

but a trustee's right to indemnity for an expense incurred in connection with the postulated breach of a core duty. There is no principle that the operation of the clear accounts rule is confined to a trustee's right to indemnity for an expense connected with a breach of trust.

[142] Following these steps, in the present case, reduction of the amount of the right of indemnity by the amount of the claim for the counter-liabilities in proceeding BS11560/16 [i.e. the Breach of Trust Proceedings] would exceed the amounts claimed by LMIM for payment for indemnity for expenses, even if the claim for indemnity were otherwise accepted as one made for expenses properly incurred by LMIM as trustee or responsible entity.

[143] It follows that the clear accounts rule operates to "suspend" the claimed right to payment from the assets of the FMIF until the resolution of that claim and that LMIM's indemnity claims, to the extent that they are otherwise maintainable, should not be finally resolved until the claim in proceeding BS11560/16 is resolved.

10. Those findings are directly applicable to your client's claims in the KPG and Lifestyle Loan Proceedings. Relevantly, even in the event that your client is entirely successful in establishing a right to equitable compensation against LMIM, and in establishing a *prima facie* right for LMIM to be indemnified against the assets of the FMIF, that right of indemnity:
 - (a) is suspended until the Breach of Trust Proceeding is resolved; and
 - (b) may not be productive of a money order in LMIM's or (subject to what we say below, by subrogation) your client's favour, in the event that LMIM is found to have counter-liabilities to the FMIF for breach of trust in the Breach of Trust Proceeding exceeding the amount of any compensation to which your client is found to be entitled.
11. We are instructed that our client intends to raise the clear accounts rule in response to the indemnity asserted by your client in the KPG and Lifestyle Loan Proceedings, and in doing so to rely on the breaches of trust alleged in the Breach of Trust Proceeding.
12. With the above in mind, we note that our client is required to approach the Court for directions under section 59 of the *Trusts Act* 1973 as to who should represent the differing interests in the Breach of Trust Proceeding, because LMIM is on both sides of the record in different capacities.
13. Our client is of the view that it ought to bring the required application under section 59 of the *Trusts Act* without further undue delay.
14. To that end, we have corresponded with the liquidators of LMIM about the appropriate directions to be made. They have advised that they are without funds, and that consequently they do not intend to take any active role in the proceeding.
15. Although our client considers the liquidators of LMIM to be appropriate persons to represent LMIM's interests as the defendant to the allegations made in the Breach of Trust Proceeding, nonetheless we are drawing all of this to your attention because, in light of the effect of the clear accounts rule, it seems to us that your client has a clear interest in the Breach of Trust Proceedings being actively defended.
16. We ask that you consider these matters and advise us of your client's position by Wednesday, 16 May 2018.

The existence of a right of subrogation

17. In both the KPG and Lifestyle Loan Proceedings, your client asserts a right of subrogation, that it is alleged entitles your client to exercise LMIM's right of indemnity against the assets of the FMIF.

18. In that regard, we draw your attention to section 601FH(b) of the Act, which relevantly provides as follows:

If the company that is a registered scheme's responsible entity is being wound up, is under administration or has executed a deed of company arrangement that has not terminated: ... (b) a right of the company to be indemnified out of the scheme property may only be exercised by the liquidator or the administrator of the company or the deed.

19. As to the purpose and intended effect of this provision, we draw your attention to the comments of the Australian Law Reform Commission (ALRC) in its report No. 45 (General Insolvency Inquiry) at [259] and [260], as follows:

[259] *Trust creditors' derivative rights.* ... If, consequent upon the insolvency of a trustee, each creditor were to be allowed to claim separately against the trust fund or a beneficiary it would be time-consuming and expensive, prevent the orderly administration of the trust fund and prejudice the creditors who had not exercised such a right.

[260] *Liquidator to exercise trust creditors' derivative rights.* To avoid such multiple actions it was proposed in DP 32 (para 184) that upon the insolvency of a corporate trustee the liquidator should exercise the right of indemnity on behalf of all trust creditors. Submissions to the Commission supported this proposal ...

Recommendation

[261] The Commission therefore recommends that, upon the insolvency of a corporate trustee, the exercise of the right of indemnity against both the trust property and the beneficiaries (if such a right exists) should be a 'collective' right exercisable by the company, through its liquidator, on behalf of all trust creditors. ...

20. These comments were adopted by ALRC Report 65 (Collective Investments: Other People's Money) at paragraph 8.8 (page 76), which led to the enactment of the Managed Investments Act 1998,¹ and thereby to section 601FH(b) of the Act.
21. As such, it seems to us that the purpose and effect of section 601FH(b) of the Act is to exclude any right that might otherwise be exercisable by a creditor of a registered scheme to be subrogated to the responsible entity's right to be indemnified (by exoneration) from the scheme's assets.
22. If that is correct, it seems to us that:
- (a) section 601FH(b) of the Act defeats your client's purported exercise of a right to be subrogated to LMIM's rights of indemnity from the assets of the FMIF;
 - (b) your client can of course pursue relief against LMIM, but it must rely on LMIM to exercise such rights of indemnity as may be available to it against the assets of the FMIF, subject to the operation of the clear accounts rule.
23. In light of this, we ask that your client clarify or confirm its position as to how it intends to overcome the effect and the operation of section 601FH(b) of the Act or why it asserts that s 601FH(b) does not have the effect suggested in this letter, by Wednesday, 16 May 2018.
24. If you have any queries about any of the issues raised by this correspondence, please do not hesitate to contact us. We reserve all of our client's rights.

Yours faithfully



Alex Nase
Tucker & Cowen

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¹ See paragraphs 1.1 and 8.26 of the Explanatory Memorandum to the Managed Investments Bill 1997.

Encl.

Tucker&CowenSolicitors.

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Our reference: Mr Schwarz / Mr Nase
Your reference: Mr O'Brien / Mrs Braad

24 April 2018

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Associates.
Marcelle Webster.
Emily Anderson.
James Morgan.
Scott Hornsey.
Robert Tooth.

Dear Colleagues

KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("LMIM") & Anor. — Supreme Court of Queensland Proceedings 8032/14 & 8034/14 ("the Proceedings")

We refer to your letter dated 29 March 2018 regarding security for costs, and to our letter to you dated 5 April 2018 (copy attached).

We note that we have not yet received a response to our letter.

Would you please:-

1. provide us with the financial statements for IMF Bentham Limited itself (as a standalone entity), so that our client may confirm its capacity to satisfy an adverse costs order; and
2. provide us with a copy of the Supplementary Deed Polls once they have been signed by IMF and filed in the Court, within seven days of the date of this letter.

We reserve all of our client's rights with respect to security for costs.

Yours faithfully



Alex Nase
Tucker & Cowen

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Encl.

Individual liability limited by a scheme approved under Professional Standards Legislation.

MinterEllison

1 May 2018

BY EMAIL

Mr David Schwarz
Tucker & Cowen
Level 15, 15 Adelaide Street
Brisbane QLD 4000

Mr Ashley Tiplady
Russells
Level 18, 300 Queen Street
Brisbane QLD 4000

Dear Colleagues

RE: KordaMentha Pty Ltd (ACN 100 169 391) as trustee for the LM Managed Performance Fund: Supreme Court of Queensland Proceeding No. 5329/15

KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("LMIM") & David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgage Income Fund ("FMIF"): Supreme Court of Queensland Proceeding No. 8032/14

KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("LMIM") & David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgage Income Fund ("FMIF"): Supreme Court of Queensland Proceeding No. 8034/14

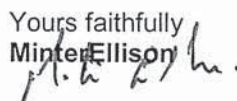
We refer to paragraph 2 of the Order made by the Honourable Justice Daubney in proceeding BS5329/15 on 26 August 2015.

We hereby give you notice that IMF Bentham Limited has terminated its agreement to fund proceedings BS8032/14 and BS8034/14, with effect from today.

