by an Authorised Investor.

5.5 **Acceptance or rejection**

The Manager may, without giving any reason:

(a) accept an Application;

(b) reject an Application; or

(c) reject part of the Application.

5.6 **Uncleared funds**

Units issued against Application Money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not subsequently cleared.

5.7 **Issue of Units**

Units are taken to be issued when:

(a) the Application Money for the Issue Price is received by the Manager; and

(b) the Manager accepts the Application and the Units are entered in the Register, or at such other time as the Manager determines.

5.8 **Number of Units Issued**

The number of Units to be issued to an Applicant will be the amount of the Application Money, rounded down to the nearest two decimal places.

5.9 **Additional Applications**

Additional Applications for investment in the Scheme by existing

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Members, not made on an Application Form may be accepted:

(a) from a Member;

(b) as a result of an Application;

(c) in accordance with an Arrangement for as long as and on condition that it complies with the requirements of the Manager and the law or ASIC's policy including any relief granted to the Manager from time to time; and

5.9 **Holding Application Money**

All Application Money must be held by the Manager on trust for the Applicants in the Subscription Account in accordance with the rules set out in this Constitution .

5.10 **Interest on Application Money**

The Manager is not required to account to any Member for any interest earned on Application Money held in the Subscription Account.

5.11 **The Manager to return Application Money**

Where the Manager has rejected (in full or in part) an Application, the relevant Application Money (without interest) must be returned to the Applicant within 14 days.

5.12 **Incomplete Application Form**

The Manager will, on receipt of any Application Money which is not accompanied by a completed Application Form, as soon as practicable return the Application Money to the relevant Applicant or-

(a) attempt to obtain the Application Form from the Applicant, and

(b) bank the Application Money.

5.13 **No Application Form received**

If the Manager has not received the Application Form by the time the offer is closed under the Information Memorandum, then the Manager must use its best endeavours to return the Application Money to the Applicant as soon as practicable, less any taxes and bank charges payable.

5.14 **Investment Confirmation Statement**

The evidence of a Members' holding in the Scheme will be the latest extract from the Register as provided from time to time to a Member by the Manager in a Investment Confirmation Statement.

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5.16 Notwithstanding clauses 5.1 - 5.15, the Manager may, in its discretion, allot Units on terms and conditions it thinks fit.

6. ISSUE PRICE

The issue price of a Unit (being an A Class Unit or a B Class Unit (including each B Unit subClass) shall be calculated as at the close of business on the Business Day prior to issue as follows:

$$(A-B)/C = D$$

$$\frac{(D \times E) + F}{E} = G$$

Where:

A = Net Fund Value excluding distributions accrued but not paid to A Class Unit holders since the Valuation Date
B = Distributions credited but not paid to all B Class Unit holders since the Valuation Date
C = Total number of all Units on issue
D= A Class Unit Issue Price
E = total number of B Class Units on issue in that subClass of B Class Unit holders
F = Distributions credited but not paid to B Class Unit holders in that subclass since the Valuation Date
G = B Class Unit Issue Price for that subClass

The purpose of the above calculations is to reflect differential Unit Issue Prices. An A class Unit Issue Price is not intended to reflect accrued but unpaid distributions. A B class Unit Issue Price is intended to reflect accrued but unpaid distributions and adjusted for the unpaid distributions for that subclass of B class Unit holders.

7. TERM OF INVESTMENT AND WITHDRAWAL OF UNITS

7.1 Minimum Term and Conditions

The minimum term of the investment and conditions attaching to the withdrawal of the Units (withdrawal of funds) are detailed in the Information Memorandum under which the Member applied for Units.

7.2 Fixed investment period

When making their Application, all Applicants must invest for one of the Investment Terms specified in the Information Memorandum.

7.3 **Authorised withdrawal**

The Manager may authorise withdrawals by any Member in accordance with the following procedure and as disclosed in the Information Memorandum:

(a) the Information Memorandum may offer fixed Investment Terms to Applicants;

(b) the fixed Investment Terms must be disclosed in the Information Memorandum;

(c) during their fixed Investment Term a Member is not entitled to withdraw (except in the absolute discretion of the Manager);

(d) within the period nominated by the Manager, as disclosed in the Information Memorandum, before the expiry of their fixed Investment Term, the Member must advise the Manager in writing ('Withdrawal Notice') whether the Member is withdrawing from the Scheme.

(e) If the Member fails to complete and return the Withdrawal Notice within the time period nominated by the Manager, as disclosed in the Information Memorandum, before the end of that Member's fixed Investment Term (and any subsequent Investment Term) and:

(i) if the investment is in A Class Units and is made in Australian dollars, the Member will be deemed to have elected to renew their investment in the Scheme for the period of the initial Investment Term in Australian dollars;

(ii) if the investment is in A Class Units and is made in a Foreign Currency the Member will be deemed to have elected to renew their investment in the Scheme for a 3 month Investment Term and applied to hedge their reinvestment in the originally nominated currency .

(iii) if the investment is in B Class Units and is made in Australian dollars the Member will be deemed to have elected to renew their investment in the Scheme for a 12 month Investment Term (unless the initial Investment Term is longer than 12 months in which case the

Member will be deemed to have elected to renew their investment in the Scheme for the initial investment term) in Australian dollars;

(iv) if the investment is in B Class Units and is made in a Foreign Currency the Member will be deemed to have elected to renew their investment in the Scheme for a 12 month Investment Term (unless the initial Investment Term is longer than 12 months in which case the Member will be deemed to have elected to renew their investment in the Scheme for the initial investment term) and applied to hedge their reinvestment in the originally nominated currency.

(f) If the Manager allows a Member to withdraw an investment from the Scheme before the end of an Investment Term, the Manager is also entitled to require the Member to pay:

(i) for investments in Australian dollars a breaking of investment term fee up to 10% of the investment amount;

(ii) for investments in foreign currency a breaking of investment term fee up to 10% of the investment amount and in addition the Manager will also be entitled to require the Member to pay an amount equal to any other fees or charges arising from the early withdrawal (including fees and charges that may be payable to the financial institution which has organised the investment in the relevant currency).

The charges referred to in this clause 7.3(f) will be deducted from the investment being withdrawn, and paid at the time of withdrawal. Such charges will become part of the Scheme Property.

7.4 **No Obligation**

(a) Subject to the provisions of clause 7.3 and 7.4(b) the Manager will agree to a Members request for withdrawal of Units.

(b) The Manager is not obliged to agree to any request for withdrawal of Units for such periods as it in its sole discretion

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determines where:-

(i) The Scheme's cash reserves fall below 5% of the value of the Scheme's Issued Units; or

(ii) In any calendar month the Manager receives net withdrawal requests equal to 10% or more of the value of the Scheme's Issued Units; or

(iii) Any other event or circumstances arises which the Manager considers in its absolute discretion may be detrimental to the interests of the Members in the Scheme.

7.5 **Withdrawal by the Manager**

The Manager may withdraw any Units at any time by giving notice of such withdrawal to the relevant Unit Holders.

7.6 **Payment**

(a) The Manager must pay to the holder of a withdrawn Unit so much of the Distributable Income for the Distribution Period as the Manager considers is reasonably attributed to the Unit for the period from the commencement of the then current Distribution Period to the date of the withdrawal.

(b) The Manager must pay to the holder of the withdrawn Units the withdrawal price as determined in clause 7.8 per Unit for each withdrawn Unit plus the amount referred to in clause 7.6(a):-

(i) for Australian dollar investments within 30 days; or

(ii) for Non-Australian dollar investments within 5 Business Days after the Manager's obligation to pay the withdrawals price under clause 7.7 arises subject to clause 7.4.

7.7 **Cancellation of Units**

Upon the withdrawal of Units, the Units must be cancelled and the name of the holder must be removed from the Register as a holder of those Units and the Manager's obligation to pay the withdrawal price and the amount referred to in clause 7.6(a) per Unit for each redeemed Unit arises.

7.8 **Withdrawal Price**

The Withdrawal Price of each A Class Unit or each B Class Unit (including each B Unit subClass) pursuant to clause 7 shall be calculated in the same manner as the Issue Price.

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8. **TRANSFER OF UNITS**

8.1 **Transferability of Units**

(a) Subject to this Constitution, a Unit may be transferred by instrument in writing, in any form authorised by Law or in any other form that the Manager approves.

(b) A Transferor of Units remains the holder of the Units transferred until the transfer is registered.

8.2 **Registration of Transfers**

(a) The following documents must be lodged for registration at the registered office of the Manager or the location of the Register:

(i) the instrument of transfer; and

(ii) any other information that the Manager may require to establish the transferor's right to transfer the Units.

(b) On compliance with clause 8.2(a), the Manager will, subject to the powers of the Manager to refuse registration, register the transferee as a Member.

8.3 **Where registration may be refused**

Where permitted to do so by Law or this Constitution, the Manager may refuse to register any transfer of Units.

8.4 **Where registration must be refused**

If:

(a) the Manager has notice that the transferor of Units has entered into any borrowing or other form of financial accommodation to provide all or part of the funds to subscribe for or acquire a Unit and has not received confirmation from the financier that the financier consents to the transfer of those Units; or

(b) the transferor has given a power of attorney in favour of the Manager in the form set out in an application form accompanying the Information Memorandum and the transferee has not executed and provided to the Manager a similar form of power of attorney (with such adaptations as are necessary) in favour of the Manager,

the Manager must refuse to register same and must continue to treat the seller or transferor as the case may be as the registered holder for all purposes and the purported sale, purchase, disposal

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or transfer shall be of no effect, or

(c) if the transferee is not a Member the Manager must not consent to the registration until the Manager is satisfied that the transferee has read or had the opportunity to read this Constitution and has agreed to be bound by its provisions.

8.5 **Notice of non-registration**

If the Manager declines to register any transfer of Units, the Manager must within 5 Business Days after the transfer was lodged with the Manager give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration.

8.6 **Suspension of transfers**

The registration of transfers of Units may be suspended at any time and for any period as the Manager from time to time decides. However, the aggregate of those periods must not exceed 30 days in any calendar year.

9. **TRANSMISSION OF UNITS**

9.1 **Entitlement to Units on death**

(a) If a Member dies:

(i) the survivor or survivors, where the Member was a joint holder; and

(ii) the legal personal representatives of the deceased, where the Member was a sole holder,

will be the only persons recognised by the Manager as having any title to the Member's interest in the Units.

(b) The Manager may require evidence of a Member's death and grant of probate as it thinks fit.

(c) This clause does not release the estate of the deceased joint Member from any liability in respect of a Unit that had been jointly held by the Member with other persons.

9.2 **Registration of persons entitled**

(a) Subject to the Bankruptcy Act 1966 and to the production of any information that is properly required by the Manager, a person becoming entitled to a Unit in consequence of the death or bankruptcy (or other legal disability) of a Member may elect to:

(i) be registered personally as a Member; or

(ii) have another person registered as the Member.

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(b) All the limitations, restrictions and provisions of this Constitution relating to:

(i) the right to transfer Units;

(ii) the registration of the transfer of Units;

apply to any relevant transfer as if the death or bankruptcy or legal disability of the Unit Member had not occurred and the notice or transfer were a transfer signed by that Member.

9.3 **Distributions and other rights**

(a) If a Member dies or suffers a legal disability, the Member's legal personal representative or the trustee of the Member's estate (as the case may be) is, on the production of all information as is properly required by the Manager, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Scheme or to voting or otherwise) as the Member would have been entitled to if the Member had not died or suffered a legal disability.

(b) Where two or more persons are jointly entitled to any Unit as a result of the death of a Member, they will, for the purposes of this Constitution, be taken to be joint holders of the Unit.

10. **DISTRIBUTABLE INCOME**

10.1 **Income of the Scheme**

The income of the Scheme for each Financial Year will be determined in accordance with applicable Accounting Standards.

10.2 **Expenses and provisions of the Scheme**

For each Financial Year:

(a) the Expenses of the Scheme will be determined in accordance with the applicable Accounting Standards; and

(b) provisions or other transfers to or from reserves may be made in relation to such items as the Manager considers appropriate in accordance with the applicable Accounting Standards including, but not limited to, provisions for income equalisation.

10.3 **Distributable Income**

The Distributable Income of the Scheme is Income of the Scheme less Expenses and provisions of the Scheme.

11. **DISTRIBUTIONS**

11.1 **Distribution Period**

(a) For A Class Unit holders:

(i) The Distribution Period is one calendar month for Australian dollar investments commencing on the 1st day of each calendar month, or as otherwise determined by the Manager in its absolute discretion.

(ii) The Distribution Period is one calendar month for investments made in non-Australian dollars where distributions are made in Australian dollars commencing on the 1st day of the investment term, or as otherwise determined by the RE in its absolute discretion.

(iii) The Distribution Period is the Investment Term for investments made in non-Australian dollars where distributions are made in non-Australian dollars, commencing on the 1st day of the investment term, or as otherwise determined by the RE in its absolute discretion.

(b) For B Class Unit holders the Distribution Period is one calendar month commencing on the 1st day of each calendar month, or as otherwise determined by the Manager in its absolute discretion.

11.2 **Distributable Income**

The Distributable Income of the Scheme Fund for the Distribution Period will be such amount as the Manager reasonably determines. Distributable Income is paid to Members in their nominated currency (except for non-Australian dollar investments where the investor has chosen to have distributions paid in Australian dollars) after taking into account all direct and indirect costs associated with any currency conversion, and to the extent they have not otherwise been taken into account, any adviser fees or costs associated with individual Members' investments.

11.3 **Distributions**

(a) If the payment for Units is made in Australian dollars the Manager must distribute the Distributable Income relating to each Distribution Period within 10 Business Days of the end of each

Distribution Period except:

(i) on withdrawal of investment where the Distributable Income will be paid in accordance with clause 7.6; or

(ii) if the Manager allows and the member elects to be paid Distributable Income other than at the end of the distribution period the Distributable Income will be paid within 10 Business Days after the end of that nominated period, which must be greater than the distribution period and a duration equivalent to multiples of the distribution period.

(b) If the payment for Units is made in Foreign Currency, which is hedged through a foreign exchange contract by the Scheme, the Distributable Income is paid:

(i) within 10 Business Days of the end of the Distribution Period; or

(ii) where the Investment Term is greater than 12 months, if the Manager allows and the member elects to be paid yearly, the Distributable Income will be paid within 10 Business Days after each 12 monthly anniversary of the investment.

(c) For each Distribution Period a Member is entitled to that proportion of the Distributable Income as is equal to the number of Units held by the Member on the last day of the Distribution Period divided by the number of Units on the Register on that date.

11.4 **Present entitlement**

Unless otherwise agreed by the Manager and subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the Members on the Register will be presently entitled to the Distributable Income of the Scheme on the last day of each Distribution Period.

11.5 **Capital distributions**

The Manager may distribute capital of the Scheme to the Members. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that

Member on a date determined by the Manager divided by the number of Units on the Register on that date. A distribution may be in cash or by way of bonus Units.

11.6 **Grossed up Tax amounts**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Members in proportion to the Distributable Income for a Distribution Period as the case may be, which is referable to a dividend or other income to which they are presently entitled.

11.7 **Reinvestment of Distributable Income**

(a) The Manager may invite Members to reinvest any or all of their distributable income entitlement by way of application for additional Units in the Scheme.

(b) The terms of any such offer of reinvestment will be determined by the Manager in its discretion and may be withdrawn or varied by the Manager at any time.

(c) The Manager may determine that unless the Member specifically directs otherwise they will be deemed to have accepted the reinvestment offer.

