

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

**IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)**

First Applicant: **JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS
AND MANAGERS APPOINTED) ACN 007 208 461 THE
RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE
INCOME FUND ARSN 089 343 288**

AND

Second Applicant: **LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)
ACN 077 208 461 THE RESPONSIBLE ENTITY OF LM FIRST
MORTGAGE INCOME FUND ARSN 089 343 288**

AND

First Respondent: **DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE
THE WINDING UP OF THE LM FIRST MORTGAGE INCOME
FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF
THE CORPORATIONS ACT 2001**

AND

Second Respondent: **SAID JAHANI IN HIS CAPACITY AS RECEIVER AND
MANAGER OF THE ASSETS, UNDERTAKING, RIGHTS AND
INTERESTS OF LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) (RECEIVERS AND MANAGERS
APPOINTED) ACN 077 208 461 AS THE RESPONSIBLE ENTITY
OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME
FUND ARSN 110 247 875 AND THE LM INSTITUTIONAL
CURRENCY PROTECTED AUSTRALIAN INCOME FUND
ARSN 122 052 868**

ORDER

Before: Justice Callaghan

Date: 23 March 2021



ORDER

Filed on behalf of the Applicants
Form 59, Version 1
Uniform Civil Procedure Rules 1999
Rule 661

Russells

Level 18, 300 Queen Street
Brisbane QLD 4000
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Ref: SCR:MKR:20190205

Initiating document: Application filed 12 February 2021

THE ORDER OF THE COURT IS THAT:

Directions for service of this Application

1. The First Applicant shall serve the Application filed 12 February 2021, the Twelfth Affidavit of Kelly-Anne Lavina Trenfield filed 12 February 2021 and the Third Affidavit of Renee Lobb filed 12 February 2021 on the members of the LM Australian Income Fund ARSN 133 497 917 ("**AIF**"), the LM Australian Structured Products Fund ARSN 149 875 669 ("**ASPF**"), the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("**ICPAIF**") and the LM Currency Protected Australian Income Fund ARSN 110 247 875 ("**CPAIF**"), as follows:
 - (a) the First Applicant shall upload to the website www.lminvestmentadministration.com ("**the Website**"): copies of this Application, a notice to Members in the form of Schedule 1 to this Application ("**the Notice**"), this order and the supporting Affidavits;
 - (b) the First Applicant shall send an email to all Members of the AIF, the ASPF, the ICPAIF and the CPAIF, for whom they hold an email address:
 - (i) attaching the Notice;
 - (ii) stating that they may view on the Website all substantive Court documents upon which the First Applicant intends to rely in support of the relief sought by paragraphs 10 to 16 of this Application; and
 - (c) if the First Applicant receives a response to an email that indicates the email was not received, or if the First Applicant does not hold an email address for any Member, and the First Applicant has a postal address for those Members, the First Applicant shall post the Notice to the postal address of those Members.
2. The First Applicant shall serve this Application, the Twelfth Affidavit of Ms Trenfield and the Third Affidavit of Ms Lobb on the creditors of the Second Applicant as follows:
 - (a) the First Applicant shall upload to the Website: a Notice to Creditors in the form of Schedule 2 to this Application ("**the Creditors' Notice**"), and this order;
 - (b) the First Applicant shall send an email to those Creditors of the Second Applicant, for whom they hold an email address:
 - (i) attaching the Creditors' Notice; and