In consequence, our client intends to discontinue both proceedings BS8032/14 and BS8034/14, if so advised by the Supreme Court of Queensland acting pursuant to section 96 of the *Trusts Act 1973* (Qld).

Our client will provide you with copies of the material it intends to rely upon in support of its section s96 application, other than Counsel's confidential memorandum of advice in support of the application, but does not intend to formally serve your clients.

As you are aware, the logistics associated with our client informing in excess of 4,500 unitholders of its view that the actions ought be discontinued, will mean that it may take two or more months before the Court's final direction can be obtained. In the meantime, please do not continue to incur costs in respect of the actions. Our client reserves its rights in this regard

Yours faithfully

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3 May 2018

Your reference: Mr O'Brien / Mrs Braad

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Dear Colleagues

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Consultant.
David Tucker.

Special Counsel.
Geoff Hancock.
Alex Nase.
Brent Weston.

Associates.
Marcelle Webster.
Emily Anderson.
James Morgan.
Scott Hornsey.
Robert Tooth.

Re KordaMentha Pty Ltd as trustee for the LM Managed Performance Funding – Supreme Court of QLD Proceeding 5329/15
KordaMentha Pty Ltd atf the LM Managed Performance Fund (“MPF”) v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) (“LMIM”) & Anor. – Supreme Court of Queensland Proceedings 8032/14 & 8034/14

We refer to your letter dated 1 May 2018.

Thank you for advising that your client intends to seek directions under s 96 of the Trusts Act 1973 (Qld) that your client would be justified discontinuing proceedings 8032/14 and 8034/14.

As you would recall, it was clear from Daubney J's reasons for judgment on the previous s 96 application brought by your client in proceeding 5329/15 that His Honour regarded the evidence that there was a litigation funding agreement in place, on satisfactory terms, as a very significant matter and that, without such a funding agreement in place, His Honour would not have directed that your client was justified in prosecuting the proceedings: see in particular p 8 lines 7 to 27 of transcript of reasons for judgment.

Indeed, His Honour made the directions given that your client was justified prosecuting the proceedings conditional upon deed polls being filed in the Court pursuant to which the litigation funder guarantees the payment of adverse costs orders.

Now that the litigation funding agreements have been terminated, it would seem to follow from His Honour's reasoning that your clients are no longer justified prosecuting the proceedings and thus, that the proceedings ought to be discontinued.

Our client would therefore query whether a further s 96 application is in fact necessary.

However, in the event that your client is intent upon bringing a further s 96 application prior to discontinuing the proceedings, our client is of the firm view that, given the lengthy delays in the proceeding to date, the application for directions ought to be brought, and the proceedings discontinued, promptly. This is particularly so given that these proceedings, whilst they continue to be on foot, are holding up the retirement of the Receivers appointed by Deutsche Bank AG, and are an impediment to our client applying to Court for approval to make an interim distribution to FMIF members.

It is not apparent to our client why it may take “two months or more” for the application and supporting material to be filed and served on unitholders (notwithstanding that there are 4,500 unit holders), and for directions to be obtained from the Court.

Our client would have thought that four to six weeks would be ample time for your client to obtain directions from the Court.

Given the above matters, our client has instructed us to request that:

1. if your client maintains that a further s 96 application is necessary, please explain why, and confirm that the application and supporting material will be filed and served promptly and let us know when we may expect to receive same; or
2. in the absence of an explanation, that your client discontinue the proceedings forthwith.

Kindly reply to this letter within seven days.

If you wish to discuss the matter, please do not hesitate to contact us.

Yours faithfully



Alex Nase
Tucker & Cowen

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MinterEllison

4 May 2018

BY EMAIL

Mr David Schwarz
Tucker & Cowen
Level 15, 15 Adelaide Street
Brisbane QLD 4000

Dear Colleagues

RE: KordaMentha Pty Ltd (ACN 100 169 391) as trustee for the LM Managed Performance Fund: Supreme Court of Queensland Proceeding No. 5329/15

KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("LMIM") & David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgage Income Fund ("FMIF"): Supreme Court of Queensland Proceeding No. 8032/14

KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("LMIM") & David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgage Income Fund ("FMIF"): Supreme Court of Queensland Proceeding No. 8034/14

We refer to your letter dated 3 May 2018.

A trustee may seek the Court's direction about ending valuable proceedings (see e.g. *Coore v Coore* [2013] QSC 196). Further, in this case the Honourable Justice Daubney in directing that our client would be justified in prosecuting the proceedings, stated in *Re KordaMentha Pty Ltd* [2015] QSC 376 at [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." (underlining added)

The termination of the funding agreement is a change in situation that should be brought to the attention of the Court.

Further, our client is entitled to seek the protection afforded it by section 97 of the *Trusts Act* 1973 (Qld) by making such an application in any event.

We enclose by way of notice, but not by way of service, two applications that we have filed today. You will see that the application for section 96 directions is to be heard on 7 June 2018. Of course, if events arise that occasion the need for an adjournment of that hearing, as they did on the hearing of the originating application, the final hearing of the present application could be delayed. Presently, we do not anticipate any such adjournment being required.

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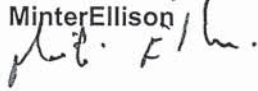
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If it is of any importance to the present s 96 application, we note that the "delay" which you mention in the prosecution of BS8032/14 and BS8034/14 occurred with your client's knowledge and consent in circumstances where our respective clients were attempting to negotiate a multi-party and multi-action settlement. We appreciate you may not know this because Gadens represented your client in those negotiations until he terminated them on 16 April 2018.

Yours faithfully

MinterEllison



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OUR REF: DOB 407735740

cc Mr Ashley Tiplady, Russells

RUSSELLS

11 May 2018

Our Ref: AJT:JTW:20150642

Your Ref: Mr O'Brien

David O'Brien
Minter Ellison
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BRISBANE QLD 4000

By Email: david.obrien@minterellison.com

Dear Colleagues

**KordaMentha Pty Ltd atf the LM Managed Performance Fund
Supreme Court of Queensland Proceeding No. 5329 /15**

**KordaMentha Pty Ltd atf the LM Managed Performance Fund v LM Investment Management Ltd
(Receivers & Managers Appointed) (In Liquidation) ("LMIM") & David Whyte in his capacity as
Court appointed receiver of the property of the LM First Mortgage Income Fund ("FMIF")
Supreme Court of Queensland Proceeding No. 8032/14**

**KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment
Management Ltd (Receivers & Managers Appointed) (In Liquidation) & David Whyte in his
capacity as Court appointed receiver of the property of the LM First Mortgage Income Fund
Supreme Court of Queensland Proceeding No. 8034/14**

We refer to your letter of 1 May 2018 and to your email of 9 May 2018.

We request that our client is served with your client's application pursuant to section 96 of the *Trusts Act 1973* (Qld) ("**the Trusts Act**") and all affidavits in support of that application. Please also tell us as soon as possible the hearing dates in respect of that application.

Your letter of 1 May 2018 gives notice of IMF Bentham Limited's ("**IMF**") termination of its agreement to fund proceedings 8032/14 and 8034/14 effective 1 May 2018 and states that your client intends to discontinue those proceedings if so advised by the Supreme Court of Queensland following the hearing of your client's application under the Trust Act.

Rule 307(1) of the UCPR provides that a party who discontinues or withdraws is liable to pay the costs of the party to whom the discontinuance or withdraw relates up to the discontinue or withdraw and the

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costs of another party or parties caused by the discontinuance or withdrawal. Accordingly, our client is, *prima facie*, entitled to its costs of proceedings 8032/14 and 8034/14 upon your client discontinuing those matters presently before the Court. Please let us know if you disagree and, if so, why.

In your 1 May 2018 letter you also refer to order 2 of the Order made by the Honourable Justice Daubney in proceeding BS5329/15 on 26 August 2015, that Order setting out a condition in respect of a Deed Poll being executed by IMF.