(d) The Units issued as a result of an offer to reinvest will be deemed to have been issued on the first day of the next Distribution Period immediately following the Distribution Period in respect of which the distributable income being reinvested was payable.

12. **NATURE OF MANAGER POWERS**

12.1 The Manager has all the powers:

(a) of a natural person to invest and borrow on security of the Scheme Property;

(b) in respect of the Scheme and the Scheme Property that it is possible under the Law to confer on a Manager and on a Trustee;

(c) as though it were the absolute owner of the Scheme Property and acting in its personal capacity; or

(d) necessary for fulfilling its obligations under this Constitution and under the Law.

12.2 Without limiting the generality of clause 12. 1, the Manager may:

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(a) purchase, sell, lease, improve, encumber, sub-divide, hire, licence, exchange, develop, grant leases and licenses and enter into any other agreement or dealing including the surrender or termination of any dealing in relation to any property forming or which is to form part of the Scheme, on any terms the Manager thinks fit;

(b) repair, renovate, demolish, build or alter any improvement to any property forming part of the Scheme;

(c) determine any rental to be paid for the use of any property;

(d) exercise all powers and obligations in relation to any investment forming part of the Scheme Property, including but not limited to:

(i) attending and voting at meetings;

(ii) appointing proxies for meetings;

(iii) taking up a rights issue; and

(iv) paying calls under any contract.

(e) exercise any Power and perform all obligations in relation to any property forming part of the Scheme as if the Manager is the beneficial owner of the property;

(f) accept a conveyance or transfer of any property as part of the Scheme;

(g) enter into possession of and manage any property interests of the Scheme;

12.3 Without limiting the generality of clause 12.1, the Manager may:

(a) invest in any "securities" as defined in Section 92(1) of the Law:

(i) whether or not a trustee could properly acquire the security; and

(ii) on personal credit, with or without security;

(b) invest any money on loan to, or on deposit with, any person (including a Member or Related Corporation):

(i) with or without interest;

(ii) with or without security; and

(iii) repayable on any terms the Manager thinks fit;

(c) enter into swap transactions, futures contracts, forward rate agreements, foreign exchange agreements;

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(d) grant or take up an option to acquire property; and

(e) invest in or make a loan to any managed investment fund or scheme, including any managed investment fund or scheme that the Manager is the responsible entity of.

12.4 Clause 12.3 applies whether the Manager's purpose in making the investment:

(a) is to create a capital accretion or to produce income or other profits;

(b) is partly for a purpose referred to in clause 12.4(a);

(c) is for any other purpose that the Manager considers benefits the Scheme; or

(d) is for any purpose that the Manager considers directly or indirectly benefits any Member,

12.5 The Manager may invest any money required to be invested on loan to or on deposit with any Member or Related Corporation on any terms the Manager thinks fit.

12.6 The Manager may:

(a) exchange any investment for any other investment authorised under this Constitution;

(b) vary the terms of any investment or the security given for that investment; and

(c) surrender any investments.

12.7 Without limiting the generality of clause 12.1, the Manager may:

(a) use the income or capital of the Scheme to carry on any trade or business, either as a sole trader or in partnership;

(b) engage any managers and other employees;

(c) enter into any arrangement for sharing profits, co-operation, joint venture or reciprocal concessions;

(d) act in relation to the trade or business as if the Manager were beneficially entitled to it;

(e) set aside an amount out of the Scheme Property which, in the Manager's opinion, is sufficient to meet any debt or obligation;

(f) open and operate an account with any financial institution;

(g) sign, draw, endorse or execute in a manner determined by the Manager:

(i) any cheque or other negotiable or transferable instrument; and

(ii) any receipt for money paid to the Manager;

(h) borrow or raise money with or without giving security over the Scheme Property or any part of it on any terms including any rate of interest and any fees and expenses as the Manager thinks fit;

(i) make, draw, accept, endorse, discount, sell, purchase, negotiate and otherwise deal with any promissory note, bill of exchange, commercial bill, bill of lading, warrant, debenture, certificate of deposit or other transferable document or financial instrument for any purpose the Manager thinks fit;

(j) encumber the Scheme Property in favour of any person in relation to any obligation of the Manager on behalf of the Scheme;

(j) to the extent permitted by law:

(i) guarantee the payment of money or the performance of any other obligation; and

(ii) grant any indemnity in respect of any obligation;

to any person whether or not in relation to the obligations of a Member or for the benefit of the Scheme.

12.8 Without limiting the generality of clause 12.1, the Manager may:

(a) make any claim or demand or take any action on behalf of a Member of the Scheme;

(b) refer any dispute affecting the assets of the Scheme to arbitration, other than a dispute involving a Member; and

(c) settle on any terms any matter which arises in relation to the Scheme (if the Manager settles any matter the settlement is binding on all persons interested in the Scheme, including all Members).

12.9 To the extent allowed by law:

(a) any restriction or prohibition imposed upon the Manager in relation to the investment from time to time of the Scheme Property or any part thereof is hereby excluded from the obligations imposed.

(b) without derogating from the generality of the foregoing this exclusion specifically applies to any "Prudent Person Rule" or the like which may be implied by any future enactment of legislation.

12.10 To the extent allowed by law:

(a) the Manager may borrow or raise money with or without security over the Scheme Property or any part of it on any terms, including any rate of interest and any fees and expenses as the Manager thinks fit;

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

12.11 The Manager may use Scheme Property to assist it with its working capital requirements.

13. **COMPLAINTS PROCEDURES**

13.1 Complaints may be made in writing or by telephone to the Manager.

13.2 The Manager has 30 days to respond to the complaint once it is received. The Manager must attempt to resolve the complaint within a satisfactory time period as determined by the nature of the complaint and the Member's response. If the Member feels that their Complaint has not been satisfactorily resolved it will be referred to a Director or Complaints Manager of the Manager for resolution.

14. **TERM OF SCHEME**

The Scheme begins on the Commencement Date and is to be wound up on the earlier to occur of:

(a) the date which is eighty years from the Commencement Date; and

(b) any earlier date which the Manager, in its absolute discretion may appoint as the Vesting Date.

15. **WINDING UP THE SCHEME**

15.1 The Scheme shall only be wound up in accordance with the Law and this Constitution.

15.2 The Manager must wind up the Scheme in the following circumstances:-

(a) if the term of the Scheme as detailed in this Constitution has expired;

(b) the Members pass an Extraordinary Resolution directing the Manager to wind up the Scheme;

(c) the Court makes an order directing the Manager to wind up the Scheme.

(d) the Members pass an Extraordinary Resolution to remove the Manager but do not at the same time pass an Extraordinary Resolution choosing a company to be the new Manager that consents to becoming the Scheme's Manager;

15.3 (a) If the Manager considers that the purpose of the Scheme:

(i) has been accomplished; or

(ii) cannot be accomplished,

it may take steps to wind up the Scheme.

(b) If the Manager wishes to wind up the Scheme pursuant to clause 15.3(a), the Manager must give to the Members of the Scheme a notice in writing;

(i) explaining the proposal to wind up the Scheme, including explaining how the Scheme's purpose has been accomplished or why that purpose cannot be accomplished; and

(ii) informing the Members of their rights to take action under Division 1 of Part 2G.4 of the Law for the calling of a Members' meeting to consider the proposed winding up of the Scheme and to vote on an Extraordinary Resolution Members propose about the winding up of the Scheme; and

(iii) informing the Members that the Manager is permitted to wind up the Scheme unless a meeting is called to consider the proposed winding up of the Scheme within 28 days of the Manager giving the notice to the Members;

(c) if no meeting is called within that 28 days to consider the proposed winding up, the Manager may wind up the Scheme.

15.4 The Manager shall not accept any further applications for Units in the Scheme or make any further loans from the Scheme at a time after the Manager has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.

15.5 The Manager shall manage the Scheme until such time as all winding up

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procedures have been completed.

15.6 Subject to the provisions of this clause 15 upon winding up of the Scheme the Manager must:

(a) realise the assets of the Scheme ;

(b) pay all liabilities of the Manager in its capacity as Trustee of the Scheme including, but not limited to, liabilities owed to any Member who is a creditor of the Scheme;

(c) subject to any special rights or restrictions attached to any Unit, distribute the net proceeds of realisation among the Members in the same proportion specified in Clause 11.4;

(d) The Members must pay the costs and expenses of a distribution of assets under clause 15.6(c) in the same proportion specified in Clause 11.4.

(e) The Manager may postpone the realisation of the Scheme Property for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.

(f) The Manager may retain for as long as it thinks fit any part of the Scheme Property which in its opinion may be required to meet any actual or contingent liability of the Scheme.

(g) The Manager must distribute among the Members in accordance with clause 15.6 anything retained under clause 15.6(f) which is subsequently not required.

15.7 If on completion of the winding up of a registered Scheme, the Manager or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property the Manager or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property to the ASIC to be dealt with pursuant to Part 9.7 of the Law.

15.8 **Capital Guarantee**

LM Investment Management Limited ACN 077 208 461 guarantees the payment of each Members entitlements in the event of any shortfall in the assets of the Scheme if the Scheme is wound up where the Member became a Member of the Scheme on or before 4 November 2002. This guarantee will only apply to Members who are registered as Unit Holders

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in the Register on 4 November 2002 and remain Members on the date on which the Scheme is wound up. LM Investment Management Limited ABN 68 077 208 461 will ensure that all amounts which are guaranteed under this clause are paid to qualifying Members within 12 months of the date on which the Scheme is wound up.

16. **VALUE OF THE SCHEME PROPERTY**

The Manager may cause the Scheme Property to be valued at any time in accordance with the Valuation Policy of the Manager.

17. **FEES, TAXES, COSTS AND EXPENSES**

17.1 Taxes:

The Manager may use the Scheme Property to pay any Tax or other obligation, liability or expense required by any applicable law in relation to:

(a) this Constitution;

(b) any amount incurred or payable by the Manager;

(c) a gift or settlement effected by this Constitution;

(d) the exercise by the Manager of any Power; or

(e) money or investments held by or on behalf of the Manager under this Constitution.

17.2 **Payment of Debts:**

The Manager may set aside any money from the Scheme Property which, in the Manager's opinion, is sufficient to meet any present or future obligation of the Scheme .

17.3 **Fees:**

The Manager is entitled to be paid a management fee from the Scheme Property up to 10% per annum of the Net Fund Value in relation to the performance of its duties as detailed in this Constitution and the Law. This fee is to be calculated monthly and paid at such times as the Manager determines.

17.4 The Manager shall be entitled to fees for the following duties:

(a) In relation to the subscription and withdrawal of units;

(b) In relation to the transfer or transmission of Units;

(c) In relation to arranging any finance facility in connection with the purchase of any asset of the Scheme;

(d) In relation to due diligence enquiries generally;

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(e) In relation to the sale of real estate or assets of the Scheme Property;

(f) In relation to the promotion and management of the Scheme. This fee is payable monthly;

(g) In relation to the winding-up of the Scheme;

(h) In relation to the performance of its duties and obligations pursuant to the Law and this Constitution.

17.5 The Manager is entitled to be paid a success fee calculated in relation to a reporting period as the difference between the net profit of the Scheme and the net distributor forecast to be paid to Members by the Manager during that reporting period.

17.6 **Costs and Expenses**

The Manager shall be indemnified out of Scheme Property for liabilities or expenses incurred in relation to the performance of its duties; including:

(a) Auditor's fees;

(b) Legal fees and outgoings

(c) Barrister/QC - Legal Counsel Fees;

(d) Fees and expenses incurred in respect of any service providers and/or employees of the Scheme;

(e) All costs, charges and expenses incurred in connection with the acquisition, custody, transfer or disposal of any asset of the Scheme or investments (for example commissions, brokerage, legal fees, bank charges and stamp duty);

(f) Independent expert's or consultant's fees including but not limited to marketing agents, property specialists, surveyors, quantity surveyors, town planners, engineers;

(g) Property report/property consultants fees;

(h) Real estate agent's sales commissions;

(i) Costs of maintenance of any asset of the Scheme ;

(j) Outstanding accounts relating to any asset of the Scheme such as council rates;

(k) Locksmith for changing locks of any asset of the Scheme as appropriate;

(l) Insurance (property and contents);

(m) Removalists for removal of borrower's property as appropriate;

(n) Security guards to attend any asset of the Scheme as appropriate;

(o) Building and/or property inspection report fees - i.e. building, town planning experts and the like;

(p) all ASIC charges;

(q) all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;

(r) all costs and expenses incurred in producing Information Memorandums and Supplementary Information Memorandums or any other disclosure document required by the Law;

(s) reasonable costs incurred in protecting or preserving all assets offered as security;

(t) all liability, loss, cost, expense or damage arising from the proper performance of its duties in connection with the Scheme performed by the Manager or by any agent appointed pursuant to the Law;

(u) any liability, loss, cost, expense or damage arising from the lawful exercise by the Manager and the Custodian of their rights under the Power of Attorney contained in clause 19;

(v) Fees and expenses of any agent or delegate appointed by the Manager;

(w) Bank and government duties and charges on the operation of bank accounts;

(x) Costs, charges and expenses incurred in connection with borrowing money on behalf of the Scheme under the Constitution;

(y) Insurances directly or indirectly protecting the Scheme Property;

(z) Fees and charges of any regulatory or statutory authority;

(aa) Taxes in respect of the Scheme but not Taxes of the Manager [save and except any goods and services or similar tax ("GST")] which are payable by the Manager on its own account;

(bb) Costs of printing and postage of cheques, advices, reports, notices and other documents produced during the management of the Scheme;

(cc) Expenses incurred in connection with maintaining accounting records and registers of the Scheme and of the Scheme Auditors;

(dd) Costs and disbursements incurred in the preparation and lodgment of returns under the Law, Tax Act or any other laws for the Scheme;

(ee) Costs of convening and holding meetings of Members;

(ff) Costs and disbursements incurred by or on behalf of the Manager in connection with its retirement and the appointment of a substitute;

(gg) Costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings;

(hh) Costs of any insurance premiums insuring against the costs of legal proceedings (whether successful or not);

(ii) Costs of advertising the availability of funds for lending;

(jj) Brokerage and underwriting fees;

(kk) If and when the Manager becomes responsible to pay any GST in respect of any services provided to the Scheme or any payments in respect of GST to be made by the Members or the Manager in respect of the Scheme or under the terms of this Constitution then the Manager shall be entitled to be indemnified in respect of such GST from the Scheme Property;

17.7 In the event that the Manager has not performed its duties, the lack of entitlement to payment of fees pursuant to clause 17.3 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause shall be interpreted to mean that the Manager is not entitled to be paid fees and expenses for work properly performed.

17.8 In the event of any dispute regarding the payment of fees and expenses, the Manager shall be paid such fees and expenses until the dispute is fully determined. Any overpayment of the Manager shall be repaid forthwith upon the identification of the overpayment.

17.9 The Manager is entitled to recover fees and expenses from the Scheme provided they have been incurred in accordance with this Constitution.

17.10 All fees payable to the Manager are net of any goods and services tax.

18. **INDEMNITY AND LIABILITY**

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18.1 The following clauses apply to the extent permitted by law:

(a) The Manager is not liable for any loss or damage to any person (including any Member) arising out of any matter unless, in respect of that matter, it acted both:

(i) otherwise than in accordance with this Constitution and its duties; and

(ii) without a belief held in good faith that it was acting in accordance with this Constitution or its duties.

In any case the liability of the Manager in relation to the Scheme is limited to the Scheme Property, from which the Manager is entitled to be, and is in fact, indemnified.

(b) In particular, the Manager is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

(i) it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Manager;

(ii) it acted as required by Law; or

(iii) it relied in good faith upon any signature, marking or documents.

