

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 007 208 461 AS RESPONSIBLE ENTITY OF THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND;

LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 007 208 461 AS RESPONSIBLE ENTITY OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND

First Applicant: LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 007 208 461

Second Applicant: JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 007 208 461

Third Applicant: LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 007 208 461 AS RESPONSIBLE ENTITY OF THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND

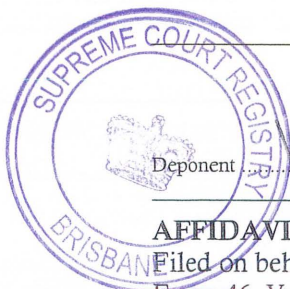
Fourth Applicant: LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 007 208 461 AS RESPONSIBLE ENTITY OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND

AFFIDAVIT OF MILLICENT KATHRYN RUSSELL

I, **MILLICENT KATHRYN RUSSELL** of Level 18, 300 Queen Street, Brisbane in the State of Queensland, Solicitor, state on oath:-

1. I am a solicitor of this Honourable Court and a Partner of Russells, solicitors for the applicants. I have the day to day carriage of this matter.

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Deponent .....

Witness .....

**AFFIDAVIT**

Filed on behalf of the Applicants  
Form 46, Version 2  
Uniform Civil Procedure Rules 1999  
Rule 431

**Russells**

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Ref: MKR:20201040

2. For convenience, I use the following defined terms in my Affidavit:

TERM	DEFINITION
<b>FMIF</b>	LM First Mortgage Income Fund ARSN 089 3543 288
<b>LMIM</b>	LM Investment Management Limited (In Liquidation) ACN 077 208 46
<b>LM Funds</b>	Means, relevantly to this application, the CPAIF, the ICPAIF and the FMIF
<b>CPAIF</b>	LM Currency Protected Australian Income Fund
<b>ICPAIF</b>	LM Institutional Currency Protected Australian Income Fund
<b>Feeder Funds</b>	CPAIF and ICPAIF
<b>Receiver</b>	Mr David Whyte as receiver of the property of the FMIF
<b>Website</b>	www.lminvestmentadministration.com

3. I swear this affidavit in support of an application for substituted service in respect of an application for judicial advice under s 96 of the *Trusts Act 1973 (Qld)* and/or s 90-15 of the *Insolvency Practice Schedule (Corporations)*.
4. The substantive orders sought in this application are for directions, pursuant to s 96 of the *Trusts Act* and/or s 90-15 of the *Insolvency Practice Schedule (Corporations)*, that the applicants are justified in:-
- (a) in commencing Supreme Court of Queensland proceeding, BS 14389 of 2022 and would be justified in continuing to prosecute that proceeding;
  - (b) resisting any strike out application that the Receiver has foreshadowed filing in Supreme Court of Queensland proceeding, BS 14389 of 2022 (presently listed for hearing before Kelly J on 27 April 2023).
5. That proceeding is a challenge to a claim for indemnity by the Receiver for payment of the sum of \$5 million out of the scheme property of the FMIF. It is proposed that LMIM will rely on a confidential statement of facts setting out the factual basis for the application for advice (**Statement of Facts**). The Statement of Facts is to be annexed to a confidential affidavit of Mr Park to be filed in this proceeding.

**Background and knowledge**

6. The second applicant is a Registered Liquidator and Senior Managing Director of FTI Consulting. He is the liquidator of LMIM, which is responsible entity of a number of managed investment schemes. Mr Park is assisted by Ms Kelly-Anne Trenfield, also a Registered Liquidator and Senior Managing Director of FTI Consulting, on tasks involved in the liquidation of LMIM. Mr Park and Ms Trenfield are assisted in the daily management of the liquidation by Ms Renee Lobb, a Managing Director of FTI Consulting.
7. I have had carriage of matters for the applicants since approximately July 2019. I am familiar with, and have acted as solicitor on record in, many applications related to the winding up of LMIM and the LM Funds.
8. To prepare my affidavit, I have relied on my knowledge of LMIM and my discussions with Ms Lobb. Unless otherwise stated, those are the sources of my information and belief relied on in preparing my affidavit.
9. Ms Lobb informs me, and I believe:-
  - (a) she is responsible for a number of tasks in the liquidation of LMIM including, but not limited to:
    - (i) attending to investor enquiries;
    - (ii) emailing updates and notices to the members of the LM Funds and the creditors of LMIM as and when required by order the Court;
    - (iii) drafting and uploading updates and notices to members of the LM Funds and creditors of LMIM to the Website; and
    - (iv) uploading Court documents to the Website;
  - (b) she has carried out that work since 19 March 2013, under the supervision of Mr Park and Ms Trenfield.
10. I have personally been involved in at least three applications for Mr Park's remuneration as well as other applications where orders for substituted service on the members of the LM Funds have been made in terms substantially similar to those sought in this substituted service application.