As our client understands the situation, on 8 September 2015 IMF executed a Deed Poll in respect of proceedings 8032/14 and 8034/14; clause (c) of that Deed Poll stating, amongst other things, that IMF for the benefit of the Court and the Respondent *"agrees to pay the Respondent the final, quantified amount of any Adverse Cost Order such that the Respondent may enforce the payment of that amount as a debt due and owing by IMF to the Respondent."*

"Respondent" is defined in the Deed Poll as LMIM and *"Adverse Cost Order"* is defined as *"any costs order made in favour of the Respondent against the Applicant in the Proceedings in respect of costs incurred during the term of the LFA"*. LFA is defined as the *"litigation funding Agreement which commenced on 5 September 2015 between IMF and the Applicant."*

It is our view that IMF's obligations under clause (c) of the Deed Poll are in respect of legal costs incurred prior to the termination of the LFA. Our client is therefore entitled, should your client discontinue proceedings 8032/14 and 8034/14, to all its legal costs up to the date of termination in accordance with the Deed Poll, particularly given rule 307(1) of the UCPR.

Consequently, on the hearing of your client's application under the Trusts Act our client will be seeking orders that proceedings 8032/14 and 8034/14 are only discontinued if costs orders are made against your client, with IMF obligated to pay our client's legal costs. We will then be seeking to relist proceedings 8032/14 and 8034/14 so that orders can be made under rule 307(2) of the UCPR.

Please let us know if your client takes an alternative view and, if so, on what basis.

There is obvious commercial benefit to both sides in attempting to agree the quantum of any costs order and our client has instructed us to offer to discuss this issue with you. Please let us know if you wish to so do.

Further, in respect of the costs of the proceeding 5329/15 (being your client's application pursuant to the Trusts Act), although, for the reasons outlined earlier by Tucker & Cowen, we see little need for such an application to be made, our client's position is that its costs of that application should be paid on an indemnity basis from the trust assets of the MPF. Please let us know if you take a different view and if so, why. That being said, our client is cognisant of the commerciality in getting too far into the detail of that application but will, only if necessary, appear at the eventual hearing of your client's Trusts Act application to seek the above orders (assuming that those orders are contested). Our client will otherwise be adopting a minimalist approach to that application.

Yours faithfully



Julian Walsh
Special Counsel

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MinterEllison

14 May 2018

BY EMAIL

Mr Julian Walsh
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Level 18, 300 Queen Street
Brisbane QLD 4000

Dear Colleagues

**RE: KordaMentha Pty Ltd (ACN 100 169 391) as trustee for the LM Managed Performance Fund:
Supreme Court of Queensland Proceeding No. 5329/15**

KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("LMIM") & David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgage Income Fund ("FMIF"): Supreme Court of Queensland Proceeding No. 8032/14

KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) ("LMIM") & David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgage Income Fund ("FMIF"): Supreme Court of Queensland Proceeding No. 8034/14

We refer to your letter dated 11 May 2018.

Our client has applied for a direction to discontinue BS8032/14 and BS8034/14. That application is to be heard on 7 June 2018, commencing at 10am.

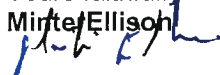
If our client obtains a direction to do so, it will then file notices of discontinuance pursuant to rule 304(1)(a) *UCPR*; neither defendant to BS8032/14 and BS8034/14 having filed a defence.

Upon filing these notices of discontinuance, our client accepts that it will be liable to pay the defendants' costs of and incidental to proceedings BS8032/14 and BS8034/14 on the standard basis up to the date of discontinuance. IMF Bentham Ltd will pay the portion of those costs incurred during the period its Funding Agreement was in operation.

In view of the above, our client will not be serving your client with its *ex parte* application for a section 96 direction in BS5329/15. As we have previously said, we will keep you informed of the progress of that application.

Our client would welcome an opportunity to agree with your client the quantum of the costs, which are to be paid if and when our client is directed to file notices of discontinuance and these notices have been filed.

Yours faithfully

MinterEllison


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Partner: David O'Brien T: +61 7 3119 6159
OUR REF: 407747729

cc Mr David Schwartz and Mr Alex Nase, Tucker & Cowen

TO THE INVESTOR AS ADDRESSED

29 March 2018

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

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

I now provide my 21st update to investors. This report is prepared in accordance with the Exemption granted by the Australian Securities and Investments Commission (ASIC Exemption) in relation to financial reporting obligations of the Fund. In this regard, the ASIC Exemption requires a report to be made available to investors for each period of six months starting on 1 January 2016, which includes the following information:

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

This report covers, inter alia, the period 1 July 2017 to 31 December 2017 (the Period). On 15 March 2018 ASIC extended the exemption on financial reporting obligations of the Fund until 16 March 2020. A copy of the exemption (relief instrument) is available for viewing at www.lmfimf.com

1. Progress and Status of the Winding Up

1.1 Position of the Secured Creditor, the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ('MPF') and claims filed against the Fund

1.1.1 Proceedings by the Trustee of the MPF against LMIM and the Fund

1.1.1.1 Assigned Loans Claims

I refer to my previous updates to investors in relation to these proceedings, in which the Trustee of the MPF is the plaintiff, and the defendants are LMIM, and myself as Receiver of the property of the FMIF.

The relief claimed by the Trustee of the MPF (MPF) in these proceedings includes equitable compensation against LMIM and claims against assets of the FMIF in the total sum of about \$24.1 million plus interest.

At the review hearing on 16 December 2016, the proceedings were adjourned to a date to be fixed as the parties wished to continue negotiations to settle the litigation in conjunction with the proceedings in both sections 1.1.1.2 and 1.1.2 below. However, given that the proceedings have not settled, I intend to take steps to progress the matter. In this regard, I have written to the MPF seeking an update on whether the MPF intend to proceed with the proceedings and if so, an approach will be made to the court to have the matter listed for a review hearing to set a timetable for the prosecution of the proceedings. I have not received a response to date.

1.1.1.2 AIIS Loan Claim

I refer to my previous updates to investors in relation to this proceeding in which the Trustee of the MPF is the plaintiff, and LMIM is the defendant.

The MPF Trustee has claimed approximately \$16.82 million as equitable compensation against LMIM and relief against the assets of the FMIF for approximately \$3.9 million (this may be increased to \$4.1 million) being alleged interest paid by the MPF to the FMIF in respect of the loan made by the FMIF to AIIS in 2005.

As with the proceedings in 1.1.1.1 above, these proceedings had also not progressed as negotiations to settle these proceedings were continuing. However, given the matters have not settled, I intend to take steps to progress the matter. However, as no step in the proceeding has been made by MPF for 12 months, the MPF is required to give one month's notice before taking any further steps in the proceeding.

1.1.1.3 Position of the Secured Creditor

I refer to my comments in my previous updates to investors. The DB Receivers have advised the matter precluding their retirement is that prior to retiring, they request the provision of a release by the MPF Trustee, with respect to various claims that the MPF Trustee has made or foreshadowed.

I continue to liaise with the DB Receivers about their ongoing role and the possibility of their retirement. Given that the DB Receivers have sold the remaining property held as security for a FMIF loan and they will retire as controllers of that property shortly, I will again be pursuing the retirement of the DB Receivers' as soon as possible.

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

I refer to my previous updates to investors in relation to a statement of claim I caused to be filed in the Supreme Court of Queensland, against a number of parties, including the MPF Trustee, in respect of loss allegedly suffered by the FMIF as a result of an amount paid to MPF in the Bellpac litigation matter. The claim is for \$15.5M plus interest.

Whilst attempts to settle the proceedings had been continuing in relation to these proceedings and those proceedings referred to in section 1.1.1 above, I continued to take steps to progress the proceedings including:

- Requiring the director defendants to file amended defences pursuant to the Court rules. As at 31 December 2017, all director defendants, except for Peter Drake, had filed amended defences;
- I have filed Replies to the amended defences received and made requests for further particulars which have all now been responded to;
- Obtaining orders enabling me to disclose for the purposes of these proceedings relevant transcripts obtained during the public examinations and documents produced for the public examinations by the former auditors.