(c) In addition to any indemnity under any Law, the Manager has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the Manager has acted negligently, fraudulently or in breach of trust.

(d) The Manager is not liable to account to any Member for any payments made by the Manager in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia for taxes or other statutory charges.

19. POWERS OF ATTORNEY

19.1 Each Member by execution of the Application Form or the transfer by which he/she/it acquires Units in the Scheme appoints the Manager and any director officer attorney or substitute nominated by the Manager severally for this purpose as its attorney and agent with the right:

(a) at any time to:

(i) sign any document in relation to any subscription and

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withdrawal agreement;

(ii) sign any document in relation to the transfer or transmission of Units;

(iii) sign any variation of this Constitution;

(iv) sign any document required by ASIC to be executed by a Member in respect of the Scheme.

(b) at the request in writing of the Manager the Member must execute separate Powers of Attorney in a form reasonably required by the Manager appointing the Manager as its attorney for the purpose of this clause.

(c) any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty;

19.2 Each Member indemnifies and shall keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under the Power of Attorney.

20. THE REGISTER

20.1 Keeping registers

The Manager must establish and keep a register of Members, and if applicable, the other registers required by the Law.

20.2 Information In registers

To the extent applicable, the registers must be kept in accordance with, and contain the information required by the Law. Otherwise, the Manager may decide what information is included in the registers. If the Law applies, the Manager has the powers conferred under the Law in relation to the register.

20.3 Changes

Every Member must promptly notify the Manager of any change of name or address and the Manager must alter the relevant register accordingly.

21. NOTICES

21.1 A notice or other communication connected with this Constitution has no legal effect unless it is in writing.

21.2 In addition to any other method of service provided by law, the Notice must be:

(a) sent by post, postage prepaid, to the address for the Member in the Manager's register of interests;

(b) sent by facsimile to the facsimile number of the Member; or

(c) otherwise delivered, including via email, at the address of the addressee of the Member as is subsequently notified.

21.3 A Notice must be treated as given and received:

(a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;

(b) if sent by facsimile or electronically before 5.00 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of delivery.

21.4 Despite clause 21.3(ii) a facsimile is not treated as given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.

21.5 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:

(a) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(b) the notice is returned unclaimed.

21.6 Any Notice by a party may be given and may be signed by the solicitor for the party.

21.7 Any Notice to a party may be given to the solicitor for the party by any of the means listed in clause 21.2 to the solicitor's business address or facsimile number as the case may be.

22. LIABILITY OF MEMBERS

22.1 The liability of each Member, whether actual, contingent or prospective, is limited to the unpaid Issue Price of his/her/its Units except if the Manager and the relevant Member agree otherwise in writing that the liability of a Member may be further limited or waived.

22.2 A creditor or other person claiming against the Manager as trustee of the Scheme has no recourse against a Member and no Member is personally liable to indemnify the Manager, any creditor of the Manager or any person claiming against the Manager in respect of any actual, contingent, prospective or other liability of the Manager in relation to the Scheme.

23. APPOINTMENT AND REMOVAL OF TRUSTEE

23.1 **Retirement or Resignation of Trustee**

(a) The Manager may retire upon giving 3 months' notice to the Members of its desire to do so.

(b) The Manager must resign:

(i) if it is removed as provided by law;

(ii) if (being a corporation) it becomes an externally-administered body corporate as defined in the *Corporations Act 2001;* or

(iii) if (being a natural person) he or she is found to be of unsound mind or becomes bankrupt.

23.2 **Unit Holders May Appoint New Trustee**

The holders of not less than 50% of the Units on Issue may by notice in writing appoint a new Manager to fill a vacancy in the office of Manager.

23.3 **Transfer of Records**

Upon the resignation, retirement, or removal of the Manager, the Manager must hand to the new Trustee all books, records, documents and other matters pertaining to the Scheme and at the expense of the Scheme do all things necessary to transfer legal title and the assets of the Scheme to the new Trustee.

23.4 **Deed of Adoption by New Trustee**

The new Trustee appointed under clause 23.2 must execute a deed in a form approved by the holders of not less than 50% of the Units on Issue by which the new Trustee undertakes to the Members to carry out the obligations of the Trustee under this Deed.

24. CHANGING THE CONSTITUTION

24.1 This Constitution may be modified or repealed or replaced with a new Constitution by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights or is deemed necessary to conduct the affairs of the Scheme.

24.2 The Manager must send a copy of the Scheme's Constitution to a Member of the Scheme within seven (7) days if the Member:

(a) asks the Manager in writing for the copy; and

(b) pays any fee (up to the prescribed amount) required by the Manager

25. ACCOUNTS AND REPORTS

(a) The accounts of the Scheme must be kept and prepared by the Manager in accordance with applicable Accounting Standards and the Law.

(b) The Manager must prepare and make available to Members the financial statements of the Scheme for each financial year.

(c) The Manager may make the financial statements available to Members by either publishing the statements on the Manager's internet site, emailing the statements to individual Members or by sending the statements to individual Members by facsimile or prepaid post.

26 OTHER ACTIVITIES AND OBLIGATIONS OF THE MANAGER

26.1 Subject to the Law, nothing in this Constitution restricts the Manager (or its associates) from:

(a) dealing with itself (as manager, trustee or responsible entity of another trust or scheme or in another capacity);

(b) being interested in any contract or transaction with itself (as manager, trustee or responsible entity of another trust or managed investment scheme or in another capacity) or with any Member or retaining for its own benefit profits or benefits derived from any such contract or transaction; or

(c) acting in the same or similar capacity in relation to any other trust or managed investment scheme.

26.2 Other Obligations All obligations of the Manager which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

27 GOVERNING LAW

This Deed is governed by the Laws of the State of Queensland. The Manager and the Members submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

EXECUTED AS A DEED POLL:

GIVEN under the Common Seal of LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 by authority of a resolution of the Board of Directors under the hands of a Director and the Secretary who certify that they are the proper officers to affix this seal	)))))))))	.... Director .... Director/Secretary

Justice of the Peace/Solicitor

Supplemental Deed Poll

LM Investment Management Limited

Amending the Constitution for LM Managed Performance Fund

Supplemental Deed Poll

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Supplemental Deed Poll

Date 23 October 2012

Party

LM Investment Management Limited (ACN 077 208 461) incorporated in Queensland of Level 4, 9 Beach Road, Surfers Paradise, Queensland (the *Manager*).

Recitals

A The Manager is the trustee of the trust known as the LM Managed Performance Fund (the ***Trust***).

B Clause 24 of the Constitution provides that the Constitution may be modified if the Manager reasonably considers the change will not adversely affect Members' rights or is deemed necessary to conduct the affairs of the Trust.

C The Manager amends the Constitution to the extent set out in this Supplemental Deed Poll and reasonably considers such amendments will not adversely affect the Members' rights.

It is declared as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Supplemental Deed Poll including the Recitals, the following definitions apply unless the context otherwise requires.

Constitution means the constitution constituting the trust, as amended from time to time.

Effective Time means the date of this Supplemental Deed Poll.

Member means a person registered as a holder of units in the Trust (including persons registered jointly).

1.2 Interpretation

(a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution.

(b) Clauses 1.1 and 1.2 of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Manager with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of Members jointly and severally.

2. Amendment of Constitution

The Manager amends the Constitution so that, on and from the Effective Time, the Constitution is amended as set out in the schedule.

3. No Resettlement

The Manager confirms that it is not by this Supplemental Deed Poll intending to:

(a) resettle or redeclare the Trust declared under the Constitution; or

(b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

4. Governing Law and Jurisdiction

This Supplemental Deed Poll is governed by the laws of Queensland. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

Supplemental Deed Poll

Executed and delivered as a Deed in Queensland

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited**:

Director Signature	Director/~~Secretary Signature~~
EGHARD VAN DER HOVEN	PETER CHARLES DRAKE
Print Name	Print Name

Schedule

1. Insert the following definitions immediately after the definition of "B Class Unit" in clause 1.1:

   "**C Class Unit**" means a Unit in the Scheme that the Manager determines is a C Class Unit (and includes all sub-classes of such C Class Units);

   "**D Class Unit**" means a Unit in the Scheme that the Manager determines is a D Class Unit (and includes all sub-classes of such D Class Units);

   "**E Class Unit**" means a Unit in the Scheme that the Manager determines is an E Class Unit (and includes all sub-classes of such E Class Units);

   "**F Class Unit**" means a Unit in the Scheme that the Manager determines is an F Class Unit (and includes all sub-classes of such F Class Units).

2. Delete the words "otherwise includes A Class Units and B Class Units;" in the definition of "Unit" in clause 1.1 and replace with the following "otherwise includes A, B, C, D, E and F Class Units;"

3. In clause 3.2:

   (a) delete the words "each sub Class of A Class Units and sub Class of B Class Units" and replace with "each sub Class of A, B, C, D, E and F Class Units";

   (b) delete the word "difference" and replace with "different";

   (c) delete the words "Without limitation B Class Units" and replace with "Without limitation B, D and F Class Units"; and

   (d) delete the words "Issue Price for the B Class Units" and replace with "Issue Price for the B, D or F Class Units (as the case may be)".

4. Delete clause 6.4 and insert in its place the following new clauses 6.4-6.8:

   "6.4 The issue price of each sub Class of C Class Units shall be the amount of "F" in the following formula calculated as at the close of business on the Business Day prior to issue:

   $$\frac{(A / B \times D) + E}{D} = F$$

   Where:

   A = Net Fund Value

   B = Total number of all Units on issue

   D = total number of Units on issue in the sub-class of C Class Unit in respect of which the issue price is being calculated ("Relevant Sub Class")

   E = Distributions accrued but not paid to Members holding the Units in the Relevant Sub Class since the Valuation Date.

6.5 The issue price of each sub Class of D Class Units shall be the amount of "F" in the following formula calculated as at the close of business on the Business Day prior to issue:

$$\frac{(A / B \times D) + E}{D} = F$$

Where:

A = Net Fund Value

B = Total number of all Units on issue

D = total number of Units on issue in the sub-class of D Class Unit in respect of which the issue price is being calculated ("Relevant Sub Class")

E = Distributions accrued but not paid to Members holding the Units in the Relevant Sub Class since the Valuation Date.

6.6 The issue price of each sub Class of E Class Units shall be the amount of "F" in the following formula calculated as at the close of business on the Business Day prior to issue:

$$\frac{(A / B \times D) + E}{D} = F$$

Where:

A = Net Fund Value

B = Total number of all Units on issue

D = total number of Units on issue in the sub-class of E Class Unit in respect of which the issue price is being calculated ("Relevant Sub Class")

E = Distributions accrued but not paid to Members holding the Units in the Relevant Sub Class since the Valuation Date.

6.7 The issue price of each sub Class of F Class Units shall be the amount of "F" in the following formula calculated as at the close of business on the Business Day prior to issue:

$$\frac{(A / B \times D) + E}{D} = F$$

Where:

A = Net Fund Value

B = Total number of all Units on issue

D = total number of Units on issue in the sub-class of F Class Unit in respect of which the issue price is being calculated ("Relevant Sub Class")

E = Distributions accrued but not paid to Members holding the Units in the Relevant Sub Class since the Valuation Date.

6.8 The purpose of the above calculations is to reflect differential Unit Issue Prices. An A Class Unit Issue Price is not intended to reflect accrued but unpaid distributions. A B, C, D, E and F Class Unit Issue Price is intended to reflect accrued but unpaid distributions for the relevant sub-class of B, C, D, E and F Class Unit holders."

5. In clause 7.3(e)(iii) delete the words "B Class Units" and replace with "B, C, D, E or F Class Units".

6. In clause 7.3(e)(iv) delete the words "B Class Units" and replace with "B, C, D, E or F Class Units".

7. In clause 7.8:

(a) delete the words "A Class Unit or each B Class Unit (including each B Unit sub Class)" and replace with "A, B, C, D, E and F Class Unit (including each sub-Class)"; and

(b) insert the words "for that Class of Unit" immediately after the words "Issue Price" at the end of clause 7.8.

8. Delete clause 11.1(b) and replace with the following:

"(b) For B, D and F Class Unit holders the Distribution Period is one calendar month commencing on the 1st day of each calendar month, or as otherwise determined by the Manager in its absolute discretion. For C and E Class Unit holders the Distribution Period is each quarter (ending on 31 March, 30 June, 30 September and 31 December each year), or as otherwise determined by the Manager in its absolute discretion."

9. In clause 11.3(c) delete the words "For each Distribution Period" and replace with "Subject to the rights, restrictions and obligations attaching to any particular Unit or Class, for each Distribution Period".

10. In clause 17.11 insert immediately at the end of that clause "This includes waiver of such remuneration in favour of certain Members only, or in a manner that benefits certain Members only."

Annexure 12

ASIC & Business Names

ORGANISATIONAL SEARCH ON LM ADMINISTRATION PTY LTD

Historical Extract

This information was extracted from ASIC database on 16 November 2018 at 05:08PM

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

055 691 426	**LM ADMINISTRATION PTY LTD**	**DOCUMENT NO.**
	055 691 426	
ABN	Not available	
Registered in	QLD	
Date Registered	03-Apr-1992	
Review Date	03-Apr-2019	

Current Organisation Details

Name	LM ADMINISTRATION PTY LTD	7E5097311
Name Start	01-Nov-1999	
Status	EXTERNALLY ADMINISTERED For information about this status refer to the documents listed under the heading "External Administration and/or Appointment of Controller", below.	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	

Ceased/Former Organisation Details

Details Start	01-Nov-1999	014228127
Details End	18-Mar-2013	
Name	LM ADMINISTRATION PTY LTD	
Name Start	01-Nov-1999	
Status	REGISTERED	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	
Details Start	23-Jun-1995	009157495
Details End	31-Oct-1999	
Name	LAW MORTGAGE MANAGEMENT PTY LTD	
Name Start	23-Jun-1995	
Status	REGISTERED	

Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	
Details Start	03-Apr-1992	002403443
Details End	22-Jun-1995	
Name	C.M.M. AUSTRALIA PTY. LTD.	
Name Start	03-Apr-1992	
Status	REGISTERED	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	EXEMPT PROPRIETARY COMPANY	
Disclosing Entity	NO	

Current Registered Office

Address	DAVID CLOUT & ASSOCIATES, 105A BOWEN STREET, SPRING HILL, QLD, 4000	7E6642691
Start Date	19-Jan-2015	

Ceased/Former Registered Office

Address	FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT, BUNDALL, QLD, 4217	7E5105027
Start Date	29-Mar-2013	
End Date	18-Jan-2015	
Address	LEVEL 4 RSL CENTRE, 9 BEACH ROAD, SURFERS PARADISE, QLD, 4217	010248517
Start Date	07-Feb-1997	(AR 1996)
End Date	28-Mar-2013	
Address	3 ALISON STREET, SURFERS PARADISE, QLD, 4217	05569142F
Start Date	07-Feb-1996	(AR 1995)
End Date	06-Feb-1997	
Address	BUTLER MCMURTRIE, LEVEL 5 RSL BUILDING, 9 BEACH ROAD, SURFERS PARADISE, QLD, 4217	007626662
Start Date	14-Jun-1994	
End Date	06-Feb-1996	
Address	C/- BUTLER MCMURTIE, 1ST LEVEL, 94 BUNDALL ROAD, BUNDALL, QLD, 4217	007626539
Start Date	26-May-1994	(AR 1993)
End Date	13-Jun-1994	
Address	C/- KPMG PEAT MARWICK, 12TH LEVEL TOWER ONE, 2 CORPORATE COURT, BUNDALL, QLD, 4217	002405213
Start Date	17-Apr-1992	
End Date	25-May-1994	
Address	43 REED STREET, ASHMORE, QLD, 4214	002403443