11. In the time I have been involved in Court proceedings where the members of the LM Funds have been served by substituted service, no member has entered an appearance or otherwise sought information about a proceeding. Ms Lobb informs me that:
- (a) she cannot recall any occasion at least after 2017 (when she became heavily involved in daily management of the winding up), when any member of the CPAIF or ICPAIF has appeared on any application;
  - (b) to the best of her recollection, from time to time individual members of the CPAIF or ICPAIF have sent emails to the liquidator complaining about the amounts sought by the liquidator for remuneration or the time the winding up of the Feeder Funds was taking. None of those emails resulted in any appearances by those parties in any application.

**Relevant LM Funds**

12. LMIM is the responsible entity of the following Funds, relevantly:-
- (a) the CPAIF; and
  - (b) the ICPAIF.
13. Ms Lobb informs me, and I believe, that if there is any change in respect of the memberships of the CPAIF or the ICPAIF she delegates to FTI Consulting staff to attend to the changes to the relevant member registers, when instructed by a member of any change to a name or contact details.
14. As at 5 April 2023:-
- (a) the CPAIF had 2,666 members. Approximately 580 of those members are institutional persons, meaning they are custodians of investment funds or bond holders; and
  - (b) the ICPAIF had 41 members. Approximately 20 of those members are institutional persons, meaning they are custodians of investment funds or bond holders.
15. The assets of the above Feeder Funds are units in the FMIF and some cash at bank.

**Difficulty in personally serving the members of the CPAIF and ICPAIF**

- 16. The cost and delay associated with personal service of each of the members of the CPAIF and the ICPAIF would be substantial.
- 17. In my experience, and based on my conversation with Ms Lobb, it will be very costly and time consuming to serve each of the members of the CPAIF and ICPAIF personally, or even by posting to them a covering letter, the Originating Application and any affidavits.
- 18. Given the number of members, the time and cost involved in FTI Consulting attending to that mailout itself is very high. As such, FTI Consulting engages a contractor to attend to the mailout, if service of the Originating Application and any affidavits is to occur by post. Previous mailouts in respect of the voluntary administration and liquidation of LMIM have occurred by FTI Consulting engaging a print service, Worldwide Printing, to carry out the work.
- 19. From her experience with previous mailouts in this administration, Ms Lobb informs me, and I believe, that she is aware of the rates charged by Worldwide Printing. She estimates that if a cover letter, the Originating Application and supporting affidavits (being approximately 20 pages) were to be sent out to 2,707 members of the CPAIF and the ICPAIF, the costs of doing so would be in excess of \$50,000 (including postage).
- 20. Further, many members of the CPAIF and the ICPAIF either reside overseas or have provided an overseas address for correspondence. Not all of the members' addresses are regularly updated by those persons and some of those addresses may be out of date.

**Giving notice to members of the Funds**

- 21. The Originating Application, in part, seeks orders permitting service to occur by:-
  - (a) emailing a notice to members of the CPAIF and the ICPAIF;
  - (b) uploading those notices, the Originating Application and this affidavit to the Website.
- 22. It is not proposed that any other substantive supporting affidavits be provided to members, because those affidavits will contain confidential material.
- 23. This process can be carried out by FTI Consulting without the need to engage a print service or other contractor. Ms Lobb has previously sent, and instructed other staff

members of FTI Consulting to send, emails to members of the CPAIF and ICPAIF in that way, including when affecting service pursuant to substituted service orders.

24. Ms Lobb is the person responsible for maintaining the Website. When orders are made by the Court, Ms Lobb can upload that material to the Website, and the members may then access those Court documents on the Website.
25. Ms Lobb informs me, and I believe, that she has the email addresses for 1,321 members of the CPAIF and 37 members of the ICPAIF. These email addresses are contained in the registries maintained by FTI Consulting and are updated when any changes are notified by the members of the CPAIF and the ICPAIF. For that reason, Ms Lobb believes that the majority of those email addresses are current.
26. All the facts and circumstances deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

**SWORN** by **MILLICENT KATHRYN RUSSELL** on 6 April 2023 at Brisbane in the presence of:

.....  
Millicent Kathryn Russell  
Deponent

.....  
Name: ✓  
Lawyer/Commissioner for Declarations/IP

FRANCISCO CARDONA  
LAWYER