As previously advised, the proceedings have not settled. As settlement discussions did not resolve the proceedings, I am now taking further steps to progress these proceedings to a trial. A review hearing was held on 14 March 2018 and orders were made setting a timetable for the next steps in the proceedings including the following:

- the 1st director defendant (being Peter Drake) has now filed his amended defence;
- by 29 March 2018, I am to file and serve any reply to the further amended defences of the 3rd and 4th defendants which were received on 12 March 2018;
- by 6 April 2018, I am to file and serve any reply to the amended defence of the 1st defendant;
- by 20 April 2018, I am to file and serve any reply to the amended defences of the 2nd, 6th and 8th defendants (which amended defences are to be filed by 6 April 2018);
- by 20 April 2018, I am to deliver any further disclosure (with all parties required to exchange disclosure on this date);
- various orders in relation to preparation of and producing document bundles for trial and production of any expert report are to be completed by mid-May 2018;
- the next review hearing date is set for 16 August 2018.

As the proceedings are ongoing, an update will be provided to investors in relation to this matter in my next report.

1.2 Legal Actions/Potential Recoveries

I provide an update in relation to other legal proceedings on foot and further work to be done, as follows:

1.2.1 Claim against the former auditors

I refer to my previous updates to investors and briefly summarise the background as follows:

- A public examination (PE) of the former auditors and certain directors and former directors (Directors) of LM Investment Management Limited (In Liquidation) was conducted in 2015;
- Following the PEs, a further amended statement of claim was filed by me and served on the former auditors of the Fund on 14 April 2016;
- The former auditors lodged and served on me a strike-out application and supporting affidavit on 27 April 2016 seeking orders to strike-out certain parts of the statement of claim;
- At the hearing of the former auditors' strike out application, the Court granted my application and placed the proceedings on the commercial list and reserved its decision on the auditor's strike out application;
- The reserved decision from the hearing of the strike out application was handed down on 8 May 2017. Orders were made that the statement of claim be amended to delete certain causes of action and to include details of the quantification of loss;
- In accordance with the Court's judgment, the parties were required to agree the form of orders including a timetable for the filing of a further amended statement of claim and the costs of the former auditors' strike-out application;
- The amended statement of claim was filed on 20 November 2017 and served on the former auditors. Details of the loss has been included in the amended statement of claim which has been calculated (at its highest) in excess of \$200 million. A significant amount of work has been undertaken in this regard, including quantifying the loss at 6 monthly hypothetical winding up dates between 1 July 2009 and 1 January 2013 being the estimated additional costs and expenses incurred by the Fund as a consequence of the alleged delay in winding up the Fund;
- I have received a number of requests pursuant to Rule 222 of the Court Rules (Rules) from the former auditors to provide documents referred to in the amended statement of claim which requests have been responded to.

I summarise developments since my last update to investors as follows:

- All of the documents requested in accordance with Rule 222 have now been provided to the former auditors.

The next steps in the proceedings are expected to include the following:

- seeking leave from the court to amend the claim and directions from the Court to progress the claim;
- dealing with any request from the former auditors for further and better particulars; and

- the filing by the former auditors of a defence to the amended claim.

The proceedings are ongoing and an update will be provided to investors in relation to this matter in my next report.

1.2.2 Bellpac Proceedings

In addition to the claim filed and served against the MPF in relation to a loss suffered by the Fund from litigation pertaining to the Bellpac loan noted at 1.1.2 above, there is another matter relating to Bellpac that has been progressed during the Period, as detailed below.

Wollongong Coal Ltd (WCL) - \$10 million Convertible Bonds

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

- The liquidator of Bellpac has received the settlement amount of \$2 million from WCL in relation to the claim for redemption of the \$2 million Bonds held in WCL;
- The Bellpac liquidator applied for the conversion of the remaining \$8 million Bonds to shares. As WCL did not issue all of the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL;
- The Bellpac liquidator and WCL entered into a binding heads of agreement (HOA) to settle the litigation commenced against WCL. The terms of the heads of agreement include that WCL will pay to Bellpac a settlement sum of \$6.3 million in return for certain releases and Bellpac returning or cancelling the WCL shares issued to Bellpac;
- A final condition precedent to the settlement with WCL has been delayed as WCL is now required to seek shareholder approval however, certain documents needed to support the proposal to shareholders has taken longer than expected;
- The remaining condition precedent (Sunset Date) to the settlement with WCL had been extended to March 2018 and the Liquidator was successful in negotiating as part of the agreement to extend the Sunset Date that WCL pay interest at 3% p.a. from 2 October 2017 until settlement. This is expected to realise \$6.3 million plus interest from 2 October 2017 for the benefit of investors;
- The MPF has demanded from the Liquidator approximately \$680K plus interest out of the proceeds of the Bonds litigation for repayment of funding the MPF allegedly made for the Bonds litigation from late 2010 to early 2013. The MPF has also reserved its rights in relation to claiming 35% of the funds realised from the successful Bonds proceedings. I have disputed the MPF's entitlement to a priority ahead of the Fund's first ranking security over the proceeds from the Bellpac bonds;
- Although there has been correspondence between the parties, no resolution has been reached in respect of the MPF claim to the proceeds of the bonds.

Developments since my last update to investors is as follows:

- The Bellpac liquidator received an update from WCL on additional time required to obtain and prepare documentation for shareholders for the meeting of shareholders to approve the

settlement. He advised me that he has agreed to again extend the sunset date to 18 May 2018;

- The Bellpac liquidator has recently been pursuing WCL for an update on their progress with preparation for the shareholders meeting however, a response has not yet been received.

1.2.3 Redemptions and Distributions paid to Class B Unit Holders

I refer to my previous updates to investors and summarise the background as follows:

- Investigations have been undertaken via the PE conducted in 2015 and subsequent thereto in relation to redemptions and distributions paid to the Class B unit holders (Feeder Funds) when the Fund had suspended redemptions and distributions to other classes of members;
- The Feeder funds are the LM Currency Protected Australian Income Fund (CPAIF), the LM Institutional Currency Protected Australian Income Fund (ICPAIF) and the LM Wholesale First Mortgage Income Fund (WMIF);
- On 28 July 2017, I caused to be filed an amended statement of claim against LMIM and the Feeder Funds and the claim was then formally served on the parties. The relief sought in the claim includes declarations to withhold from distributions or payments otherwise payable from the Fund to:
 - CPAIF in the sum of \$40,583,109.06 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the CPAIF would otherwise have been entitled as referred to in the amended statement of claim;
 - ICPAIF in the sum of \$5,044,118.30 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the CPAIF would otherwise have been entitled as referred to in the amended statement of claim;
 - WMIF in the sum of \$9,432,090.76 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the WMIF would otherwise have been entitled as referred to in the amended statement of claim
- In October 2017, I caused to be filed an application under Section 59 of the Trusts Act to seek directions in relation to how the differing interests of LMIM are to be represented in the proceedings and an application under Section 500 of the Corporations Act to seek leave to proceed against LMIM (which is required because it is in liquidation) (the Applications);
- The receivers for the CPAIF and ICPAIF (Grant Thornton) have advised they will not consent to my Section 59 application unless orders are made:
 - that their reasonable costs and fees be fixed by the Court and paid out of the FMIF up to them preparing and filing a defence and considering any Reply filed by me;
 - that I disclose to them certain books and records as requested by them.

- The parties consented to adjourn the hearing of the Applications (which was originally set down on 8 December 2017) to a date to be fixed.

I summarise developments since my previous update to investors as follows:

- I have also informed the parties that I will be making an application to have the matter listed on the Court's commercial list. The application and supporting documents have been prepared in respect of this application and sent to the parties for their comments;
- It is intended that the Applications and the Commercial List Application will be set down for hearing shortly, at which time I will also seek directions for the further conduct of the proceedings. At the hearing of those Applications, I also intend to seek orders for a timetable for the future conduct of the proceedings, including the filing of defences and replies;
- I am also corresponding with the parties as to the provision of certain documents requested by them to assist with the just and expeditious resolution of the real issues of the proceedings.