Start Date	03-Apr-1992	
End Date	16-Apr-1992	

Current Principal Place of Business

Address	105A BOWEN STREET, SPRING HILL, QLD, 4000	7E6642691
Start Date	23-Dec-2014	

Ceased/Former Principal Place of Business

Address	LEVEL 4 RSL CENTRE, 9 BEACH ROAD, SURFERS PARADISE, QLD, 4217	010248517
Start Date	31-Jan-1997	(AR 1996)
End Date	22-Dec-2014	
Address	SUITE 18 PARKRISE, 3 ALISON STREET, SURFERS PARADISE, QLD, 4217	007626539
Start Date	30-Jun-1993	(AR 1993)
End Date	30-Jan-1997	
Address	43 REED STREET, ASHMORE, QLD, 4214	002403443
Start Date	03-Apr-1992	
End Date	29-Jun-1993	

Ceased/Former Director

Officer Name	PETER CHARLES DRAKE	1E2918595
ABN	Not available	
Birth Details	23-Aug-1955 WHANGARA NEW ZEALAND	
Address	13 ALBATROSS AVENUE, NOBBY BEACH, QLD, 4218	
Appointment Date	03-Apr-1992	
Cease Date	09-Jan-2015	
Officer Name	MICHAEL PATRICK DWYER	05569142F
ABN	Not available	(AR 1995)
Birth Details	01-May-1955 WARWICK QLD	
Address	1A YACHT STREET, SOUTHPORT, QLD, 4215	
Appointment Date	28-Jun-1995	
Cease Date	20-Feb-2002	
Officer Name	BIRGIT ZAMMIT	005256309
ABN	Not available	
Birth Details	11-Nov-1958 ADELAIDE SA	
Address	LEVEL 5 PARKRISE, 3 ALISON STREET, SURFERS PARADISE, QLD, 4217	
Appointment Date	31-Mar-1993	
Cease Date	28-Jun-1995	
Officer Name	CHRISTOPHER THOMAS JONES	002405214
ABN	Not available	
Birth Details	20-Nov-1962 LISMORE NSW	

Address	UNIT 3, 16 LATHER STREET, SOUTHPORT, QLD, 4215	
Appointment Date	03-Apr-1992	
Cease Date	31-Mar-1993	

Officer Name	MICHAEL PATRICK DWYER	002405214
ABN	Not available	
Birth Details	01-May-1955 WARWICK QLD	
Address	1A YACHT STREET, SOUTHPORT, QLD, 4215	
Appointment Date	03-Apr-1992	
Cease Date	31-Mar-1993	

Officer Name	BARRY REUBEN CANNELL	002405075
ABN	Not available	
Birth Details	06-Jan-1940 ESSEX UNITED KINGDOM	
Address	43 REED STREET, ASHMORE, QLD, 4214	
Appointment Date	03-Apr-1992	
Cease Date	03-Apr-1992	

Officer Name	CHRISTINE MARY CANNELL	002405075
ABN	Not available	
Birth Details	27-Nov-1941 MELTON UNITED KINGDOM	
Address	43 REED STREET, ASHMORE, QLD, 4214	
Appointment Date	03-Apr-1992	
Cease Date	03-Apr-1992	

Ceased/Former Secretary

Officer Name	PETER CHARLES DRAKE	1E2918595
ABN	Not available	
Birth Details	23-Aug-1955 WHANGARA NEW ZEALAND	
Address	13 ALBATROSS AVENUE, NOBBY BEACH, QLD, 4218	
Appointment Date	03-Apr-1992	
Cease Date	09-Jan-2015	

Officer Name	CHRISTINE MARY CANNELL	002405075
ABN	Not available	
Birth Details	27-Nov-1941 MELTON UNITED KINGDOM	
Address	43 REED STREET, ASHMORE, QLD, 4214	
Appointment Date	03-Apr-1992	
Cease Date	03-Apr-1992	

Current Appointed Liquidator (Creditors Voluntary Winding up)

Officer Name	DAVID LEWIS CLOUT	7E5398403
ABN	Not available	
Address	DAVID CLOUT & ASSOCIATES, 'DAVID CLOUT & ASSOCIATES', 105A BOWEN STREET, SPRING HILL, QLD, 4000	
Appointment Date	26-Jul-2013	

Officer Name	DAVID LEWIS CLOUT	7E5398580
ABN	Not available	
Address	DAVID CLOUT & ASSOCIATES, 'DAVID CLOUT & ASSOCIATES', 105A BOWEN STREET, SPRING HILL, QLD, 4000	
Appointment Date	26-Jul-2013	

Ceased/Former Appointed Liquidator (Creditors Voluntary Winding up)

Officer Name	LORRAINE DEBORAH SMITH	7E5398403
ABN	Not available	
Address	DAVID CLOUT & ASSOCIATES, 105A BOWEN STREET, SPRING HILL, QLD, 4000	
Appointment Date	26-Jul-2013	
Cease Date	13-Feb-2014	

Officer Name	LORRAINE DEBORAH SMITH	7E5398580
ABN	Not available	
Address	DAVID CLOUT & ASSOCIATES, 105A BOWEN STREET, SPRING HILL, QLD, 4000	
Appointment Date	26-Jul-2013	
Cease Date	13-Feb-2014	

Ceased/Former Controller

Officer Name	KORDAMENTHA PTY LTD	028643212
ACN	100 169 391	
ABN	Not available	
Address	12 CREEK STREET, BRISBANE, QLD, 4000	
Appointment Date	24-Jul-2013	
Cease Date	05-Jun-2015	

Ceased/Former Administrator of a Company Under Administration

Officer Name	JOHN RICHARD PARK	7E5097311
ABN	Not available	
Address	FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT, BUNDALL, QLD, 4217	
Appointment Date	19-Mar-2013	
Cease Date	26-Jul-2013	

Officer Name	GINETTE DAWN MULLER	7E5097311
ABN	Not available	
Address	FTI CONSULTING, 'CORPORATE CENTRE ONE' LEVEL 9, 2 CORPORATE COURT, BUNDALL, QLD, 4217	
Appointment Date	19-Mar-2013	
Cease Date	26-Jul-2013	

Current Issued Capital

Type	Current	007626539
Class	ORD	(AR 1993)

	ORDINARY
Number of Shares/Interests issued	3
Total amount paid/taken to be paid	$3.00
Total amount due and payable	$0.00

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

Current Members

Class	ORD			1E2918595
No. Held	1			
Beneficially Owned	YES	Fully paid	YES	

Name	DRAKE, PETER CHARLES
ABN	Not available
Address	13 ALBATROSS AVENUE, NOBBY BEACH, QLD, 4218
Joint Holding	NO

Class	ORD			1E2918595
No. Held	2			
Beneficially Owned	YES	Fully paid	YES	

Name	DRAKE, PETER CHARLES
ABN	Not available
Address	13 ALBATROSS AVENUE, NOBBY BEACH, QLD, 4218
Joint Holding	NO

Ceased/Former Members

Class	ORD			05569142F
No. Held	1			(AR 1995)
Beneficially Owned	YES	Fully paid	YES	

Name	DWYER, MICHAEL PATRICK
ABN	Not available
Address	1A YACHT STREET, SOUTHPORT, QLD, 4215
Joint Holding	NO

Class	ORD			007626539
No. Held	1			(AR 1993)
Beneficially Owned	NO	Fully paid	YES	

Name	ZAMMIT, BIRGIT
ABN	Not available
Address	LEVEL 5 PARKRISE, 3 ALISON STREET, SURFERS PARADISE, QLD, 4217

Joint Holding NO

Documents Relating to External Administration and/or Appointment

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

Received	Form Type	Processed	No. Pages	Effective	
22-Aug-2018	1500	22-Aug-2018	4	25-Jul-2018	7EAD36932
1500 ANNUAL REPORT TO CREDITORS					
20-Aug-2018	524	20-Aug-2018	4	25-Jul-2018	7EAD27335
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
06-Feb-2018	524	06-Feb-2018	4	25-Jan-2018	7E9876292
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
12-Oct-2017	1500	12-Oct-2017	7	25-Jul-2017	7E9534420
1500 ANNUAL REPORT TO CREDITORS					
07-Aug-2017	524	07-Aug-2017	13	25-Jul-2017	7E9327596
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
02-Feb-2017	524	02-Feb-2017	13	25-Jan-2017	7E8736007
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
24-Aug-2016	1500	24-Aug-2016	7	25-Jul-2016	7E8278737
1500 ANNUAL REPORT TO CREDITORS					
09-Aug-2016	524	09-Aug-2016	13	25-Jul-2016	7E8231472
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
18-Feb-2016	524	18-Feb-2016	12	25-Jan-2016	7E7709546
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
16-Sep-2015	1500	16-Sep-2015	9	25-Jul-2015	7E7306050
1500 ANNUAL REPORT TO CREDITORS					
30-Jul-2015	524	30-Jul-2015	11	25-Jul-2015	7E7175776
524J PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP					
03-Jul-2015	524	06-Aug-2015	9	05-Jun-2015	029315718
524T PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF FINAL ACCOUNTS OF CONTROLLER (OTHER THAN RECEIVER OR MANAGING CONTROLLER)					

05-Jun-2015	505	05-Jun-2015	2	05-Jun-2015	7E7013752
505X	NOTIFICATION OF CESSATION OF CONTROLLER (OTHER THAN RECEIVER OR MANAGING CONTROLLER)				
18-Feb-2015	524	18-Feb-2015	11	23-Jan-2015	7E6735193
524S	PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF ACCOUNTS OF CONTROLLER (OTHER THAN RECEIVER OR MANAGING CONTROLLER)				
12-Feb-2015	524	12-Feb-2015	15	25-Jan-2015	7E6719475
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
02-Oct-2014	525	02-Oct-2014	3	02-Oct-2014	7E6415016
525	NOTICE OF DISCLAIMER OF ONEROUS PROPERTY				
02-Oct-2014	5011	02-Oct-2014	5	24-Sep-2014	7E6414902
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
08-Sep-2014	1500	08-Sep-2014	9	25-Jul-2014	7E6348602
1500	ANNUAL REPORT TO CREDITORS				
07-Aug-2014	524	07-Aug-2014	12	23-Jul-2014	7E6273411
524S	PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF ACCOUNTS OF CONTROLLER (OTHER THAN RECEIVER OR MANAGING CONTROLLER)				
01-Aug-2014	524	01-Aug-2014	17	25-Jul-2014	7E6257560
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
17-Mar-2014	524	29-Apr-2014	9	22-Jan-2014	028896207
524S	PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF ACCOUNTS OF CONTROLLER (OTHER THAN RECEIVER OR MANAGING CONTROLLER)				
24-Feb-2014	524	24-Feb-2014	17	25-Jan-2014	7E5858892
524J	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF CREDITORS' VOLUNTARY WINDING UP				
14-Feb-2014	505	14-Feb-2014	2	13-Feb-2014	7E5839529
505R	NOTIFICATION OF RESIGNATION OR REMOVAL OF LIQUIDATOR/PROVISIONAL LIQUIDATOR				
17-Jan-2014	5011	17-Jan-2014	6	19-Dec-2013	7E5775524
5011A	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A				
13-Sep-2013	507	13-Sep-2013	9	09-Sep-2013	7E5510840

507D REPORT AS TO AFFAIRS BY DIRECTORS

22-Aug-2013 507 22-Aug-2013 22 02-Aug-2013 7E5458201
507F REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)

12-Aug-2013 524 12-Sep-2013 18 26-Jul-2013 028666313
524Z PRESENTATION OF ACCOUNTS & STATEMENT PRESENTATION OF FINAL ACCOUNTS OF ADMINISTRATOR

05-Aug-2013 5011 05-Aug-2013 4 26-Jul-2013 7E5418681
5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A

05-Aug-2013 5011 05-Aug-2013 23 26-Jul-2013 7E5418678
5011B COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A

05-Aug-2013 505 14-Aug-2013 6 24-Jul-2013 028643341
505T NOTIFICATION OF APPT OF CONTROLLER (OTHER THAN RECEIVER/MANAGING CONTROLLER)

31-Jul-2013 504 09-Aug-2013 4 24-Jul-2013 028643212
504C NOTIFICATION OF APPOINTMENT OF A BY APPOINTEE RE APPT OF CONTROLLER (OTHER THAN A RECEIVER)

26-Jul-2013 509D 26-Jul-2013 2 26-Jul-2013 7E5399478
509DA NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY
RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)

26-Jul-2013 505 26-Jul-2013 2 26-Jul-2013 7E5399436
505Y NOTIFICATION OF RESIGNATION OR REMOVAL OF ADMINISTRATOR OF COMPANY UNDER ADMINISTRATION UNDER S.436E(4), 449B OR 449C

26-Jul-2013 509D 26-Jul-2013 2 26-Jul-2013 7E5398742
509DA NOTICE UNDER S.446A OF SPECIAL RESOLUTION TO WIND UP COMPANY
RESOLVED THAT COMPANY BE WOUND UP UNDER 439C(C)

26-Jul-2013 505 26-Jul-2013 2 26-Jul-2013 7E5398580
505J NOTIFICATION OF APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)

26-Jul-2013 505 26-Jul-2013 2 26-Jul-2013 7E5398403
505J NOTIFICATION OF APPOINTMENT OF LIQUIDATOR (CREDITORS' VOLUNTARY WINDING UP)

19-Jun-2013 5011 19-Jun-2013 6 03-Jun-2013 7E5298882
5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A

20-May-2013 5011 20-May-2013 4 30-Apr-2013 7E5228021
5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS,

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

22-Apr-2013 5011 22-Apr-2013 4 16-Apr-2013 7E5168697
5011A COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION OTHER THAN UNDER S.436E OR S.439A

15-Apr-2013 5011 15-Apr-2013 15 02-Apr-2013 7E5152996
5011B COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A

19-Mar-2013 505 19-Mar-2013 2 19-Mar-2013 7E5097311
505U NOTIFICATION OF APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)

Charges

ASIC Charge Number	569440	Charge status	Satisfied
Date registered	04-Dec-1996	Time registered	13:22:00
Charge type	Both Fixed & Floating		
Date Created	02-Aug-1996		

Chargee **CAPITAL OPPORTUNITIES PTY LTD**
061 780 069

Lodged	Form Type	Processed	No. Pages	
24-Jun-1999	312	25-Jun-1999	1	015314905

312 NOTIFICATION OF
312A DISCHARGE

ASIC Charge Number	605333	Charge status	Satisfied
Date registered	20-Aug-1997	Time registered	09:30:00
Charge type	Both Fixed & Floating		
Date Created	06-Aug-1997		

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

Lodged	Form Type	Processed	No. Pages	
05-Jan-2010	312	06-Jan-2010	2	026198161

312 NOTIFICATION OF
312A DISCHARGE

ASIC Charge Number	692551	Charge status	Satisfied
Date registered	23-Apr-1999	Time registered	15:11:00
Charge type	Fixed		
Date Created	15-Mar-1999		

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

Lodged	Form Type	Processed	No. Pages	
17-Jun-2002	312	17-Jun-2002	1	017788582

312	NOTIFICATION OF			
312A	DISCHARGE			

ASIC Charge Number	700960	Charge status	Satisfied
Date registered	24-Jun-1999	Time registered	15:47:00
Charge type	Fixed		
Date Created	18-Jun-1999		