- (ii) stating that they may view on the Website all substantive Court documents upon which the First Applicant intends to rely in support of the relief sought by paragraphs 10 to 16 of this Application; and
 - (c) if the First Applicant receives a response to an email that indicates the email was not received, or if the First Applicant does not hold an email address for any Creditor, and the First Applicant has a postal address for those Creditors, the First Applicant shall post the Creditors' Notice to the postal address of those Creditors.
- 3. Service of the Application and the said Affidavits of Ms Trenfield and of Ms Lobb in accordance with this order shall be deemed to be effective service on each of the members of the AIF, the ASPF, the ICPAIF and the CPAIF and the creditors of the Second Applicant.
- 4. The First Respondent shall within three business days, serve this Application, the Twelfth Affidavit of Ms Trenfield and the Third Affidavit of Ms Lobb on the Members of the LM First Mortgage Income Fund ARSN 089 343 288 ("**FMIF**") as follows:
 - (a) the First Respondent shall send the Notice by email to those Members of the FMIF for whom an email address is recorded in the register of Members maintained by the First Respondent ("**the Register**");
 - (b) if the First Respondent receives a response to an email that indicates the email was not received, or if the First Respondent does not hold an email address for any Member, and the First Respondent has a postal address for those Members, the First Respondent shall post the Notice to the postal address of those Members recorded in the Register, if any; and
 - (c) the First Respondent shall upload to the website www.lmfmif.com a copy of the Application, the Notice, this Order and a link to the location on the Website where the material uploaded pursuant to paragraph 1(a) of this Order has been placed.
- 5. Service of the Application and the said Affidavits of Ms Trenfield and of Ms Lobb on the members of FMIF shall be deemed to be effective 10 days after the last of the steps referred to in paragraph 4 have been taken.
- 6. If the First Applicant intends to rely on further material, he shall serve that material as follows:
 - (a) on the members of the AIF, ASPF, ICPAIF, CPAIF and on Creditors of the Second Applicant, by the First Applicant shall upload the further material to the Website and send an email (or, where the First Applicant does not hold a valid

email address, a notice by post) to the Members and Creditors informing them that further material in relation to this Application has been uploaded to the Website;

- (b) on the members of the FMIF:
 - (i) in the manner set out in subparagraph 1(a) of this Order; and
 - (ii) giving notice thereof to the First Respondent who shall upload to the website www.lmfimf.com such material, and a link to the location on the Website where the further material has been placed.

- 7. The First Applicant is not required to take further steps to serve the Members of the Funds or Creditors of the Second Applicant whose email addresses return permanent undeliverable receipts and for whom the Applicants do not have a postal address.

Direction for service of any future Application

- 8. The directions in paragraphs 8 to 15 below shall apply for any future applications by the First Applicant to the Court for approval of:
 - (a) reasonable remuneration under paragraph 18 of the Order of Justice Jackson dated 17 December 2015 [CFI 35]; and
 - (b) costs for expenses under paragraph 2 of the Order of Justice Jackson made 18 July 2018 [CFI 135];
 - (c) remuneration with respect to the AIF, the ASPF, the ICPAIF or the CPAIF.
- 9. Service of the application and any supporting material shall be effected on the Members of the AIF, the ASPF, the ICPAIF and the CPAIF, as follows:
 - (a) by the First Applicant uploading the Website: copies of the application, a notice to Members in a form similar to the form in Schedule 1 to Application filed on 12 February 2021 (“**a Schedule 1 Notice**”), any order made as to service, and any supporting material;
 - (b) the First Applicant sending an email to all Members of the AIF, the ASPF, the ICPAIF and the CPAIF, for whom an email address is recorded:
 - (i) attaching a Schedule 1 Notice;

- (ii) stating that they may view all substantive Court documents upon which the First Applicant intends to rely in support of the relief sought in the application on the Website; and
 - (c) where the First Applicant receives a response to an email that indicates the email was not received, or if the First Applicant does not hold an email address for any Member, and the First Applicant has a postal address for those Members, the First Applicant is to post a Schedule 1 Notice to the postal address of those Members.
- 10. Service of the application and any supporting material shall be effected on the Creditors of the Second Applicant as follows:
 - (a) by the First Applicant uploading to the Website: a notice to Creditors in a form similar to the form in Schedule 2 to the Application filed on 12 February 2021 (“**a Schedule 2 Creditors’ Notice**”), any order made as to service, and any supporting material;
 - (b) by sending an email to those Creditors of the Second Applicant, for whom an email address is recorded:
 - (i) attaching a Schedule 2 Creditors’ Notice;
 - (ii) stating that they may view all substantive Court documents upon which the First Applicant intends to rely in support of the relief sought in the application on the Website; and
 - (c) where the First Applicant receives a response to an email that indicates the email was not received, or if the First Applicant does not hold an email address for any Creditors, and the First Applicant has a postal address for those Creditors, the First Applicant is to post a Schedule 2 Creditors’ Notice to the postal address of those Creditors.
- 11. Service of the application and supporting material in accordance with any orders made shall be deemed to be effective service on each of the Members of the AIF, the ASPF, the ICPAIF, the CPAIF and the Creditors of the Second Applicant.
- 12. Service of the application and any supporting material on the Members of the FMIF shall be deemed to be effective 10 days after the last of the following steps have been taken in respect thereof, as applicable:
 - (a) service by the First Applicant of such documents on the First Respondent;