If the Court grants the relief sought against the Feeder Funds and putting aside any other recoveries for the benefit of investors:

- the CPAIF and ICPAIF are not likely to receive any distribution in the winding up of the FMIF;
- the WMIF is likely to receive a smaller distribution than it otherwise would have been entitled, subject to the outcome of litigation against the FMIF and future operating costs of the FMIF;
- the FMIF can use the funds which otherwise would have been paid to the Feeder Funds for distributions to investors generally instead and, as a result, the return to other investors (Class A and Class C) is likely to increase.

I will keep investors updated as to the progress of this claim.

1.2.4 Various claims against guarantors

Developments since my last report to investors are as follows:

- Judgement has been obtained against the guarantor that defaulted on a payment obligation in a deed of settlement entered into with him however, my solicitors have had difficulties in serving the judgment on the guarantor. Once service has been effected and if the guarantor then fails to pay the judgement, bankruptcy proceedings may then be pursued;
- I recently received a report from the trustee of a bankrupt guarantor that his investigations have identified potential recoveries for the benefit of creditors of which the Fund is the major creditor. I am liaising with the trustee in regard to his continuing investigations and negotiations with certain of the parties involved in the land development, the proceeds of which we are informed the bankrupt has an entitlement.

1.2.5 Western Union

Western Union held funds on account of the FMIF, which represented investor distributions returned due to incorrect account details held.

Western Union sought to set off funds held in the FMIF account against liabilities of other LM related entities, however a confidential commercial settlement has been negotiated. This matter was finalised and the settlement funds deposited into the Fund's bank account during the Period.

1.2.6 Liquidators of LMIM (FTI Consulting)

1.2.6.1 Application for remuneration approval

I refer to my previous updates to investors and summarise the background as follows:

- FTI filed a Further Amended Originating Application on 16 December 2015 for the determination of their remuneration claimed as administrators or liquidators of LMIM in the amount of \$3,098,251.83 for the period from the date of their appointment to 30 September 2015 from assets of the Fund;
- Judgement was reserved;
- FTI had not submitted further details of their additional remuneration and costs claimed after mid December 2015 as they were awaiting the outcome of the judgement noted above.
- The Court handed down its reasons for judgment on 17 October 2017. Orders reflecting His Honour's reasons for judgment were made on 22 November 2017 that FTI be paid a total of \$1,827,205.23 plus any GST for remuneration and out of pocket expenses from property of the FMIF for the relevant period. The result is a significant cost saving for the investors as the amount to be paid to FTI from property of the FMIF for the relevant period is significantly less than the claimed amount from the property of the FMIF of approximately \$3.1 million (plus GST);
- As to the costs of the proceedings, the court orders provide that certain specified proportions of FTI's costs on an indemnity basis are to be paid from the property of the Fund and three other LM funds. The quantum of those costs is to be assessed if they cannot be agreed between FTI and me.

I summarise developments since my update to investors as follows:

- FTI filed an application on 19 December 2017 for further orders against me for payment of the amounts ordered on 22 November 2017 to be paid. That application has been adjourned to a date to be fixed;
- The amount of \$1,827,205.23, being the remuneration (excluding any amount for GST) for the period to 30 September 2015 as approved by the Court, was paid on 20 December 2017 together with an amount of interest. However, a dispute has arisen as to the appropriate treatment for GST purposes (by FTI, LMIM and the FMIF) of any GST attributable to the work performed by FTI. The additional amount claimed for GST has not been paid by the Fund.

1.2.6.2 Indemnity claim against the Fund and proof of debt process

As advised in my previous reports to investors, the orders handed down in relation to FTI's ongoing role and extent of their powers and responsibilities set out, amongst other things, the process for me to adjudicate on claims made by LMIM for indemnity against the property of the FMIF in respect to any expense or liability of, or claim against, LMIM in acting as Responsible Entity of the FMIF.

I refer to my previous updates to investors and summarise the background as follows:

- FTI submitted two indemnity claims for \$241,453.54 and \$375,499.78 against the assets of the Fund;
- The first claim of \$241,453.54 relates to legal costs incurred in relation to the appeal of the decision appointing me as receiver to wind up the Fund. I rejected this claim in full;
- In respect of the second claim, I accepted and paid \$84,954.41 (\$93,449.85 less GST of \$8,495.44) (Accepted Claim), rejected \$169,243.26 and deferred \$5,473.59 pending the judgement to be handed down in relation to FTI's remuneration application. The balance of FTI's claim has been withdrawn;
- FTI made an application to Court challenging my decision to reject their indemnity claim noted above (Indemnity Application);
- I obtained judicial advice to the effect that I am justified in raising the clear accounts rule in opposition to the Indemnity Application, in relation to certain identified claims;
- FTI's Indemnity Application challenging my decision to reject FTI's indemnity claim was heard on 19 and 20 June 2017. The Court reserved its decision;
- The Court handed down its reasons for judgment on 17 October 2017. His Honour found that the legal costs of the appeal in 8895 of 2013 of \$263,127.13 and costs of assessment of those costs in the sum of \$9,068.68 cannot be paid out of the property of the FMIF, that the Liquidators are entitled to direct indemnity out of the FMIF for various amounts totalling \$44,158, and that the clear accounts rule operates to suspend LMIM's claimed right to payment from the assets of the FMIF until the resolution of the claim made in the proceeding 11560/16 (the LMIM Claim) and that LMIM's indemnity claims, to the extent that they are otherwise maintainable, should not be finally resolved until the LMIM Claim is resolved;
- Orders reflecting His Honour's reasons for judgment were made on 22 November 2017;
- As to the costs of the proceedings, the court orders provide that 90% of FTI's costs of the application be paid on an indemnity basis as agreed with me or otherwise as assessed by the Court;
- In summary, of the total amount sought of \$616,953 under FTI's indemnity claim, only \$129,112 has to be paid from the Fund's assets.

I summarise developments since my update to investors as follows:

- The amount of \$44,158 was paid to FTI on 20 December 2017

Please note that material filed, decisions and orders made in relation to FTI's remuneration claim and indemnity claim are available on the websites www.lmfimf.com and www.lminvestmentadministration.com.

1.2.6.3 Additional remuneration claimed

As the judgement had been handed down, I requested FTI to provide details of any additional remuneration and costs incurred subsequent to the remuneration claimed in the above mentioned court application.

FTI has informed me that for the period since late 2015 and up to 31 December 2017 they have incurred additional remuneration of \$329,678 plus GST and expenses of \$7,731 plus GST. FTI have advised that they propose to make application to the court for the approval of the remuneration shortly.

FTI have provided me with these figures so that the Fund may properly record the expense in the December 2017 management accounts. I have yet to receive details of these amounts claimed and FTI have advised these amounts are subject to change based on the formulation of its application for court approval.

1.2.6.4 Proof of debt process

If a debt or claim is admitted by FTI in the winding up of LMIM and a claim for indemnity out of the FMIF with respect to such debt or claim is identified, I summarise the process as outlined in the Court Orders as follows:

- FTI must notify me within 14 days of the claim for indemnity against the assets of the Fund;
- Within 14 days I may seek further information in relation to the claim;
- Within 30 days of receipt of the claim from FTI or from receipt of further information I have requested, I am required to:
 - Accept the claim, or
 - Reject the claim, or
 - Accept part of it and reject part of the claim; and
 - To give FTI written notice of the decision;
- I am required to give FTI written reasons for rejecting any part of a claim within 7 days after giving notice of my decision including those claims identified through the proof of debt process mentioned above;
- Within 28 days of receiving a notice of rejection, FTI may apply to the Court for directions in relation to the rejection and advise the creditor of my decision and other specified matters.