Chargee **DAIMLERCHRYSLER CAPITAL SERVICES (DEBIS) AUSTRALIA PTY LTD**
074 134 437

Lodged	Form Type	Processed	No. Pages	
13-May-2010	312	17-May-2010	4	026419951

312 NOTIFICATION OF
312A DISCHARGE

ASIC Charge Number	703332	Charge status	Satisfied
Date registered	08-Jul-1999	Time registered	09:57:00
Charge type	Both Fixed & Floating		
Date Created	30-Jun-1999		

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

Lodged	Form Type	Processed	No. Pages	
28-Aug-2006	312	28-Aug-2006	2	023096861

312 NOTIFICATION OF
312A DISCHARGE

ASIC Charge Number	872079	Charge status	Satisfied
Date registered	01-Jul-2002	Time registered	10:17:00
Charge type	Both Fixed & Floating		
Date Created	12-Jun-2002		

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

Lodged	Form Type	Processed	No. Pages	
28-Aug-2006	312	28-Aug-2006	2	023096863

312 NOTIFICATION OF
312A DISCHARGE

ASIC Charge Number	948055	Charge status	Satisfied
Date registered	04-Jun-2003	Time registered	11:25:00
Charge type	Both Fixed & Floating		
Date Created	28-Oct-2002		

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

Lodged	Form Type	Processed	No. Pages	
13-Jul-2010	312	13-Jul-2010	2	025130508

312 NOTIFICATION OF
312A DISCHARGE

ASIC Charge Number	1169760	Charge status	Satisfied
Date registered	14-Jun-2005	Time registered	11:37:00
Charge type	Both Fixed & Floating		
Date Created	03-May-2005		

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

Lodged	Form Type	Processed	No. Pages	
05-Jan-2010	312	06-Jan-2010	2	026198160

312 NOTIFICATION OF
312A DISCHARGE

Document Details

Received	Form Type	Processed	No. Pages	Effective	
12-Jan-2015	484	12-Jan-2015	2	12-Jan-2015	7E6642691
484 Change to Company Details 484B Change of Registered Address 484C Change of Principal Place of Business (Address)					
22-Mar-2013	484	22-Mar-2013	2	22-Mar-2013	7E5105027
484B Change to Company Details Change of Registered Address					
11-Jan-2012	311	11-Jan-2012	3	01-Nov-2011	7E4207405
311A Notification of Assignment of Charge					
23-Sep-2011	309	23-Sep-2011	5	09-Sep-2011	7E3971531
309A Notification of Details of a Charge					
13-Jul-2010	312	13-Jul-2010	2	13-Jul-2010	025130508
312A Notification of Discharge					
13-May-2010	312	17-May-2010	4	13-May-2010	026419951
312A Notification of Discharge					
07-Apr-2010	312	09-Apr-2010	2	07-Apr-2010	026495319
312C Notification of Release of Property					
29-Mar-2010	312	31-Mar-2010	2	29-Mar-2010	026246715
312C Notification of Release of Property					
29-Mar-2010	312	31-Mar-2010	2	29-Mar-2010	026246714
312C Notification of Release of Property					
05-Jan-2010	312	06-Jan-2010	2	05-Jan-2010	026198160
312A Notification of Discharge					
05-Jan-2010	312	06-Jan-2010	2	05-Jan-2010	026198161
312A Notification of Discharge					
05-Jan-2010	309	06-Jan-2010	25	22-Dec-2009	026198162
309A Notification of Details of a Charge					
15-May-2007	311	16-May-2007	4	04-May-2007	023759510
311B Notification of Change to Details of Charge					

14-Feb-2007	484	14-Feb-2007	2	14-Feb-2007	1E2918595
484	Change to Company Details				
484A1	Change Officeholder Name or Address				
484A2	Change Member Name or Address				
28-Aug-2006	312	28-Aug-2006	2	28-Aug-2006	023096863
312C	NOTIFICATION OF RELEASE OF PROPERTY				
08-Jul-2005	350	08-Jul-2005	1	08-Jul-2005	020965555
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE				
	Alters 020 957 875				
14-Jun-2005	309	14-Jun-2005	31	03-May-2005	020957875
309A	NOTIFICATION OF DETAILS OF A CHARGE				
	Altered by 020 965 555				
03-Oct-2003	312	03-Oct-2003	1	03-Oct-2003	019255499
312C	NOTIFICATION OF RELEASE OF PROPERTY				
04-Jul-2003	312	17-Oct-2003	2	04-Jul-2003	019011364
312C	NOTIFICATION OF RELEASE OF PROPERTY				
04-Jun-2003	312	04-Jun-2003	1	04-Jun-2003	017905731
312C	NOTIFICATION OF RELEASE OF PROPERTY				
04-Jun-2003	309	04-Jun-2003	20	28-Oct-2002	017905729
309A	NOTIFICATION OF DETAILS OF A CHARGE				
20-Mar-2003	902	20-Mar-2003	1	20-Mar-2003	0E8703807
902	SUPPLEMENTARY DOCUMENT				
	Alters 0E8 567 142				
04-Feb-2003	316	20-Mar-2003	3	31-Jan-2003	0E8567142
316L	ANNUAL RETURN - PROPRIETARY COMPANY				(AR 2002)
	Altered by 0E8 703 807				
23-Aug-2002	309	23-Aug-2002	35	13-Jun-2002	018193490
309A	NOTIFICATION OF DETAILS OF A CHARGE				
01-Jul-2002	309	01-Jul-2002	20	12-Jun-2002	017919705
309A	NOTIFICATION OF DETAILS OF A CHARGE				
14-Mar-2002	370	20-Mar-2002	2	14-Mar-2002	017688371
370	NOTIFICATION BY OFFICEHOLDER OF RESIGNATION OR RETIREMENT				
	Updates 055 691 42F				
31-Jan-2002	316	11-Feb-2002	3	30-Jan-2002	05569142L
316L	ANNUAL RETURN - PROPRIETARY COMPANY				(AR 2001)
17-Jan-2001	316	27-Feb-2001	3	20-Dec-2000	05569142K
316L	ANNUAL RETURN - PROPRIETARY COMPANY				(AR 2000)
28-Jan-2000	316	14-Feb-2000	3	27-Jan-2000	05569142J
316L	ANNUAL RETURN - PROPRIETARY COMPANY				(AR 1999)

01-Nov-1999	205	01-Nov-1999	1	29-Oct-1999	014228127
205A	NOTIFICATION OF RESOLUTION CHANGING COMPANY NAME				
08-Jul-1999	309	08-Jul-1999	21	30-Jun-1999	015339426
309A	NOTIFICATION OF DETAILS OF A CHARGE				
24-Jun-1999	309	24-Jun-1999	15	18-Jun-1999	015314906
309A	NOTIFICATION OF DETAILS OF A CHARGE				
24-Jun-1999	312	25-Jun-1999	1	24-Jun-1999	015314904
312C	NOTIFICATION OF RELEASE OF PROPERTY				
23-Apr-1999	309	27-Apr-1999	19	15-Mar-1999	014825070
309A	NOTIFICATION OF DETAILS OF A CHARGE				
14-Dec-1998	316	14-Dec-1998	3	08-Dec-1998	05569142I
316L	ANNUAL RETURN - PROPRIETARY COMPANY				(AR 1998)
30-Jan-1998	316	09-Feb-1998	4	29-Jan-1998	05569142H
316L	ANNUAL RETURN - PROPRIETARY COMPANY				(AR 1997)
20-Aug-1997	309	20-Aug-1997	19	06-Aug-1997	012781959
309A	NOTIFICATION OF DETAILS OF A CHARGE				
31-Jan-1997	316	24-Mar-1997	4	31-Jan-1997	010248517
316	ANNUAL RETURN				(AR 1996)
316A	CHANGE OF REGISTERED OFFICE ADDRESS				
316L	ANNUAL RETURN - PROPRIETARY COMPANY				
04-Dec-1996	309	05-Dec-1996	37	15-Jun-1996	011173086
309A	NOTIFICATION OF DETAILS OF A CHARGE				
31-Jan-1996	316	05-Jun-1996	4	30-Jan-1996	05569142F
316	ANNUAL RETURN				(AR 1995)
316A	CHANGE OF REGISTERED OFFICE ADDRESS				
316C	CHANGE TO OFFICEHOLDERS				
316L	ANNUAL RETURN - PROPRIETARY COMPANY				
	Updated by 017 688 371				
23-Jun-1995	245	23-Jun-1995	1	23-Jun-1995	009157496
245	CERTIFICATE OF REGISTRATION ON CHANGE OF NAME				
23-Jun-1995	205	23-Jun-1995	1	20-Jun-1995	009157495
205A	NOTIFICATION OF RESOLUTION CHANGING COMPANY NAME				
20-Jun-1995	410	20-Jun-1995	1	20-Jun-1995	009157432
410B	APPLICATION FOR RESERVATION OF A NEW NAME UPON CHANGE OF NAME				
06-Feb-1995	316	09-Feb-1995	4	31-Dec-1994	05569142E
316L	ANNUAL RETURN				(AR 1994)
07-Jun-1994	203	07-Jun-1994	1	01-Jun-1994	007626662
203A	NOTIFICATION OF CHANGE OF ADDRESS				
19-May-1994	316	19-May-1994	4	31-Dec-1993	007626539

316	ANNUAL RETURN				(AR 1993)
316A	CHANGE OF REGISTERED OFFICE ADDRESS				
316L	ANNUAL RETURN				

30-Mar-1994 304 31-Mar-1994 2 31-Mar-1993 005256309
304A NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY

17-Nov-1993 909 17-Nov-1993 1 15-Oct-1993 005951599
909 NOTICE OF ADDRESS OF BRANCH REGISTER

28-Apr-1992 304 28-Apr-1992 1 03-Apr-1992 002406045
304A NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY

24-Apr-1992 304 15-May-1992 1 03-Apr-1992 002405966
304A NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY

10-Apr-1992 207 10-Apr-1992 2 03-Apr-1992 002405224
207B NOTIFICATION OF ALLOTMENT OF SHARES REGARDING SUBSEQUENT ALLOTMENT

10-Apr-1992 209 10-Apr-1992 1 03-Apr-1992 002405219
209 NOTICE OF REDEMPTION OF REDEEMABLE PREFERENCE SHARES

10-Apr-1992 304 10-Apr-1992 2 03-Apr-1992 002405214
304A NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY

10-Apr-1992 203 10-Apr-1992 1 03-Apr-1992 002405213
203A NOTIFICATION OF CHANGE OF ADDRESS

03-Apr-1992 204 03-Apr-1992 1 03-Apr-1992 002405098
204 CERTIFICATE OF REGISTRATION DIVISION 1 PT 2.2

03-Apr-1992 215 03-Apr-1992 1 03-Apr-1992 002405075
215 NOTIFICATION OF INITIAL APPOINTMENT OF OFFICEHOLDERS

03-Apr-1992 201 03-Apr-1992 4 03-Apr-1992 002403443
201C APPLICATION FOR REGISTRATION AS A PROPRIETARY COMPANY

01-Apr-1992 410 01-Apr-1992 1 01-Apr-1992 002404833
410A APPLICATION FOR RESERVATION OF A NAME OF A NEW AUSTRALIAN COMPANY

Annual Returns

Year	Return Due Date	Extended Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
1993	03-Nov-1993		03-Oct-1993		31-Dec-1993	N
1994	31-Jan-1995		31-Dec-1994		31-Dec-1994	N
1995	31-Jan-1996					N
1996	31-Jan-1997					N
1997	31-Jan-1998					N

1998	31-Jan-1999	N
1999	31-Jan-2000	N
2000	31-Jan-2001	N
2001	31-Jan-2002	N
2002	31-Jan-2003	N

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

Address	PO BOX 588, SURFERS PARADISE, QLD, 4217
Start Date	23-Oct-2003

*** End of Extract ***

SERVICE AGREEMENT

LM Investment Management Ltd
And
Administration Trust

1.7.2010

TABLE OF CONTENTS

THIS SERVICE AGREEMENT is made on the date specified in schedule BETWEEN LM Investment Management Ltd (ACN 077 208 461) (the principal) and LM Administration Pty Ltd (ACN 055 691 426) as trustee for the LM Administration Trust (the Service Provider.)

Recitals:

1 The Principal conducts the business from the premises.

2 The Service Provider is in business as a provider of staff, plant and equipment, administrative funds management services, consulting and other services to persons for the purposes of providing assistance in the operation of the businesses which those persons respectively conduct.

3 The Principal has agreed to engage the Service Provider for the purpose of providing services to the principal in the conduct of the business and the Service Provider has agreed to be so engaged.

4 The Service Provider has agreed to render to the Principal the services of such of them or such other services as may be agreed upon by the Service Provider and the Principal from time to time on the terms and conditions contained in this agreement.

IT IS AGREED as follows:

1. Interpretation

1.1 "the business" means the business specified in schedule 1 and any other business from time to time conducted by the Principal and which the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement.

1.2 "commencement" date means the commencement date specified in schedule 1;

1.3 "commercial rates" in relation to the service fees payable under this agreement means the rates which it could be expected would be charged by a Service Provider to a client if the Service Provider and the client were dealing with each other at arm's length.

1.4 "confidential information" means and includes, but is not limited to, information relating to the business of the Principal and which is not in the public domain, such as developments relating to existing and future products and services marketed or used or to be marketed or used by the Principal or the Service Provider and persons or companies dealing with the Principal or the Service Provider and, also, information relating to the general business operations of the Principal including profit and loss statements balance sheets, customer or client lists, costs and selling price information, any trade secrets, know-how or product specifications, business and marketing plans and information provided to the Principal by persons other than the Service provider;

1.5 "the equipment" means the plant and equipment specified in schedule 1 and such other equipment as the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement;

1.6 "the other services" means the other services specified in schedule 1 and such other services as the Principal and the Service Provider may from time to time agree shall be subject to the provisions of this agreement",

1.7 "person" or persons means and includes all natural persons and corporations whether acting in their own capacity or as the trustee of a trust",

1.8 "the premises" means the premises specified in schedule 1 and such other premises from which the Principal may from time to time conduct the business;

1.9 "the Principal" means the party named in schedule 1 and any other company or persons which may at any time after the commencement date merge with the Principal or take over or carry on either in whole or in part the business and the undertaking of the Principal;

1.10 "the Service Provider" means the party named in schedule 1 and any other company or person which may at any time after the commencement date merge with the Service Provider or take over or carry on either in whole or in part the business and undertaking of the Service Provider;

1.11 "the services" means the services specified and/or referred to in schedule 1;

1.12 "the service fees" means the fees payable to the Service Provider pursuant to clause 5;

1.13 "the staff" means the persons specified in schedule 1 and all such other persons who from time to time are employed by the Service Provider in the provisions of the services;

1.14 "the term" means the period of this agreement specified in clause 3;

1.15 if any party consists of more than one person then the liability of those persons in all respects under this agreement shall be a joint liability of all those persons and the liability of each of them severally;

1.16 in this agreement except to the extent that the context otherwise requires:

1.16.1 words denoting the singular include the plural and vice versa;

1.16.2 words denoting individuals or persons include bodies corporate and trusts and vise versa;

1.16.3 reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this agreement;

1.16.4 reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time;

1.16.5 reference to any statutory enactment is a reference to that enactment as amended and modified from time to time;

1.16.6 words denoting any gender includes all genders; and

1.16.7 where a word or phrase is given a definite meaning in this agreement as part of speech or other grammatical form for that word or phrase has a corresponding meaning.

2. Engagement of Service Provider

The Principal engages the Service Provider and the Service Provider agrees to be so engaged to provide and make available during the term the services to the Principal on the terms and conditions set out in this agreement.