- (b) the First Respondent sending a Schedule 1 Notice by email to those Members of the FMIF for whom an email address is recorded in the register of Members maintained by the First Respondent (“**the Register**”);
 - (c) where the First Respondent receives a response to an email that indicated the email was not received, or if the First Respondent does not hold an email address for any Member, and the First Respondent has a postal address for those Members, the First Respondent posting a Schedule 1 Notice to the postal address of those Members recorded in the Register, if any; and
 - (d) the First Respondent uploading to the website www.lmfmif.com a copy of the application, a Schedule 1 Notice and a link to the location on the Website where the material uploaded pursuant to paragraph 9(a) of this Order has been placed.
13. The First Respondent shall take the steps in sub-paragraphs 12(b) to 12(d) above within three business days after service of the application and any supporting material. .
14. If the First Applicant intends to rely on further material, service of that material will be deemed effective:
- (a) on the AIF, ASPF, ICPAIF, CPAIF and Creditors of the Second Applicant, by the First Applicant uploading the further material to the Website and sending an email (or, where the First Applicant does not hold a valid email address, a notice by post) to the Members and Creditors informing them that further material in relation to the application has been uploaded to the Website;
 - (b) on the members of the FMIF by:
 - (i) in respect of any further material, the Applicants taking the steps set out in subparagraph 9(a) of this Order;
 - (ii) the First Respondent uploading to the website www.lmfmif.com such material, and a link to the location on the First Applicant’s website where the material uploaded pursuant to paragraph 9(a) of this Order has been placed.
15. The First Applicant shall not be required to take further steps to serve the Members of the Funds or Creditors of the Second Applicant whose email addresses return permanent undeliverable receipts and for whom the Applicants do not have a postal address.

Directions for the conduct of any future Application

16. Within 28 days of the date of service of the application and any supporting material in accordance with paragraph 8 to 15 above, any respondent intending to appear at the hearing of that application, file and serve on the First Applicant any affidavit on which the respondent intends to rely in response to the application.
17. Within 14 days after receipt of any affidavit material in accordance with paragraph 16 above, the First Applicant shall file written submissions and any further affidavit material in support of the application and serve such written submissions and any further affidavit material on any respondent who has served an affidavit in accordance with paragraph 16 above.
18. Within 14 days after the steps in paragraph 17 above, any respondent intending to appear at the hearing of the application, file and serve upon the First Applicant written submissions in response to the application.

Directions for the future conduct of this Application

19. Within 28 days of the date of this Order, any respondent intending to appear at the hearing of the Application filed 12 February 2021, file and serve on the First Applicant any affidavit on which the respondent intends to rely in response to this Application.
20. Within 14 days after receipt of any affidavit material in accordance with paragraph 19 above, the First Applicant shall file written submissions and any further affidavit material in support of this Application and serve such written submissions and any further affidavit material on any respondent who has served an affidavit in accordance with paragraph 19 above.
21. Within 14 days after the steps in paragraph 20 above, any respondent intending to appear at the hearing of the Application filed 12 February 2021, file and serve upon the First Applicant written submissions in response to this Application.
22. The Application filed 12 February 2021 be listed for hearing on a date to be fixed.
23. Costs are reserved.

Signed:

Deputy Registrar

A handwritten signature in black ink is written over a circular official stamp. The stamp contains the text "SUPREME COURT OF QUEENSLAND" around the top and "BRISBANE" around the bottom. The signature is a stylized, cursive script.

SCHEDULE 1

NOTICE TO MEMBERS

TO: The Members of [INSERT NAME OF RELEVANT FUND]

John Richard Park is the liquidator of LM Investment Management Limited (in liquidation) (receivers and managers appointed) ACN 077 208 461 (“LMIM”), which remains the responsible entity of the **[SELECT RELEVANT FUND, VIZ:**

LM First Mortgage Income Fund ARSN 089 343 288 (“FMIF”);

LM Australian Income Fund ARSN 133 497 917 (“AIF”);

LM Australian Structured Products Fund ARSN 149 875 669 (“ASPF”);

LM Currency Protected Australian Income Fund ARSN 110 247 875 (“CPAIF”); or

LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (“ICPAIF”)].