I have sought a number of updates from FTI as to when they will be commencing the process. I am hopeful that this process can be undertaken in the near future so the quantum of any creditor claims against the Fund can be ascertained and dealt with as soon as possible. These claims may be subject to the “clear accounts rule” described above and if so, a set off against that claim may be able to be made.

1.2.6.5 Claim filed against LMIM

I refer to my previous report to investors and summarise the background as follows:

- In November 2016, I caused LMIM as RE of the FMIF to commence a proceeding against LMIM in relation to certain transactions to avoid possible expiry of the statutory limitation periods for making the claims;
- This claim alleges that, *inter alia*, LMIM breached its duties to members of the FMIF by:

- causing to be paid out of assets of the FMIF management fees in advance of it becoming entitled to payment of same;
 - overpaying management fees to itself out of assets of the FMIF;
 - causing to be paid to LMA additional fees purportedly for loan management and controllership services;
 - directing payments to be made by the MPF, purportedly in satisfaction of liabilities owed by the MPF to the FMIF, to be paid to itself as RE of the feeder funds;
- Following further investigations, an amended claim and statement of claim and consolidated particulars have been filed and served on LMIM;
- Steps have been taken to prepare an application under Section 59 of the Trusts Act for directions of the Court in relation to how the differing interests of the parties (LMIM as RE of the FMIF, and LMIM in its personal capacity) are to be represented in the proceedings and an application under Section 500 of the Corporations Act to seek leave to proceed against LMIM (the Applications) and supporting Affidavits.

No further steps have been taken since my previous update to investors.

Subject to any directions that may be made by the Court, if the claims made in this proceeding are successful, they may be able to be relied upon as a set-off against certain claims made by LMIM for indemnity out of assets of the FMIF, including those claims identified through the proof of debt process mentioned above or claims made by other parties seeking to subrogate to LMIM's alleged rights of indemnity.

I will keep investors updated as to the progress of this claim.

1.3 Realisation of Assets

All real property assets have now been sold. What remains to be realised or resolved are the various claims and legal proceedings both for and against the Fund as set out above.

2. Financial Position of the Fund

The management accounts for the year ending 31 December 2017 have now been completed and are available on the website www.lmfimf.com on the page titled 'Financial Statements & Other Key Documents'.

A summary of the financial position of the Fund as at 31 December 2017 is provided below.

	31 December 2017
ASSETS	\$
Cash and cash equivalents	69,932,089
Receivables	389,476
Loans & Receivables	1,716,378
TOTAL ASSETS	72,037,943
 LIABILITIES	
Payables	2,423,816
Distributions payable	1,372,036
Total liabilities excluding net assets attributable to unitholders	3,795,852
 NET ASSETS	68,242,091

2.1 Fund Assets

The total assets of the Fund as at 31 December 2017 were \$72,037,943.

The balance includes cash at bank of \$69,932,089, interest receivable on term deposits and GST refunds of \$389,476 and net default loans of \$1,716,378. The net default loans balance represents the cash held in controllership bank accounts.

2.2 Fund Liabilities

The total liabilities of the Fund as at 31 December 2016 were \$3,795,852.

The Distributions Payable balance relates to distributions paid prior to the date of the receiver's appointment which have not cleared or were returned unclaimed.

The Payables balance primarily consists of trade creditors, custodian fees, legal fees, receiver's fees and fees and expenses claimed by FTI, which remain unpaid as at 31 December 2017.

2.3 Net Assets Attributable to Unit Holders

Net assets attributable to unit holders as at 31 December 2017 were \$68,242,091.

The net assets of the Fund and number of units on issue as at 31 December 2017 and 30 June 2017 is detailed in the table below:

	31 December 2017	30 June 2017
Estimated net amount of assets available to investors as at the period end (\$)	68,242,091	68,809,977
Total investor units (# of units) *	478,100,386	478,100,386
Estimated net asset amount per unit available to investors as at the period end (cents in the dollar)	0.143	0.144

Investments made in Foreign Currencies

Investigations undertaken by BDO have identified that the number of units held by investors who invested in foreign currencies appears to be incorrectly recorded in the membership records of the FMIF. It appears that when LMIM transferred the member records of the FMIF to a new database in 2010 the number of units of investors who invested in a foreign currency were incorrectly recorded in the new database, by allocating to the investors concerned one unit in the FMIF for each unit of foreign currency invested, rather than one unit in the FMIF for each \$1AUD invested (after the foreign currency amount invested had been converted to AUD at the applicable exchange rate) in accordance with the PDS and Constitution. Further investigations are ongoing and appropriate steps, including an application to Court for directions approving the correction of the member records of the FMIF, will be taken to address the issue and to ensure that the member records of the FMIF are accurate.

3. Receipts and Payments of the Fund

The receipts and payments of the Fund, as maintained by the DB Receivers, for the period 1 July 2017 to 31 December 2017 is summarised in the table below.

	\$
Receipts	
Interest received	923,454
GST received	80,290
Asset realisations (from controllerships and legal matters)	1,569,614
TOTAL RECEIPTS	2,573,358
Payments	
Bank charges	11,424
Deed of assignment payment	14,000
Consultants' fees	51,829
GT Controller fees	8,578

Custodian fees	11,000
DB Receivers' fees	138,936
GST paid	298
IT expenses	60,820
Legal fees	1,013,944
FTI Liquidators' fees & expenses	1,882,252
Loan draws	85,384
Printing and stationary	19,298
Receiver's fees and disbursements	2,242,734
Record management and storage	6,460
TOTAL PAYMENTS	5,546,957
NET RECEIPTS (PAYMENTS)	(2,973,599)

Please note that the Receiver's fees and disbursements relate to work undertaken for the 12 month period between 1 November 2016 to 30 October 2017, however, payment was made during this six months reporting period.

4. Investor Information

4.1 Estimated Return to Investors

I provide an estimated return to Investors of between 13.1 cents and 14.3 cents per unit as at 28 February 2018, calculated as follows:

Description	Low \$	High \$
Cash at bank	70,181,022	70,181,022
Other assets	320,708	1,359,538
Estimated Assets	70,501,730	71,540,560
Other unsecured creditors	6,234,582	1,505,517
FTI Fees & legal expenses (subject to approval) (55% RITC)	694,756	694,756
Receivers and Managers' fees (DB Receivers) (55% RITC)	42,200	42,200
Receiver's fees & outlays (BDO) (including controllerships) (55% RITC)	641,481	641,481

Receiver's legal fees (BDO) (55% RITC)	79,414	79,414
Estimated Liabilities	7,692,432	2,963,367
Estimated net amount available to investors as at 28 February 2018	62,809,297	68,577,192
Total investor units (as at 31 December 2016)	478,100,386	478,100,386
Estimated return in the dollar	13.1 cents	14.3 cents

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

In calculating the estimated return to investors, I have also not provided any allowance for the claims filed by the MPF Trustee as the prospects of a successful claim against the Fund is unknown.

4.2 Estimated Unit Price as at 31 December 2017

The estimated unit price as at 31 December 2017 is 14.3 cents.

	\$
Total Value of Fund Assets as at 31 December 2017	72,038,217
Less Creditors and Other Payables	3,801,353
Total Net Value of Fund Assets	68,236,864
Total Number of Units	478,100,386
Unit Price	14.3 cents

I attach a copy of a letter confirming the unit price as at 31 December 2017, which may be forwarded to Centrelink to assist with the review of investors' pensions.

4.3 Distributions to Investors

Once the DB Receivers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the auditor claim and Bellpac litigation.

I am also required to seek the directions of the Court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer, however, I am hopeful to be in a position to commence distributions during this calendar year, although it is subject to resolving matters before the court where I cannot necessarily control the timeframe to resolve the issues.