3. Term

The term of this agreement shall be the period commencing on the commencement date and continuing until termination in accordance with the provisions of clause 16.

4. Place of the Services

The services shall be provided at the premises and/or any other place or places as the Principal and the Service Provider may agree upon.

5. The Service Fees

5.1 The Principal shall subject to any review of the method of the calculation of the service fees pursuant to paragraph 14.1.1, pay to the Service Provider for the provision of the services the service fees set out in schedule1.

5.2 The service fees shall be calculated quarterly with the first of such quarterly payments being due and payable on the last day of the quarter.

5.3 The Service Provider acknowledges and agrees that in any review of the method of calculation of the service fees it shall not seek to have the service fees set at rates which exceed commercial rates for the services on the date of review.

6. Invoices for Service Fees

The Service Provider shall for each quarter or part of a quarter during the term as soon as practicable after the last day of each quarter of the term prepare and submit to the Principal an tax invoice for the service fees payable for each such quarter or part of a quarter.

7. Interest and security on unpaid money

7.1 The Principal shall at the request of the Service Provider pay to the Service Provider interest at a rate specified in schedule 1 (as varied from time to time under paragraph 14.1.5);

7.1.1 on any part of the service fees which remains outstanding for more than seven (7) days after the last day of the quarter for which the service fees are payable; and

7.1.2. on any other money from time to time outstanding and owed by the Principal to the Service Provider.

7.2 All interest payable by the Principal to the Service Provider in respect of unpaid service fees or any other money owed by the Principal to the Service Provider shall unless otherwise agreed by the Principal and the Service Provider be calculated quarterly on the last day of each quarter during the term on the total amount outstanding (including all unpaid interest) at the beginning of each quarter during the term.

7.3 For the purposes of securing payment to the Service Provider of all amounts (including interest) referred to in sub-clause 7.1 the Principal shall at the request of the Service Provider provide to the Service Provider security in the form and over the assets reasonable requested by the Service Provider and if the Principal is a company, for the purposes of this sub-clause, if a request is made by the Service Provider the Principal shall execute a mortgage debenture over all its assets and undertaking in favour of the Service Provider.

8. The Service Provider to maintain separate account

The Service Provider shall at all time during the term maintain a bank account into which it shall ensure all service fees are paid. The payment may alternatively be directly offset against any monies owed by the principal to the service provider.

9. Administrative Staff of Service Provider

The Service Provider shall ensure that all times during the term it has sufficient properly trained staff to enable it to carry out and honor all its obligations under this agreement and in particular to administer the calculation, collection and banking of the service fees.

10. Staff

10.1 The Service Provider shall as soon as practicable after the receipt of a request from the Principal to do so, provide to the Principal all of the staff to be provided by the Service Provider in the provision of the services.

10.2 Subject to the Principal having at the time of the request for the provision of any of the staff informed the Service Provider of the nature of the duties, tasks and/or work to be undertaken by each of the persons who comprise the staff the Service Provider shall make every reasonable endeavour to satisfy itself that each of these persons is fully qualified to carry out and provide those duties, tasks and/or work.

10.3 The Service Provider shall be responsible for salaries and/or wages and all income tax deductions, workers compensation or equivalent insurance, payroll tax, holiday pay, sick pay, superannuation and other employee entitlements payable in respect of the staff.

10.4 The Service Provider shall if requested by the Principal remove and replace any person who may from time to time comprise any of the staff.

10.5 The Service Provider shall be responsible for attending to all registrations required by State and Federal Law due to its status as an employer, including but not limited to, group employer registration, payroll tax registration, Workcover insurance registration, and any administrative requirements arising out of its management of any superannuation fund.

11. Equipment

The equipment shall remain the property of the Service Provider.

The Principal covenants with the Service Provider;

11.2.1 to treat and care for the equipment as would a cautious and prudent owner in order to prevent the deterioration of the equipment or its being damaged, lost or destroyed.

11.2.2 to at its own expense maintain the equipment in good repair, working order and condition and regularly and properly serviced and adjusted;

11.2.3 to preserve all identification marks on the equipment;

11.2.4 to permit the Service Provider or any person nominated by the Service Provider to inspect the equipment at any reasonable time of day or night without prior notice and to enter any premises to inspect, test or retake possession of the equipment;

11.2.5 to keep the equipment in its own possession control and custody and not to conceal or hide same or attempt to do so;

11.2.6 to indemnify and keep indemnified the Service Provider from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to the provision of the services or the use of the equipment during the term;

11.2.7 not to create or incur any lien or charge on the equipment nor to pledge, sub-let, assign, sell or part with possessions of the equipment;

11.2.8 upon expiration of the term forthwith to surrender the equipment to the Service Provider in the same condition as it was delivered, fair wear and tear excepted.

11.2.9 not without the consent of the Service Provider to all the equipment to be operated by any person other than an employee of the Principal;

and

12 Devotion of time

During the term the Service Provider shall devote so much of its time and attention to the performance of the services and its duties under this agreement as is required for the proper and efficient provision of the services and those duties.

13. Promotion of Principal

The Service Provider shall wherever it is reasonably practicable so to do promote, develop and extend the business of the Principal.

14. Review of service fees and terms of agreement

14.1 Whenever the principal shall upon reasonable notice require and in any event on not less than one (1) occasion in each period of the term ending on 30 June the Principal and the Service Provider shall meet with the view to determining whether any of the following terms of agreement need to be reviewed and/or varied:

14.1.1 the service fees and the method of calculation of the service fees;

14.1.2 the services provided by the Service Provider.

14.1.3. the number and suitability of the staff

14.1.4 the state of repair, general condition, adequacy and quality of the equipment;

14.1.5 the rate of interest which under the provisions of clause 7 may from time to time be payable on any part of the service fees and on any other money which from time to time remains outstanding and owed by the Principal to the Service Provider.

14.1.6 the operation of the terms of this agreement and generally the administrative arrangements between the Service Provider and the Principal; and

14.1.7 any other matters raised by either the Service Provider or the Principal.

15. Non –disclosure of information

Any information supplied by the Principal or any of its employees or agents to the Service Provider or by the Service Provider to the Principal shall be treated as confidential information and shall not be disclosed to any other person or firm unless the Principal or the Service Provider respectively consents to such disclosure.

16. Termination of agreement

This agreement shall be deemed to be terminated forthwith upon the happening of any of the following events:

16.1 if the Service Provider, the Principal or any of the directors of either of them is convicted of any offence which may reasonably be regarded as prejudicing the rights of the other of them under this agreement of otherwise;

16.2 subject to payment of all outstanding service fees payable under this agreement at the expiration of thirty (30) days after the receipt of a written notice of termination of this agreement given by either the Principal or the Service Provider to the other of them;

16.3 if either the Service Provider or the Principal shall fail to rectify any breach of the terms and conditions of this agreement within thirty (30) days of the service on the other of them of a written notice requiring rectification of the breach;

16.4 if a petition is presented or an order is made or any effective resolution is passed for the winding up of the Service Provider or the Principal or a meeting is summoned or convened for that purpose.

16.5 if a receiver of the business and undertaking of the Service Provider or the Principal or any part of their respective businesses and undertakings is appointed or proposed.

16.6 if an administrator is appointed to the Service Provider or the Principal under the provisions of the Corporations Law or the Service Provider or the Principal enters into any arrangements, reconstruction or composition with it creditors or any of them or proposes so to do;

16.7 If without the prior written consent of the Principal of the Service Provider as the case may be, a change occurs:

16.7.1 in the membership of the Service Provider or the Principal;

16.7.2 in the beneficial ownership of the issued capital of the Service Provider or the Principal;

16.7.3. the beneficial ownership of the business or assets of the Service Provider or the Principal;

resulting in the effective control of the Service Provider or the Principal or the beneficial ownership of their respective businesses being with a person whom at the commencement date did not have that control.

17. <u>Costs</u>

The Principal shall bear the costs in relation to the preparation and execution of this agreement.

18. <u>Further assurance</u>

The Principal and the Service Provider agree to do all such things and execute all such documents as may be necessary or desirable or reasonable required to give full effect to the provisions of this agreement and the transactions contemplated by it.

19. <u>Applicable law</u>

This agreement shall be governed by the laws of the State in which this agreement is executive and the Principal and the Service Provider agree to submit to the jurisdiction of the Courts in that State in relation to any question or dispute that may arise under this agreement.

20. <u>Services of notices</u>

Any demand notice or document under this agreement shall be sufficiently served or delivered if served or delivered personally or posted by prepaid post addressed to the person to be served at his address set out in schedule 1 or if served in any other manner authorised by the rules of the applicable law for the service of documents.

21. Entire Agreement

This agreement constitutes the sole and entire agreement between the Principal and the Service Provider and not warranties representations guarantees or other terms or conditions other than those contained and recorded in this agreement shall be of any force or effect.

22. Severability

If any provision of this agreement shall be invalid and not enforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with those terms.

23. No variation unless in writing

Any variation termination or attempted waiver of any of the provisions of this agreement shall only be binding if it is in writing and executed by the Principal and the Service Provider or their respective duly authorized officers.

24. No assignment without consent

Neither the Principal nor the Service Provider shall assign or permit a third party to obtain the benefit of its rights and interests under this agreement except with the prior written consent of the other of them.

25. Parties not joint venturers

This agreement does not constitute either the Principal or the Service Provider a joint venturer, partner, agent, employee or fiduciary of the other of them and subject to any other agreement between the Principal and the Service provider any act or omission of any party shall not bind or obligate the other of them except as expressly set out in this agreement.

26. Agreement to bind successors

This agreement shall extend to bind the Principal and the Service Provider and their respective assigns, transferees and successors, and any reference to the Principal or the Service Provider shall where the context so admits include its respective assigns, transferees and successors.

Executed as an agreement at the place specified in schedule 1.

<u>THE COMMON SEAL</u> of LM Administration Pty Ltd)
ACN 055 691 426 was hereunto affixed in accordance)
with its Articles of Association in the)
presence of:)

....
Grant Fischer Peter Drake - Director

<u>THE COMMON SEAL</u> of LM Investment Management Ltd)
ACN 077 208 461 was hereunto affixed in accordance)
with its Articles of Association in the.)
presence of:)

....
Grant Fischer Lisa Darcy - Director

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SCHEDULE 1

1.	Date of this agreement	The First day of July 2005
2.	Principal	LM Investment Management Ltd
3.	Service Provider:	LM Administration Pty Ltd as trustee for LM Administration Trust
4.	Business:	Funds management
5.	Premises:	Level 4, 9 Beach Road Surfers Paradise 4217 Level 2, 333 Sussex Street Sydney
6.	Commencement Date:	The 1st day of July 2005

7. Services:

7.1 Staff

7.2 Equipment:

7.3 Other Services:

*7.3.1 All services necessary for the proper and efficient management and administration of the business including but not limited to:

*7.3.1.1 the collection of all debts owed to the Principal by its customers and all other amounts from time to time outstanding to the Principal.

7.3.1.2 do all things necessary to remain the holder of the direct debit license on behalf of the principal between ANZ Banking Group Ltd (or other banking institution).

7.3.1.3 the payment of all electronic distributions under the direct debit license of behalf of the principal.

7.3.1.4 the provision of all administration funds management services on behalf of the principal for which the service provider will be entitled to payment (on behalf of the principal) of all management fees earned by the principal in its business of operating managed investment schemes. These management fees will be paid directly to the service provider and is in addition to the quarterly service fee paid for all other services.

*7.3.1.2 the preparation of all financial statements necessary for the external accountants for the Principal to prepare the year end financial statements of the Principal including the maintenance of all records necessary to properly maintain the general ledger of the principal and prepare a trial balance of the Principal on an ongoing basis;

*7.3.1.3 the employment and dismissal and the management of all personnel to be employed by the Principal in the operation of the business;

*7.3.1.4 all computer and administrative services required for the provision of the administration and operation of the business;

*7.3.1.5 all office supplies and materials to be used in connection with the conduct of the business;

*7.3.1.6 negotiating for the Principal all financial, leasing and hire purchase contracts including all the terms and conditions of those contracts;

*7.3.1.7 all services necessary for the proper management and administration of all properties from time to time leased and/or occupied by the Principal including the acquisition, design, layout, refurbishment and redecoration, sub-leasing, maintenance and repair of al those properties; and

*7.3.2 any services other than those referred to in sub-clauses 7.1 and 7.2 of this schedule I and this sub-clause from time to time provided by the Service Provider to the Principal by agreement of those persons.

8. <u>The Service Fees</u>

The service fees payable for the services shall be calculated as follows. All of the services shall be provided at 52% of the total expenses incurred by the Service Provider of the provision of the services to be provided plus such percentage or proportionate amount of that cost as may be agreed upon between the Principal and the Service Provider. In addition, the service provider will also be directly paid all management fees on behalf of the principal earned in the principals capacity as manager of all of its managed investment schemes.

9. Place of execution of agreement: Surfers Paradise Queensland

Annexure 14

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

ORDER

Before: Daubney J

Date: 26 August 2015

Initiating document: Originating Application filed 29 May 2015

THE ORDER OF THE COURT IS THAT:

1. Subject to Order 2:

1.1 Pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**"), the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461) ("**LMIM**") for the relief claimed in the Claim and Statement of Claim filed in Supreme Court of Queensland proceeding number 8032/14 ("**First Proceeding**").

1.2 Pursuant to section 96 of the *Trusts Act*, the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LMIM for the relief

SUPREME COURT OFFICE BRISBANE

ORDER

Filed on behalf of the Applicant

Form 59 Rule 661

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference NYB DOB 407747729

ME_123399513_2 (W2007)

claimed in the Claim and Statement of Claim filed in Supreme Court of Queensland proceeding number 8034/14 (**"Second Proceeding"**).

2. Each of Orders 1.1 and 1.2 is conditional upon there being filed in each of the First Proceeding and the Second Proceeding respectively a Deed Poll executed by IMF Bentham Limited ("IMF") by which IMF agrees to pay adverse costs orders made against the Applicant in each proceeding during the term of a litigation funding agreement made between the Applicant and IMF and to give the defendant(s) in each proceeding written notice of any termination of the litigation funding agreement within 7 days of such termination.

3. The Applicant serve the Claim and Statement of Claim in the First Proceeding within 14 days of this order.

4. The Applicant serve the Claim and Statement of Claim in the Second Proceeding within 14 days of this order.

5. The costs and expenses of and incidental to the application (including any reserved costs) of each of the Applicant, the Respondent Liquidators of LMIM and the Respondent David Whyte (receiver of the property of the LM First Mortgage Income Fund and the person appointed to take responsibility for the winding up of that fund) be paid on the indemnity basis out of the LM Managed Performance Fund.

6. The following documents handed up to the Court be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court":

   (a) the joint memorandum of advice of Counsel in the First Proceeding;

   (b) the joint memorandum of advice of Counsel in the Second Proceeding;

   (c) the confidential submissions on the merits;

   (d) the confidential summary of the main commercial terms of the proposed funding agreement;

   (e) the confidential draft of the proposed funding agreement.

7. The affidavit of Ashley John Tiplady sworn 23 July 2015 and filed by leave on 18 August 2015 be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court".

AND IT IS FURTHER DIRECTED that the Applicant forthwith make application for each of the First Proceeding and the Second Proceeding to be placed on the Commercial List.