TAKE NOTICE that John Richard Park, the liquidator of LMIM, has applied to the Supreme Court of Queensland for:

- (a) the determination of his remuneration as liquidator of the Second Applicant, for the period **[SELECT RELEVANT PERIOD, VIZ:**

1 October 2015 to 31 October 2020, in the sum of \$863,876.31 (including GST);

- (b) an order permitting him to be paid that remuneration of \$833,091.71 (including GST) from the scheme property of the **[SELECT RELEVANT FUND, VIZ:**

AIF (\$143,884.62) (including GST));

FMIF (\$260,633.12) (including GST));

ASPF (\$131,504.67) (including GST));

ICPAIF (\$64,370.35) (including GST)); or

CPAIF (\$232,698.95) (including GST))].

The application is set down for hearing on **[DATE]**.

Copies of the application and other court documents filed in the proceeding will be available on the website www.lminvestmentadministration.com. Any member who reasonably requires a hardcopy of the application and other court documents should call Russells Lawyers on +61 7 3004 8888.

The members of **[INSERT FUND]** are not respondents to the application but any member is entitled to be heard in the application if they wish. Any member who wishes to appear and to make submissions at the hearing of the application must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act 2001* which are in Chapter 23 of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Russells, the solicitors for John Richard Park as liquidator of LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ACN 007 208 461 the Responsible Entity of the LM First Mortgage Income Fund ARSN 089 343 288, at their office at Level 18, 300 Queen Street, Brisbane, QLD 4000. Tel. +61 7 3004 8888 Fax +61 1 3004 8899 E-mail: Service@RussellsLaw.com.au.

This notice is given pursuant to an order of the Supreme Court of Queensland made on **[DATE]**. A copy of the order may be seen on the website www.lminvestmentadministration.com.

Dated: ## January 2021

SCHEDULE 2

NOTICE TO CREDITORS

TO: The Creditors of LM Investment Management Limited (in liquidation) (receivers appointed)

John Richard Park is the liquidator of LM Investment Management Limited (in liquidation) (receivers appointed) (“**LMIM**”), which remains the responsible entity of the LM First Mortgage Income Fund ARSN 089 343 288 (“**FMIF**”), LM Australian Income Fund ARSN 133 497 917 (“**AIF**”), LM Australian Structured Products Fund ARSN 149 875 669 (“**ASPF**”), LM Cash Performance Fund ARSN 087 304 032 (“**CPF**”), LM Currency Protected Australian Income Fund ARSN 110 247 875 (“**CPAIF**”) and LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (“**ICPAIF**”).

TAKE NOTICE that John Richard Park, the liquidator of LMIM, has applied to the Supreme Court of Queensland for:

- (a) the determination of his remuneration as liquidator of the Second Applicant, for the period 1 October 2015 to 31 October 2020, in the sum of \$863,876.31 (including GST);
- (b) an order permitting him to be paid that remuneration of \$833,091.71 (including GST) as follows:
 - (i) from the scheme property of the AIF, \$143,884.62 (including GST);
 - (ii) from the scheme property of the FMIF, \$260,633.12 (including GST);
 - (iii) from the scheme property of the ASPF, \$131,504.67.44 (including GST);
 - (iv) from the scheme property of the ICPAIF, \$64,370.35 (including GST);
 - and
 - (v) from the scheme property of the CPAIF, \$232,698.95.00 (including GST).

The application is set down for hearing on [DATE].

Copies of the application and other court documents filed in the proceeding will be available on the website www.lminvestmentadministration.com. Any creditor who reasonably requires a hardcopy of the application and other court documents should call Russells Lawyers on +61 7 3004 8888.

The creditors of LMIM are not respondents to the application but any creditor is entitled to be heard in the application if they wish. Any creditor who wishes to appear and to make submissions at the hearing of the application must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act 2001* which are in Chapter 23 of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Russells, the solicitors for John Richard Park as liquidator of LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ACN 007 208 461 the Responsible Entity of the LM First Mortgage Income Fund ARSN 089 343 288, at its office at Level 18, 300 Queen Street, Brisbane, QLD 4000. Tel. +61 7 3004 8888 Fax +61 1 3004 8899 E-mail: Service@RussellsLaw.com.au.

This notice is given pursuant to an order of the Supreme Court of Queensland made on [DATE]. A copy of the order may be seen on the website www.lminvestmentadministration.com.

Dated: ## January 2021