The matters before the court which need to be resolved prior to a distribution to investors are:

- the Bellpac litigation claim against the directors, MPF and LMIM and the MPF's claims against the Fund (see sections 1.1.1 and 1.1.2 above). These proceedings have not settled and I am now taking further steps to progress the matter to a trial;
- the claim served on the Feeder Funds seeking declarations that any distribution to the Feeder Funds be withheld (see section 1.2.3 above);
- obtaining directions from the Court for approval to proceed with a distribution and the retirement of the DB Receivers so that the funds of the FMIF held by them are released to me.

In addition to the above, an application to Court for directions approving the correction of the member records pertaining to foreign investors of the FMIF, will need to be determined.

Please note that a distribution to investors will take place after paying DB's receivers fees and costs, remaining property expenses, receiver's fees and costs and the unsecured creditors who rank ahead of investors' interests.

4.4 Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor in the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if investors could nominate an email address as their preferred method to receive correspondence. Investors may update their details as outlined in Section 4.5 below. For those investors that do not have an email address, correspondence will continue to be sent to you via post.

My next report to investors will be issued by 30 June 2018.

4.5 Investors Queries

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

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

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

It is a requirement that advisors or other third parties acting on behalf of Unit Holders are doing so pursuant to a relevant Authority/Power of Attorney. Please ensure that a relevant Authority/Power

of Attorney accompanies the abovementioned documents as necessary (if an Authority/Power of Attorney has not previously been provided).

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

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

5. Receiver's Remuneration and Expenses

There have been eight applications to Court to date to approve my remuneration from the date of my appointment on 8 August 2013 until 31 October 2017.

The eighth application for the approval of my remuneration for the period 1 May 2017 to 31 October 2017 was heard on 30 November 2017. The Court ordered that my remuneration for this period be fixed in the amount of \$1,280,897.20 (inclusive of GST). In addition, the Court approved my remuneration sought of \$26,155.25 (inclusive of GST) in respect of the work undertaken on the controllerships.

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

In addition to the remuneration previously approved by the Court, I calculate that, on a time basis, I have incurred further remuneration of \$588,073.50 plus outlays of \$12,459.91 plus GST from 1 November 2017 to 28 February 2018 plus work undertaken in respect of the controllerships for the retirement village assets of \$13,320.50 plus GST as detailed in the table below and attached summaries.

	Remuneration (GST exclusive) \$	Outlays (GST exclusive) \$
LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed)	588,073.50	12,459.91
OVST Pty Ltd (In Liquidation) (Controllers Appointed)	9,666.50	0.86
Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)	729.00	-
Bridgewater Lake Estate Ltd (In Liquidation) (Controllers Appointed)	1,241.00	-
Redland Bay Leisure Life Ltd (In Liquidation) (Controllers Appointed)	960.50	0.86
Redland Bay Leisure Life Development Ltd (In Liquidation) (Controllers Appointed)	423.00	0.86
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers & Managers Appointed) (Controllers Appointed)	300.50	0.86
Total	601,394.00	12,461.63

The fees for the four months from November 2017 to February 2018 average approximately \$150,348.50 per month.

I anticipate that my next application to Court for the approval of my remuneration will be made in May/June 2018 covering the period 1 November 2017 to 30 April 2018. A copy of my application in this respect will be posted to the website www.lmfimif.com and investors will be notified when this application has been lodged.

5.1 Actions taken during the Period

I provide below a summary of actions taken during the Period:

- Work undertaken in relation to the litigation matters, which among other things, include:
 - Progressing the claim against the former auditors regarding the financial statements and compliance plan audits. The majority of the work undertaken was to comply with the court's decision on the former auditor's strike out application including, amending the statement of claim to include details of the quantification of the loss suffered by the Fund and preparing loss calculations for each six month period from 1 July 2009 to 1 January 2013;

- In addition to the above work undertaken in progressing the claim against the former auditors, work was also undertaken to comply with the court rule 222 request for documents;
 - Providing assistance to the Liquidator of Bellpac regarding the \$8M bond claim including progressing the settlement with WCL;
 - Progressing the claim against the MPF and others;
 - Progressing the claim against the Feeder Funds in relation to redemptions and distributions paid to Class B unitholders;
 - Progressing claims against guarantors;
 - Dealing with FTI's proceedings to review the rejection of parts of their claims for indemnity against the assets of the Fund for expenses and costs incurred in their capacity as liquidators of the responsible entity;
 - Progressing the claim against LMIM.
- Liaising with various parties in relation to the potential for the DB Receiver's retirement;
 - Finalising the Western Union matter;
 - Maintaining the management accounts of the Fund;
 - Preparing an application to ASIC for an extension of the relief from complying with requirements to conduct financial audits and reviews of the Fund's accounts;
 - Undertaking the investor management function for approximately 4,500 investors including answering queries on the winding up of the Fund and maintaining the investment database, including any change in details or transfer of units;
 - Progressing the investigation of the AX files to determine the alternatives to resolving the incorrect conversion of foreign investors units into AX;
 - Preparing affidavit and supporting material for an application to Court for approval of the receiver's remuneration for the period 1 May 2017 to 31 October 2017; and
 - Finalising outstanding residual matters from the sale of five retirement villages, including tax compliance issues.

5.2 Actions proposed to be taken in the next 12 months

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

- Take steps to finalise the various ongoing litigation matters outlined in this report;
- Progressing the claim against the former auditors as outlined at section 1.2.1 of this report which will likely include responding to any requests for particulars and reviewing and responding to the defence filed by the former auditors and otherwise progress the matter to trial;

- Take steps to determine or resolve the claim regarding the Bellpac bonds and realise this asset as outlined at section 1.2.2 of this report;
- Resolve the MPF claim against the proceeds of the Bonds;
- Resolve the position in relation to the distributions and redemptions paid to the Feeder Funds;
- Finalise all claims against guarantors;
- Dealing with any further FTI indemnity claims against the Fund including proof of debt claims per the regime set out in section 1.2.6.4 above;
- Maintain the accounts of the Fund and prepare management accounts and finalise the management accounts for the half year ending 31 December 2017 and for the year ending 30 June 2018;
- Resolve the issues relating to the investor units subscribed in foreign currencies in the investor management database, and obtain court approval to correct the member records of the FMIF;
- Maintain the investor management database;
- Subject to resolution of the litigation/court matters raised in section 4.3 above, obtain approval from the Court to process interim distributions to investors;
- Report to investors on a quarterly basis; and
- Make applications to Court for remuneration approval.

Please note that the timing to finalise some of the above matters will be subject to judgments being handed down by the Court.

5.3 Actions required to complete the winding up

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

- Finalise all litigation currently on foot and contemplated;
- Finalise any further FTI's indemnity claims against the Fund and any proof of debt claims;
- Discharge all liabilities of the Fund;
- Obtain a discharge of the DB security and of the DB Receivers;
- Obtain approval from the Court to process interim distributions and a final distribution to investors;
- Prepare final accounts for the Fund;
- Arrange for an auditor to audit the final accounts of the Fund after the Fund is wound up; and
- Obtain court orders in relation to the finalisation of my role in relation to the Fund.

I anticipate that the winding up of the Fund will be finalised in approximately 18 months, however, this may vary subject to the progression of the outstanding legal matters detailed in this report.

6. Queries

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

BDO

GPO Box 457

Brisbane QLD 4001

Phone: +61 7 3237 5999

Fax: +61 7 3221 9227

Email: enquiries@lmfmif.com

Yours faithfully

A handwritten signature in blue ink, appearing to read 'David Whyte', with a long, sweeping horizontal stroke extending to the right.