Signed: Deputy Registrar

SUPREME COURT OFFICE BRISBANE

ME_123399513_2 (W2007)

SUPREME COURT OF QUEENSLAND

CITATION:	*Kordamentha Pty Ltd v LM Investment Management Limited (Receivers & Managers Appointed); Re: Kordamentha Pty Ltd* [2015] QSC 376
PARTIES:	**In 5329 of 2015:** **KORDAMENTHA PTY LTD AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND** (applicant) **DAVID WHYTE IN HIS CAPACITY AS COURT-APPOINTED RECEIVER OF THE PROPERTY OF THE LM FIRST MORTGAGE INCOME FUND** (not a party to the application) **In 8032 of 2014 and 8034 of 2014:** **KORDAMENTHA PTY LTD AS TRUSTEE OF THE LM MANAGED PERFORMANCE TRUST** (plaintiff/applicant) v **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461** (defendant/respondent)
FILE NO/S:	8032 of 2014 8034 of 2014 5329 of 2015
DIVISION:	Trial Division
PROCEEDING:	Civil Hearing
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	26 August 2015 (*ex tempore*)
DELIVERED AT:	Brisbane
HEARING DATE:	18 August 2015; written submissions on 20 August 2015
JUDGE:	Daubney J
ORDER:	**1. Subject to Order 2:** **1.1. Pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("Trusts Act"), the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LM Investment Management Limited (Receivers and Managers**

Appointed) (In Liquidation) (ACN 077 208 461) ("LMIM") for the relief claimed in the Claim and Statement of Claim filed in the Supreme Court of Queensland proceeding number 8032/14 ("First Proceeding").

1.2. Pursuant to section 96 of the *Trusts Act*, the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LMIM for the relief claimed in the Claim and Statement of Claim filed in the Supreme Court of Queensland proceeding number 8034/14 ("Second Proceeding").

2. Each of Orders 1.1 and 1.2 is conditional upon there being filed in each of the First Proceeding and the Second Proceeding respectively a Deed Poll executed by IMF Bentham Limited ("IMF") by which IMF agrees to pay adverse costs orders made against the Applicant in each proceeding during the term of a litigation funding agreement made between the Applicant and IMF and to give the defendant(s) in each proceeding written notice of any termination of the litigation funding agreement within 7 days of such termination.

3. The Applicant serve the Claim and Statement of Claim in the First Proceeding within 14 days of this order.

4. The Applicant serve the Claim and Statement of Claim in the Second Proceeding within 14 days of this order.

5. The costs and expenses of and incidental to the application (including any reserved costs) of each of the Applicant, the Respondent Liquidators of LMIM and the Respondent David Whyte (receiver of the property of the LM First Mortgage Income Fund and the person appointed to take responsibility for the winding up of that fund) be paid on the indemnity basis out of the LM Managed Performance Fund.

6. The following documents handed up to the Court be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court":

(a) the joint memorandum of advice of Counsel in the First Proceeding;

(b) the joint memorandum of advice of Counsel in the Second Proceeding;

(c) the confidential submissions on the merits;

(d) the confidential summary of the main commercial terms of the proposed funding agreement;

(e) the confidential draft of the proposed funding agreement.

7. The affidavit of Ashley John Tiplady sworn 23 July 2015 and filed by leave on 18 August 2015 be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court".

AND IT IS FURTHER DIRECTED that the Applicant forthwith make application for each of the First Proceeding and Second Proceeding to be placed on the Commercial List.

CATCHWORDS: EQUITY – TRUSTS AND TRUSTEES – APPLICATIONS TO COURT FOR ADVICE AND AUTHORITY – PETITION FOR SUMMONS OR ADVICE – GENERALLY – where there is an application for directions with respect to whether or not a proceeding should be brought against the respondents – where the statement of facts gives rise to a justiciable case – where the likely legal costs of the proceedings are significant – where there is a litigation funder – where the litigation funder will effectively assume liability for adverse costs orders made against the trustee – whether the proceedings should be pursued in the best interests of the trust estate – whether the liquidators should be indemnified out of the trust estate in respect of costs incurred on the application under s 96 of the *Trusts Act* 1973

PROCEDURE – COMMENCING PROCEEDINGS – where the defendant is subject to voluntary liquidation – where leave to proceed against a company in liquidation was not obtained at the time that proceedings were instituted – whether leave to proceed under s 500 of the *Corporations Act* 2001 should be granted

Trusts Act 1973 (Qld), s 96

Corporations Act 2001 (Cth), s 500

Federal Republic of Brazil v Durant International Corporation [2015] UKPC 35

Glassock v The Trust Company (Aust) Pty Ltd [2012] QSC 15

Coore v Coore [2013] QSC 196

KordaMentha Pty Ltd & Calibre Capital Ltd v LM Investment Management Ltd (in liquidation) & Anor [2015] QSC 4

Macedonian Orthodox Community Church St Petka Incorporated v His Eminence Petar The Diocesan Bishop of The Macedonian Orthodox Diocese of Australia and New Zealand (2008) 249 ALR 250

COUNSEL: In 5329 of 2015:

A Crowe QC with E Goodwin for the applicant
M Luchich for David Whyte in his capacity as court-appointed receiver of the property of the LM First Mortgage Income Fund

In 8032 of 2014 and 8034 of 2014:

A Crowe QC with E Goodwin for the applicant
J Peden for the respondent

SOLICITORS: In 5329 of 2015:

Minter Ellison for the applicant
Tucker & Cowan for David Whyte in his capacity as court-appointed receiver of the property of the LM First Mortgage Income Fund

In 8032 of 2014 and 8034 of 2014:

Minter Ellison for the applicant
Russells for the respondent

[1] Until the 12th of April 2013, LM Investment Management Ltd, (Receivers and Managers Appointed) (In Liquidation) ("LMIM") was the trustee of a unit trust called the LM Managed Performance Fund ("MPF"). On that date de Jersey CJ ordered that the present applicant, KordaMentha Pty Ltd ("the Trustee") replace LMIM as trustee of the MPF.

[2] LMIM was placed into voluntary administration on the 23rd of March 2013, and since the 1st of August 2013, has been administered under a voluntary winding up with Mr Park and Ms Muller ("the liquidators") as liquidators.

[3] LMIM also was (and remains) the responsible entity for a particular registered managed investment scheme called LM First Mortgage Income Fund ("FMIF"). On 21 August 2013, Mr David Whyte ("Mr Whyte") was appointed, *inter alia*, as Court appointed receiver to the FMIF.

[4] Relevant for present purposes is the fact that the Trustee has issued two sets of proceedings against LMIM. In respect of each proceeding, the Trustee seeks directions under s 96 of the *Trusts Act* as to whether it would be justified in prosecuting each proceeding. Moreover, leave to proceed against a company in liquidation was not obtained at the time that proceedings were instituted, and an application is now made for the necessary orders under s 500 of the *Corporations Act.*

[5] For quite a number of years, LMIM carried on business as a professional trustee for reward, in which capacity it created and managed both registered and unregistered investment schemes. It has been the responsible entity of the FMIF since 28 September 1999. FMIF is registered under s 601EB of the *Corporations Act*, and LMIM holds the property of the FMIF on trust for its members.

[6] The trust company PTAL Ltd ("PTAL") (formerly known as Permanent Trustee Australia Limited) is a professional corporate trustee which, under the terms of the custody agreement dated 4 February 1999:

(a) custodially holds the portfolio of title documents as agent for LMIM in relation to, amongst others, the FMIF;

(b) was required to act on LMIM's instructions in relation to any asses of the portfolio (including the assets of the FMIF).

[7] Whilst PTAL held legal title to various assets, it did not carry out any discretionary management functions.

[8] In argument before me, the two relevant proceedings were referred to as "the first proceeding" (being proceeding S8032 of 2014), and "the second proceeding" (being proceeding S8034 of 2014). Both proceedings were filed on 27 August 2014. It is convenient to adopt that terminology for present purposes.

[9] The following summary of the nature of each of the first proceeding and the second proceeding, as set out in the trustee's written submissions, was uncontentious:

Nature of the First Proceeding.

22. *The business of both LMIM ATF the MPF and LMIM ATF the FMIF was to use funds obtained from members by entering into property investment and structured loan transactions for the purchase and/or development of Australian real property for the eventual benefit of members.*

23. *The essence of the trustee's complaint is that LMIM ATF the MPF entered into a deed of assignment pursuant to which PTAL, in its capacity as Custodian of the FMIF, assigned existing loans and securities to LMIM ATF the MPF in exchange for payment of a settlement sum, in circumstances where the value of the securities received were significantly less than settlement sum paid.*

24. *The trustee's complaint is that, by entering into the deed of assignment (and subsequent deeds of variation), LMIM:*

(a) *breached the duty that it owed to the beneficiaries (i.e., unitholders of the MPF) not to place itself in a position of conflict of duty, in that the duties that it owed to the beneficiaries of the MPF conflicted with the duties it owed to the beneficiaries of FMIF; and*

(b) *breached the duty it owed pursuant to s 22 of the Trusts Act to exercise the care, diligence and skill a prudent person engaged in that profession, business, or employment would exercise in managing the affairs of other persons when exercising a power of investment.*

25. *The principal relief claimed in the first proceeding is:*

(a) *equitable compensation;*

(b) *a declaration that LMIM ATF the FMIF holds the amount of $9,731,662.76 paid as the settlement sum pursuant to the Assignment Deed as varied on constructive trust of the trustee.*

26. *However, the final quantum awarded after a successful trial will likely be affected by a number of other factors mentioned further below.*

Nature of the second proceeding

27. *The essence of the Trustee's complaint is that LMIM ATF the MPF entered into a Deed of Assignment pursuant to which PTAL, in its capacity as custodian of the FMIF, assigned an existing loan and securities to LMIM ATF the MPF in consideration for a Settlement Sum where the value of the securities received were, at the date of the assignment deed, and will be at the time of the proposed proceeding, significantly less than the Settlement Sum paid pursuant to the deed.*

28. *The trustee's complaint is that by entering into the Deed of Assignment and subsequent Deeds of Variation, LMIM:*

(a) *breached the duty that it owed to the beneficiaries of the MPF not to place itself in a position of conflict of duty, in that the duties that it owed to the beneficiaries of the MPF conflicted with the duties it owed to the beneficiaries of the FMIF; and*

(b) *breached the duty it owed pursuant to s 22 of the Trusts Act to exercise the care, diligence, and skill a prudent person engaged in that profession, business, or employment would exercise in managing the affairs of other persons when exercising a power of investment.*

29. *The principal relief proposed to be claimed in the proceeding is:*

(a) *equitable compensation; and*

(b) *a declaration that LMIM holds the amount of $19,551,800.65 paid as a Settlement Sum pursuant to the Assignment Deed (as varied) on constructive trust of the Trustee.*

30. *As with the first proceeding, the final quantum awarded after a successful trial will likely be affected by a number of other factors mentioned further below.*

[10] Whilst, as is apparent from this summary, and indeed as is apparent from a review of the statement of claim in each of the first proceeding and the second proceeding, the claims are presently framed to seek equitable compensation and relief of a proprietary nature, it became clear from argument that the trustee also proposes pursuing a tracing claim in each proceeding. In so doing, it will be seeking to identify not merely specific assets still held by LMIM over which it has a direct proprietary claim, but also will seek to trace (if it can) the value of its claim into other assets of LMIM. In pursuing its tracing remedy in that regard by seeking to follow value, and not just cash, the Trustee drew support from the very recent advice of the Privy Council in *Federal Republic of Brazil v Durant International Corporation* [2015] UKPC 35.

[11] The bulk of the argument before me was directed to the applications under s 96 of the *Trusts Act*. That section relevantly provides for the Court, in effect, to give private judicial advice to a trustee. The consequence of giving such advice is that personal protection is afforded to the trustee in pursuing a proceeding and the giving of the advice operates to protect the interests of the trust. The principles relevant to consideration of an application under s 96 have recently been essayed by Boddice J in *Glassock v The Trust Company (Aust) Pty Ltd* [2012] QSC 15 and by Atkinson J in *Coore v Coore* [2013] QSC 196. The relevant passages of those judgments were set out at length in the judgment of Martin J in *KordaMentha Pty Ltd & Calibre Capital ltd v LM Investment Management Ltd (in liquidation) & Anor* [2015] QSC 4. I respectfully adopt those statements of principle without setting them out at length.

[12] It was not in issue before me that Mr Whyte was a proper interested party to be heard on the present applications. Mr Whyte's attitude was that he did not oppose the directions sought by the Trustee, but considered it appropriate to put before the Court some matters which went to the Court's consideration as to the appropriateness of making the directions. In particular, the information provided by Mr Whyte went to the Court's consideration of the likely return if the Trustee as successful in the proceedings.

[13] For the liquidators, it was properly conceded that the information before the Court demonstrated in each proceedings that there is a *prima facie* legal case underpinning each proceeding. Arguments advanced on behalf of the liquidators in opposing the making of the directions went to questioning the true value of the claims, particularly in the context of the cost of pursuing each proceeding.

[14] Counsel for the liquidators accepted that if there were an insurance policy that responded to the claims, then the liquidators would accept that the proceedings could be justified. The situation, on the material before me, is that an insurer has declined to respond in respect of the claims which are the subject of the first proceeding and the second proceeding. I was informed by counsel for the liquidators that his current instructions from the liquidators are that LMIM does not presently intend to challenge the refusal of coverage; counsel for the liquidators further informed me that this was not to be taken to be a concession that there was no policy, nor an assertion that the liquidators abandoned any claim on such policy.

[15] Apart from a significant quantity of material filed in open court in respect of each of the claims made in the first proceeding and the second proceeding, I was provided, as is conventional on applications of this sort, with material on a confidential basis. That

material included advices by counsel and confidential submissions by counsel for the Trustee, which were directed particularly to the benefits of prosecuting the first proceeding and the second proceeding. I was also provided, on a confidential basis, with details of the proposed funding arrangements for the first proceeding and the second proceeding from a litigation funder, IMF Bentham. Subject to one matter to which I will refer specifically later, it is not appropriate for me to refer in any detail to those funding arrangements, save to record that I have had regard to the terms of the currently proposed funding agreement for the purposes of forming a view as to the appropriateness or otherwise of giving directions under s 96.

[16] Moreover, in response to particular concerns raised on behalf of the liquidators, an affidavit has now been filed on behalf of the Trustee which confirms that the litigation funder has been informed that the insurer has declined cover in respect of the claims made in the first proceeding and the second proceeding, and the litigation funder has also been provided with copies of the material put before me which raised questions as to the availability of assets to meet the claims made in the first proceeding and the second proceeding. The affidavit confirms that, at the present time, the offer of litigation funding remains open, and further that the litigation funder is still reviewing the documentation filed before me which went to the question of the availability of assets to meet the claims made in the proceedings.

[17] In reaching my conclusion with respect to the appropriateness of making directions under s 96, I expressly do so on the basis that litigation funding will be provided on terms which are identical to those put before me in the confidential information. Should that situation change, and it be the case that the litigation funder will only provide funding on terms different from those put before me, then I consider that this would be a circumstance which would require the legal advisers for the Trustee, in proper discharge of their obligations as officers of the Court, to bring these matters back before the Court for further consideration.

[18] After counsel for the Trustee informed the Court of the information which had been provided to the litigation funder, counsel for the liquidators took instructions as to the liquidators' attitude with respect to the application under s 96. Counsel for the liquidators was then able to advise the Court to the effect that if, on receiving the confidential information, I was satisfied as to the appropriateness of the litigation funding arrangements proposed to be entered into then, as with their attitude with respect to insurance, the liquidators would properly concede that this would be an issue which would be taken into account in justifying the making of directions under s 96.

[19] I turn then to the matters with which I need to be concerned on the applications under s 96.