David Whyte
Receiver

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2017 to 28 February 2018
LM First Mortgage Income Fund (Receivers & Managers Appointed)

Employee	Position	Rate	Totals		Task Area											
			hrs	\$	Assets		Creditors		Trade On		Investigations		Administration			
					hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$		
Leisa Rafter	Partner	680	6.1	4,148.00	6.1	4,148.00										
David Whyte	Partner	580	116.8	67,744.00	33.6	19,488.00	43.2	25,056.00						26.4	15,312.00	
Clark Jarrold	Partner	580	45.9	26,622.00	45.9	26,622.00			13.6	7,888.00						
Mark Whittaker	Partner	560	16.7	9,352.00	16.7	9,352.00										
John Garrard	Senior Manager	540	2.5	1,350.00	2.5	1,350.00										
Craig Jenkins	Partner	515	1.0	515.00			1.0	515.00								
Craig Jenkins	Partner	500	11.8	5,900.00			11.8	5,900.00								
Eric Leeuwendal	Executive Director	495	418.1	206,959.50	266.6	131,967.00	47.1	23,314.50	26.9	13,315.50			1.4	693.00		
Samuel Alexander	Manager	450	6.1	2,745.00	6.1	2,745.00										
Chris Demeyere	Manager	430	9.0	3,870.00	9.0	3,870.00										
Julie Pagcu	Senior Manager	400	8.4	3,360.00												
Julie Pagcu	Senior Manager	385	24.4	9,394.00	24.4	9,394.00										
Ainsley Watt	Senior Accountant I	350	350.0	122,500.00	47.7	16,695.00	165.6	57,960.00	8.7	3,045.00			15.9	5,565.00		
Joanna Lane	Senior Consultant II	280	0.4	112.00	0.4	112.00										
Reuben Tham	Senior Consultant II	240	2.2	528.00	2.2	528.00										
Andrew Hack	Analyst I	225	2.4	540.00	2.4	540.00										
Sarah Cunningham	Team Assistant	215	0.1	21.50									0.1	21.50		
Andrew Whittaker	Accountant II	215	67.6	14,534.00			63.5	13,652.50	3.1	666.50			1.0	215.00		
Antoinette Fielding	Accountant II	215	9.9	2,128.50	0.6	129.00	9.3	1,999.50								
Antoinette Fielding	Accountant II	175	146.8	25,690.00	4.1	717.50	117.3	20,527.50	6.8	1,190.00			5.7	997.50		
George Lethbridge	Undergraduate	175	126.3	22,102.50	38.2	6,685.00	83.0	14,525.00	2.6	455.00			1.4	245.00		
Ryan Whyte	Undergraduate	175	305.7	53,497.50	24.2	4,235.00	209.0	36,575.00	44.2	7,735.00			21.2	3,710.00		
Brooke Streidl	Team Assistant	130	3.1	403.00	1.8	234.00										
Emma Gatti	Junior Practice Assistant	120	0.4	48.00												
Moir Hattingh	Team Assistant	95	42.2	4,009.00									42.2	4,009.00		
TOTALS			1,723.9	588,073.50	532.5	238,811.50	708.4	176,442.00	275.4	115,645.00	92.3	26,407.00	115.3	30,768.00		
			GST		58,807.35											
			TOTAL INC GST		646,880.85											
			AVERAGE HOURLY RATE		341		448		249		420		286		267	

Note: All amounts exclude GST unless otherwise noted

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2017 to 28 February 2018
Bridgewater Lake Estate Pty Limited (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area	
			hrs	\$	Trade On	Administration
					hrs	hrs
Eric Leeuwendal	Executive Director	495	0.8	396.00	0.8	
Ainsley Watt	Senior Accountant I	350	1.2	420.00	0.2	1.0
Sarah Cunningham	Team Assistant	215	1.4	301.00		1.4
Ryan Whyte	Undergraduate	175	0.6	105.00		0.6
Maira Hattingh	Team Assistant	95	0.2	19.00		0.2
TOTALS			4.2	1,241.00	1.0	3.2
			GST			
			124.10			
			TOTAL INC GST			
			1,365.10			
			AVERAGE HOURLY RATE			
			295			
			466			
			242			

Note: All amounts exclude GST unless otherwise noted

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2017 to 28 February 2018
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area	
			hrs	\$	hrs	\$
Sarah Cunningham	Team Assistant	215	0.4	86.00	0.4	86.00
Antoinette Fielding	Accountant II	175	0.3	52.50	0.3	52.50
Ryan Whyte	Undergraduate	175	0.6	105.00	0.6	105.00
Moir Hattingh	Team Assistant	95	0.6	57.00	0.6	57.00
TOTALS			1.9	300.50	1.9	300.50
			GST			
			TOTAL INC GST			
			AVERAGE HOURLY RATE			
					158	

Note: All amounts exclude GST unless otherwise noted

Note: All amounts exclude GST unless otherwise noted



REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2017 to 28 February 2018

Pinevale Villas Morayfield Pty Ltd (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area	
			hrs	\$	hrs	\$
Ainsley Watt	Senior Accountant I	350	0.5	175.00	0.5	175.00
Sarah Cunningham	Team Assistant	215	2.0	430.00	2.0	430.00
Ryan Whyte	Undergraduate	175	0.6	105.00	0.6	105.00
Moir Hattingh	Team Assistant	95	0.2	19.00	0.2	19.00
TOTALS			3.3	729.00	3.3	729.00
			GST	72.90		
			TOTAL INC GST	801.90		
			AVERAGE HOURLY RATE	221		
						221

Note: All amounts exclude GST unless otherwise noted



REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2017 to 28 February 2018

Redland Bay Leisure Life Pty Ltd (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area	
			hrs	\$	Administration	\$
Ainsley Watt	Senior Accountant I	350	0.5	175.00	0.5	175.00
Sarah Cunningham	Team Assistant	215	2.7	580.50	2.7	580.50
Antoinette Fielding	Accountant II	175	0.3	52.50	0.3	52.50
Ryan Whyte	Undergraduate	175	0.6	105.00	0.6	105.00
Moirra Hattingh	Team Assistant	95	0.5	47.50	0.5	47.50
TOTALS			4.6	960.50	4.6	960.50
			GST		96.05	
			TOTAL INC GST		1,056.55	
			AVERAGE HOURLY RATE		209	

Note: All amounts exclude GST unless otherwise noted

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 November 2017 to 28 February 2018

Redland Bay Leisure Life Development Pty Ltd (Controllers Appointed)

Employee	Position	Rate	Totals		Task Area	
			hrs	\$	hrs	\$
Ainsley Watt	Senior Accountant I	350	0.5	175.00	0.5	175.00
Sarah Cunningham	Team Assistant	215	0.2	43.00	0.2	43.00
Antoinette Fielding	Accountant II	175	0.3	52.50	0.3	52.50
Ryan Whyte	Undergraduate	175	0.6	105.00	0.6	105.00
Maira Hattingh	Team Assistant	95	0.5	47.50	0.5	47.50
TOTALS			2.1	423.00	2.1	423.00
			GST	42.30		
			TOTAL INC GST	465.30		
			AVERAGE HOURLY RATE	201		
						201

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 November 2017 to 28 February 2018

Entity	Expense Type				Total (\$ ex GST)
	Postage	Printing	Search Fee	General	
LM First Mortgage Income Fund (Receivers & Managers Appointed)	9,834.94	325.20	70.77	2,229.00	12,459.91
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Controllers Appointed)	0.86				0.86
OVST Pty Ltd (Controllers Appointed)	0.86				0.86
Redland Bay Leisure Life Pty Ltd (Controllers Appointed)	0.86				0.86
Redland Bay Leisure Life Development Pty Ltd (Controllers Appointed)	0.86				0.86
				TOTAL	12,463.35
				GST	1,246.34
				TOTAL INC GST	13,709.69

29 March 2018

TO WHOM IT MAY CONCERN**LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ARSN 089 343 288 ('the Fund' or 'FMIF')**

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

I provide an update on the estimated unit price of the fund as at 31 December 2017, calculated as follows:

	\$
Total Value of Fund Assets as at 31 December 2017 (net of land tax and rates)	72,037,943
Less Creditors and Other Payables	3,795,852
Total Net Value of Fund Assets	68,242,091
Total Number of Units	478,100,386
Unit Price	14.3 cents

Should you have any queries in respect of the above, please contact Ryan Whyte of my office on (07) 3237 5921.

Yours faithfully,



David Whyte
Receiver