[20] First, I note that each application has been made "upon a written statement of facts". As I have already noted, there was no real issue before me that the facts, as stated, give rise to justiciable cases to be pursued in the first proceeding and the second proceeding.

[21] Secondly, I am satisfied that service has been effected on "all persons interested in the application". In that regard, on 29 May 2015 an order was obtained from Peter Lyons J regarding the mode of service on the approximately 4,500 unitholders of MPF. There was no issue that service has been effected in accordance with that order.

[22] The real issue in respect of whether I ought accede to the applications for directions came down to, in effect, an assessment of the likely costs to be incurred in the proceedings, and the prospective benefit to be obtained for MPF from the proceedings.

[23] Each of the first proceeding and the second proceeding is a significant piece of litigation. The estimate put before me was that the Trustee's total legal costs of separately prosecuting both proceedings will be in the order of $1.8 million. As was said by counsel for the Trustee, it ought be possible to reduce those costs if the first proceeding and the second proceeding are tried at the same time, or at least sequentially, by the same judge. Be that as it may, there will undoubtedly be significant costs and outlays incurred in prosecuting the proceedings.

[24] As against that, questions are being raised, particularly by Mr Whyte, as to the quantum of monies which actually would be available to meet any judgments obtained in the proceedings. So, for example, the Trustee points to a large value (approximately $40 million) which it contends was transferred from the MPF to the FMIF and which, it would argue, represents value into which it can trace for the purposes of recovery on its claim. Mr Whyte, however, points to facts which would call into question whether such transfers, or transfers of that value, actually occurred. He says, for example, that within that alleged transfer of value of some $40 million, there were cash payments only amounting to some $9.5 million, and of those cash payments at least 40 per cent were not attributable to the transactions which are the subject of the first proceeding and the second proceeding. Indeed, Mr Whyte says that, as at the date of appointment of voluntary administrators, the only amount which then remained in FMIF over which any constructive trust might be declared for the benefit of MPF was in the order of $1.6 million.

[25] Despite having properly raised these questions, Mr Whyte also properly acknowledged the relevance to my consideration of the details of the litigation funding (details of which remained confidential).

[26] Counsel for the liquidators was also anxious to ensure that I had regard to the serious questions which had been raised as to the availability of assets to meet the potential claims under the first proceeding and the second proceeding, and also assisted considerably by pointing me to particular matters which might be of relevance when considering the terms of the proposed litigation funding agreement.

[27] It is, of course, neither appropriate nor possible on an application such as the present to descend into making findings as to the true quantum and extent of the assets which will properly be available to meet any judgment in the proceedings. It is, however, completely appropriate for me to have cognisance of the issues which have been raised on behalf of Mr Whyte and the liquidators, acknowledging also that the issues that they have raised will inevitably contribute to the complexity (and cost) of the litigation to be pursued. It cannot, I think, be said on any fair reading of the material before me

that either the first proceeding or the second proceeding would be fruitless. On the other hand, it can equally be said that it is apparent that pursuit of the proceedings will be costly for all parties concerned. That is why it has been particularly relevant for me to have regard to the terms of the proposed litigation funding agreement.

[28] As I have said, the terms of that proposed litigation funding agreement are confidential, and, save for one respect, it is inappropriate for the details of that proposed agreement to be publicised in this judgment. It is sufficient to record that the terms of the proposed litigation funding agreement have been put before me, and, having reviewed those terms and considered those in the commercial context of the relief claimed in each proceeding and also the prospective limitations on recovery which have been flagged by counsel to the liquidators and counsel for Mr Whyte, I have reached the view that it is in the best interests of the trust estate of MPF that, with the proposed litigation funding agreement in place, each of the first proceeding and the second proceeding should be pursued.

[29] The one particular matter which arises out of the proposed funding agreement is this, namely that in each of the first proceeding and the second proceeding, the litigation funder will be required to file in Court a deed poll (in the form provided to me on a confidential basis) the effect of which will be that the litigation funder effectively assumes liability for adverse cost orders made against the Trustee in those proceedings. In view of the complexities of the litigation to which I have already referred, and the limitations on the MPF funds for recourse in the event of adverse costs orders being made, it seems to me that the provision of such a deed poll in each of the first proceeding and the second proceeding is necessary. Indeed, the approval I give under s 96 in respect of each of the proceedings will be conditioned on such a deed poll being filed in each of the proceedings.

[30] It is also necessary for me to deal with the applications which have been made under s 500 of the *Corporations Act*. LMIM is subject to voluntary liquidation. The relief sought in each of the proceedings is outside the scope of the usual proof of debt procedure – this is particularly the case insofar as proprietary claims are pursued. It seems to me to be clearly appropriate for there to be leave to proceed in each case under s 500, and such leave shall be granted *nunc pro tunc*.

[31] As to the costs of the s 96 application, I accept, as was said by Martin J in his KordaMentha judgment at [28], that in applications of this type the Trustee's costs are ordinarily ordered to be paid out of the trust estate on the indemnity basis.

[32] The Trustee, however, resisted orders that the liquidators and Mr Whyte be similarly idemnified. It was argued that it would be inappropriate for either of those parties, effectively representing the interest of LMIM as they do, to have their costs now in circumstances where each of the first proceeding and the second proceeding is founded on allegations of breach of trust by LMIM. It was contended that an allegedly defaulting trustee should only have its costs out of a trust fund after the proceeding has been resolved in its favour.

[33] In the present case, however, there are a number of considerations to be taken into account.

[34] First, an application under s 96 is not a regular adversarial proceeding. Rather, it is the procedure by which a trustee obtains advice from the Court in relation to the management or administration of trust property. An important legal and a practical consequence of an order being made is that a trustee who acts on the direction of the Court is taken, as regards its own liability, to have discharged its duty as trustee so long as the trustee, has not been guilty of fraud, wilful concealment or misrepresentation in obtaining the direction – see *Coore v Coore* [2013] QSC 196 at [6]. The making of an order is important for the trust, because the Court would necessarily have had regard to the proper use of the trust assets, and it is important for the Trustee, because of the practical protection which the making of the order provides for the trustee. So the nature of an application under s 96 is quite different – as has been said by the High Court in the *Macedonian Church* case, it represents an exception to the Court's ordinary function of deciding disputes between competing litigants.[1]

[35] Secondly and consequentially, it was appropriate in the present case to hear from the liquidators and Mr Whyte. Moreover, the liquidators and Mr Whyte provided the Court with information and assistance which was highly relevant to my considerations as to whether or not to make the orders sought. That assistance particularly went to the questions concerning the availability of assets to meet any prospective judgment in the first proceeding and the second proceeding, and also relevant issues to which I needed to turn my mind when considering the appropriateness or otherwise of the litigation funding agreement.

[36] In all of the circumstances, I have decided that it is appropriate, in this particular case, for each of the liquidators and Mr Whyte to be indemnified out of the MPF in respect of the costs they have incurred on the present application under s 96.

[37] The costs incurred in respect of the applications under s 500 of the *Corporations Act*, in my view, fall into a different category. Given the circumstances of the present case, and the particular nature of the allegations made, it seems to me that those are costs which should abide the event. Accordingly, the parties' costs in respect of the applications under s 500 shall be reserved costs in the first proceeding and the second proceeding respectively.

[38] Finally, it became clear in the course of argument that there will be issues which will need to be addressed early in the course of each of the proceedings. Not the least of these will be to identify the parties which will have carriage of the defences for LMIM. In any event, each proceeding is patently of such complexity as to warrant active case management. Accordingly, I will be directing the applicant to move immediately to have each proceeding placed on the commercial list.

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[1] See *Macedonian Orthodox Community Church St Petka Incorporated v His Eminence Petar The Diocesan Bishop of The Macedonian Orthodox Diocese of Australia and New Zealand* (2008) 249 ALR 250 at [64].

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TRANSCRIPT OF PROCEEDINGS

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BODDICE J

No 5329 of 2015

RE: KORDAMENTHA PTY LTD

REVISED

BRISBANE

3.09 PM, THURSDAY, 7 JUNE 2018

ORDER

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

HIS HONOUR: This is an application under section 96 of the Trust Act 1973 for a direction as to whether the applicant, in its position as trustee of a fund, would be justified in discontinuing proceedings against the first defendant and the second defendant. They relate to two separate proceedings in this Court.

The application is brought in the following circumstances. The trustee is the trustee of a unit trust, having replaced another party as trustee on 12 April 2013 by order of this Court. That unit trust has 4500 unit holders.

On 26 August 2015, Justice Daubney gave directions in this proceeding under section 96 of the Act. Those directions essentially were that the trustee would be justified in prosecuting these proceedings because on the information placed before Justice Daubney, a funding agreement had been reached with a litigation funder.

The direction given by Justice Daubney was conditional upon a Deed being executed by the funder in which the funder agreed to pay any adverse cost orders made against the trustee in each proceeding during the term of the litigation funding agreement. There was also a requirement that the trustee give the defendants in each proceeding written notice of any termination of that litigation funding agreement.

On 1 May 2018, the litigation funder terminated the funding agreement in relation to both proceedings. On that same date, the trustee gave written notice to the defendants in the proceedings of the termination of that funding. It is in that context that this application for directions is sought by the trustee. Unsurprisingly, the trustee seeks a direction as to whether, in the circumstances, it would be justified in discontinuing those proceedings.

Having considered the material, I am satisfied it is appropriate to make directions pursuant to section 96 of the Trust Act. I am so satisfied because the present application effectively arises as a consequence of earlier directions given pursuant to that section by a Judge of this Court. The earlier directions effectively gave the trustee a direction that it would be justified in prosecuting the proceedings on a specific condition, namely, that there was in place litigation funding.

It was apparent from that direction that it was the intention that should those circumstances change, the matter ought properly to come back before this Court. I am satisfied the trustee accordingly has appropriately brought the matter back before the Court for further directions. Once the litigation funder terminated the funding agreement, there is little doubt the circumstances have significantly changed for the trustee in relation to the continued Prosecution of those proceedings.

Indeed, it is highly doubtful that a direction would have been given in the form given by Justice Daubney had there not been in place the funding agreement. This change in circumstances justifies the conclusion that a direction ought to be given that the trustee would be justified in discontinuing those proceedings.

There are many reasons why that direction is justified in the present case. Primarily, that reason is that the only basis upon which the original direction was given was that there was funding in place to ensure the defendants would be able to have any cost order in their favour met by that funder. That position no longer exists.

To continue with the proceedings in those circumstances would simply render the trustee liable to a payment of costs in circumstances where there are very little funds available and there are many demands on those funds, having regard to other related proceedings. There is also significant doubt that any existing insurance policies in relation to the directors would have funds available to meet those cost orders.

I accept, in coming to that conclusion, that there are some factors that may suggest the proceeding ought to continue. Primarily, that factor is that there is a prospect of success in relation to those proceedings. However, on balance, it is more probable that a continuation of the proceedings would result in dissipation of whatever funds are available, which would not be in the overall interests of the unit holders.

It is accepted by the trustee that in respect of the application itself, an order should be made that the costs of the application of the defendants be paid on an indemnity basis out of the LM Managed Performance Fund. That is similar to the order that was made at the time of the original application for directions. I am satisfied it is appropriate for that order to be made.

The remaining order in respect of costs relates to the consequences of the discontinuance. Under the rules, there would be a consequence of the discontinuance, namely, that the plaintiff would have to pay the defendants' costs unless the Court had ordered otherwise. I am satisfied that in the circumstances of this case, it is appropriate to make a formal order to the effect that upon the discontinuance having been filed, there should be cost orders in favour of those defendants. That simply ensures there be no argument in relation to the position of costs in the particular circumstances of this case.

I am satisfied it is appropriate to make the orders sought as a consequence of the directions I propose to make.

I order:

(1) In accordance with paragraphs 1, 2 and 3 of the draft direction, which provides for directions pursuant to section 96 of the Trust Act and the payment of costs in the application associated with those directions.

(2) In relation to the costs that will follow in respect of each of proceedings 8032 of 2014 and 8034 of 2014 upon the discontinuance by the plaintiff of those proceedings in accordance with the direction that I have made pursuant to section 96 of the Trust Act 1973.

I have initialled each of those orders. They will be placed with the papers.

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 8032/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**

AND

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

AND

Second Defendant: **DAVID WHYTE IN HIS CAPACITY AS COURT APPOINTED RECEIVER OF THE PROPERTY OF THE LM FIRST MORTGAGE INCOME FUND**

NOTICE OF DISCONTINUANCE

TAKE NOTICE that the Plaintiff discontinues the whole of the claim against the First Defendant and the Second Defendant.

The Plaintiff does not represent any other person in the proceeding.

The Plaintiff has not yet been served with the first defence of either defendant.

Signed:

Description: MinterEllison, solicitors for the Plaintiff

Dated: 7 June 2018

NOTICE OF DISCONTINUANCE

SUPREME COURT OFFICE BRISBANE

Filed on behalf of the Plaintiff

Form 27 Rule 304

ME_147643526_1

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SUPREME COURT OF QUEENSLAND

REGISTRY	Brisbane
NUMBER	8034/14

Plaintiffs:	**KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND**
	AND
First Defendant:	**LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)**
	AND
Second Defendant:	**DAVID WHYTE IN HIS CAPACITY AS COURT APPOINTED RECEIVER OF THE PROPERTY OF THE LM FIRST MORTGAGE INCOME FUND**

NOTICE OF DISCONTINUANCE

TAKE NOTICE that the Plaintiff discontinues the whole of the claim against the First Defendant and the Second Defendant.

The Plaintiff does not represent any other person in the proceeding.

The Plaintiff has not yet been served with the first defence of either defendant.

Signed:

Description: MinterEllison, solicitors for the Plaintiff

Dated: 7 June 2018

NOTICE OF DISCONTINUANCE	MINTER ELLISON Waterfront Place 1 Eagle Street BRISBANE QLD 4000 DX 102 Brisbane
Filed on behalf of the Plaintiff	Telephone (07) 3119 6000 Facsimile (07) 3119 1000 Email david.obrien@minterellison.com
Form 27 Rule 304	Reference DOB 407747729

SUPREME COURT OFFICE BRISBANE

ME_147644138_1

Annexure 18

FORM 535

subregulation 5.6.49(2)
Corporations Act 2001

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of LM Investment Management Limited **(in Liquidation) ACN 077 208 461 (the "Company") in its own capacity**

This is to state that the company was on 19 March 2013, and still is, justly and truly indebted to: KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund of C/- KordaMentha, Level 14, 12 Creek Street, Brisbane full name, ABN and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for 12,340,378 dollars.

Particulars of the debt are:

Date	Consideration *(state how the debt arose)*	Amount	Remarks *(include details of voucher substantiating payment)*
Various	Equitable compensation for, among other things, the loss caused by LMIM's breaches of the duty it owed as trustee of the MPF, to the beneficiaries of the MPF to: (i) adhere to the terms of the trust constituted by the MPF as set out in the Trust Deed from to time; and (ii) exercise the same care that an ordinary, prudent person of business would exercise in the conduct of that business were it his or her own.	$12,340,378	Refer to Statement of Claim.

To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it.

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount	Due Date

Signed by (select option):

☐ I am the creditor personally.

☐ I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

× I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: ______________________ Dated: 2 October 2018

Name: Jarrod Villani on behalf of KordaMentha Pty Ltd as trustee of the LM Managed Performance Fund

Address: Level 14, 12 Creek Street, Brisbane QLD

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RECEIVE REPORTS BY EMAIL	Yes	No
Do you wish to receive all future reports and correspondence from our office via email?	×	☐
Email: sclisby@kordamentha.com AND jvillani@kordamentha.com		

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